Kepplinger
SSA

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

B-222702

May 27, 1986

Mr. Jon Baumgarten
Proskauer, Rose, Goetz & Mendelsohn
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036

Dear Mr. Baumgarten:

Pursuant to Pub. L. No. 99-194, § 401, 99 Stat., 1345 (1985) (copy enclosed), GAO is studying the feasibility of two new sources of funding for the National Endowment for the Arts, Humanities and Museum Services. The two funding schemes specified for our consideration contemplate the creation of a revolving fund. Under one scheme, the fund would be comprised of payments made to the federal government for the right to use or publicly perform artistic, dramatic, literary or musical works (works) in the public domain. Under the other, the fund would be comprised of payments made to the federal government "through an extension of the existing copyright period for artistic, dramatic, literary, and musical works."

As part of our study, we have been asked to consider whether the proposals for the new funding schemes would survive constitutional and other legal challenge. Some of the issues we have been asked to consider include: (1) can Congress constitutionally extend the copyright period conditioned on the payment of a fee or tax by the users of the copyrighted material during the extended period; (2) can Congress constitutionally impose a fee or tax on the right to use or perform works in the public domain; (3) what would be the impact of the proposed funding schemes on obligations of the United States under any international copyright treaties.

We are soliciting your views on the constitutional or other legal concerns that the proposals for new funding schemes would pose and would welcome any written comments concerning these proposals by June 13, 1986. If you have any questions on this matter, please contact Nancy Finley of my staff at 275-5881. Thank you in advance for your cooperation.

Sincerely,

Gary L. Kepplinger

Gary L. Kepplinger
Assistant General Counsel

Enclosure