



## Legislative Agenda 2010

### A. EXECUTIVE SUMMARY

ACRL's Legislative Agenda includes objectives for legislative action at the national level on issues that affect the welfare of academic and research libraries. These are in a rough priority order and include the following issues that ACRL will focus on in 2010:

1. **Public Access to Federally Funded Research**
2. **Section 215 of the USA PATRIOT Act**
3. **Network Neutrality**
4. **Government Information**
5. **Orphan Works**
6. **Fair-Use and Anticircumvention**
7. **The Consumer Product Safety Improvement Act of 2008 (Lead in Children's Books - U.S.C. 15 1278a)**
8. **SKILLS Act**

### B. ACRL LEGISLATIVE AGENDA

#### 1. **Public Access to Federally Funded Research**

**Brief Background/Legislative History:** On December 26, 2007, the National Institutes of Health (NIH) Policy became mandatory with passage of the Consolidated Appropriations Act of 2007 (H.R. 2764). The Federal Research Public Access Act, first introduced in 2006, was reintroduced in the current Congress on June 25, 2009, by Senators Joseph I. Lieberman (I-CT) and John Cornyn (R-TX), cosponsors. The Federal Research Public Access Act of 2009 (S. 1373, FRPAA) aims "to help ensure free, timely online access to the published results of taxpayer funded research produced by 11 U.S. federal agencies and departments." The Federal Government funds tens of billions of dollars in research annually. Open access to federally funded research is part of an effort to ensure transparency in government and access to government information. FRPAA requires that federal agencies develop public access policies relating to unclassified research conducted by employees of that agency or from funds administered by that agency. It extends and advances the National Institutes of Health (NIH) Public Access Policy, which requires public access to published results of NIH-funded research no later than 12 months after publication via PubMed Central. FRPAA ensures that researchers, employed or funded by a federal agency with an annual research budget exceeding \$100 million, who publish a manuscript based on the work done for the funding agency in a peer-reviewed

journal must submit the electronic copy of the final manuscript to be made available in a free and stable archive or repository within six months of publication.

**Current Status:** The FRPAA bill was read twice and referred to the Senate Committee on Homeland Security and Governmental Affairs. As of mid-February, a House version had not been introduced. In addition to this potential legislative solution, an Executive Order could be issued. The Office of Science and Technology Policy (OSTP) within the Executive Office of the President, has requested input from the community regarding enhancing public access to archived publications resulting from research funded by federal science and technology agencies. This RFI was active from December 10, 2009, to January 21, 2010. On January 12, ALA and ACRL submitted comments to the White House OSTP supporting increased public access to research funded by federal science and technology agencies.

**Impact on Academic Libraries:** Unfortunately, access to research information paid for with tax dollars is limited at most universities and colleges. Academic libraries simply cannot afford ready access to most of the research literature that its faculty and students need. Scholarly journals that traditionally publish federally funded research have high subscription fees and, by devoting funds to them, we are unable acquire other important information resources. Open access to federally funded research, in both the natural and social sciences, from a wide array of federal agencies would substantially improve this situation. Indeed, the growth of PubMed Central as a result of the NIH Public Access Policy has already been of great benefit to the students, faculty, and communities we serve. Local, regional, and national scholarly communication programs will want to track the implementation of this policy in order to inform their response to additional proposed funder mandates.

**Links to other information:**

- White House Office of Science and Technology Policy [Public Access Policy Forum](#)
- [Alliance for Taxpayer Access](#) and [Scholarly Publishing and Academic Resources Coalition](#) (SPARC)
- [ALA Letter](#) to Senate Homeland Security & Governmental Affairs Committee regarding FRPAA (September 29, 2009)
- [ALA/ACRL Comments](#) to Office of Science and Technology Policy (January 12, 2010)

**ACRL Position:** ACRL supports enhanced access to federally funded research through open access publication and open data policies. ACRL strongly supports S.1373.

## **2. Section 215 of the USA PATRIOT Act**

**Issue:** Privacy rights of library users and surveillance of library records.

**Brief Background/Legislative History:** The USA PATRIOT Act broadly expanded law enforcement's surveillance and investigative powers and amended more than 15 different statutes, including the Electronic Communications Privacy Act of 1986 (ECPA), the Computer Fraud and Abuse Act (CFAA), the Foreign Intelligence Surveillance Act (FISA), and the Family Education Rights and Privacy Act (FERPA). The Act increased the ability of law enforcement agencies to search library, telephone, e-mail communications, medical, financial, and other records. Specifically Section 215 allows the FBI to order any person or entity to turn over library

records, as long as the FBI states that it is for an authorized investigation to protect against international terrorism or clandestine intelligence activities.

On March 7, 2006, Congress renewed the USA PATRIOT Act, and President Bush signed the renewal of the legislation. The renewal did not include the major reforms the library community had desired. A sunset of December 31, 2009, was established for Section 215 of the USA PATRIOT Act.

On November 6, 2009, the House Judiciary Committee passed by a 16-10 vote H.R. 3845 USA Patriot Amendments Act of 2009, introduced by House Judiciary Committee Chairman John Conyers (D-MI) and Representatives Jerrold R. Nadler (D-NY) and Bobby Scott (D-VA). It has been referred to the House Committee on Intelligence. It would restore reader privacy by curbing the use of secret court orders and National Security Letters to obtain library and bookstore records about innocent people. Other key protections in the bill include improved judicial review of investigations, new protections for librarians and others who receive gag orders from the government, and more oversight of how USA PATRIOT Act powers are being used. Among the amendments for Section 215 are the following:

#### **Section 215 Orders**

- improves the standard for issuing a Section 215 order by requiring specific and articulable facts to show that the tangible things sought are relevant to an authorized investigation, other than a threat assessment;
- provides recipients of Section 215 orders with the ability to immediately challenge both the underlying order and any gag order associated with it;
- facilitates compliance with already existing minimization procedures to ensure proper safeguards pertaining to information collected via Section 215 orders; and
- prohibits a request for Section 215 records to a library or bookseller for documentary materials that contain personally identifiable information concerning a patron.

The Senate Judiciary Committee on October 28, 2009, reported out S. 1692, the USA PATRIOT Act Sunset Extension Act of 2009, introduced by Chairman Patrick Leahy (D-VT) and Senators Benjamin Cardin (D-MD) and Ted Kaufman (D-DE). Although several senators attempted a number of amendments, none of the amendments that would have improved protection of our civil liberties was passed. This bill would substantially weaken the reforms the library community has sought relevant to Section 215 and National Security Letters.

At present, 35 state library associations had passed resolutions calling for Congress to allow Section 215 of the USA Patriot Act to expire.

**Current Status:** In late February, both the Senate and House extended the three sections of the USA PATRIOT Act that were to sunset – Section 215, roving wiretaps, and lone wolf – on February 28, 2010, for one year without any amendments. Some see these votes on a one-year extension as a “capitulation” by the Democrats to the Republicans and the White House – both of which wanted no amendments. Others look at this as a smart tactical move because it gives more time for negotiations to build up support again for the changes proposed this Fall by Senators Feingold and Durbin, Rep. Nadler and others in both the Senate and House. The ALA Washington Office will press on in efforts to seek reform to this legislation, believing that we need to achieve comprehensive reform of our nation’s surveillance laws.

**Impact on Academic Libraries:** Section 215 potentially increases government surveillance on college campuses and challenges long-standing library protections for library records.

**Links to Other Information:**

- ALA Washington Office. [The USA PATRIOT Act](#)

**ACRL Position:** ACRL supports legislation that will remedy those sections of the USA PATRIOT Act that infringe on the civil liberties of library users. Specifically we need to continue to argue for a more stringent standard for Section 215 orders—one that requires the FBI to limit its search of library records to individuals who are connected to a terrorist or suspected of a crime. We also seek the addition of a provision allowing recipients of Section 215 or 505 orders to pose a meaningful challenge to the “gag” order that prevents them from disclosing the fact that they have received such an order.

### 3. Network Neutrality

**Issue:** Net neutrality opposes discrimination in Internet access by Internet Service Providers (ISP) whether it be sending or receiving content, applications, or services. This means that consumers can access any legal content or run any Internet applications regardless of their network provider. Current telecommunications laws are being revamped, but language prohibiting preferential treatment of network traffic has been removed ISPs could decide to provide lots of bandwidth to certain customers and not to others. So telecommunications companies could dictate which Internet sites get preferential treatment (e.g., a company could pay its carrier a premium to deliver movies, videos, etc.). As bandwidth is a limited resource, every prioritized packet pushes aside another packet that is deemed less important. Internet network owners could be allowed to decide on their own how and when to restrict content or different kinds of traffic. Library services could be impaired or blocked by providers, particularly if "free" services and content provided by libraries are given low priority.

**Legislative History:** Various pieces of legislation dealing with net neutrality have been introduced since 2006. H.R. 5273 Net Neutrality Act of 2006 was introduced by Representative Ed Markey (D-MA). H.R. 5417, The Internet Freedom and Nondiscrimination Act, sponsored by Rep. Jim Sensenbrenner (R-WI), was introduced in the 109th Congress, referred to committee and reported by committee and it died. The Senate introduced S. 2917 Internet Preservation Act in the 109th Congress, and it also died. In the 110th Congress, H.R. 5353 Internet Freedom Preservation Act of 2008 was introduced by Representative Ed Markey (D-MA) and Chip Pickering (R-MO) but again, it died. S. 215, The Internet Freedom Preservation Act, sponsored by Senator Byron Dorgan (D-ND), was introduced in the 110th Congress, and it also died.

**Current status:** In the 111th Congress, H.R. 3458 Internet Freedom Preservation Act of 2009 was introduced by Representatives Ed Markey (D-MA) and Anna Eshoo (D-CA), and it has been referred to the House Committee on Energy and Commerce. This is Markey’s third attempt at introducing net neutrality legislation.

The current Federal Communications Commission (FCC) chairman Julius Genachowski and President Obama are both proponents of net neutrality. Genachowski (in his Brookings Institution presentation linked below) has vowed to “expand the four current broadband principles known as the Four Freedoms and extend them to all broadband connections.” On

January 14, 2010, in response to the commission's call for comments in the matter of Preserving the Open Internet Broadband Industry Practices, ALA affirmed its support for all six principles to maintain an open Internet by codifying the principles of network neutrality, including two new principles recently introduced by Genachowski.

**Impact on Academic Libraries:** The impact of privileged, or non-neutral, Internet access on free speech and the free choice of content, applications, and services would be significant for our patrons and could also slow down Internet access at, to, and from our institutions. We must maintain our ability to access information that may be in conflict with the corporate philosophy of the ISP without discrimination in the form of premium charges, degraded or impaired service, and slower network speeds.

**Links to Other Information:**

- [HR.3458](#): Internet Freedom Preservation Act of 2009 111th Congress 2009-2010
- [Brookings Events](#) (video and transcript of Julius Genachowski's presentation on September 21, 2009)
- [Free Press](#) (Free Press is a national, nonpartisan organization working to reform the media)
- [Public Knowledge](#) (Washington, D.C., Public Interest Group):
- [The Internet at Risk](#), Moyers on America:
- [ALA Web site](#) link to network neutrality information
- [ALA Comments to the FCC](#) In the Matter of Preserving the Open Internet GN Docket No. 09-191 Broadband Industry Practices
- ASLA OITP Brief. [Fiber to the Library](#): How Public Libraries Can Benefit from Using Fiber Optics for their Broadband Internet Connection
- ALA OGR [Telecommunications and Broadband Issues Brief](#)

**ACRL Position:** ACRL supports legislation to preserve the neutrality of the Internet and to ensure that ISPs do not discriminate against users by charging premiums, providing slower network speeds, restricting access, content, applications or services that may be in conflict with the corporate philosophy of the ISP.

#### **4. Government Information**

**Brief Background/Legislative History:** The Federal Depository Library Program (FDLP) has its roots in the early 19th century, when the federal government began to take steps to ensure the public distribution of selected government documents. The most recent revision to the law concerning the distribution of government documents occurred in 1962 (*Title 44, United States Code*). Thanks to major changes in the distribution of federal government information via the Internet, and thanks to significant economic hardship faced by many depository libraries, the FDLP model as it currently stands is rapidly becoming less sustainable. In recent years, a number of depository libraries have withdrawn from FDLP. Regional depository libraries, in particular, are finding the burden of maintaining print and microform legacy collections increasingly difficult.

**Current Status:** The Joint Committee on Printing, a subset of the Senate Committee on Rules and the House Committee on Administration, is unlikely to pursue a legislative solution in the

foreseeable future to allow for the changes needed to make FDLP more viable. Recently, the Government Printing Office (GPO) has developed a system for authenticating electronic information, but a number of federal agencies, apparently, do not find this satisfactory.

**Impact on Academic Libraries:** Many of the 1,200-plus depository libraries are also academic libraries, including 22 regional depositories that are also members of the Association of Research Libraries. If the burden of maintaining print and microform collections becomes too great, it is likely that more depository libraries will seek to withdraw from FDLP. Two regional depository libraries have withdrawn from the program in the last year, leaving 50. Withdrawing from FDLP is a complex and lengthy process.

#### **Links to Other Information:**

- GPO Report - [Regional Libraries in the 21st Century: A Time for Change?](#)
- [A Strategic Vision for the 21st Century](#) (GPO)
- Ithaka Report: [Documents for a Digital Democracy: A Model for the Federal Depository Library Program in the 21st Century](#)
- [GODORT Future of FDLP wiki](#)

**ACRL Position:** ACRL supports appropriate revisions to *Title 44, U.S. Code* to make FDLP more viable and adaptable to current conditions. This would allow participating libraries to be relieved of excessive burdens in maintaining print and microform “legacy collections” and to take full advantage of the electronic distribution of government information. [ACRL supports the GPO guidelines for shared regional depository libraries](#) (June 2007). See also the [Joint ACRL/ALCTS/AASL comments to GPO on Study of Regional Depository Libraries](#) (May 2008). ACRL supports the Government Printing Office’s implementation of authentication of electronic government information to assure public access. With the adoption of appropriate revisions to *Title 44, U.S. Code*, depository libraries would make possible the more economical and feasible maintenance of government document collections and the provision of the best service possible to library patrons based on a variety of formats as needed.

## **5. Orphan Works**

**Issue:** To limit liability of copyright infringement on copyrighted works whose owners are difficult or impossible to locate after a good faith effort has been made.

**Brief Background/Legislative History:** Originally introduced as The Orphan Works Act of 2006 (H.R. 5439) by Representative Lamar Smith (R-TX) in May 2006, the bill was folded into the Copyright Modernization Act of 2006 (H.R. 6052). Both the Senate and House of the 110th Congress introduced orphan works legislation. It re-emerged in the Senate as the Shawn Bentley Orphan Works Act of 2008 (S. 2913) and in the House of Representatives as the Orphan Works Act of 2008 (H.R. 5889). The House bill died. On September 26, 2008, the Senate amended the Shawn Bentley Orphan Works Act of 2008 (S. 2913), sponsored by Senator Patrick Leahy (D-VT). It was passed and referred to the House Committee on the Judiciary.

**Current Status:** No orphan works legislation has been introduced this session. However, with the impending settlement between book rights holder interests and Google in the matter of the Google BookSearch, the issues surrounding orphan works are likely to receive more attention in the coming months.

**Impact on Academic Libraries:** Although not perfect, passage of S. 2913 will benefit academic libraries in making available, via electronic reserves of other means, works under copyright but where the ownership of the copyright is either unclear or the owner is not locatable.

**Links to Other Information:**

- For current full text of [H.R. 5889](#)
- For current full text of [S. 2913](#)
- Open Congress [S. 2913](#) information
- [Public Knowledge](#) – news from the Washington, D.C.-based public interest group:
- ALA OGR [Copyright Issues Brief](#)

**ACRL Position:** ACRL supports orphan works legislation that will make these orphan works accessible without undue burden to researchers and reducing damages if the copyright holder comes forward.

## 6. Fair Use and Anticircumvention

**Issue:** Fair-use of digital materials.

**Brief Background/Legislative History:** According to Section 1201 (a) (1) of the Digital Millennium Copyright Act (DMCA), the Librarian of Congress is allowed once every three years to adopt exceptions to the anticircumvention provisions that place technological protections on copyrighted works. However, nearly all requested exceptions have been denied. Additionally, the statute does not permit exemptions for the manufacture and distribution of circumvention tools, thus making any approved exceptions impractical.

In 2007, while the 110th Congress was in session, Representative Rick Boucher (D-VA) introduced a bill to amend Section 1201 (a) (1) of the DMCA, but the bill never moved beyond being referred to the House Subcommittee on Courts, the Internet, and Intellectual Property. No new legislation has as of this date been introduced in the 111th Congress.

**Current Status:** The latest triennial review for adopting exceptions to the anticircumvention provisions of the DMCA Section 1201 began in early 2009. ALA and other interested groups have filed a request with the Librarian of Congress asking for an expansion of the previous exemption in two ways: to audiovisual works included in any college or university library, not just the library of the media studies department, and to classroom uses by instructors in all subjects, not just media studies or film professors. In October 2009, The Librarian of Congress extended, on an interim basis, the existing classes of works covered.

**Impact on Academic Libraries:** The DMCA negatively affects the ability of libraries and educational institutions to make fair use of digital materials. Legitimate anticircumvention tools are needed to allow fair use access to the complete range of digital resources being paid for by libraries and educational institutions.

**Links to Other Information:**

- [Library Copyright Alliance](#) (ALA, ARL, ACRL)
- ALA Washington Office [Issues & Advocacy: Copyright](#)
- ALA Washington Office [District Dispatch](#) Blog

- [Digital Millennium Copyright Act](#) U.S. Copyright Office summary

**ACRL Position:** ACRL supports exceptions to the anticircumvention provisions of the DMCA to allow fair use access to copyrighted works; ACRL supports exemptions for the manufacture and distribution of circumvention tools in order to make such exceptions possible.

## **7. The Consumer Product Safety Improvement Act of 2008 (Lead in Children’s Books - U.S.C. 15 1278a)**

**Issue:** The Consumer Product Safety Improvement Act of 2008 (CPSIA) was passed by Congress in order to reduce the amounts of lead and phthalates in products intended for children the age of 12 or younger. The Consumer Product Safety Commission (CPSC) has interpreted the legislation to include books. Books would be required to be tested for lead and/or phthalate content if they are available for children.

**Brief Background/Legislative History:** Representative Jeff Fortenberry (R-NE) has introduced H.R. 1692 “to Amend the Consumer Product Safety Improvement Act to exempt ordinary books from the lead limit in such act.” The resolution was introduced March 24, 2009, and referred to the House Committee on Energy and Commerce. ALA issued a Legislative Action Alert asking librarians to contact their representatives and ask them to sign on to Fortenberry’s “Dear Colleague” letter to the Consumer Product Safety Commission regarding the CPSC’s interpretation of the Act regarding children’s books.

**Current Status:** In August, CPSC confirmed that libraries have no independent obligation to test library books for lead under the law. On January 15, 2010, CPSC released its Report to Congress regarding difficulties encountered with enforcing CPSIA. The report notes that used books have emerged as a particular problem due to the retroactive nature of the law, adding that the retroactive applicability of the lead limits creates problems for libraries. We await Congress’ response to the CPSC report, which states that the commission does not have the flexibility needed to grant an exclusion for ordinary books and that “Congress may, with some limitations, choose to consider granting an exclusion for ordinary children’s books and other children’s paper-based printed materials.”

**Impact on Academic Libraries:** Universities and colleges with schools or departments of education face a significant challenge with the CPSC’s interpretation of the legislation. Children’s books are integral to the academic missions of these institutions where early childhood and elementary education are taught. Currently, more than 1,500 academic libraries hold children’s and young adult books that could be impacted. The economic impact of testing and the disruption to services are enormous.

### **Links to other Information:**

- [Report to Congress](#) Pursuant to the Statement of Managers Accompanying P.L. 111-117

## **8. SKILLs Act**

**Issue:** The SKILLs Act requires that state and local educational agencies (LEAS) that receive school improvement funds ensure that by the beginning of the 2010-2011 school year there be at least one highly qualified school library media specialist working full-time in the media center.

Additionally, this legislation is intended to ensure that 1) the funds serve elementary, middle and high school students, 2) books and materials be appropriate for all grade levels, including students with special needs and English language learners and, 3) they be used for professional development in information literacy instruction that is appropriate for all grades.

**Brief Background/Legislative History:** In 2007, H.R. 2864 was introduced by Representatives Raul Grijalva (D-AZ) and Vernon Ehlers (R-MI) with 30 cosponsors. It was referred to the Subcommittee on Early Childhood, Elementary, and Secondary Education, but did not report out. H.R. 2864 amends title I of the Elementary and Secondary Education Act of 1965 regarding school library media specialists. In October 2009, H.R. 3928 was reintroduced in the House by Grijalva and Ehlers with bipartisan support. It was referred to the House Committee on Education and Labor. There is no Senate legislation in the 111th Congress.

**Current Status:** H.R. 3928 was referred to the House Committee on Education and Labor on October 26, 2009.

**Impact on Academic Libraries:** Passage of the legislation will benefit academic libraries by providing more consistent, high-quality library service and resources for all K-12 students, better preparing the college-bound with the information literacy skills necessary to function effectively at the college or university level.

**Links to Other Information:**

- ALA Washington Office. District Dispatch: [House re-introduces SKILLS Act emphasizing role of school librarians.](#)
- GovTrack: [H.R. 3928](#): SKILLS Act
- School Library Journal: [Congress Takes Up SKILLS Act, Again](#)
- The Press Democrat: [Don't Leave Students without Librarians](#)

**ACRL Position:** ACRL supports this legislation with its emphasis on providing professional library media specialists in each media center and providing quality resources and materials to develop information literate students who are better prepared for research in higher education.

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