

## ACRL

### Legislative Agenda

April 3, 2008

#### 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 include the areas of intellectual property and copyright; public access to federally-funded research; network neutrality; government information; and intellectual freedom. ACRL will focus on these issues in the spring 2008:

1. Fair-Use and Anti-Circumvention
2. Orphan Works
3. Network Neutrality
4. Copyright: Section 108
5. Public Access to Federally-funded Research
6. Government Information

#### B. ACRL LEGISLATIVE AGENDA

##### 1. 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:** On February 27, 2007 Rep. Rick Boucher of Virginia introduced H. R. 1201 (To amend title 17, United States Code, to promote innovation, to encourage the introduction of new technology, to enhance library preservation efforts, and to protect the fair use rights of consumers, and for other purposes). The bill was referred to the House Subcommittee on Courts, the Internet, and Intellectual Property on March 19, 2007.

**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](#)
- [THOMAS](#) (Search bill number to read text and see current status.)

**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.

##### 2. Orphan Works

**Issue:** To limit liability for copyright infringement of copyrighted works whose owners are difficult or impossible to locate after a good faith effort is made to locate them.

**Brief Background/Legislative History:** The Orphan Works Act of 2006 (HR 5439) introduced by Rep. Lamar Smith (R-Texas) was originally introduced in May of 2006. The bill aimed to limit liability of copyright infringement for orphan works – copyrighted works whose owners were difficult or impossible to find. In September of 2006, the bill was folded into the

Copyright Modernization Act of 2006 (HR 6052). This bill was referred to the House Committee on the Judiciary. No action was taken on the bill in 2007.

**Current Status:** Orphan Works legislation may well be reintroduced in 2008. On Thursday, March 13, 2008, the House Subcommittee on Courts, the Internet and Intellectual Property held a [hearing](#) to gather follow-up testimony from select rights holders and content users.

**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:**

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

**ACRL Position:** ACRL supports the legislation as drafted as by Rep. Smith to limit liability for copyright infringement for orphan works.

### 3. Network Neutrality

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

**Brief Background/Legislative History:** The Internet, since its inception, was always intended to be neutral but in 2005 an FCC decision put net neutrality in jeopardy. Later, the Internet Freedom and Non-Discrimination Act of 2006 made it illegal for broadband network providers to charge premiums for unrestricted service. The act was designed to ensure that competition, free trade, and non-discriminatory access to the internet was available to all people.

Net Neutrality S. HRG 109-695 [Hearing](#) before the Committee on Commerce, Science, and Transportation, United States Senate, One Hundred Ninth Congress, Second Session, February 7, 2006

**Current Status:** Ed Markey (D-Massachusetts) and Chip Pickering (R-Missouri) introduced a bipartisan bill in the House of Representatives, "Internet Freedom Preservation Act 2008" (HR 5353) on February 12, 2008.

**Impact on Academic Libraries:** The impact on free speech and the free choice of content, services, and applications 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:**

- Federal Communications Commission [05-151](#)
- [Open Internet Coalition](#)
- [Save the Internet](#)
- [Moveon.org](#)
- [Free Press](#)
- [Consumer Federation](#)

**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 or restricting access, content, applications or services.

### 4. 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 is preparing findings and making recommendations to the Librarian of Congress for possible alterations to the law that reflect 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 is looking 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.

**Other pending copyright legislation:**

Intellectual Property Enforcement Act of 2007. S. 2317

Introduced by Senator Patrick Leahy (VT), John Cornyn (TX) and Arlen Specter (PA) on November 7, 2007, this bill out of the Senate Judiciary Committee would provide increased staffing and funding for copyright enforcement and augments statutory damages in copyright cases. The bill was scheduled for markup on March 6.

Prioritizing Resources and Organization for Intellectual Property Act of 2007, or PRO-IP bill, HR. 4279

Introduced by Rep. John Conyers, Jr. (MI), this bill out of the House Judiciary Committee's subcommittee on Courts, the Internet, and Intellectual Property would amend federal copyright law and the federal criminal code with respect to intellectual property. It creates new enforcement offices and mandates formulation of a strategic plan for combating piracy and coordinating national and international enforcement of IP. It would award higher damages for copyright infringement. This bill would also increase civil penalties for compiled works. Hearings on this bill were held on December 13, 2007.

**Impact on Academic Libraries:** Both of the proposed bills could have a chilling impact on those seeking to use copyrighted materials in educational and research settings.

**Links to other information:** [THOMAS](#) (Search bill number to read text and see current status)

**ACRL Position:** ACRL supports reasonable enforcement of copyright statutes that do not deter lawful uses of intellectual property for study and research.

## 5. Public Access to Federally-funded Research

**Issue:** Public Access to results of federally funded research and data including the National Institutes of Health (NIH) Public Access Policy and FRPAA.

**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:** 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 will 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:**

- NIH Policy notice [NOT-OD-08-033](#)
- [Alliance for Taxpayer Access](#) and [Scholarly Publishing and Academic Resources Coalition](#) (SPARC)
- Official [NIH website](#) for the policy, including text of the law, and details on how to comply.

**ACRL Position:** ACRL supports enhanced access to federally-funded research through open access publication and open data policies.

## 6. Government Information

### A. E- Government Services

**Issue:** Access to E-Government Services is endangered.

**Brief Background/Legislative History:** The ALA Committee on Legislation (COL) has identified E-Government as an important legislative initiative for the 110th Congress. As part of continuing discussions within the library community, COL is working with other partners and stakeholders to develop a legislative proposal for introduction during the 110th Congress, to seek recognition and resources for libraries providing E-Government services.

**Current Status:** Senate Bill S2331, a bill to amend the E-Government Act of 2002, was introduced on November 7, 2007. It seeks to improve the searchability of government websites and to improve access to government information on the worldwide web.

**ACRL Position:** ACRL supports legislation which will improve access to government information through the worldwide web.

**Links to other information:** ALA Washington Office: [Egovernment](#)

### B. Freedom of Information Act

**Issue:** The Freedom of Information Act (FOIA) is not being enforced.

**Brief Background/Legislative History:** The Freedom of Information Act (FOIA) was signed into law on July 4, 1966 (Amended 2002). This act allows for the full or partial disclosure of previously unreleased information and documents controlled by the U.S. Government. The current administration has taken several steps to curtail access to government information.

**Current Status:** March 13, 2007. Sen. Leahy (VT) introduced S.849, the OPEN Government Act of 2007. It includes several provisions to strengthen the Freedom of Information Act. It has been endorsed by ALA and more than 100 other organizations and associations. On March 15, 2007, the House passed a companion bill, H.R. 1309, the Freedom of Information Act of 2007, by a wide margin (308 to 117). Senate Bill S849, an act to promote accessibility, accountability, and openness in government, was passed on August 3, 2007.

**ACRL Position:** ACRL supports legislation which will increase and preserve access to government information.

### **C. Government Printing Office**

**Issue:** Support for the Government Printing Office is eroding.

**Brief Background/Legislative History:** ALA focuses on a variety of public access issues including funding for the Federal Depository Library Program (FDLP) and the Government Printing Office (GPO).

**Current Status:** February 2008: In his fiscal 2009 budget, the President requested \$174.254 million for the Government Printing Office (GPO). Within GPO, the request includes:

- \$97.928 million for Congressional Printing and Binding Appropriation; and
- \$43.426 million for the Salaries and Expenses Appropriation of the Superintendent of Documents

On April 1, ARL, ALA, MLA, and SLA sent a [joint letter](#) supporting the President's budget request to US Senate and House Committees on Appropriations.

**ACRL Position:** ACRL supports legislation and funding which will preserve the Government Printing Office and the Federal Depository Library Program.

### **D. Access to Presidential Records**

**Issue:** Access to Presidential Records is being compromised.

**Brief Background/Legislative History:** The Presidential Records Act (PRA) of 1978 governs the official records of Presidents and Vice Presidents created or received after January 20, 1981 and mandates the preservation of all presidential records. President Bush issued Executive order 13233 in November 2001, which limits access to the records of former Presidents and Vice-Presidents.

**Current Status:** March 15, 2007. The House passed H.R. 1255, the Presidential Records Act of 2007, which revokes President Bush's Executive Order and other restrictions on access to presidential records imposed in 2001. A companion bill, The Presidential Records Act Amendments of 2007 (S.886), was reported in the Senate on June 20, 2007, but has not come to a vote. ALA has called on Congress to reaffirm the intent of Congress that presidential records be made generally available to the public with limited statutory restrictions by the end of 12 years.

**ACRL Position:** ACRL supports legislation which removes restriction on access to Presidential records.