

ACRL Legislative Agenda 2018

ACRL's annual Legislative Agenda lists objectives for legislative action at the national level on issues that affect the welfare of academic and research libraries. This document is issued each spring, prior to National Library Legislative Day, and focuses on issues that the U.S. Congress has recently taken action on, or will act on, in the year ahead. ACRL is active in advocating for policy and legislation through the ALA Washington Office, as well as through coalition work with groups such as the Open Access Working Group and the Library Copyright Alliance (LCA). The following list is in priority order and includes the issues that will be the focus of ACRL's advocacy in 2018:

1. Federal Funding Issues Affecting Libraries
2. Network Neutrality
3. Deferred Action for Childhood Arrivals (DACA)
4. Access to Federally Funded Research (FASTR)
5. PROSPER Act
6. Affordable College Textbook Act
7. Open, Permanent, Electronic, and Necessary (OPEN) Government Data Act
8. Federal Depository Library Program
9. Marrakesh Treaty Implementation Act
10. Government Surveillance

1) Federal Funding Issues Affecting Libraries

Background

In 2017, effective library advocacy and a strong grassroots movement helped to thwart the elimination of funding for the Institute of Museum and Library Services (IMLS), which provides federal funding for libraries through the Library Service and Technologies Act (LSTA). LSTA is the only federal program that “exclusively covers services and funding for libraries. LSTA

provides more than \$183 million for libraries through the Grants to States program, the National Leadership Grants for Libraries, the Laura Bush 21st Century Librarian Program, and Native American Library Services.” Advocacy efforts are also credited with gaining support for libraries, which resulted in appropriations bills in both houses of Congress, providing full funding with a proposed increase in funding in the Senate.

On February 9, Congress passed a 2018 spending agreement, which was anticipated to continue federal funding for libraries at the FY 2017 levels. This was followed on March 23 with the passage of a spending bill with “\$9 million more for IMLS than [the previous year], including \$5.7 million for LSTA and \$27 million for the Innovative Approaches to Literacy program.” Innovative Approaches to Literacy (IAL) “supports high-quality programs designed to develop and improve literacy skills for children and students from birth through 12th grade in high-need local educational agencies.”

Current Status

Despite the additional federal dollars for domestic programs in 2018, the 2019 budget proposed later in February 2018 by the White House again eliminates funding for libraries across the country through LSTA and IAL, and the fight to reinstate and retain this primary source of federal support for libraries, as well as other programs affecting libraries, will continue into the next year.

A part of the process of ensuring library funding is the reauthorization of the IMLS program, which, while not necessary for a program to receive funding, indicates congressional support for the agency. The Museum and Library Services Act (MLSA) (S.2271), a bill to reauthorize IMLS, was introduced in December 2017 by Senator Jack Reed (D-Rhode Island). MLSA 2017 also includes additional provisions that enable more Native American tribes to participate in IMLS grant programs and an allowance for grant funds, which can be used to help libraries prepare for or provide services after a disaster or emergency. While not a guarantee of funding for libraries, writes Kathi Kromer, director of ALA’s Washington Office, “S. 2271 would authorize IMLS to continue to exist and give direction about how the agency should operate. Passage of this reauthorization bill would signal that Congress values libraries and supports the mission of IMLS.”

Impact on Academic Libraries

Funding LSTA and the reauthorization of IMLS through MLSA are priority issues for all libraries. Since LSTA funds are distributed via state library agencies to support statewide programs and initiatives, academic libraries with state-funded resources are likely to be greatly impacted by the loss of LSTA grant funds. Within the states, LSTA funds are also distributed as “subgrants or cooperative agreements to public, school, academic, research, and special libraries.”

ACRL's Position

ACRL and ALA continue their campaign to preserve federal funding for libraries through IMLS and to reauthorize IMLS through MLSA. In response to the 2018 budget increase, ALA President Jim Neal has stated, “This is also a time to strengthen our resolve. The FY2018 budget passage represents a major win for libraries—a win that needs to fuel even more aggressive efforts to advocate for federal library funding in FY2019.”

Links to more information

[Senators introduce bipartisan Museum and Library Services Act of 2017 \(ALA District Dispatch Blog 12/22/2017\)](#)

[Innovative Approaches to Literacy \(U.S. Department of Education\)](#)

[Congressional Appropriations and Authorization: Two Sides of the Same Coin for IMLS \(*College & Research Libraries News*. v. 78, n. 11, p. 620, Dec. 2017\)](#)

[ALA President Welcomes FY2018 Federal Budget Agreement, Applauds Library Advocates \(ALA District Dispatch Blog, 02/09/2018\)](#)

[Spending Bill Includes Big Increases for Libraries \(*American Libraries*, 03/23/2018\)](#)

2) Network Neutrality

Background

Net Neutrality is a set of principles that promote, among other things, unrestricted or uncontrolled access to all resources and applications available on the Internet via Internet Service Providers (ISPs). Whether legislation is needed to ensure this kind of access has

become a focal point in the debate over telecommunications reform. Those opposed to access mandates claim that such action goes against the long-standing policy to keep the Internet as free as possible from regulation and the state of the Internet before this attempted regulation has allowed for commercial innovation and growth.

In 2015, the Obama Administration asked the Federal Communications Commission (FCC) to rule in favor of net neutrality by reclassifying broadband as a common carrier under Title II of the Communications Act of 1934 and Section 706 of the Telecommunications Act of 1996. In February 2015, the FCC approved reclassifying high-speed Internet as a “telecommunications service rather than an information one, subjecting providers to regulation.” In December 2017, the FCC voted in favor of repealing these policies, 3–2, along party lines.

Current Status

The FCC announced the repeal will go into effect April 23, 2018. The new regulations appeared in the Federal Register on February 22, 2018, which gives opponents of the decision 60 days from that date attempt to prevent the new regulations from going into effect.

Immediately after the December repeal vote, action began at the federal and state levels to overturn or bypass the FCC’s decision. Congress can overturn regulatory action via the Congressional Review Act (CRA). CRA only requires a simple majority in each chamber to overturn an administrative rule. Fifty U.S. Senators signed a resolution of disapproval in January 2018, but 51 votes are required to pass the resolution to send it to the House, where it would face a tough uphill battle for passage during the 2018 legislative session.

Several states mobilized quickly to pass executive orders supporting net neutrality in contractual dealings with their state governments. Twenty-two states and the District of Columbia have filed suit in the United States Court of Appeals for the District of Columbia Circuit against the FCC’s decision. Ballot initiatives in several states and proposed bills supporting net neutrality have been proposed, as well.

Impact on Academic Libraries

Educational institutions, including libraries, rely on the high-bandwidth applications and services, which support access to resources, collaboration, content creation, and learning—activities core

to their mission. Yet these are the institutions and organizations that are the least able to pay for priority, high-bandwidth access. As colleges and universities seek to be equal access providers of digital content and applications of all types via the Internet, eliminating the net neutrality rules promulgated by the Obama Administration would invite discriminatory practices by ISPs.

ACRL's Position

ACRL stands with ALA's assertion that without net neutrality policies, ISPs could act as gatekeepers by giving enhanced or favorable transmission to some Internet traffic, block access to certain websites or applications, or otherwise discriminate against certain Internet services for their own commercial reasons. In a March 2017 letter to the FCC before the repeal vote, ACRL joined with several other associations in asserting that, "preserving the unimpeded flow of information over the public Internet and ensuring equitable access for all people is critical to our nation's social, cultural, educational, and economic well-being." The letter also reaffirmed a set of principles around maintaining net neutrality.

Links to more information

[Joint ACRL/ALA letter to FCC outlining net neutrality principles](#)

[ALA's August 2017 reply comments to the FCC](#)

[Federal Register Restoring Internet Freedom Order](#)

[Senate CRA resolution](#)

[Protecting an open internet in Washington state. \(Washington State Legislature, HB 2282 - 2017-18\)](#)

3) Deferred Action for Childhood Arrivals (DACA)

Background

In June 2012, the Department of Homeland Security (DHS) implemented a program called "Deferred Action for Childhood Arrivals," commonly called DACA. This DHS program authorized certain noncitizens, who were brought to this country as children, to remain in the United States. In essence, DHS used its prosecutorial discretion not to seek removal of certain young noncitizens. Like recipients of other forms of DHS deferred action, DACA recipients enjoyed no formal immigration

status. If granted deferred action under DACA, however, immigrants were able to remain in the United States for renewable, two-year periods. About 1.2 million people qualified for DACA in 2012.

Under 2012 DACA, in order for these noncitizens to remain in the United States, certain conditions had to be met. These conditions were laid out in what is often called the “DACA Memo.” The DACA Memo listed five criteria that would need to be satisfied before an individual could be considered for DACA. 1) Immigrants must have come to the United States before the age of 16 and must have been under the age of 31 by June 15, 2012; 2) immigrants must have been living in the United States at the time the DACA program was announced; 3) immigrants must have resided continuously in the United States for at least the previous five years; 4) immigrants must have been enrolled in school, have graduated from high school, have obtained a General Educational Development certification, or have been honorably discharged from the U.S. Armed Forces or Coast Guard; and 5) immigrants must not pose a threat to public safety and must undergo extensive criminal background checks.

The Obama Administration expanded DACA in November 2014 with the DHS “DAPA Memo.” DACA was expanded by: 1) making millions more persons eligible for the program; 2) expanding the DACA period of time; and 3) establishing the DAPA program (or Deferred Action for Parents of Americans and Lawful Permanent Residents). Under DAPA, individuals who had, as of November 20, 2014, a son or daughter who was a U.S. citizen or was a lawful permanent resident and who also meet certain additional criteria, could remain in the United States. Again, DHS used its prosecutorial discretion not to seek removal of certain noncitizens. About 4.3 million people were eligible for the DAPA program in 2014.

In September 2017, the Trump administration rescinded DACA and effectively set an end date to the legal protections temporarily granted to approximately 800,000 people. As DACA was considered a temporary fix, it was anticipated that it would be replaced with laws that would formalize the status of immigrants under its protections. However, such legislation, like the DREAM Act (Development, Relief, and Education for Alien Minors) had been under consideration by Congress since 2001. The Trump administration’s order in September 2017 to rescind DACA, effective March 5, 2018, allowed a six-month grace period for anyone with current DACA status to file for renewal and allowed Congress more time to “address the fate of hundreds of thousands of people brought to the U.S. illegally as children.”

Current Status

Through much of early 2018, Congress struggled to develop DACA legislation acceptable to both parties. In January 2018, Senate Democrats attempted to make a deal to exchange their votes on a funding measure which would avoid a government shutdown in exchange for legislation that would resolve the issue. When the “Dreamers” (so named for the DREAM Act) issue was excluded from the bill going forward, many Democrats rejected the bill and the federal government entered a shutdown. By the end of January, the Senate had voted to reopen the government with what was, according to Senate Minority Leader Chuck Schumer, “a commitment from Republicans that if an agreement is not reached by February 8, the Senate would ‘immediately proceed’ to consider DACA-related legislation.” The February deadline came and went and with it another government shutdown occurred, though brief.

Meanwhile, in January 2018, a federal judge in California issued a nationwide preliminary injunction on the September 2017 rescission of the DACA program. Though appealing the injunction, the Trump administration also asked the Supreme Court to review and decide the DACA issue. The Court declined. This move by the Supreme Court was to be expected, as currently no appeals court has ruled on the issue. (The U.S. Court of Appeals for the 9th Circuit is considering but has yet to rule on the Trump administration’s appeal of the injunction.)

The refusal by the Supreme Court effectively nullified the March 5 deadline and allows recipients of the program to continue to renew their applications while the case works its way through the courts and possibly ending up, again, at the Supreme Court.

Impact on Academic Libraries

The ACRL Board of Directors has publicly recognized DACA students, faculty, and staff in higher education—many of whom work in libraries—as important and valued members of the academic community. The loss of these groups who “contribute their unique perspectives” will “harm intellectual freedom by removing the voices of vulnerable groups from the scholarly discourse, and will jeopardize the invaluable cultural enrichment brought to our campuses by immigrant students, faculty, and staff.”

ACRL’s Position

ACRL and ALA support continued DACA protections for immigrants and have strongly urged Congress to address this problem. As ALA President Jim Neal has stated, “We are disappointed that the protections of the Deferred Action for Childhood Arrivals program are in jeopardy. Through no

fault of their own, these undocumented youth were brought to this country as children, and deserve the opportunity to contribute to our society without the fear of being deported. We ask Congress to work together to find a solution to this issue."

Links to more information

[Timeline: DACA, the Trump administration and a government shutdown \(Politifact, 01/22/2018\)](#)

[When Does DACA Expire? The Supreme Court Just Gave Dreamers More Time \(Time, 02/26/2018\)](#)

[DACA Update as of February 26, 2018 \(immigration.net, 02/28/2018\)](#)

[ACRL Supports "Dreamers" – Statement on Deferred Action for Childhood Arrivals \(ACRL Insider, 10/04/2017\)](#)

4) Access to Federally Funded Research (FASTR)

Background

FASTR is an outgrowth of longstanding efforts to make taxpayer-funded research results publicly available. Every year, the U.S. federal government funds more than \$60 billion in basic and applied research, which is primarily concentrated in 11 departments/agencies and results in a significant number of articles being published each year (approximately 100,000 annually as a result of National Institutes of Health [NIH] funding alone). Because this research is funded by U.S. taxpayers, there is public interest in seeing it disseminated and used as widely as possible, including access to articles reporting on the results of funded research. A number of measures have made important progress toward this goal, such as the NIH Public Access Policy (which became mandatory with passage of the Consolidated Appropriations Act of 2007) and the 2013 directive from the White House Office of Science and Technology Policy, which requires federal agencies with research and development budgets in excess of \$100 million to increase access to federally funded scientific research.

The Federal Research Public Access Act (FRPAA) was first introduced in 2006, reintroduced in 2009, and reintroduced again in the 112th Congress on February 9, 2012. It was superseded by the Fair Access to Science and Technology Research Act (FASTR), originally introduced in 2013 and refiled on March 18, 2015, as S.779/H.R.1477 with bipartisan support in both the House and the Senate chambers. FASTR has widespread support among the library, higher education, advocacy,

and funding organizations with a commitment to increased openness to the results of sponsored research.

If passed into legislation FASTR will:

- require federal departments and agencies with an annual extramural research budget of \$100 million or more, whether funded totally or partially by a government department or agency, to submit an electronic copy of the final manuscript that has been accepted for publication in a peer-reviewed journal;
- ensure that the manuscript is preserved in a stable digital repository maintained by that agency or in another suitable repository that permits free public access, interoperability, and long-term preservation;
- require that each taxpayer-funded manuscript be made available to the public online and without cost, no later than six months after the article has been published in a peer-reviewed journal; and
- require agencies to examine whether introducing open licensing options for research papers they make publicly available as a result of the public access policy would promote productive reuse and computational analysis of those research papers.

While the directives for agencies have not been codified in law, many agencies are in the process of establishing repositories or collaborating to use existing repository platforms. Libraries have supported similar legislation and initiatives, including the U.S. National Cancer Moonshot Initiative; the OPEN Government Data Act (reintroduced in the 115th Congress as S. 760/H.R. 1770); the Affordable College Textbook Act (now introduced in the 115th Congress as S. 2176/H.R. 3721); and the U.S. Department of Education open licensing policy for grant-funded educational resources.

Current Status

Legislation was introduced in the 115th Congress (S. 1701/H.R. 3427) but has seen no action.

Impact on Academic Libraries

The passage of FASTR will allow academics to share research results more widely across institutions and disciplines, collaborate more effectively, and reuse results for new research, as well as verification and replication. Sharing the results of research will allow new research efforts to be accelerated, resulting in greater innovation, new products and services, and long-term economic

growth. In addition, articles and data available in a digital environment allow new fields of research and analysis to emerge through the use of computational analysis tools, which could revolutionize academic research. We would expect the pace of innovation to accelerate and offer more benefits to colleges and universities that have invested in research, technology transfer, and partnerships with their business and nonprofit communities.

Libraries would be able to build new services and supporting structures for researchers to use and share research results. The passage of FASTR fulfills the goals of credible, taxpayer-funded research being widely available for the purposes of education, practice, and lifelong learning of our academic colleagues and the public.

ACRL's Position

ACRL has lent full support to the introduction and passage of the bill, as it has for similar bills and appropriations. Federal legislation should be passed in order to codify White House directives calling for public access to federally funded research and to extend the limited measures brought about by the 2015 Consolidated and Further Continuing Appropriations Act. ACRL opposes unnecessarily long embargo periods and other restrictions on public access to federally funded research.

Links to more information

[SPARC FAQ for the Fair Access to Science and Technology Research Act](#)

[Open Access Working Group letter in support of FASTR](#)

[ALA Issue Brief, Support Public Access to Taxpayer-Funded Research](#)

5) PROSPER Act—Education and the Workforce Committee

Background

The House Committee on Education and the Workforce, chaired by Congresswoman Virginia Foxx (R-North Carolina), works on issues relating to the U.S. education system and workforce and provides oversight of policies administered by the U.S. Departments of Labor, Education, Agriculture, and Health and Human Services. The Subcommittee on Higher Education and Workforce Development, chaired by Representative Brett Guthrie (R-Kentucky), covers issues on post-secondary education. Issues for which they have jurisdiction include the Higher Education Act,

Title IX of the Education Amendments of 1972, all programs relating to museums and library services, and postsecondary career and technical education.

Current Status

Currently up for consideration in the House is ambitious educational reform legislation sponsored by Foxx, the Higher Education Reform and Opportunity Act (H.R.4274) and the PROSPER: Promoting Real Opportunity, Success, and Prosperity through Education Reform Act (H.R. 4508). Some elements of the bills have bipartisan support:

- simplifying the federal financial aid process,
- cutting down on student debt, and
- expanding programs like federal work-study programs and Pell grants.

PROSPER calls for an overhaul of the federal student aid system that includes eliminating loan forgiveness for some public sector employees and adjusting repayment options for federal student loan program borrowers, eliminating the subsidized loan program for undergraduates while increasing loan limits for the unsubsidized loans, and repealing federal student aid restrictions on for-profit schools.

Impact on Academic Libraries

Key provisions of the PROSPER Act may significantly change student loan programs and negatively affect student workers in academic libraries, as well as impact financial aid opportunities for graduate students in LIS programs.

ACRL's Position

Kevin Maher from ALA's Washington Office states "Programs to support higher education libraries and MLIS students are valuable assets at colleges and universities and support the mission of ALA. ALA's Washington Office will continue to monitor and report on developments with HEA and the PROSPER Act."

Links to more information

[House Committee Passes Higher Education Act \(District Dispatch, 12/18/2017\)](#)

[The Public Student Loan Forgiveness Program \(Federal Student Aid. U.S. Department of Education\)](#)

[PROSPER Act: House Republicans HEA Bill \(12/08/2017\)](#)

[H.R.4508 - PROSPER Act](#)

6) Affordable College Textbook Act

Background

The Affordable College Textbook Act has its roots in concerns about the high costs of education and the ability of students to manage these costs. The increasing price of textbooks has drawn the attention of legislators, and, as a result, legislation has been introduced to combat these rising costs. The bill was first introduced in the 113th and 114th Congress, but it did not advance.

The Affordable College Textbook Act:

- 1) creates a grant program to support pilot programs at colleges and universities to create and expand the use of open textbooks with priority for those programs that will achieve the highest savings for students;
- 2) ensures that any open textbooks or educational materials created using program funds will be freely and easily accessible to the public;
- 3) requires entities who receive funds to complete a report on the effectiveness of the program in achieving savings for students;
- 4) improves existing requirements for publishers to make all textbooks and other educational materials available for sale individually rather than as a bundle; and
- 5) requires the Government Accountability Office to report to Congress by 2017 with an update on the price trends of college textbooks.

The Affordable College Textbook Act is supported by U.S. Public Interest Research Group, Scholarly Publishing & Academic Resources Coalition, National Association of College Stores, Young Invincibles, American Federation of Teachers, National Education Association, Service Employees International Union, American Association of Community Colleges, Association of Community College Trustees, UNCF, Creative Commons, Association of Research Libraries, Association of College & Research Libraries, and OurTime.

Current Status

The bill has been introduced into the 115th Congress, but no action has been taken. Note, however, that the omnibus appropriations bill for 2018 introduced on March 21 included \$5 million for a grant program to be administered by the Department of Education. The appropriations bill was passed by the House and Senate, then signed into law by President Trump March 23, 2018.

Impact on Academic Libraries

Academic librarians share a concern for affordability of higher education and the impact rising costs have on students' success. They also share the interest in supporting open educational resources as part of a larger movement toward opening scholarly and learning resources for sharing freely, adapting for coursework, expanding the corpus of openly available course content, and adopting it on a large scale in the classroom. As part of the commitment to embed information literacy and access to quality resources into the student experience and strategies for teaching and learning, librarians are working with academic colleagues to create such resources and to offer them freely for adoption by others.

Open Education Resources may be seen as a growing part of library programs that support new methods of scholarly communication, open access, library publishing, and digital scholarship. They also may be a component of implementing new pedagogies and developing digital literacy for students and faculty.

ACRL's Position

ACRL joined with 13 other organizations to support the Affordable College Textbook Act, introduced by U.S. Senators Dick Durbin (D-Illinois), Al Franken (D-Minnesota), and Angus King (I-Maine). The legislation is designed to help students manage costs by making high-quality textbooks easily accessible to students, professors, and the public for free.

Links to more information

[The Affordable College Textbook Act \(SPARC\)](#)

[Congress Funds \\$5 Million Open Textbook Grant Program in 2018 Spending Bill \(SPARC\)](#)

7) OPEN Government Data Act

The Open, Permanent, Electronic, and Necessary (OPEN) Government Data Act (S. 760 / H.R. 1770) is a bill to codify former President Obama's Executive Order making "open and machine readable" the default for all government data. The bill aims to expand the government's use and administration of data to facilitate transparency, effective governance, and innovation. It would make more government data freely available online, in machine-readable formats, and discoverable

through a federal data catalog. The bill defines “open government data asset” as a public data asset that is

- 1) machine-readable,
- 2) available (or could be made available) in an open format,
- 3) not encumbered by restrictions that would impede the use or reuse of such asset, and
- 4) based on an underlying open standard that is maintained by a standards organization.

The bill defines “open license” to mean a legal guarantee that a data asset is made available

- 1) at no cost to the public, and
- 2) with no restrictions on copying, publishing, distributing, transmitting, citing, or adapting such asset.

On the Watch List of 2017, access to government data was a concern in regard to how the Trump administration will affect the quality and accessibility of government data collection and systems. Early on, groups monitoring government websites reported a number of takedowns or [alteration of data and information on government websites](#). The budget appropriations process will likely affect the collection and management of data, as will the current administration’s agenda and stand on issues that directly impact federal agencies.

Impact on Academic Libraries

Providing access to data is a core function of academic libraries. Government data is both an academic and public resource: essential to teaching, learning, and participation in the democratic process. Local businesses and organizations benefit from freely accessible data that inform how they conduct and manage their operations, and that seed their innovation strategies and research. A free flow of government data facilitates productive public/private partnerships. Open data also supports public scholarship. Academic libraries can bring to bear tools and other resources for integration and analysis of data in digital and machine-readable formats.

ACRL’s Position

On April 5, 2017, ACRL joined over 80 other organizations in signing a [coalition letter](#) supporting the OPEN Government Data Act, reintroduced by a bicameral and bipartisan group of lawmakers on March 29, 2017, as [S. 760](#) and [H.R. 1770](#). The coalition letter is being sent to relevant Congressional committees. This legislation is consistent with ACRL’s [strategic goal](#) to accelerate the

transition to more open and equitable systems of scholarship and, more specifically, the strategic objective that ACRL is an advocate for open dissemination practices.

Links to more information

[ACRL Supports Open Data Legislation \(ACRL Insider, 04/05/2017\)](#)

[Open Government Data Legislation \(ALA District Dispatch, 11/2017\)](#)

[Open Data Factsheet \(SPARC, 11/2010\)](#)

8) Federal Depository Library Program

Title 44, Chapter 19 of the United States Code establishes the legal basis for the [Federal Depository Library Program](#) (FDLP), which is meant to ensure free public access to government publications for the general public. Having been asked by the Government Publishing Office (GPO) to recommend changes to Title 44, the Depository Library Council (DLC), in summer 2017, issued a call for comments from the library community on the substantive modernization of Title 44, and, in response, many libraries came forward with their concerns and recommendations. Some of the major ongoing issues cited with the FDLP include a lack of provision for selective depository libraries to be digital-only, the division of operational responsibilities between agencies who contribute content and the GPO, and staffing. In October 2017, DLC submitted recommendations to GPO, and the Committee on House Administration completed a draft bill of revisions to Title 44 in December.

Current Status

The FDLP Modernization Act of 2018 (H.R. 5305) was introduced March 15, 2018. The bill addresses many issues, including improved access to electronic resources, digitization of historical publications for public access, modernization of the online repository, free public access to GPO's online repository (govinfo.gov), and improved access to cataloging data produced by SuDoc. As the bill makes its way through the legislative process, it is important that institutions stay involved, comment, and make suggestions for changes to the FDLP in order to ensure the future of public access to government documents.

Impact on Academic Libraries

The majority of Federal Depository Libraries are associated with an academic institution, a relationship that allows academic libraries to offer an important service creating access to government information both online and in print. Improving and modernizing public access to government information has become both essential and challenging for academic libraries as the demand for easier-to-use interfaces has grown and use of these resources has declined.

ACRL's Position

ACRL has been a longstanding proponent of revising Title 44 in order to develop an "appropriate model for providing access to government information to 21st century audiences." In 2008, then-ACRL President Julie Todaro wrote, "ACRL is a proponent of reconsidering Title 44 so that it ensures excellent access to government information while allowing for innovations as libraries work to provide this service. Regional depository libraries are self-funded and voluntary participants in the Federal Depository Library Program. They play a critical role in providing public access to government information, and we support allowing them flexibility to collaborate, innovate, and experiment in order to thrive."

Links to more information

[Federal Depository Library Program Website](#)

[Draft Bill to Amend Title 44, U.S. Code \(December 11, 2017\)](#)

[Comments on Draft Legislation to Amend Title 44, U.S.C. \(February 22, 2018 version; Comments submitted February 27, 2018\)](#)

[DLF on Privacy, Preservation, & Free Access to Government Info via Title 44 \(September 19, 2017\)](#)

[ACRL, ALCTS, AASL Letter \(FDLP.gov, May 16, 2008\)](#)

["Federal Depository Library Program" \(American Library Association, March 20, 2018\)](#)

[Title 44 Revision \(Depository Library Council, March 16, 2018\)](#)

9) Marrakesh Treaty Implementation Act

In March 2018, the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, came closer to implementation in the United States. The Marrakesh Treaty is an international copyright treaty administered by the World Intellectual Property Organization (WIPO), signed by the United States in October 2013, and ratified by 37 other countries. According to WIPO, Marrakesh requires “contracting parties to introduce a standard set of limitations and exceptions to copyright rules in order to permit reproduction, distribution and making available of published works in formats designed to be accessible to VIPs [visually impaired persons], and to permit exchange of these works across borders by organizations that serve those beneficiaries.”

Current Status

Though signed, the Treaty still requires legislation in order to be implemented in the United States since ratification and adoption require modification of the copyright law. Over a five-year period, groups with interests in copyright policy, including the National Federation of the Blind, the Library Copyright Alliance, and American Association of Publishers, met to hammer out the legislative language. The Marrakesh Treaty Implementation Act was introduced March 15, 2018, and amends the Copyright Act to ensure compliance with the Marrakesh Treaty in the United States.

Impact on Academic Libraries

The Marrakesh Treaty Implementation Act will create a copyright exception that authorizes libraries to make and distribute accessible copies of copyrighted resources for those with print disabilities “in formats designed to be accessible to the visually impaired and to permit exchange of these works across borders by organizations that serve those beneficiaries.” If passed, the act will make extensive amounts of new content accessible to Americans with print disabilities, including those who speak English as a second language.

ACRL’s Position

ALA and ACRL have advocated for a copyright exception that would serve readers with print disabilities as individual organizations and as part of the Library Copyright Alliance. As ACRL President Cheryl Middleton states, “The implementing legislation introduced today would allow

libraries in the United States to participate in the Marrakesh system and better serve the needs of people with print disabilities at home and around the world.”

Links to more information

[Library Copyright Alliance Welcomes Introduction of Marrakesh Treaty Implementation Act \(ACRL Insider, March 16, 2018\)](#)

[Blind Users Celebrate as Marrakesh Treaty Implementation Bill Drops \(Electronic Freedom Foundation, March 15, 2018\)](#)

[Summary of the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled \(MVT\) \(World Intellectual Property Organization, 2013\)](#)

[Marrakesh Treaty Closer to Reality \(*American Libraries*, 03/15/2018\)](#)

10) Government Surveillance

FISA

Section 702 of the Foreign Intelligence Surveillance Act (FISA) authorizes the National Security Agency, under a special court order, to collect and analyze emails and other digital communications of foreigners living abroad. But the program also ends up collecting the communications of an undisclosed number of Americans, including when they communicate with a foreign target living overseas, which can later be searched without a warrant.

FISA expired at the end of December 2017, and on January 11, 2018, the House took up debate and voted on a bill for extending the Section 702 provisions. Representatives Justin Amash (R-Michigan) and Zoe Lofgren (D-California) offered an amendment of a substitute bill that would have prohibited the FBI and intelligence agencies from querying the database without first obtaining a warrant and would have ended the collection of communications entirely between American citizens referencing foreign targets (the so-called “about” collections). However, the amendment was voted down in the House (with 55 Democrats joining 178 Republicans), and shortly thereafter the original bill, leaving the 702 provisions largely unchanged, passed 256-164 (191 Republicans and 65 Democrats supporting). The Section 702 reauthorization does make a minor modification to warrant requirements: “a warrant would be required only if an F.B.I. agent wants to look at emails about a subject of an open criminal investigation for which there is no national security angle. It would not apply to security-related queries by any intelligence or law-enforcement agency, nor to requests from

F.B.I. agents who are following up on criminal tips but have not yet opened formal investigations.” The bill passed the Senate 65-34 on January 18, 2018, before being signed by President Trump on January 19. It extends the Section 702 authorization for another six years.

Privacy concerns about FISA surveillance and information gathering is an issue that’s not likely to go away in the near future, and several organizations continue to press for reforms, including the Electronic Frontier Foundation, which is currently litigating multiple cases related to the constitutionality of the Section 702 collection program (see [NSA Spying](#)).

Email Privacy Act

Other legislation affecting privacy and government surveillance is the [H.R. 387, Email Privacy Act](#), which passed the House this Congress but has not been taken up in the Senate. It updates the Electronic Communications Privacy Act to require the government “to obtain a search warrant from a court in criminal investigations before a provider is required to disclose the content of communications.” It has had broad bipartisan support: 315 cosponsors last Congress, passed by a unanimous vote in the 114th and by voice vote last year in the current Congress.

Cloud Act

More recently, both the House and Senate introduced the Clarifying Lawful Overseas Use of Data Act (CLOUD Act) in early February. The act aims to expand American and foreign law enforcement’s ability to target and access people’s data across international borders. There are concerns that the CLOUD Act could have serious negative implications for the privacy of Americans as well as lawful resident aliens and visitors to the United States (a group that includes many scholars and students in U.S. higher education). It would allow U.S. law enforcement to compel companies to deliver both the content and metadata of electronic communications of an individual regardless of where the information is stored and without the need to follow foreign privacy laws. The bill would further allow the President to enter into executive agreements with any other foreign government to allow foreign law enforcement officials to collect data stored in the United States from U.S. companies, without following U.S. privacy rules like the Fourth Amendment, as long as the target is not a U.S. citizen or a person residing in the United States in the United States. However, there are concerns that this would introduce a backdoor for the collection of “incidental” data on U.S. citizens or residents, whose communications may peripherally touch a target, similar to how Sec. 702 of FISA operates. That data could then be shared with U.S. authorities, who could use it without judicial review (see [A](#)

[New Backdoor Around Fourth Amendment: The Cloud Act](#)). Many big technology companies seem to be in favor of the legislation, because it would reduce the legal costs of complying with varied data and privacy regulations across jurisdictions (see the letter linked in [Tech Companies Welcome Cross Border Data Search Legislation](#), as well as Sec. 4(3)(B)(i)(d) of the bill limiting the liability of providers who comply with disclosures to law enforcement authorized by the bill).

Impact on Academic Libraries

Privacy has always been an issue of paramount concern to academic librarians. The protection of the patron's right to freedom from monitoring of their selection and use of information sources, print and online, is a core value of the profession included in ALA's Code of Ethics and addressed by many libraries within their institutional policies. The possibility of access to information about patrons by third parties destroys the sense of trust and confidentiality patrons should be guaranteed when using library resources.

ACRL's Position

ALA's Code of Ethics states, "We protect each library user's right to privacy and confidentiality with respect to information sought or received and resources consulted, borrowed, acquired or transmitted." Over the years, ALA and ACRL have worked to oppose any legislation that permits mass surveillance, access to personal information, and invasion of personal privacy.

Links to more information

[House Extends Surveillance Law, Rejecting New Privacy Safeguards \(New York Times, 1/11/2018\)](#)

[S.139 - An Act to amend the Foreign Intelligence Surveillance Act of 1978... \(Congress.gov, All Actions S.139 — 115th Congress\)](#)

[NSA Spying \(Electronic Freedom Foundation\)](#)

[Email Privacy Act, H.R. 387](#)

[A New Backdoor Around Fourth Amendment: The CLOUD Act \(Electronic Freedom Foundation\)](#)

[Tech Companies Welcome Cross Border Data Search Legislation \(Bloomberg, 2/07/2018\)](#)

WATCH LIST

Customarily, the Government Relations Committee places on the Watch List those issues that are not included in the Legislative Agenda because there is no relevant legislation pending or no legislation is necessary. In writing the 2017-2018 Agenda, however, all the issues of primary concern, as identified by the committee, had pending legislation at the time of publication and were therefore placed on the Agenda. Consequently, for this year, at least, there is no Watch List.