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, or will likely take, action 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 most important issues upon which ACRL will focus in 2015:

1. Access to Federally Funded Research

Background
The Fair Access to Science and Technology Research Act (FASTR) was originally introduced on February 14, 2013, with bipartisan support in both the House and the Senate. On March 18, 2015, FASTR was refiled in both the Senate and the House of Representatives for the 114th Congress. This bill also has bipartisan support in both chambers, with Senators John Cornyn (R-TX) and Ron Wyden (D-OR) sponsoring this legislation in the Senate and Representatives Michael Doyle (D-PA), Zoe Lofgren (D-CA), and Kevin Yoder (R-KS) sponsoring it in the House of Representatives.

Shortly after FASTR was first introduced in Congress in February 2013, the Office of Science and Technology Policy directed federal agencies with R&D budgets in excess of $100 million to increase access to federally funded scientific research and gave added momentum to improve access to federally funded research. There have been several responses from federal agencies to this memo. Those who have responded at the time of this writing are listed below under “Public Access Plans from Federal Agencies.”

While Congress did not fully enact the entire FASTR bill, significant progress was made in the passage of the Consolidated and Further Continuing Appropriations Act, 2015. The overall purpose of this law is to fund government activity through September 30, 2015, with the exception of the Department of Homeland Security, which only has funding through February 27, 2015. Language favorable to open access was included in various sections. For example, in the section on Labor, Health and Human Services, Education on page 961, it states,
Each Federal agency, or in the case of an agency with multiple bureaus, each bureau (or operating division) funded under this Act that has research and development expenditures in excess of $100,000,000 per year shall develop a Federal research public access policy that provides for

(1) the submission to the agency, agency bureau, or designated entity acting on behalf of the agency, a machine-readable version of the author’s final peer-reviewed manuscripts that have been accepted for publication in peer-reviewed journals describing research supported, in whole or in part, from funding by the Federal Government;

(2) free online public access to such final peer-reviewed manuscripts or published versions not later than 12 months after the official date of publication; and

(3) compliance with all relevant copyright laws.

Conversely, legislation that is detrimental to the goals of public access was introduced in the last session of Congress. At that point, ACRL joined others in opposing the Frontiers in Innovation, Research, Science, and Technology (FIRST) Act of 2014. The language in Section 303 of the FIRST Act calls for access to articles reporting on federally funded research to be restricted for up to three years after initial publication, an unnecessarily long delay with potential harm to stakeholders. No similar legislation has come forth in this current 114th session of Congress.

Outside of federal legislation, the Bill and Melinda Gates Foundation announced their open access policy on November 24, 2014. It is difficult to know whether similar announcements will come from other funding agencies outside the federal government, but it is certainly a positive sign of the general acceptance of the desire to share research results.

**Current Status:** FASTR was refiled on March 18, 2015, in the Senate as bill S.779 by Sen. Cornyn (R-TX) and was refiled on March 19, 2015, in the House as bill H.R.1477 by Rep. Doyle (D-PA-14).

**Impact on Academic Libraries:** FASTR increases opportunities for academics to share research results across institutions and disciplines, collaborate widely, and reuse results. According to the FAQ published by the Scholarly Publishing and Academic Resources Coalition (SPARC), 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.
Public access to the results of federally funded research would substantially improve opportunities for access. For instance, 1.5 million articles are retrieved from PubMed each weekday by 700,000 unique users, 25% of which are users from universities.

Links to more information
FAQ for the Fair Access to Science and Technology Research Act (SPARC)

White House Office of Science and Technology Memorandum for the Heads of Executive Departments and Agencies (February 22, 2013)

White House: Expanding Public Access to the Results of Federally Funded Research
White House: Response from Federal Agencies to the OSTP Memo (March 24, 2014)


Public Access Plans from Federal Agencies
Department of Defense
Department of Energy Public Access Plan
Agency for Healthcare Research and Quality (AHRQ) Public Access Plan
SPARC’s Overview of the AHRQ Public Access Plan
National Science Foundation (NSF) Public Access Plan
National Aeronautics and Space Administration (NASA) Public Access Plan
SPARC’s Overview of the NASA Public Access Plan
Center for Disease Control and Prevention (CDC) Public Access Plan

ACRL Position: FASTR 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 FY 2015 Consolidated Appropriations Bill. We oppose unnecessarily long embargo periods and other measures that restrict public access to federally funded research.
2. Curbing Government Surveillance Background

In 2011, Congress voted to extend Section 215 of the USA PATRIOT Act without addressing weaknesses in the law that allow the government to gather information about citizens’ private lives, including their reading habits and research interests. It is now known that Section 215 was used to compile records of the phone calls of customers of major U.S. telecommunications carriers, regardless of whether those customers were suspected of involvement in terrorism or any other illegal activity. In addition, the National Security Agency (NSA) collected metadata about Internet communications without warrants or probable cause. These actions have been supported by the Foreign Intelligence Surveillance Court, which has approved nearly all government applications to exercise its extensive surveillance powers, though this secret court is not subject to public or constitutional review.

Current Status: The Privacy and Civil Liberties Oversight Board (an independent, bipartisan agency within the executive branch) has recently concluded that the “Section 215 program has shown minimal value in safeguarding the nation from terrorism.” The board, which had access to classified briefings and documentation, found no instance in which the Section 215 program made a concrete difference in the outcome of a counterterrorism investigation. The board also found “no instance in which the program directly contributed to the discovery of a previously unknown terrorist plot or the disruption of a terrorist attack.”

In October 2013, the USA FREEDOM Act was introduced in Congress, a bill that would place restrictions on bulk phone and Internet government surveillance, and permit companies to make public the number of Foreign Intelligence Surveillance Act (FISA) orders and National Security Letters received. This bicameral piece of legislation would rewrite Section 215 of the USA PATRIOT Act—also called the “library provision”—and impose new limits on Section 702 of FISA. This bill would bring more transparency and oversight to these spying programs.

The Privacy and Civil Liberties Board's July 2014 report on Section 702 of FISA, “called for the government to create and release, with minimal redactions, declassified versions of the current minimization procedures that govern the CIA's, FBI's and NSA's use of information collected under that program.” On February 3, 2015, President Obama's Administration publically released documents that fully implemented this recommendation and “has accepted virtually all recommendations in the Board's Section 702 report…, while also accepting most of the recommendations in the Board's January 2014 report on the telephone records program conducted under Section 215 of the USA PATRIOT Act.” The board went on to note that President Obama’s Administration “has not implemented the Board's recommendation to halt the NSA's bulk telephone records program, which it could do at any time without congressional involvement.”
Impact on Academic Libraries: According to the USA PATRIOT Act, librarians could be compelled to compile and submit patron records, including documentation of computer usage, circulation records, printing records, Internet histories, and interlibrary loan requests. Compliance is mandatory.

Links to more information
Privacy and Civil Liberties Oversight Board Comments on the Intelligence Community's Signals Intelligence Reform Anniversary Report

Section 215 of the USA PATRIOT Act allows the government to secretly request and obtain library records for large numbers of individuals without any reason to believe they are involved in illegal activity.

H.R. 3361 USA Freedom Act as passed in the House and sent to the Senate, where it was referred to the Committee on the Judiciary.

ACRL Position: ACRL believes that Section 215 of the USA PATRIOT Act violates the Fourth Amendment, which protects citizens from unreasonable searches and seizures, and the First Amendment, which protects citizens’ right to freely access information. We support legislation, like the USA FREEDOM Act, which helps put a stop to warrantless surveillance.

WATCH LIST
There are additional policy issues of great concern to academic librarians that are not included above because there is no pending legislation or we believe legislation may not be necessary. Nevertheless, if legislation does arise or becomes necessary, ACRL will advocate for the best interests of academic and research libraries by relying on past precedent and current analysis.

Net Neutrality. Network neutrality is the nondiscrimination of Internet access by Internet service providers, whether it be sending or receiving content, applications, or services. On May 15, 2014, the FCC introduced a rulemaking (Proceeding #14-28) seeking public opinion on “how best to promote and protect open access to the Internet.” After millions of responses to this call for public comment, FCC Chairman Tom Wheeler released a Fact Sheet on the newly proposed rules for protecting the open Internet. During the FCC’s February 26, 2015, open meeting, the FCC adopted these new rules, by stating,

Today, the Commission—once and for all—enacts strong, sustainable rules,
grounded in multiple sources of legal authority, to ensure that Americans reap the economic, social, and civic benefits of an Open Internet today and into the future. These new rules are guided by three principles: America’s broadband networks must be fast, fair and open—principles shared by the overwhelming majority of the nearly 4 million commenters who participated in the FCC’s Open Internet proceeding.

ACRL supports efforts to preserve the neutrality of the Internet and to ensure that Internet service providers do not discriminate against users by charging premiums or restricting access, content, applications, or services.

**Copyright Legislation: An Overview**

At this time the U.S. House of Representatives Committee on the Judiciary, Subcommittee on Courts, Intellectual Property, and the Internet is engaged in a comprehensive review of copyright law. No legislation is likely to be brought to the floor for some time as this subcommittee is in the early phases of its copyright review. Nonetheless, we are monitoring the following copyright issues.

The Register of Copyrights has argued that United States Copyright Law is in need of reform and has urged Congress to undertake a comprehensive review. Numerous hearings on aspects of the law were held in 2013 and 2014 and they continue to be held in 2015. It remains unclear whether legislation will be introduced in 2015.

The House Judiciary Committee held a [hearing](#) on the Copyright Office's functions and resources on February 26, 2015. This hearing highlighted sections of a 82-page report, which provides recommendations on the technology, procedures, and staffing needed to “optimize key services for customers, including copyright registration, the recordation of copyright documents, and the searchability of public records, and facilitate the exchange of legal and business data with the global marketplace.”

Fair use and preservation and reproduction exemptions for libraries are important features of United States Copyright Law, upon which we rely to provide vital services to users and to preserve important cultural heritage materials. Libraries have been responsible stewards of copyrighted works, mindfully balancing the interests of rights holders with the interests of the public.

Although aspects of current Copyright Law are certainly in need of reform, in particular the term of copyright and certain requirements of the Digital Millennium Copyright Act (DMCA), a revision should not seek to limit or constrain critical exemptions such as fair use (Section 107), reproductions by libraries and archives (Section 108), and the limitations of first sale (Section 109). There remains a real possibility that opening the law for revision will have unintended negative consequences for libraries. If copyright legislation is introduced, ACRL should urge Congress to resist overengineering the law to
respond to specific technological challenges, focusing instead on the essential purpose of the law: to promote the progress of science and the useful arts.

**Fair Use.** Fair use, codified under Section 107 of the Copyright Act, allows reproduction and other uses of copyrighted works for purposes such as criticism, comment, news reporting, teaching, scholarship, and research. We do not expect any legislation on this issue for some time. Currently, ACRL believes that Section 107 of the Copyright Act requires no change. For further information about this issue, see this statement by the LCA on the “Scope of Fair Use.”

**“Making Available” Right.** According to its website, the Copyright Office is “undertaking a study to assess the state of U.S. law recognizing and protecting ‘making available’ and ‘communication to the public’ rights for copyright holders.” The United States has formal agreements, known as the WIPO Internet Treaties, with other countries that “obligate member states to give authors of works, producers of sound recordings, and performers whose performances are fixed in sound recordings the exclusive right to authorize the transmission of their works and sound recordings.” This language was added into the DMCA in 1998, but U.S. law was not changed to include these rights, assuming that the rights were adequately covered by Title 17. As a result, there is frequent argument about what rights are protected and what rights are maintained by libraries to make copies available for lending.

In 2014 Congress asked the Copyright Office “to review and assess (1) how the existing bundle of exclusive rights under Title 17 covers the making available and communication to the public rights in the context of digital on-demand transmissions such as peer-to-peer networks, streaming services, and music downloads, as well as more broadly in the digital environment; (2) how foreign laws have interpreted and implemented the relevant provisions of the WIPO Internet Treaties; and (3) the feasibility and necessity of amending U.S. law to strengthen or clarify our law in this area.”

As part of this review of the “making available” and “communication to the public” rights, the LCA provided a document as public comment on April 4, 2014. The results of this study by the Copyright Office are not available, and no legislation has been introduced as a result.

**Library Copyright Alliance Statements**


Preservation and reproduction exceptions. Congress enacted Section 108 of the Copyright Act in 1976 to provide libraries and archives with a set of clear exceptions with regard to the preservation of unpublished works; the reproduction of published works for the purpose of replacing a copy that was damaged, deteriorating, lost, or stolen; and the making of a copy that would become the property of a user. Library exceptions in Section 108 supplement, and do not supplant, the fair use right under Section 107. U.S. libraries spend over $4 billion a year acquiring books, films, sound recordings, and other materials. The objective of the Section 108 is to maximize the benefits of this enormous investment for current users and to preserve it for future generations.

District Dispatch: Jim Neal Represents Libraries at House judiciary Subcommittee Copyright Hearing


Orphan Works. The LCA has been active in recent conversations at the Copyright Office about orphan works. In April 2014, LCA comments made three points: there is no consensus on a way forward on legislation concerning orphan works; there is consensus that extended collective licensing will not be an effective solution for mass digitization, even just for books; and the best practices for fair use developed by user communities are an appropriate approach for addressing issues relating to orphan works and mass digitization.

The Digital Millennium Copyright Act. Section 512(a) of the DMCA protects libraries from potential liability for copyright damages incurred by infringing library users. Libraries depend upon this protection to allow them to deliver critical services to underserved communities, therefore ACRL opposes the alteration of 17 U.S.C. § 512(a) or any imposition of new obligations on Internet access providers. In addition, ACRL feels Section 512(c)(2) of the DMCA should be repealed because it requires libraries to identify an agent on its website to receive notifications of claimed infringement and also to provide the Copyright Office with the agent’s contact information, a bureaucratic burden with no clear purpose. Finally, many libraries offer resources to customers that provide hyperlinks to websites with useful information. Section 512(d) offers protection to libraries if any of these links, unbeknownst to the library, contain infringing material; therefore, this section should be preserved.