

2007 Copyright Agenda

ALA supports efforts to amend the Digital Millennium Copyright Act (DMCA) and to urge the courts to restore the balance in copyright law, ensure fair use and protect and extend the public domain

HIGHLIGHTS OF COPYRIGHT LEGISLATION AND RELATED ACTIVITY

For details, please go to www.ala.org/copyright

See also www.librarycopyrightalliance.org

(Note: The text of bills is available at <http://thomas.loc.gov>.)

Freedom and Innovation Revitalizing U.S. Entrepreneurship (FAIR USE) Act of 2007, H.R. 1201

Introduced February 2007

Co-sponsored by Reps. Rick Boucher (D-VA), Zoe Lofgren (D-CA) and John Doolittle (R-CA)

(See "DMCA Section 1201 Rulemaking" below)

Libraries urge Members of Congress to co-sponsor this important bill that would:

- Allow permanent exemptions to the DMCA's prohibition on circumventing technological locks, where use of a copyrighted work is non-infringing, e.g., for educational use in a classroom
- Enhance libraries' preservation efforts
- Allow circumvention to access public domain works as well as works used for criticism, comment, scholarship, research
- Codify the U.S. Supreme Court's 1984 ruling that a copying technology (in that case, the videocassette recorder) is permissible under the Copyright Act so long as the technology can be used for non-infringing as well as infringing purposes

The 109th Congress considered but did not complete action on the following bills. **We anticipate that we will see new versions of some of them reintroduced in the 110th Congress.**

"Orphan Works"

The House of Representatives' Orphan Works bill would have amended the Copyright Act to allow use of copyrighted works whose owners are difficult or even impossible to find. The thrust of the bill was that remedies for infringement of a copyrighted work would be limited if the user (the alleged infringer) had made a reasonably diligent, good faith search to locate the owner of the work but was unable to find the owner. **Libraries are very supportive of legislation to address this problem and are asking their Senators and Representatives to introduce Orphan Works bills.**

Government Information/Open Access to Research

A Senate bill, S. 2695, the "Federal Research Public Access Act of 2006," would have required Internet access to articles reporting on federally funded research. We expect to see the bill reintroduced in the Senate as well as a House version introduced in the 110th Congress. **Libraries strongly support Open Access legislation and will ask their Senators and Representatives to do so as well.** In the meantime, we are urging both the House and the Senate to include language in the appropriations bill to require mandatory public access to research funded by the National Institutes of Health no later than 12 months after publication in a peer-reviewed journal. For more on public access to publicly funded research: www.taxpayeraccess.org

"Broadcast Flag"

S. 2686, the large and complex Communications Act of 2006, included a "Digital Content Protection Act" to give the FCC authority to reissue its rule to require that all digital electronic devices, such as TV sets and personal computers, include code (known as the "broadcast flag") that accompanies digital TV signals to prevent redistribution of the digital content over the Internet. There was ambiguous language in the broadcast flag provision about exceptions for educational and other uses along the lines of fair use, thus we were not disappointed when the larger bill failed to be acted upon. Though we do not expect the issue – mandated protection of digital TV content - to disappear, it is unclear whether we will see a reintroduction this year.

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<p>DMCA Section 1201 Rulemaking</p> <p>Section 1201 of the Digital Millennium Copyright Act provides for exemptions from the prohibition on circumvention of technological locks that control access to copyrighted works</p> <p>(See "H.R. 1201, the FAIR USE Act, above)</p>	<ul style="list-style-type: none"> Exemptions available to users of "classes of works" who would be "adversely affected by virtue of such prohibition in their ability to make non-infringing uses" of those works. The Librarian of Congress issued new rule in November 2007, setting out six classes of copyrighted works subject to exemptions for the next three years (through October 27, 2009) One of the new "classes of works" will allow film and media studies professors to make compilations of film clips for classroom instruction.
<p>Court Case: <u>Perfect 10, Inc. v. Google, Inc.</u></p> <p>Appeal to U.S. Court of Appeals (Ninth Circuit)</p> <p>July 2006: libraries join <i>amici curiae</i> (friends of the court) brief on behalf of Google</p> <p>November 2006: oral arguments</p> <p>May 2007: Court rules for Google on most points - decision contains mostly positive rulings for search engines</p>	<ul style="list-style-type: none"> Federal district court issued preliminary injunction to Perfect 10, which alleged that Google infringed copyright both for displaying thumbnail images of Perfect 10 photographs in response to search queries and for linking to sites where infringing images were displayed. Appeals Court agreed that providing links to third-party web pages did not lead to Google's direct or secondary liability for copyright infringement Appeals Court affirmed prior appellate court rulings (<i>Kelly v. Arriba Soft</i>), holding that Google's display of the thumbnail images was fair use. Court's ruling concerning display of thumbnails is important for libraries, which rely on commercial search engines, including image search functions, to help users navigate the sea of information that constitutes the World Wide Web.
<p>Court Case: <u>Greenberg v. National Geographic Society</u></p> <p>Appeal to U.S. Court of Appeals (Eleventh Circuit)</p> <p>June 2006: libraries file <i>amici curiae</i> (friends of the court) brief on behalf of NGS</p> <p>June 2007: appeals court issues favorable decision</p> <p>Related to <u>Psihoyos/Faulkner</u> case in Second Circuit and <u>New York Times v. Tasini</u> in U.S. Supreme Court</p>	<ul style="list-style-type: none"> Eleventh Circuit appeals court held that decision by U.S. Supreme Court in <u>New York Times v. Tasini</u> (2001) makes clear that an image-based reproduction of all past NGS magazine issues is a permissible revision, as would be a reproduction on microfilm or microfiche. Court also held that use of computer program to give users access to images is "transparent and does not alter the original context of the magazine contents." Courts' interpretation of copyright law allows libraries to use technology to promote broader public availability of more obscure, less widely accessible magazines, newspapers, scholarly journals and other periodicals.
<p>Court Case: <u>Twentieth Century Fox v. Cablevision Systems</u></p> <p>Appeal to U.S. Court of Appeals (Second Circuit)</p> <p>June 2007: libraries join <i>amici curiae</i> (friends of the court) brief on behalf of Cablevision</p>	<ul style="list-style-type: none"> Copyright infringement case concerns the question of who makes the copy when an entity provides facilities that can be used by third parties Lower court held cable company to be infringer by allowing its users to direct company server to make copy of a particular TV program, then user could view copy whenever she wished ("remote DVR service") Libraries provide "facilities" that can be used by third parties for copying -- from photocopy machines to Internet access to websites where users can post content -- but do not engage in volitional acts of infringement by doing so

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<p>Section 108 Study Group</p> <p>The Library of Congress has convened a "Section 108 Study Group" to make recommendations for possible changes to the section of the U.S. Copyright Act that provides exceptions for libraries and archives.</p>	<ul style="list-style-type: none">• The Study Group hosted a series of roundtables in 2006 and 2007 for interested parties to offer suggestions and comments on how best to revise these exceptions for the digital era.• The Group expects to make recommendations to the Librarian of Congress by Fall 2007. The U.S. Copyright Office would then consider draft legislation and recommend that Congress hold hearings.• Issue papers, roundtable transcripts and written comments available at www.loc.gov/section108
<p><u>International Copyright Issues</u></p> <p>International agreements and trade treaties impact libraries and U.S. copyright law</p> <p>www.ala.org/copyright/international</p>	<ul style="list-style-type: none">• World Intellectual Property Organization (WIPO), addressing:<ul style="list-style-type: none">○ "development agenda"○ library and archives exceptions○ database protection○ "broadcast" treaty○ traditional knowledge and folklore• Hague Convention on Choice of Court Agreements• Free Trade Area of the Americas Agreement (FTAA) and bi-lateral free trade agreements (FTAs)• Continuing implementation of the World Trade Organization's (WTO) General Agreement on Trade in Services (GATS)• Implementation of the World Summit on the Information Society (WSIS)• United Nations Educational, Scientific and Cultural Organization (UNESCO)• European Commission studies addressing<ul style="list-style-type: none">○ EC Database Directive○ EC Copyright Directive○ Access to scientific and scholarly research