

2011

TO: ALA Executive Board

RE: *Report on Washington Office Activities*

ACTION REQUESTED/INFORMATION/REPORT:

For information purposes. No action requested.

ACTION REQUESTED BY:

No action requested.

CONTACT PERSON:

Emily Sheketoff, 202-628-8410, esheketoff@alawash.org

DRAFT OF MOTION:

None.

DATE: *October 6, 2011*

BACKGROUND:

See Executive Summary.

EXECUTIVE SUMMARY

Office of Government Relations (OGR)

Appropriations

As the 2011 fiscal year came to a close on September 30, Congress passed a short-term Continuing Resolution (CR) through October 4 that will allow Congress to come back from the Rosh Hashanah recess and pass a longer CR that will fund the government until November 18. For FY 2012, the Senate marked up (voted on) in full committee on September 21 their FY 2012 Labor, Health and Human Services, and Education (LHHS) bill. This marked-up bill level funds the Library Services and Technology Act (LSTA) at last year's level of \$189 million. This bill also appropriates \$30 million for literacy, half of which much go to school libraries. There is no word yet when, or if, this bill will be voted on by the entire Senate.

The House has not marked up any LHHS bill as of yet, and it is unlikely they will this year. However, they did introduce a FY 2012 LHHS bill on September 29. This bill had no funding for school libraries and cut the Institute of Museum and Library Services to \$226.3 million, a \$16.2 million cut from FY 2011. It is unclear at this time what the House intentions are for funding LSTA in FY2012.

Funding for the Government Printing Office (GPO)

In September, after much action from our members, the Senate Committee on Appropriations passed its Legislative Branch Appropriations bill with an increase in funding for the Government Printing Office (GPO) over the amount in the House committee's bill. The Senate version includes \$116.8 million for GPO while the House bill set the amount at \$108.1 million.

Consumer Product Safety Improvement Act (CPSIA)

On August 1, U.S. Rep. Mary Bono Mack (R-CA) introduced H.R. 2715, a bill to provide the Consumer Product Safety Commission (CPSC) with greater authority and discretion in enforcing the consumer product safety laws, and for other purposes.

Internet (Net) Neutrality

The legislative clock has begun to tick on the issue of [Internet \(net\) neutrality](#) (the concept of online non-discrimination). At the start of the 112th Congress, Senator Hutchinson (R-TX), introduced S.J. Res. 6, joined by 39 fellow Republican co-sponsors. It is a resolution of disapproval under the Congressional Review Act (CRA) to repeal net neutrality regulations [adopted by the FCC](#) in December 2010. The Office of Management & Budget (OMB) approved the FCC's order and it was published in the Federal Register on Sept. 21, 2011, with an effective date of Nov. 20, 2011 (60 days after OMB's approval was published). Once the FCC's order was published in the Federal Register, a 20-day clock was started in the Senate under the CRA. At the conclusion of the 20-day period, which ends Oct. 13, Senator Hutchinson may file discharge of the CRA from the Senate Commerce Committee advancing it to the floor of the Senate.

Privacy and Surveillance

Some observers had thought that the 10th anniversary of the 9/11 attacks might renew interest in surveillance legislation. If so, it is not yet evident. Since Congress merely renewed for four more years, without any reforms, the three expiring provisions of the USA PATRIOT Act, including Section 215, the "library provision," earlier this year, there is little Congressional interest in revisiting such issues.

For many months, other legislative proposals on privacy and surveillance have been "hanging" out there waiting for Congressional attention. Although some Hill offices suggest that "yes, there will be movement" on proposals such as ECPA (Electronic Communications Privacy Act) and CALEA (Communications Assistance for Law Enforcement Act) little has happened in the last few months that suggest action is pending.

Copyright

In June 2011, the Library Copyright Alliance joined the Electronic Frontier Foundation (EFF) and other non-profit groups and signed onto two amicus curiae briefs filed with the U.S. Supreme Court.

In the first court case, *Golan v. Holder*, the brief argues that the law in question, Section 514 of the Uruguay Round Agreements Act, which takes potentially millions of works by foreign authors that were previously in the public domain and puts them back under copyright protection. In the second case, *Vernor v. Autodesk*, the brief asks the Supreme Court to weigh in because this case tests whether the "first sale doctrine" will survive in the digital age. The 9th U.S. Circuit Court of Appeals held that that first sale does not apply to the facts of the case (Mr. Vernon tried to auction four packages of AutoCAD software on eBay).

OFFICE FOR INFORMATION TECHNOLOGY POLICY

Digital Content

President Molly Raphael proposed to the ALA Council that she would appoint a new, standing committee (by mid September) that will initially follow up on the recommendations of the EQUACC report in subgroups on accessibility, public relations, environmental scan, model project incubation, and licensing.

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Public libraries now confront formidable challenges. The digital transformation of all media affects our resources, services, staff and programs, while changes in users and their needs, the growth of competitive Internet services, and financial stringencies add complexity.

OITP will host a webinar on this topic Thursday, October 27 from 2 – 3 p.m. EDT. Register at: <http://www.districtdispatch.org/2011/09/register-now-for-webinar-on-the-future-of-public-libraries/>

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Native American Comments to FCC

The American Library Association (ALA) submitted a filing to the Federal Communications Commission (FCC) June 21 in response to its call for comments regarding improving communications services for native nations. The filing was submitted in consultation with the American Indian Library Association (AILA), an affiliate of ALA that serves native communities from Alaska to Hawaii and across the contiguous United States.

The ALA supports the FCC's efforts to improve access to and utilization of high-capacity broadband across the nation and stressed that in the case of broadband and native nations, it is vitally important to aggressively address the vast digital divide that exists between native nations and the rest of the country.

Google Book Lawsuit

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Author’s Guild Lawsuit

Related to the substance of the Google Book Search lawsuit, the Authors Guild filed its own lawsuit, Authors Guild, Inc. et al. v. HathiTrust et al., against HathiTrust and its research library partners. The Library Copyright Alliance (LCA), whose members include the American Library Association, the Association of Research Libraries, and the Association of College and Research Libraries, issued a statement opposing the validity of the suit and how it challenges fair use. Read more at: <http://www.districtdispatch.org/2011/09/library-copyright-alliance-speaks-out-against-authors-guild%E2%80%99s-decision-to-file-a-lawsuit-against-hathitrust-and-partners/>

World Intellectual Property Organization (WIPO)

U.S. libraries were represented by the Library Copyright Alliance (of which ALA is a member) at recent sessions of the World Intellectual Property Organization (WIPO). WIPO is a United Nations organization focused on copyright, patent, trademark and other intellectual property concerns. At the WIPO Intergovernmental Committee on Traditional Cultural Expressions, LCA voiced its concern with the current draft of a proposed treaty to provide protection for traditional cultural expressions.

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Library Services and Technology Act Advocacy

Additionally, ALA members living in states with a senator on the Labor HHS Appropriations subcommittee were asked to contact their senator about funding for the Library Services and Technology Act (LSTA). For the first time, ALA members were given a tweet to send to their senator's Twitter account.

Consumer Product Safety Improvement Act (CPSIA)

On August 1, U.S. Rep. Mary Bono Mack (R-CA) introduced H.R. 2715, a bill to provide the Consumer Product Safety Commission (CPSC) with greater authority and discretion in enforcing the consumer product safety laws, and for other purposes. This bill provides the further guidance that the CPSC stated was required in order to enforce the CPSIA as Congress had originally intended. This bill protects libraries in two ways:

1. Page 2 of the bill specifies that "each limit set forth ... shall apply only to a children's product ... that is manufactured after the effective date of such respective limit." This would then require the manufacturers of books to ensure that their processes are safe and fall within the limits of the law.

2. Pages 18-19 of the bill states that “the third party testing requirements established ... shall not apply to ordinary books or ordinary paper-based printed materials” and then continues to define both ordinary book and ordinary paper-based printed materials.

The bill passed the House (421-2) and then went to the Senate where it was passed without amendment by unanimous consent.

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Some observers had thought that the 10th anniversary of the 9/11 attacks might renew interest in surveillance legislation. If so, it is not yet evident. Since Congress merely renewed for four more years, without any reforms, the three expiring provisions of the USA PATRIOT Act, including Section 215, the "library provision," earlier this year, there is little Congressional interest in revisiting such issues.

For many months, other legislative proposals on privacy and surveillance have been "hanging" out there waiting for Congressional attention. Although some Hill offices suggest that "yes, there will be movement" on proposals such as ECPA (Electronic Communications Privacy Act) and CALEA (Communications Assistance for Law Enforcement Act) little has happened in the last few months that suggest action is pending.

There are also growing concerns about the tremendous amount of personal data being collected by the federal government - and if or how to curb such surveillance. The Obama Administration argues that it has the legal right to do this (for example cell phone tracking) without any new legal reauthorizations. Despite the public concerns, little appears to be happening.

The House can just "pass a bill" with its clear majority, although the political environment is such that, unless there is agreement on bills already ironed out behind the scenes, it is unlikely that computer privacy and other surveillance proposals will be introduced or see final passage anytime soon. Meanwhile, the Senate is holding off on many pieces of legislation. With presidential and congressional elections only 14 months away, every issue appears contentious.

Copyright

In June 2011, the Library Copyright Alliance joined the Electronic Frontier Foundation (EFF) and other non-profit groups and signed onto two amicus curiae briefs filed with the U.S. Supreme Court.

In the first court case, *Golan v. Holder*, the brief argues that the law in question, Section 514 of the Uruguay Round Agreements Act, which takes potentially millions of works by foreign authors that were previously in the public domain and puts them back under copyright protection. The brief argues that this law creates a dangerous uncertainty about copyright policy, posing a significant threat to libraries, digital repositories, and others that promote access to knowledge. The brief is available via ALA Connect at http://connect.ala.org/files/28986/golan_amici_curiae_brief_pdf_16418.pdf.

In the second case, *Vernor v. Autodesk*, the brief asks the Supreme Court to weigh in because this case tests whether the "first sale doctrine" will survive in the digital age. The 9th U.S. Circuit Court of Appeals held that that first sale does not apply to the facts of the case (Mr. Vernon tried to auction four packages of AutoCAD software on eBay). The Court of Appeals contends that it does not apply as long as the vendor writes a user agreement that includes restrictions transforming a sale into a license. The amicus brief argues that by undermining the crucial balance between copyright owners and users that supports used bookstores, libraries, DVD rentals, and others, it negatively impacts the ability to retain, archive and access older, out-of-print materials. The brief is available via ALA Connect at http://connect.ala.org/files/28986/vernor_amici_curiae_brief_pdf_61638.pdf.

Webinars

On August 30, OGR hosted a webinar titled "10 Quick and Painless Steps to Effective Library Advocacy." This inclusive webinar covered simple advocacy tasks like calling Congress, using ALA resources, and writing a letter to the editor. The webinar, moderated by ALA consultant Stephanie Vance, was attended by over 200 people.

Town Hall Meetings Advocacy

During the Rosh Hashanah recess, targeted messages with library talking points were sent to districts where a member of Congress was holding a town-hall meeting. Additional talking points were sent to districts where a town hall meeting was being held at a library. Action Alerts were sent out to the entire membership list encouraging support for three issues:

- The Strengthening Kids Interest in Learning and Libraries (SKILLS) Act
- The American Jobs Act (AJA)

- Government Printing Office (GPO) funding

Grassroots Advocacy

On July 22, OGR sent out an alert to school librarians (summer email addresses) asking them to call their senators and ask them to co-sponsor the SKILLS Act. The special Alert reached 170 people.

On August 11 and 12, alerts were sent to the districts of members on the Appropriations Committee who were holding town hall meetings. The alert included talking points asking for an increase in LSTA funding. The following Congressional member's districts were contacted:

- Aug. 11 Rep. Tom Cole: 229 people contacted
- Aug. 11 Rep. Tom Graves: 70 people contacted
- Aug. 11 Rep. Sam Farr: 171 people contacted
- Aug. 11 Sen. Jerry Moran (sent to all of Kansas): 725 people contacted
- Aug. 15 Rep. Alan Nunnelee: 54 people contacted
- Aug. 15 Rep. Steve Womack: 154 people contacted

Throughout August, alerts were sent to districts where a member of Congress was holding a town hall meeting in a public library. General talking points on the benefits of libraries in a tough economy were included. The districts of the following members were contacted:

- Aug. 12, Rep. Kevin Brady: 333 people contacted
- Aug. 12, Rep. Kathy Hochul: 230 people contacted
- Aug. 15, Sen. Mike Johanns (meeting in 3rd district): 89 people contacted
- Aug. 15 Sen. Mike Johanns (meeting in 1st district): 165 people contacted
- Aug. 15 Rep. Dan Benishek: 138 people contacted
- Aug. 22 Rep. Peter Defazio: 166 people contacted

On August 17, an alert was sent out to the main ALA list asking people to call both their senators and ask them to co-sponsor the SKILLS Act. 68,354 people were contacted.

On August 18, an alert was sent out to the Rhode Island, Massachusetts, Washington, West Virginia, and Mississippi state lists asking people to thank Senators Murray, Rockefeller, Whitehouse, Kerry, Reed, and Cochran for co-sponsoring the SKILLS Act. In total, 5,983 people were contacted.

OFFICE FOR INFORMATION TECHNOLOGY POLICY

Digital Content

President Molly Raphael proposed to the ALA Council that she would appoint a new, standing committee (by mid September) that will initially follow up on the recommendations of the EQUACC report in subgroups on accessibility, public relations, environmental scan, model project incubation, and licensing.

The new standing committee will reside in OITP, but some of its work will also be coordinated with PIO, the ALA Librarian and Knowledge Management Specialist, the Office for Research and Statistics with input from the divisions. Membership of the committee will be broad, encompassing ALA offices, divisions etc. In the longer term, the new committee will be embedded throughout ALA as a part of the “transforming libraries” initiative. This committee will focus on all digital content issues including institutional repositories, open access initiatives, mass digitization projects, things like the Google Book Settlement when finalized, digital libraries, born digital materials, etc.

Work continues on the new initiative on digital content and libraries. Through the OITP E-book Task Force, three draft papers were developed: *E-book Lending and America's Libraries*, *E-book Principles for the Library Community* and *Talking Points on Library Lending of E-books*. Keith Fiels included these papers in his update to ALA Council on this general topic. Read more at: <http://americanlibrariesmagazine.org/inside-scoop/ala-meets-with-aap>

Confronting the Future

In June, the Office for Information Technology Policy’s (OITP) released its latest policy brief, which breaks down the formidable challenges in store for libraries during the next few decades. The brief, “Confronting the Future: Strategic Visions for the 21st Century Public Library” was written by OITP Fellow Roger E. Levien, president of Strategy and Innovation Consulting.

The report explores how emerging technologies combined with challenges, such as financial constraints as well as shifts in the nature and needs of library users, require libraries to evolve rapidly and make strategic decisions today that will influence their future for decades to come.

Upcoming Event

Public libraries now confront formidable challenges. The digital transformation of all media affects our resources, services, staff and programs, while changes in users and their needs, the growth of competitive Internet services, and financial stringencies add complexity.

A range of possible responses will be presented as contrasting visions: physical vs. virtual library; individual vs. community focus; portal vs. archive service; collection vs. creative approach.

OITP will host a webinar on this topic Thursday, October 27 from 2 – 3 p.m. EDT. Register at: <http://www.districtdispatch.org/2011/09/register-now-for-webinar-on-the-future-of-public-libraries/>

Gates Foundation Benchmarks Project

OITP, along with the Public Library Association, continues its work as a member of the Public Access Technology Benchmarks coalition. The project is in the first of three phases of work: drafting the prototype benchmarks and beginning to collect feedback from the library field and local government leaders to ensure the benchmarks will be meaningful and useful to libraries and communities across the country. The Urban Libraries Council, which is facilitating this effort, held a meeting at the Annual Conference to begin gathering feedback, and this work will continue through September. Next, the group will test an initial set of benchmarks in communities in California, North Carolina, Oklahoma, and Texas, beginning in fall 2011. The prototype benchmarks will be refined with feedback from the pilot communities and the library field. Lastly, the benchmarks will be launched for broad use by the library community in spring 2012.

OITP also is drafting and coordinating supporting materials that will document the benchmark development process and support future training and curriculum development activities by coalition members.

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The ALA supports the FCC’s efforts to improve access to and utilization of high-capacity broadband across the nation and stressed that in the case of broadband and native nations, it is vitally important to aggressively address the vast digital divide that exists between native nations and the rest of the country.

In doing so, ALA reminds the Commission that physical access to broadband is but one part of the equation. It is equally important to address specific barriers to adoption, such as the lack of digital literacy skills necessary for individuals to make productive use of the resources made available via a broadband connection. Barriers to broadband adoption on tribal lands far exceed barriers that non-tribal communities face.

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