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*Copyright Protection in the New Millennium: Amending the Digital Millennium
Copyright Act to Prevent Constitutional Challenges*

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Abstract by Sean Sullivan

This article begins by evaluating the Digital Millennium Copyright Act of 1998, and includes a brief history of copyright law and a discussion of the Act's controversial legislative history. The author traces the two versions of the Act originating in the United States House of Representatives and a third originating in the Senate. She notes the controversy over whether the paracopyright provisions, contained in both House versions, should have properly originated from the Judiciary Committee or the Commerce Committee. These provisions would give copyright holders additional methods by which to protect their copyrighted materials. The Commerce Committee version also granted the Secretary of Commerce rulemaking authority to further delineate the new protections. The version eventually signed into law grants this rulemaking authority to the Librarian of Congress, rather than to the Commerce Department. The legitimacy of to whom rulemaking authority is granted and the extent of that authority is the central issue of the author's analysis.

The author first argues that the delegation of rulemaking authority to the Librarian of Congress is an unconstitutional delegation of legislative power. She points out that rulemaking authority must be delegated to executive agencies in order to pass constitutional muster. Decisions affecting substantive rights by the legislative branch must be approved by both houses and approved by Congress according to *INS v. Chada*. Because the Librarian is a legislative official, the author concludes the new rulemaking authority is unconstitutional. The author further argues that even if the delegation of authority to the Librarian is legitimate, the extent of the power granted makes the delegation unconstitutional. Citing the non-delegation doctrine, the author concludes that the power given to the Librarian to fashion paracopyright powers for copyright holders is too broad.