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 2012:

1. Public Access to Federally Funded Research
2. “Safe harbor” provisions of the Digital Millennium Copyright Act (e.g., SOPA, PIPA)
3. Government Information
4. Freedom of Information Act
5. Section 215 of the USA PATRIOT Act

1. Public Access to Federally Funded Research


Public access to federally funded research is part of an effort to ensure transparency in government and access to the results of federally funded research. 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 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. The FRPAA of 2012 has been introduced in the Senate (S. 2096) and in the House (H.R. 4004). On January 12, 2010, ALA and ACRL submitted comments to the Office of Science and Technology Policy (OSTP) within the Executive Office of the President supporting increased public access to research funded by federal science and technology agencies.

Current Status: FRPAA was reintroduced in the 112th Congress on February 9, 2012 (as S. 2096 and H.R. 4004). Before the 112th Congress, President Obama signed into law the America COMPETES Reauthorization Act of 2010 (Public Law 111-358). The law enacted two open access-related initiatives. The law establishes a working group to coordinate federal science agency research and
policies related to the dissemination and long-term stewardship of the results of federally supported unclassified research. The law requires OSTP, in consultation with relevant federal agencies, to develop formal policies for the management and use of federal scientific collections, including policies for the disposal of collections, and to create an online clearinghouse for information on the contents of and access to federal scientific collections. As part of the America COMPETES Act, OSTP issued a Request for Information (RFI) in November 2011, asking individuals and organizations to provide recommendations on approaches for broad public access and long-term stewardship to peer-reviewed scholarly publications that result from federally funded scientific research. The deadline for submissions was January 12, 2012. Submissions can be viewed at [http://www.whitehouse.gov/blog/2010/03/08/public-access-policy-update](http://www.whitehouse.gov/blog/2010/03/08/public-access-policy-update). The Research Works Act (H.R. 3699), designed to roll back the NIH Public Access Policy and block the development of similar policies at other federal agencies, has been introduced into the U.S. House of Representatives. Co-sponsored by Darrell Issa (R-CA) and Carolyn Maloney (D-NY), it was introduced December 16, 2011, and referred to the Committee on Oversight and Government Reform. On January 24, 2012, ACRL joined nine other library organizations and signed a letter to the House Committee on Oversight and Government Reform opposing H.R. 3699 (see [http://www.arl.org/bm~doc/lt_oawg_3699_24jan12.pdf](http://www.arl.org/bm~doc/lt_oawg_3699_24jan12.pdf)). In late February 2012, the act essentially died when the publisher Elsevier withdrew its support, and the sponsoring legislators issued statements essentially retracting the proposed bill ([http://www.districtdispatch.org/2012/03/research-works-act-abandoned-open-access-week-in-review/](http://www.districtdispatch.org/2012/03/research-works-act-abandoned-open-access-week-in-review/)).

FRPAA has bipartisan support in both chambers and has momentum in Congress and from the wider public; it is endorsed by 120 U.S. university presidents or provosts, 41 Nobel laureates, and 16 House co-sponsors from both parties.

**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. 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:**

- FRPAA in the Senate (S. 2096): [http://hdl.loc.gov/loc.uscongress/legislation.112s2096](http://hdl.loc.gov/loc.uscongress/legislation.112s2096)
- FRPAA in the House (H.R. 4004): [http://hdl.loc.gov/loc.uscongress/legislation.112hr4004](http://hdl.loc.gov/loc.uscongress/legislation.112hr4004)
- Alliance for Taxpayer Access and Scholarly Publishing and Academic Resources Coalition (SPARC)
• ALA Web page on FRRPA: 
  http://www.ala.org/advocacy/access/accesstoinformation/publiclyfundedresearch/s1373

ACRL Position: ACRL supports increased access to federally funded research through open access publication and open data policies and opposes efforts like the Research Works Act.

2. “Safe harbor” provisions of the DMCA (e.g., SOPA, PIPA, and the OPEN Act)

Issue: “Safe harbor” provisions of the DMCA

Brief Background: Section 215 of the Digital Millennium Copyright Act protects online service providers from liability for infringing materials located on their servers provided that they quickly remove any infringing materials upon a complaint from a copyright holder.

Current Status: While “notice and take down” is problematic (it can and does result in the removal of noninfringing material) it provides important protections for online service providers including libraries. Both the Stop Online Piracy Act (SOPA) and the Preventing Real Online Threats to Economic Creativity and Theft of Intellectual Property Act (PROTECT IP Act or PIPA) are very similar bills that were introduced in 2011 with the reported intention of protecting online intellectual property. PIPA was introduced in the Senate by Senator Patrick Leahy (D-VT) as S. 968 on May 12, 2011. SOPA was introduced to the House by Representative Lamar Smith (R-TX) as H.R. 3261 on October 26, 2011. These bills are intended to allow the government to block access to “rogue” foreign sites to prevent large scale piracy. Section 210 of SOPA, as example, would expand the definition of “willful” infringement, increasing the activities that could be subject to criminal prosecution.

According to the legislation, the Department of Justice and the U.S. Attorney General could create a blacklist of sites to be censored by Internet Service Providers (ISPs), search engines, and advertisers; and would have the authority to shut down entire domains if it contains material alleged to be infringing on even a single Web page. SOPA and PIPA also actively encourage blocking access to Web sites. A vote scheduled in the Senate on January 24th was called off by Senator Harry Reid (D-NV). Similarly, Representative Smith canceled plans to introduce his version of the bill in February. On December 17, 2011, Senator Ron Wyden (D-OR) introduced S. 2029, the Online Protection and Enforcement of Digital Trade Act (OPEN Act). The OPEN Act focuses on halting offending Web sites by shutting off their access to payment and advertising. The OPEN Act was referred to the Senate Committee on Finance.

Even with the events of January 2012 that appear to have put in place significant roadblocks to SOPA and PIPA, neither is completely dead until the conclusion of the congressional session. At this point, with the unprecedented grassroots opposition to SOPA and PIPA coupled by the fact that it is an election year, it is unlikely further legislative activity will occur, at least not until after the Presidential election. The OPEN Act continues to stand in both the Senate and the House. However, further action during this congressional session is not likely.

Impact on Academic Libraries: These bills broaden the definition of willful infringement and could subject libraries to felony charges for streaming media, even if the purpose is noncommercial. This increases the risk for libraries in an already fraught copyright environment.
ACRL position: While ACRL supports Congress’ efforts to prevent counterfeit or copyright infringing products from being posted, ACRL is opposed to any legislation that weakens the “safe harbor” provisions of the DMCA, including SOPA and PIPA.

3. 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 assure 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). As a result of major changes in the distribution of federal government information via the Internet as well as the significant economic hardships faced by many federal depository libraries, the FDLP model, as it currently exists, is rapidly becoming less sustainable. In recent years, a number of federal depository libraries have withdrawn from the FDLP. Regional depository libraries, in particular, are increasingly struggling to maintain sustainability in their efforts to provide services and to maintain print and microform legacy collections.
An additional concern focuses on the decision to cut funding for the Statistical Compendia Unit of the U.S. Bureau of the Census. One of the consequences of this decision is the termination of the publication of *The Statistical Abstract of the United States* after 2012. This is a crucial, particularly relevant resource that has been used extensively by librarians, researchers, small businesses, and the general public since 1878. While Proquest announced in late March 2012 that they will now issue this publication in print and online, other major reference tools, such as *The Consolidated Federal Funds Report* and the *County and City Data Book*, may be terminated.

**Current Status:** The Joint Committee on Printing, a subset of the Senate Committee on Rules and the House Committee on Administration, has indicated it is interested in hearing about potential changes in the laws governing the FDLP, but only if there is consensus among the major library associations as to what those changes might be. In September 2010, the Government Printing Office (GPO) announced that Ithaka, a not-for-profit organization focusing on assisting the academic world to use information and networking technologies, would develop recommendations for sustainable models for the FDLP for the 21st century and beyond. The resulting report is noted below under Links to Other Information.

Regional depository libraries and other major depository libraries are seeking alternative measures or options to address the increasingly unsustainable burdens imposed by the current FDLP model. The State Library of Michigan and the University of Minnesota attempted to address the situation by having the University of Minnesota become the regional depository library for both Michigan and Minnesota. The GPO rejected this proposal in September 2011. Also, in 2011, the Association of Southeastern Research Libraries (ASERL) drafted/proposed a Collaborative Federal Depository Library Program in which participating depositories would identify at least one agency/topic/format within their collections as a Center of Excellence by September 1, 2011. As of late 2011, ASERL is seeking support via petition of this proposed program as a result of negative responses from the GPO.

In November 2011, ACRL joined the conversation by writing to the public printer and superintendent of documents, stating "ACRL believes that the future of libraries will be based in innovative uses of technology and intensive collaboration across geographic boundaries. The multi-state models for managing federal documents that libraries have developed address the pressing issues of the economic climate, the imperative for wider collaboration, and the improvement of access to these critical resources. We view these as necessary and viable partnerships that will sustain library collections and services and will create enduring programs of access and preservation."

Budget cuts included in the 2012 federal budget have targeted the U.S. Bureau of the Census’s Statistical Compendia Unit. Potential consequences include the termination of major reference tools, including *The Statistical Abstract of the United States* (which will be published commercially), *The Consolidated Federal Funds Report*, the *County and City Data Book*, and other valuable resources. Also under consideration is the termination of the *Economic Census*.

The American Library Association (ALA) distributed *Resolution on Access to and Classification of Government Information* to all members of the U.S. Congress and to the White House in March 2011 in recognition of Sunshine Week, a national initiative intended to promote a dialogue on the importance of open government and freedom of information. The Resolution commended President Obama for creating the National Declassification Agency as well as issuing Executive Order 13526 on Classified National Security Information. The Resolution also supports and encourages initiatives to
reform the U.S. classification system; urges the President, Congress, federal judicial system, and the executive/legislative agencies to defend the inalienable rights of the press and U.S. citizens to disseminate information on national security issues to the general public and to refrain from actions and initiatives that impair these rights; and affirms the principle that government information available to the general public within the boundaries of U.S. law should be available to libraries and the press without restrictions.

**Impact on Academic Libraries:** Many of the 1,200+ federal depository libraries are also academic libraries, including 22 regional depositories that are also members of the Association of Research Libraries (ARL). If the burdens associated with maintaining both print and microform legacy collections become too great, it is likely that more depositories will seek to withdraw from the FDLP. Five regional depository libraries have withdrawn from the FDLP in the past three years, leaving 47. Withdrawing from the FDLP is a complex and extended process.

The defunding of the U.S. Bureau of the Census’s Statistical Compendia Unit and the resulting termination of major reference tools will have a significant or devastating impact on the ability of librarians, researchers, small businesses, and the general public to locate accurate and convenient statistical data/information. Much of this data/information is neither freely nor easily accessible from alternative resources. As a result, services provided by academic libraries will be significantly affected.

**Links to Other Information:**

- *A Strategic Vision for the 21st Century:*
- Links to Information on the Michigan / Minnesota proposal: [http://connect.ala.org/node/160211](http://connect.ala.org/node/160211)
  - Register for updates from Ithaka: [http://www.ithaka.org/ithaka-s-r](http://www.ithaka.org/ithaka-s-r)
- *ALA Resolution on Access to and Classification of Government Information Distributed to All Members of Congress and to the White House:* [http://connect.ala.org/node/133608](http://connect.ala.org/node/133608)
ACRL Position: ACRL supports appropriate and necessary revisions to Title 44, U.S. Code, to make the Federal Depository Library Program (FDLP) more viable, sustainable, and adaptable to current conditions. This will allow participating libraries or institutions to be relieved of excessive burdens in relation to maintaining print and microform legacy collections and to take full advantage of the electronic distribution of federal government information. ACRL supports GPO’s implementation and authentication of electronic government information to assure public access. The adoption of appropriate and necessary revisions to Title 44, U.S. Code, will facilitate an effective, as well as economic, maintenance of government document collections in federal depository libraries, including the best services possible to all library patrons who will be able to obtain needed information efficiently and in a variety of formats.

ACRL supports initiatives, such as the Michigan/Minnesota regional depository library proposal and the ASERL Plan, as realistic alternatives to the existing FDLP in the face of diminishing budgets and resources for making federal government information available and accessible to the American public. Additionally, ACRL urges the Congressional Appropriations Committees to restore (and, ideally, increase) funding for the U.S. Bureau of the Census’s Statistical Compendium Unit so that the American public will be able to access and obtain valuable statistical data/information.

4. Freedom of Information Act

Brief Background/Legislative History: The Freedom of Information Act (FOIA) was passed in 1966 (PL-89-487) and requires the federal government to respond to citizen requests for documents, except those in exempt categories. In 1974 Congress imposed deadlines on agencies for filling these requests and allowed judicial review of agency decisions to classify documents. In 1996 FOIA was amended to define “record” as any information kept by a federal agency (required records), including any in electronic format. Legislation was introduced in 2009, and Public Law No. 111-257 was passed October 5, 2010, to amend FOIA to require Congress to specifically cite the provision used to make a record exempt from FOIA, making certain exemptions to FOIA are narrowly implied. On March 1, 2011, in Federal Communications Commission et al. v. AT&T Inc. et al., the Supreme Court ruled that “Corporations do not have ‘personal privacy’ for the purposes of Exemption 7(C),” which demonstrates the narrow application of exemptions under FOIA.

Current Status: The Faster FOIA Act of 2011 (S.627), initially presented in the Senate Spring 2011, has passed the Senate twice. In essence the act would set up a panel to review agency backlogs in answering FOIA requests and suggest ways to relieve the backlog. In May the bill made it through the Senate, and then the House rolled the bill into the Budget Control Act of 2011, where it expired. Faster FOIA was passed again in August by the Senate. It was received in the House and is on hold as of August 2, 2011.

On March 21, 2011, the Department of Justice put forward a proposed rule change in the Federal Register for 28 CFR Part 16 regarding FOIA Regulations. In 16.6(f)(2) the proposed rule change states that officials “will respond to the request as if the excluded records did not exist.” On October 28, Senator Chuck Grassley (R-IA) sent a letter to Attorney General Eric Holder questioning the Justice Department’s proposed change to FOIA regulations allowing agencies to imply records do not exist if the requested records fit within a legal exclusion under FOIA. On November 3, the Justice Department announced it would not allow department officials to reply to FOIA requests with the ambiguous phrasing “there exist no records responsive to your FOIA request.” This proposed rule change
illustrates the need for attention to the status of FOIA regulations and responses to FOIA requests by government agencies.

**Impact on Academic Libraries:** FOIA is critical to research and teaching in academic communities. The right of citizens to access government information with a bias toward openness and reasonable, clearly defined exemptions is essential to information seeking in academic communities. FOIA allows researchers an opportunity to access government materials not published but still obtainable that may be important to research or teaching.

**Links to Other Information:**

- THOMAS: The Library of Congress, Bill Summary and Status HR 1564 (Faster FOIA Act): [http://hdl.loc.gov/loc.uscongress/legislation.112hr1564](http://hdl.loc.gov/loc.uscongress/legislation.112hr1564)
- Open Government Plans Audit URL: [http://sites.google.com/site/opengovtplans/home/final-updated-rankings/final-rankings-1](http://sites.google.com/site/opengovtplans/home/final-updated-rankings/final-rankings-1)

**ACRL Position:** ACRL supports protection of the FOIA and seeks to promote transparency in government.

**5. Section 215 of the USA PATRIOT Act**

**Issue:** Privacy concerns with library and bookseller records continue due to the reauthorization of Section 215. The USA PATRIOT Act increased the ability of law enforcement agencies to search library, telephone, e-mail communications, medical, financial, and other records. Specifically Section 215, often called the “library provision,” allows the FBI to order any person or entity to turn over “any tangible thing” – including library records – as long as the FBI states that it is for an authorized investigation to protect against international terrorism or clandestine intelligence activities. ALA Office of Government Relations’ Lynne Bradley has pointed out Section 215 has “long been the focus of ALA’s efforts to seek reforms to the PATRIOT Act because it particularly addresses law enforcement access to any kind of tangible thing or records.”

**Legislative History:** The USA PATRIOT Act, passed October 26, 2001, 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, often called the “library provision,” allows the FBI to order any person or entity to turn over “any
“tangible thing” – including 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. On February 24, 2010, without enough time to reach a compromise on the differing bills in the House and Senate, the Senate voted by unanimous consent for an additional one-year extension of the three provisions. On February 25, 2010, following the Senate’s action, the House voted 315-97 for an additional one-year extension. President Obama signed the one-year extension into law (P.L. 111-141) February 27, 2010.

Representative Peter Hoekstra’s (R-MI) bill, H.R. 6429, would extend the expiring provisions (orders for tangible things) of the USA PATRIOT Improvement and Reauthorization Act of 2005 and Intelligence Reform and Terrorism Prevention Act of 2004 from February 28, 2011, to February 29, 2012. The bill was referred to the House Committee on the Judiciary to the Committee on Intelligence (Permanent Select) November 18, 2010, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.
On March 11, 2011, the Senate Judiciary Committee approved a bill, the USA PATRIOT Act Sunset Extension Act of 2011 (S. 193), to reauthorize three expiring provisions of the USA PATRIOT Act – Section 215, Section 206 (the “roving John Doe wiretap” provision), and Section 6001 (the “Lone Wolf” provision) – and added important new safeguards for library and bookseller records. These safeguards included provisions such as requiring the federal government prove a terrorist or espionage connection before gaining access to library patron and circulation records. This would have applied to bookseller records, as well. For the first time, National Security Letter (NSL) statutes would have been subject to sunset laws. In addition, safeguards would have been imposed on the roving wiretap authority under the Foreign Intelligence Surveillance Act (FISA), however, no vote on S. 193 was scheduled.

**Current Status:** With the existing provisions (206, 215, and 6001) set to expire May 27, 2011, Congress voted May 26, 2011, to approve S. 990, which extended the three provisions until June 1, 2015. The bill passed by a Senate vote of 79 – 23 and House vote of 250 – 153. The President signed the measure into law on the same day (Public Law No. 112-14). The extension did not reform the provisions (as suggested in S. 193) in any way.

**Impact on Academic Libraries:** Section 215 potentially increases government surveillance on college campuses and challenges long-standing library protections for library records, invading library users’ privacy, decrease library users’ confidence in libraries’ assurances of privacy, and prevents libraries from adhering to federal and state privacy laws.

**Links to Other Information:**

- S. 193 - To extend the sunset of certain provisions of the USA PATRIOT Act, and for other purposes: [http://www.gpo.gov/fdsys/pkg/BILLS-112s193is/pdf/BILLS-112s193is.pdf](http://www.gpo.gov/fdsys/pkg/BILLS-112s193is/pdf/BILLS-112s193is.pdf)


• USA PATRIOT Issues for Campuses: [http://www.ala.org/ala/issuesadvocacy/advleg/federallegislation/theusapatriotact/campusissues.pdf](http://www.ala.org/ala/issuesadvocacy/advleg/federallegislation/theusapatriotact/campusissues.pdf)


**ACRL Position:** ACRL supports legislation that will remedy those sections of the USA PATRIOT Act that infringe on the civil liberties of library users. ACRL supports ALA’s position to continue to reform Section 215, the “library provision” of the USA PATRIOT Act.

*Submitted by the ACRL Government Relations Committee March 22, 2012.*