



ALA Washington Newsletter

Contents:

November 20, 1984, Volume 36, Number 13

Appropriations, FY 1985	p. 1	LSCA Federal Shares	p. 4
Medical Libraries	p. 1	Taxation - Educ. Assistance	p. 4
Cable TV Legislation	p. 1	Federal Grant Opportunities	p. 5
Computer Crime	p. 2	CDBG Proposed Regs	p. 5
Copyright	p. 3		
Record Rental	p. 3		
Computer Software	p. 3		
Semiconductor Chips	p. 4		

Attachment: ALA Midwinter Alert

Appropriations, FY 1985

President Reagan signed HR 6028, the Labor-HHS-Education Appropriations Bill for FY 1985 on November 8 (now PL 98-619).

Medical Libraries

On October 30, the President vetoed S. 540, the Health Research Extension Amendments of 1984, which would have extended for two years the Medical Library Assistance Act. Since Congress had adjourned on October 12, the pocket veto stands. As in the previous three years when MLAA lacked a specific authorization because of congressional inaction, the appropriations measure serves an authorizing function as well.

The National Library of Medicine was funded for FY 1985 at \$52,410,000 in the Labor-HHS-Education Appropriations Bill (HR 6028, PL 98-619), plus \$3.5 million in the continuing resolution (H.J.Res. 648, PL 98-473), for a total of \$55,910,000. Of this, \$12,240,000 is for extramural programs, including \$8,040,000 for MLAA authorities and \$4,200,000 for medical informatics.

Cable Television Legislation

Shortly before adjournment, Congress gave final approval to S. 66, the Cable Communications Policy Act of 1984, and the President signed the bill on October 30 (now PL 98-549). The bill's provisions are substantially those of HR 4103, passed by voice vote in the House on October 1. The Senate added a few amendments on



October 11; the House agreed to the Senate amendments the same day. The new act is the result of pressure by the cable industry for legislation, and lengthy negotiations held at the request of the involved congressional committees by the National Cable Television Association, the National League of Cities and the U.S. Conference of Mayors.

PL 98-549 will take effect December 29, 1984, although some provisions have later effective dates, and many provisions of existing franchises are grandfathered. Most observers agree that the new statute is complex and often ambiguous and must be looked at carefully in connection with upcoming new and renewal franchises.

The measure allows franchising authorities to require as part of a franchise or franchise renewal proposal, channel capacity for public, educational, or governmental use, but it does not set minimum access requirements. Leased access (limited to video programming) would be required, but only on cable systems with 36 or more channels. Franchise authorities could not establish specific requirements for video programming or other information services. "Cable service" is limited to one-way transmission of video programming and information services.

Franchise fees would be capped at five percent of the cable operator's gross revenues. Existing payments required from cable operators for public, educational or governmental access are not counted in the franchise fee. Franchise agreements could be modified when a cable operator can demonstrate "commercial impracticability" of compliance, but this would not permit modification of any requirement for services relating to public, educational, or governmental access facilities. The franchise renewal process is to include identification of community needs and, thanks to a floor amendment by Sen. Metzenbaum (D-OH), provision of adequate public notice and opportunity for participation.

Computer Crime

In a textbook example of the dangers of last minute legislating, Congress tossed a computer crime measure into the FY 1985 continuing appropriations bill (H.J.Res. 648) which contained a number of criminal code revisions, and sent the huge package to the White House for a quick signature (PL 98-473). Some Senators discovered unintended effects in the hasty computer crime provision and tried to correct it with separate legislation, but did not get it all the way through the process before the session adjourned.

The Counterfeit Access Device and Computer Fraud and Abuse Act of 1984, now part of PL 98-473, makes it a federal offense to knowingly use or disclose information in a government computer if the computer is accessed without authorization or if the scope of authorized access is exceeded. Questions had been raised in the library community regarding earlier versions of computer crime legislation as to whether publicly or federally funded bibliographic databases were covered, particularly if they were transmitted across state lines. The language in PL 98-473 seems to apply only to computers "operated for or on behalf of the Government of the United States."

However, Sens. Mathias (R-MD) and Leahy (D-VT) pointed out that the focus of the new provision is on whether access is authorized, not on whether the use or disclosure of information is authorized. Thus even information whose release is mandated by the Freedom of Information Act might not be able to be released if the authority of a particular government employee to obtain it from a computer

file were in any doubt. The provision could have a dampening effect on the public's right to know.

Sens. Mathias, Leahy, Baker (R-TN) and Kennedy (D-MA) offered a corrective amendment to HR 5615, an earlier House-passed computer crime bill, and the Senate passed the amended version on October 11. However, the House did not have time to consider the Senate amendment before adjournment.

Copyright

Record Rental. The Senate on September 21 agreed to the House amendments to S. 32, the Record Rental Amendment of 1984, and the President signed the bill on October 4 (now PL 98-450). The measure prohibits the commercial renting of audio recordings without the copyright owner's permission. It would modify the "first sale" doctrine embodied in section 109(a) of the Copyright Act to require authorization of the copyright owners before phonorecords could be rented, leased or lent for commercial advantage. Nonprofit libraries and schools are exempted; see the September 20, 1984 ALA Washington Newsletter for details of this exemption.

Computer Software. Sen. Charles Mathias (R-MD), Chairman of the Patents, Copyrights and Trademarks Subcommittee, introduced on October 5 for discussion and hearings next year a bill to protect copyrighted computer programs from illegal copying. S. 3074 would require authorization from the copyright owner before one could engage in the rental, lease, or lending of computer programs for commercial purposes.

Sen. Mathias' introductory statement on the bill in the October 5 Congressional Record (pp. S13706-7, daily edition) contains the following note:

Let me note one area that will certainly deserve careful discussion: Whether the bill should make special provision for the rental of software by nonprofit educational institutions. In the case of record rental, a consensus has developed that nonprofit libraries and schools should be exempt from the new rule prohibiting unauthorized lending of records. While the same accommodation could be made for software, some might argue that organized software rental policies, even on a nonprofit basis, so encourage improper copying that they should be permitted only with the consent of the copyright owner. I am confident that these and related concerns will be fully explored in the coming months, and that we will then know better how to proceed in this regard.

ALA's Ad Hoc Copyright Subcommittee is interested in comments on this issue; please send comments to the ALA Washington Office.

HR 3398, the Tariff and Trade Act given final approval by Congress on October 9 and signed into law on October 30 (now PL 98-573), includes a sense of the Congress declaration that copyright protection is essential for computer software and if a nation withdraws such protection or provides for compulsory licensing of software, the U.S. should seek appropriate relief. In addition, in renewing the Generalized System of Preferences concerning trade with developing countries, Congress established intellectual property rights as one of the major priorities in U.S. trade negotiations and provided mechanisms for promoting better protection of intellectual property in world trade.

Semiconductor Chips. In the last few weeks of the session Congress passed in final form the first truly new form of intellectual property protection in nearly 100 years by becoming the first country to explicitly protect the designs of semiconductor chips against unauthorized copying. Semiconductor chips are small pieces of semiconductor material which perform electronic functions. They are composed of layers of semiconductor material which have been imprinted with traces of other elements in certain patterns through the use of "masks" or stencils. They are a hybrid form of expression in some ways similar to audio-visual or graphic works subject to copyright protection, and in other ways similar to useful articles subject to the patent system.

Congress opted for a sui generis approach rather than a copyright approach to protection and incorporated the provision in the Federal District Court Organization Act (HR 6163), which was signed by the President on November 8 (now PL 98-620). The measure prohibits chip piracy by granting ten-year proprietary protection to mask works for semiconductor chip products through a new chapter 9 at the end of title 17 of the U.S. Code. The new chapter is not part of the Copyright Act, chapters 1-8 of title 17, but instead creates a sui generis form of intellectual property right, a form of industrial intellectual property right rather than the traditional "author's copyright". Penalties are civil rather than criminal.

The Semiconductor Chip Protection Act of 1984 is a compromise amendment resolving differences between S. 1201 (S. Rept. 98-425) passed by the Senate in May and HR 5525 (H. Rept. 98-781) passed by the House in June. The Senate bill provided limited copyright protection; the compromise generally follows the House sui generis approach with some modifications.

The actual differences in protection between House and Senate bills were not great, but adoption of a noncopyright approach means that any precedential value for future copyright legislation is extremely limited. Sponsors were at pains to point out that the semiconductor chip measure has no implications for computer program protection (see above).

LSCA Federal Share Percentages

The Library Services and Construction Act stipulates that states and communities must match the federal contribution for titles I and II on the basis of a ratio of the state's per capita income to the average per capita income of the U.S. The federal share is no lower than 33 percent and no higher than 67 percent. The Secretary of Education must promulgate the federal share for each state and territory every other year. Federal shares for FY 1986 and '87 were published in the October 24 Federal Register, p. 42777.

Taxation - Educational Assistance

The tax exclusion for employee educational assistance was extended for two years by HR 2568, given final approval by Congress on October 11 and signed by the President on October 31 (now PL 98-611). The prior law tax exclusion for employer provided educational assistance expired on December 31, 1983. Since then such assistance was tax free only if it was directly related to an employee's current job. PL 98-611 extends the previous tax exclusion through 1985 and imposes an annual cap of \$5,000 in excludable educational benefits per employee.

Federal Grant Opportunities

December 19 is the deadline for grant applications under the Higher Education Act title VI National Resource Centers Program and Foreign Language and Area Studies Fellowships Program. Some academic libraries have received funds through the Centers program which provides general assistance for nationally recognized centers of excellence in modern foreign languages and area and international studies. Approximately \$12 million is available for such Centers in FY 1985. Among the priorities for Centers, the Education Department lists initiating or strengthening "effective linkages between language and area studies and professional schools, such as business, education, law, library science and journalism." See the October 19 Federal Register, pp. 41084-6.

January 11 is the deadline for applications for Institutional, Design, and Cooperative Project grants, and March 8 is the deadline for Special Project grants under the Education Department's Minority Institutions Science Improvement Program, funded at \$5 million. One of the purposes is to enhance minority institution's general scientific research capabilities. See the November 13 Federal Register, pp. 44943-4.

January 11 is also the deadline for several discretionary grant programs under the Indian Education Act of 1972 administered by the Department of Education (November 7 Federal Register, pp. 44616-20). The announcement includes four programs for Indian children: Educational Services, Planning Projects, Pilot Projects, and Demonstration Projects.

Institutions of higher education may apply for grants to make fellowship awards under the Education Department's Public Service Education Fellowships Program (November 6 Federal Register, pp. 44322-23). Closing date is January 9, 1985. This program supports fellowships for graduate and professional study to students who demonstrate financial need and who plan to pursue a career in public service at all levels of government and in nonprofit community service organizations. Public Service Education fellowships are intended to provide opportunities for qualified students, particularly minorities and women who traditionally have been underrepresented and underserved in these areas. Congress appropriated \$2.5 million for the program.

The National Science Foundation Guide to Programs Fiscal Year 1985 is available from Forms and Publications, NSF, Washington, D.C., 20550 (202/357-7861). The NSF Bulletin, which regularly publishes program information and updates, can be obtained by writing Editor, NSF Bulletin, Public Affairs and Publications Group, at the above address. Announcements about the NSF programs in information science and technology, information impact, and research initiation for new investigators in information science are available from the Division of Information Science and Technology.

CDBG Proposed Regulations

The Department of Housing and Urban Development is proposing amendments to the regulations for Community Development Block Grants, under which some public libraries have received construction funds. The deadline for comments is December 31. See the October 31 Federal Register, pp. 43852-903.

!!! ALA MIDWINTER ALERT !!!

January 5-10, 1985
Washington, D.C.

ALA LEGISLATIVE WORKSHOP

Saturday, January 5
8:00 a.m. - 2:00 p.m.
Sheraton Ballroom
Sheraton Washington Hotel

Purpose: To begin implementation of recommendations in Realities & Alliance for Excellence, to help you sharpen your lobbying skills by listening to experts, sharing ideas, and developing coalitions.

Sponsors:
ALA Legislation Committee
& Legislation Assembly

Workshop features C. C. Chen, Legis. Com. Chair; Joe Shubert on Realities and Ray Fry on Alliance for Excellence; Bill Doswell, lobbyist for Virginia Library Assoc.; working session chaired by Caroline Arden to refine draft PR leaflet/fact sheets on various types of library services for use with lawmakers, the public, & coalitions; panel with representatives of national organizations (4-H, PTA, National League of Cities, Amer. Assoc. of Retired Persons); luncheon with speaker Rep. Major Owens (D-NY), introduced by ALA President E. J. Josey.

\$20 fee for lunch and materials

Attendance by invitation to ALA divisions, state chapters and state school library/media associations. Others are welcome as long as space is available. Advance registration is required. Contact the ALA Washington Office, 110 Maryland Avenue, N.E., Washington, D.C. 20002 (202/547-4440).

ALA LEGISLATION COMMITTEE'S LEGISLATIVE UPDATE

Sunday, January 6
2:00 - 4:00 p.m.
Cotillion Room North
Sheraton Washington Hotel

How will election results affect libraries? ALA Washington Office staff on composition of new Congress, the outlook for funding and other issues, and advice for your get-acquainted visits to congressional offices. Nancy Kranich on ACRL Legislation Committee's work in preparation for upcoming extension of Higher Education Act. Telecommunications consultant Walter Bolter on telecommunications developments. Video consultant Ken Winslow on copyright and video -- Q & A.

Now is the time to set up get-acquainted visits with the offices of new Representatives and Senators while you are in Washington for Midwinter, and visits to staff of returning members before the session gets well underway.