### Highlights of Copyright Legislation and Related Activity

**For details, please go to** [www.ala.org/copyright](http://www.ala.org/copyright)

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

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

**Introduced on February 27, 2007**

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

---

The 109th Congress considered but did not complete action on the following bills. We anticipate that we will see new versions 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.

**“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.

**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.
## 2007 Copyright Agenda

| **DMCA Section 1201 Rulemaking** | • The exemptions are 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 a new rule on November 27, setting out six classes of copyrighted works that will be subject to exemptions for the next three years  
• The exemptions will be in effect 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. |
| **Section 108 Study Group** | • The Study Group hosted a series of roundtables in March 2006 for interested parties to offer suggestions and comments on how best to revise these exceptions for the digital era.  
• The next public roundtable will be held Jan. 31, 2007.  
• The Group expects to make recommendations to the Librarian of Congress by Summer 2007.  
• Issue papers, roundtable transcripts and written comments available at [http://www.loc.gov/section108](http://www.loc.gov/section108) |
| **Court Case: Perfect 10, Inc. v. Google, Inc.** | • 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.  
• Court found that providing links to third-party web pages did not lead to Google’s direct or secondary liability for copyright infringement, but court imposed direct liability for Google’s display of the thumbnail images by rejecting Google’s fair use defense.  
• Court’s ruling concerning display of thumbnails, if it stands on appeal, could create serious problems for search engines. Libraries rely on commercial search engines, including image search functions, to help patrons navigate the sea of information that constitutes the World Wide Web. |
| **Court Case: Greenberg v. National Geographic Society** | • Eleventh Circuit appeals court will consider whether its 2001 decision against the NGS – issued prior to the U.S. Supreme Court’s decision in *New York Times v. Tasini* (June 2001) – should stand.  
• Libraries believe that the NGS publication of its past issues on CD/DVD is permitted under the copyright law, as interpreted by the Tasini decision. Eleventh Circuit ruling against the NGS in 2001, if not reversed, would frustrate broader public availability of more obscure, less widely accessible magazines, newspapers, scholarly journals and other periodicals. |

---

**March 2007**  
**Page 2 of 3**  
**Miriam Nisbet, ALA Legislative Counsel**  
**mnisbet@alawash.org**
International Copyright Issues

International agreements and trade treaties impact libraries and U.S. copyright law

- World Intellectual Property Organization (WIPO):
  - addressing
    - the “development agenda”
    - library and archives exceptions
    - database protection
    - “broadcast” treaty
    - traditional knowledge

- 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 World Summit on the Information Society
- European Commission's Database Directive – libraries urge repeal