



**ALA COMMITTEE ON LEGISLATION
2008 Orientation Retreat
December 2008
DISCUSSION BRIEF**

THE ISSUE: Copyright and Related Issues

Orphan Works

Even though much time and energy was invested this legislative session to advocating for a reasonable solution aimed at making historic and cultural “orphan works,” whose copyright holders cannot be found, available to the public, the bill ultimately died in the House. This session was not without victory, however, as we had successfully negotiated a reasonable and relatively useful Senate version of the bill that passed (that’s the furthest we’ve ever advanced on orphan works legislation over the years).

At this writing, it is unclear whether orphan works legislation will be introduced in the next session. Several recent occurrences may influence future activity on the issue – including the dissolution of the House Subcommittee on the Courts, the Internet and Intellectual Property and the proposed Google Book Project settlement agreement.

PRO-IP Act of 2008

We were very disappointed to see the President sign into law the PRO-IP Act of 2008 (S. 3325). Along with “gifting” the incoming President with an Intellectual Property Enforcement Coordinator (i.e. I.P. Czar), the new law allows the forfeiture of devices (i.e. computers, etc.), used in piracy – which is of particular concern to libraries.

Specifically, such forfeiture raises the following major questions:

- (1) To what extent is the information on seized devices reached by the forfeiture (i.e. data on a server)?
- (2) What rights are implicated by accessing the information stored on seized devices?

Also of particular interest is the question of who will ultimately be appointed to the I.P. Czar position.

Broadcast Flag

While this issue managed to generate some late-session traction in the 110th session, with several meetings and some lobbying, it did not (thankfully) become a bill. While the broadcast flag as a solution to the content industry’s ability to combat piracy died (yet again), their desire for parity over how they control distribution and redistribution of digital *and* over-the-air content has not. From our perspective, librarians and faculty in education would have been severely limited in their ability, under fair use, to copy and distribute media content broadcast over the air – significantly negatively impacting media content used in courses.

At this writing, we anticipate legislative action -- in some form -- on this issue in the 111th session.

QUESTIONS:

- Impact of Google settlement agreement on legislation relating to orphan works and copyright issues in general?
- Impact of key administration appointments -- including the new I.P. Czar and the Chief Technology Officer?
- Impact of activity on the international front (i.e. Rep. Berman's continued interest from his post chairing the Foreign Affairs Committee)?
- Impact of the dissolution of the House Subcommittee on the Courts, the Internet and Intellectual Property?
- Opportunity to play "offense" and introduce legislation vs. defensively responding to content industry-backed legislation?

RELATED ALA UNITS AND OTHER COALITIONS/ALLIES:

- ACRL
- ARL
- Library Copyright Alliance (LCA) (comprised of ALA, ARL, MLA, SLA & AALL)
- Informal allies (tech. industry, internet companies, higher education, etc.)

ACTION NEEDED/NEXT STEPS – including what, who and when:

- Creating a lobbying strategy and planning targeted Hill visits
- Continuing to work with ALA units (ACRL, ARL, etc.) and cultivating informal allies
- Cultivating targeted grassroots "expert advocates" within ALA in specific Congressional districts