

## Legislative Agenda March 18, 2009

### A. EXECUTIVE SUMMARY

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 2009:

1. Government Information
2. Public Access to Federally-funded Research
3. LSTA Reauthorization
4. Orphan Works
5. Copyright: Section 108
6. Section 215 of the PATRIOT Act
7. Network Neutrality
8. Fair-Use and Anti-Circumvention

### B. ACRL LEGISLATIVE AGENDA

#### 1. Government Information

**Brief Background/Legislative History:** The most recent revision to the law concerning the distribution of government documents took place in 1962 (*Title 44, United States Code*). Thanks to major changes in the distribution of federal government information via the Internet and thanks to significant economic hardship being faced by many depository libraries, the FDLP model as it currently stands is rapidly becoming less sustainable. In recent years, a number of depository libraries have withdrawn from the FDLP. Regional depository libraries, in particular, are finding the burden of maintaining print and microform legacy collections increasingly difficult.

**Current Status:** The Joint Committee on Printing, a subset of the Senate Committee on Rules and the House Committee on Administration, is unlikely to pursue a legislative solution in the foreseeable future that will make the FDLP more viable despite the greatly changed world of government information.

**Impact on Academic Libraries:** Many of the 1200-plus depository libraries are also academic libraries, two thirds of the FDLP Regional Libraries are academic libraries. If the burden of maintaining print and microform collections becomes too great, it is likely more depository libraries will seek to withdraw from the FDLP. Two regional depository libraries have withdrawn from the program in the last six months, leaving fifty.

**Links to Other Information:**

- GPO Report [Regional Libraries in the 21st Century: A Time for Change](#)
- GPO [A Strategic Vision for the 21<sup>st</sup> Century](#)
- GODORT Future of FDLP [wiki](#)

**ACRL Position:** While the issues are complex and there is a diversity of opinions among members of the library community about how best to proceed, ACRL supports the [GPO guidelines for shared regional depository libraries](#) (June 2007). See also the [Joint ACRL/ALCTS/AASL comments to GPO on Study of Regional Depository Libraries](#) (May 2008)

**2. Public Access to Federally-Funded Research**

**Brief Background/Legislative History:** In February 2005 after many months of discussion and deliberation the National Institutes of Health (NIH) introduced their policy on “Enhancing Public Access to Archived Publications Resulting from NIH Funded Research.” On December 26, 2007 the NIH Policy became mandatory with passage of the Consolidated Appropriations Act of 2007 (H.R. 2764.) Federal Research Public Access Act (2006) FRPAA has not been reintroduced in the current Congress. Open data policies outline requirements for the management of publicly funded original research data that enables minimally restricted downstream use and reuse for the advancement of knowledge. Such policies promise similar advantages and opportunities to libraries as do policies for public access to published research results, including downward pressure on the cost of information products, ease in providing access to and preservation of an institution's scholarly output, and support for the advancement of knowledge by opening up primary data to re-interpretation, student use, etc.

**Current Status:** The Chairman of the U.S. House Judiciary Committee Member (Rep. John Conyers, D-MI) re-introduced a bill into the 111<sup>th</sup> Congress that would reverse the NIH Public Access Policy and make it impossible for other federal agencies to put similar policies into place. The legislation is H.R. 801: the “Fair Copyright in Research Works Act.”

As of April 7, 2008, investigators who receive NIH funding must submit their final peer-reviewed manuscripts to PubMed Central no later than 12 months after acceptance for journal publication. For all applications, proposals or progress reports submitted for the NIH's May 25, 2008 due date or beyond, investigators need to include a PubMed Central reference number when citing articles they have authored or co-authored with support from an NIH award. Open data legislation or policy developments have already been adopted in some form by the NIH and the NSF.

**Impact on Academic Libraries:** Public access to this important health science research will improve access particularly for those users affiliated with libraries (small colleges, non-health science libraries, etc.) that could not afford access to a broad range of health science journal literature. Libraries at institutions with NIH grant holders may wish to construct or consult on services that assist researcher or institutional compliance. Local, regional, and national scholarly communication programs will want to track the

implementation of the NIH policy in order to inform their response to additional proposed funder mandates, e.g. if a version of the Federal Research Public Access Act (2006) is reintroduced.

**Links to other information:**

- ALA Washington Office [Alert on HR801](#)
- NIH Policy notice [NOT-OD-08-033](#)
- [Alliance for Taxpayer Access](#) and [Scholarly Publishing and Academic Resources Coalition](#) (SPARC)
- Official [NIH website](#) for the most up to date information on the policy.

**ACRL Position:** ACRL supports enhanced access to federally-funded research through open access publication and open data policies. ACRL strongly opposes H.R. 801.

### 3. LSTA Reauthorization

**Brief Background/Legislative History:** The Library Services and Technology Act is managed by the Institute for Museum and Library Services. LSTA was renewed September 2003 for five years (PL 108-81). According to the legislative history, the Act worked to update “the purposes of the Library Services and Technology Act to promote improvements in library services in all types of libraries; to facilitate access to, and sharing of, resources; and to achieve economical and efficient delivery of service for the purpose of cultivating an educated and informed citizenry.” The Act also authorized the doubling of the minimum state allotments under the grants to State Library Agencies programs from \$340,000 to \$680,000. However, Congress in the reauthorization act of 2003 included a “hold harmless” clause which ensured that the increase would not take effect if it resulted in a decrease in the allotments to the states below the 2003 level. Funding was insufficient to permit this.

**Links to Other Information:**

- ALA Washington Office [Appropriations Update](#) (Midwinter 2009)
- IMLS [Detailed Program Descriptions](#), (p.15)

**Impact on Academic Libraries:** Many academic libraries rely on LSTA funding via state library agencies to fund important and innovative programs.

**Current Status:** While legislation has not yet been introduced to reauthorize LSTA, the FY 2009 Omnibus Appropriations bill is a victory for libraries. Signed into law by President Obama March 11, 2009, it contains \$171,500,000 for the Grants to State Library Agencies program within the LSTA. This funding level is an increase of over \$10 million from last year and also allows for full implementation of a 2003 law to provide a more equitable distribution of state formula grants.

**ACRL Position:** ACRL supports reauthorization of the LSTA *with* adequate funding to support the doubling of grants in order to escape the impact of the hold-harmless restriction.

#### 4. Orphan Works

**Issue:** Limit liability of copyright infringement on copyrighted works whose owners are difficult or impossible to locate after a good faith effort has been made.

**Brief Background / Legislative History:** Originally introduced as The Orphan Works Act of 2006 (HR 5439) by Rep. Lamar Smith (R-TX) in May of 2006, the bill was folded into the Copyright Modernization Act of 2006 (HR 6052). Both the Senate and House of the 110<sup>th</sup> Congress introduced orphan works legislation. It re-emerged in the Senate as the Shawn Bentley Orphan Works Act of 2008 (S. 2913) and in the House of Representatives as the Orphan Works Act of 2008 (H.R. 5889). The House bill died. On September 26, 2008, the Senate amended Shawn Bentley Orphan Works Act of 2008 (S.2913) sponsored by Sen. Patrick Leahy (D-VT) was passed and referred to the House Committee on the Judiciary. This bill includes the amendment, “to modify provisions relating to diligent efforts, guide searches, recommend practices, imitations on injunctive relief, and for other purposes.”

**Current Status:** At this writing, orphan works legislation has not been introduced in the 111<sup>th</sup> Congress. 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.

**Impact on Academic Libraries:** Passage of the legislation will benefit academic libraries in making available via electronic reserves or other means works under copyright but where the ownership of the copyright is either unclear or the owner is not locatable.

#### Links to Other Information:

- For current [full text of H.R. 5889](#)
- For current [full text of the S. 2913](#)
- ALA Washington Office [Brief on Orphan Works](#) (Midwinter 2009)
- [Open Congress S.2913 information](#)
- For more [orphan works legislation](#) news from the Washington, D.C.-based public interest group Public Knowledge.
- Copyright Office information [Orphan Works](#).

**ACRL Position:** ACRL supports reasonable orphan works legislation that will make these copyrighted works accessible without undue burden to researchers and reducing damages if the copyright holder comes forward. In the 110th Congress this meant supporting the Senate version of the bill over the House version, which included a provision for a so called “dark archive.”

#### 5. Copyright: Section 108

**Issue:** Reproduction of copyrighted works by libraries and archives, including for preservation and inter-library loan.

**Brief Background/Legislative History:** The Library of Congress convened the [Section 108 Study Group](#) in early 2005 to examine Section 108 of the U.S. Copyright Act. Members of the Study Group from the library community were Lolly Gasaway, Jim Neal, Miriam Nisbet and the late Bob Oakley. The group convened several roundtables and invited comments from affected communities. The group prepared findings and made recommendations to the Librarian of Congress for possible alterations to the law, reflecting current technologies.

**Impact on Academic Libraries:** Section 108 is a critical provision of the law as it concerns reproduction of copyrighted works by libraries and archives, including for preservation and inter-library loan. Section 108 privileges are set out separately from the Section 107 fair use privileges and do not depend on application of the four factors listed as determining whether a use is "fair." They provide predictability for libraries and archives and immunity from liability for the unsupervised use of on-site reproduction equipment.

There is growing concern that provisions of the Copyright Act may need revision to address issues arising from use of copyrighted works by libraries and archives in a digital environment. Digital technologies are radically transforming how copyrighted works are created and disseminated and also how libraries and archives preserve and make those works available. For example, the existing statute does not address new forms of copying in the digital environment such as temporary copies that are created in the process of delivering digital materials. Nor does it acknowledge preservation needs for newer formats. The study looked at how the law should be amended to address such issues.

**Current status:** The Section 108 Study Group held its final meeting on January 31 and [released its report](#) March 28, 2008. Maria Pallante, Deputy General Counsel in the U.S. Copyright Office, is expected to review the report for legislative action that may result from the report recommendations.

**Links to other information:**

- [Section 108 Study Group](#) website includes legislative language, background documents, transcripts and comments
- Association of Research Libraries [Copyright Policies](#)
- ALA Washington Office [Section 108](#)

**ACRL Position:** ACRL supports the recommendations of the ALA and ARL position papers; specifically we support the extension of Section 108 to include museums and other cultural institutions and ways to facilitate web archiving, preservation, and remote access to digital replacement copies. Maintaining flexibility in the statute is important in order for libraries to achieve their mission. Proposed changes to Section 108 should not be predicated on the use of restrictive conditions or technologies such as those included in the TEACH Act.

## 6. Section 215 of the PATRIOT Act

**Issue:** Privacy rights of library users and surveillance of library records

**Brief Background/Legislative History:** The USA PATRIOT Act 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 allows the FBI to order any person or entity to turn over library records so 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 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.

**Current Status:** In June 2007, ALA called on Congress to tighten language in the USA Patriot Act to avoid the type of privacy violation described by George Christian, Executive Director of the Library Connection (a library co-operative in Connecticut), and former plaintiff in the case "John Doe vs. Gonzales", and to provide more consistent, thorough oversight of the FBI's surveillance activities.

In January 2009, U.S. Attorney General Eric Holder said at his confirmation hearing before the Senate Judiciary Committee that he supports renewing a section of the USA Patriot Act that allows FBI agents investigating international terrorism or espionage to seek records from businesses, libraries and bookstores.

On March 12, 2009, House Republicans today introduced the [Safe and Secure America Act of 2009](#) to reauthorize the three expiring provisions for 10 years. Specifically, the Act extends the "roving" wiretaps provision of the PATRIOT Act, Section 215 the "library provision" (aka FISA business records) of the PATRIOT Act and the "lone wolf" provision of the Intelligence Reform Act. The ALA Washington Office is working to obtain more background, determine the likelihood of hearings, and monitor a potential version introduced by the Democrats.

**Impact on Academic Libraries:** Section 215 potentially increases government surveillance on college campuses and challenges long standing library protections for library records.

**Links to other Information:**

- ALA Washington Office [USA PATRIOT](#)
- ACLU [Overview](#)

**ACRL Position:** ACRL supports legislation that will remedy those sections of the PATRIOT Act that infringe on the civil liberties of library users. Specifically we need to continue to argue for a more stringent standard for Section 215 orders—one that requires the FBI to limit its search of library records to individuals who are connected to a terrorist or suspected of a crime. We also seek the addition of a provision allowing recipients of Section 215 or 505 orders to pose a meaningful challenge to the “gag” order that prevents them from disclosing the fact that they have received such an order.

## 7. Network Neutrality

**Issue:** Net neutrality is the non-discrimination of internet access by Internet service providers whether it be sending or receiving content, applications or services.

**Legislative History:** Various pieces of legislation dealing with net neutrality have been introduced since 2006. The Internet Freedom and Nondiscrimination Act (H.R. 5417), sponsored by Rep. Sensenbrenner (R-WI) was introduced in the 109<sup>th</sup> Congress. The Internet Freedom Preservation Act (S. 215), sponsored by Sen. Byron Dorgan (D-ND) was introduced in the 110<sup>th</sup> Congress. A bipartisan House of Representative bill, “Internet Freedom Preservation Act 2008” (H.R. 5353) was introduced by Ed Markey (D-MA) and Chip Pickering (R-MO) on February 12, 2008.

**Current status:** Pres. Obama has promised to “take a backseat to no one” in his commitment to Network Neutrality. Legislation is likely to be introduced this session by Sen. Byron Dorgan according to reports on *Save the Internet*. On March 3, 2009, President Obama nominated Julius Genachowski, a supporter of net neutrality, as the chairman of the FCC. Lobbying and industry groups signaled their approval, see statements from [Public Knowledge](#), [National Cable & Telecommunications Association](#), [Free Press](#), and [American Cable Association](#).

**Impact for Libraries:** The impact on free speech and the free choice of content, applications and services would be significant for our patrons. We must maintain our ability to access information that may be in conflict with the corporate philosophy of the ISP without discrimination in the form of premium charges and slower network speeds.

### Links to Other Information:

- ALA Washington Office [Network Neutrality](#)
- [Open Internet Coalition](#)
- [Save the Internet](#)

**ACRL Position:** ACRL supports legislation to preserve the neutrality of the Internet and to ensure that Internet service providers do not discriminate against users by charging premiums, providing slower network speeds, restricting access, content, applications or services.

## 8. Fair-Use and Anti-Circumvention

**Issue:** Fair-use of digital materials.

**Brief Background/Legislative History:** According to Section 1201 (a) (1) of the Digital Millennium Copyright Act, the Librarian of Congress is allowed once every three years to adopt exceptions to the anti-circumvention provisions that place technological protections on copyrighted works. However, nearly all requested exceptions have been denied. Additionally, the statute does not permit exemptions for the manufacture and distribution of circumvention tools, thus making any approved exceptions impractical.

**Current Status:** As of early 2009, the latest triennial review for adopting exceptions to the anti-circumvention provisions of the DMCA Sec. 1201 has just begun. On February 2, 2009, the American Library Association and several other interested groups [filed a request](#) with the Librarian of Congress to extend the exceptions allowed for media and film utilized by college media instructors for educational purposes to be extended beyond the discipline of film and media.

In the 110<sup>th</sup> Congress Rep. Rick Boucher of Virginia introduced a bill to amend Section 1201(a)(1) of the DMCA, but the bill never moved beyond being referred to the House Subcommittee on Courts, the Internet, and Intellectual Property. As of early 2009, with the 111<sup>th</sup> Congress in session, no new legislation had been introduced.

**Impact on Academic Libraries:** The Digital Millennium Copyright Act negatively affects the ability of libraries and educational institutions to make fair use of digital materials. Legitimate anti-circumvention tools are needed to allow fair use access to the complete range of digital resources being paid for by libraries and educational institutions.

**Links to Other Information:**

- ALA Washington Office [Issues & Advocacy: Copyright](#)
- ALA Washington Office [District Dispatch Blog: Copyright](#)

**ACRL Position:** ACRL supports exceptions to the anti-circumvention provisions of the Digital Millennium Copyright Act to allow fair use access to copyrighted works; ACRL supports exemptions for the manufacture and distribution of circumvention tools in order to make such exceptions possible.