



## Copyright June 2009

### Legislation

#### **H.R. 801, "The Fair Copyright in Research Works Act"**

Rep. Conyers (D-MI), chairman of the U.S. House of Representatives Committee on the Judiciary, introduced H.R. 801, "The Fair Copyright in Research Works Act," on Feb. 3, 2009. Unfortunately, this not-so-new bill seeking to amend copyright code and create a new category of copyrighted work differs only in the bill number assigned from its predecessor in the 110th Congress (H.R. 6845) that ultimately died in the House Judiciary Committee.

And just as in the last Congress, H.R. 801 negates or reverses the National Institutes of Health (NIH) Public Access Policy currently in place, rolling back hard-fought progress on public access to taxpayer-funded NIH research on the Internet. The bill would effectively reverse the NIH Public Access Policy, as well as make it impossible for other federal agencies to put similar policies into place. Additional information on this bill is available at ALA's Web site ([www.ala.org](http://www.ala.org)) under Issues & Advocacy → Copyright → Active Legislation & Advocacy → [The Fair Copyright in Research Works Act](#).

#### **Action Needed:**

Library advocates should continue to express to their members of congress they strongly opposes H.R. 801, as it seeks to amend copyright law and reverse the NIH Public Access Policy.

#### **Possible Orphan Works legislation**

"Orphans" are works whose copyright holders cannot be identified or found – and are not made publicly available by libraries for fear that rights holders will come forward, initiate legal action, and demand statutory damages of up to \$150,000 a work.

It is not clear whether orphan works legislation will be introduced in the 111<sup>th</sup> Congress as several recent occurrences may influence future activity including the proposed Google Book Search settlement and Senator Hatch's (R-UT) recent statement that he is hopeful the Senate Judiciary Committee, "...will move forward on its intellectual property agenda as early as this summer...overhauling a portion of U.S. copyright law that deals with...other content whose owners cannot be easily located." Additional information on past orphan works legislation is available at ALA's Web site ([www.ala.org](http://www.ala.org)) under Issues & Advocacy → Copyright → [Orphan Works](#).

### Regulation/U.S. Copyright Office filings

#### **Facilitating Access to Copyrighted Works for the Blind or Other Persons with Disabilities**

Carrie Russell from the American Library Association's Office for Information Technology Policy testified in April 2009 at a public meeting called by the U.S. Copyright Office (Copyright Office) and the U.S. Patent and Trademark Office (USPTO) on the topic of copyright exceptions for the blind or other persons with disabilities. The purpose of the hearing was to inform the U.S. delegation on relevant copyright and access issues to be discussed at the May meeting of the Standing Committee on Copyright and Related Rights (SCCR) of the World Intellectual Property Organization (WIPO).

Russell testified that librarians value Section 121 of Copyright Act (also known as the “Chafee Amendment”), which allows qualified agencies to make reproductions of copyrighted works for the blind or other persons with disabilities. The copyright exception, however, is often in conflict with the Americans with Disabilities Act (ADA) and other federal laws as well as state laws that expand access to a broader user group, not just the visually impaired, but also the reading impaired which may include users with dyslexia, or physical handicaps that prevent one from using a book.

The ALA’s comments on the Chafee amendment and the Section 121 hearings are available at the US Copyright Office Web site, <http://www.copyright.gov/docs/sccr/>.

### **DMCA 1201 Exemption for Faculty in all disciplines**

In December 2008, ALA, as a member of the Library Copyright Alliance (LCA) along with the Music Library Association (MLA) submitted comments to the U.S. Copyright Office, asking that the existing exemption to circumvent technology on DVDs in order to make compilation clips for use in the face-to-face classroom be expanded. LCA argued that:

- The exemption should apply to audiovisual works included in any college or university library, not just the library of the media studies department, and that
- The exemption should apply to classroom uses by instructors in all subjects, not just media studies or film professors.

LCA and MLA followed up in February 2009 by submitting additional evidence supporting the circumvention of access control technologies of audiovisual works included in a library of a college or university. The library associations highlighted the absence of alternatives available and included additional examples of film clips used by college and university faculty – from many academic disciplines.

In early May, Jonathan Band, ALA’s legal consultant on copyright-related matters, testified (on behalf of the ALA, the Association of College and Research Libraries (ACRL), and the Association of Research Libraries (ARL) and offered evidence in support of the expansion of the exemption. Band said that DVDs provide the high-quality audio and video necessary to discern subtle forms of communication central to teaching language, criminal justice, and other classes. Motion picture representatives argued that the exemption is not necessary since faculty can use a video camera to tape clips from DVDs playing on a TV monitor as an alternative to circumvention. A demonstration of this can be seen at: <http://vimeo.com/4520463>. Jonathan Band’s testimony on behalf of ALA, ACRL and ARL is available at: <http://www.wo.ala.org/districtdispatch/wp-content/uploads/2009/05/library-dmca-1201-testimony.pdf>.

In October 2009, the Copyright Office will announce what exemptions to the anti-circumvention rule will be honored over the next three years.

## **Litigation**

### **Update on the *proposed* Google Book Search settlement**

In late October 2008, a proposed settlement agreement was announced that would end the copyright infringement lawsuit that the American Association of Publishers (AAP) and the Author’s Guild filed against Google in 2005. The proposed settlement outlines the agreed-upon terms and conditions for Google Book Search – the product at the center of the lawsuit, which is a searchable index of the full-text of digitally scanned books.

Although the proposed settlement is a private settlement, the result has very real implications for public policy and the way libraries of all types will operate. The mission of libraries is to provide the broadest public access to information, and the library community has a long history of advocating for laws and policies that protect the rights of library users. Because of the complexity of the agreement, its potential long-term impact on libraries and the public interest and the enormity of the book collection involved, many librarians have raised questions about the settlement.

As such, earlier in the year, the American Library Association (ALA), the Association of Research Libraries (ARL) and the Association of College and Research Libraries (ACRL) brought together members of the library community to discuss the both the library and legal implications of the proposed settlement to determine the most appropriate course of action to take, if any. As a result, the three associations filed a brief with the court in the Southern District of New York by the May 5, 2009, deadline.

### **Library Associations' Filing**

Although the filing deadline for comments was extended by the judge presiding over the case to Sept. 7, 2009, the library associations filed comments on May 4, 2009, to help inform the public as it considers the important and complex settlement implications. In addition, the library associations filed as members of the plaintiff class because they are both authors and publishers of books. While the library associations do not ask the judge to reject the settlement, they do request the judge carefully monitor the parties' behavior once the settlement takes effect by exercising vigorous oversight of the interpretation and implementation of the settlement to ensure the broadest possible benefit from the services the settlement enables. The associations also assert that although the settlement has the potential to provide public access to millions of books, many of the features of the settlement, including the absence of competition for new services, could compromise fundamental library values including equity of access to information, patron privacy and intellectual freedom. A final fairness hearing has been set by the court for Oct. 7, 2009.

### **Recent Activity**

On May 20, 2009, the University of Michigan, one of the original participating libraries in the Google Book project, announced it had entered into an amended agreement that will govern the relationship between Google and Michigan if the proposed Google Book Search settlement is approved by the judge. The amended agreement outlines additional rights and responsibilities of participating libraries, including specific provisions such as Michigan and any partner library can initiate a review of the pricing of the institutional subscription and Google must provide Michigan with a free institutional subscription for at least 25 years.

The full-text of the brief filed by the library associations, the University of Michigan's amended agreement and guides providing concise descriptions of both, as well as additional resources, are available at:

<http://wo.ala.org/gbs>.