

**TO:** ALA Executive Board

**RE:** Washington Office Report

**ACTION REQUESTED/INFORMATION/REPORT:**

No action requested

**ACTION REQUESTED BY:**

**CONTACT PERSON:**

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**DATE:** June 3, 2016

**BACKGROUND:**

Report of activities of the Office of Government Relations and Office for Information Technology Policy

**ATTACHMENTS:**

Washington Office Report

# WASHINGTON OFFICE REPORT

## Office of Government Relations

### **Dr. Hayden's Procedural Path to Confirmation Votes Clear, but Timetable Unknown**

Librarian of Congress designee Dr. Carla Hayden, as [reported in District Dispatch](#), was warmly received by Members of the Senate Rules Committee in a late April confirmation hearing. Subsequently, Committee staff reports, she has responded to supplemental written questions submitted in mid-May by several Committee Senators and, OGR has learned, met just before the Memorial Day recess with long-time fair use supporter Sen. Ron Wyden (D-OR). To date, no public opposition to her nomination has surfaced in any quarter of the larger copyright community including, perhaps most significantly, from representatives of major copyright-based industries like the Motion Picture Association of America or the Association of American Publishers. At this writing, however, it remains unclear when the Rules Committee will meet to vote on whether to recommend that Dr. Hayden be confirmed by the full Senate or, if/when they do, a chamber-wide vote would occur. Absent new opposition, however, there remains a good chance that one or both such approvals could come prior to Congress' next major recess for Independence Day. OGR will continue to monitor the "state of play" closely.

### **ALA Opposes Congressional Moves to Block LC Subject Heading Changes**

As reported recently in both [mainstream press](#) and [District Dispatch](#), the House Legislative Branch appropriations bill recently was approved by the full House Appropriations Committee on May 17 with report (non-bill) language effectively instructing the Library of Congress not to implement its proposal to change the subject headings "Aliens" and "Illegal Aliens" to less pejorative terms. The action came after an amendment (strongly [backed by ALA and ALCTS](#)) to strip the objectionable language by Rep. Debbie Wasserman Schultz (D-FL23) failed (24-25). (The [language had been inserted in the bill's report](#) at the Subcommittee level.) The amendment also was supported by a [joint letter](#), entered into the record, by the Chairs of the Hispanic, Black, and Asian Pacific American Caucuses.

The full Senate Appropriations Committee passed its version of the bill on May 19<sup>th</sup>, however, with no such language -- as also jointly requested of key Senators by the presidents of ALA and ALCTS. Consequently, even if both chambers pass their Legislative Branch appropriations bills, the matter now must be negotiated "in conference." November, post-election, is the earliest that such a scenario is likely to play out. The unprecedented "standalone" bill to preempt the Library's proposed actions, the "Stopping Partisan Policy at the Library of Congress Act" ([H.R. 4926](#)), remains unlikely to advance.

As in the past, library professionals and the public at large have been invited by the Library to comment informally through mid-July on the proposed subject heading changes. Given the

volume of comments anticipated with respect to the terms “Aliens” and “Illegal aliens,” the Library has for the first time turned to an [online survey form](#). It is unclear how such comments, which have not been solicited as part of a formal rulemaking proceeding, will be assessed by the Library or when it will make a final determination as to whether to proceed with its controversial proposed changes.

### **ALA Supported Coalition Pushes Landmark Privacy Protections Unanimously through House**

After literally years of work by ALA and many coalition partners, a bill to finally reform the Electronic Communications Privacy Act (ECPA), [H.R. 699, passed the House](#) on April 27<sup>th</sup>. Critically, it did so by a vote of 419–0 and devoid of language that, until late in the process, threatened to weaken the bill to the point that ALA and other privacy advocates likely would have been forced to withdraw their support. ALA and its grassroots actively lobbied for passage of H.R. 699, releasing a [statement](#) by president Sari Feldman and writing in coalition to the [Senate on May 24<sup>th</sup>](#), the [House on April 26<sup>th</sup>](#), and all [House Judiciary Committee Members on April 13<sup>th</sup>](#). (As passed by the House, HR. 699 would require law enforcement authorities to obtain a judicial warrant based on probable cause to obtain the content of personal emails, texts, electronic files, photos and virtually any other private and electronically stored data. [Under current law](#), in most cases, only a subpoena is needed to get such material after it’s more than six months old.)

The bill’s fate in the current Congress now rests with the Senate Judiciary Committee, which was to have “marked up” a slightly altered version of the bill on May 26<sup>th</sup> but was forced to forego action in the face of a flurry of late amendments seemingly designed to make the bill unworkable by advocates of real reform. The Committee is now scheduled to again consider the measure and amendments to it on June 9<sup>th</sup>. It is unclear at this writing, however, whether the Committee will succeed in reporting the bill out to the full Senate and, if it does so, whether that bill will be one that contains unworkable “poison pill” provisions. Those could include exempting certain civil agencies from the bill’s strong new judicial warrant requirements, or affording law enforcement exemptions from the new warrant requirement in “emergencies” so broadly defined as to effectively nullify the bill’s intended new protections.

### **National Library Legislative Day Tops Grassroots Highlights List**

Just over 400 participants from all but three states again attended this year’s National Library Legislative Day (NLLD) in Washington. Participants reacted favorably to changes in the structure of the event, including particularly condensed issue briefings and added time for a media training panel. The event’s popular “newbie” training session, traditionally offered on the Sunday before Monday’s formal “Leg Day” briefings, was in particularly high demand this year. Subscription by more than 120 first-time NLLD participants necessitated the addition of a second training session for the first time in NLLD’s more than 40 year history.

NLLD this year also both facilitated and showcased ALA’s deepening collaboration with the [Harry Potter Alliance](#) (HPA). Pre-NLLD social media and email “challenges” inaugurating a

constructive and friendly rivalry between our respective grassroots netted more than 630 contacts by HPA members, *and almost 2200 contacts by ALA activists*, to congressional offices in support of [ALA's key policy "asks"](#) on federal funding, copyright and privacy legislation. They also actively advocated for Dr. Carla Hayden's immediate confirmation as Librarian of Congress and in support of the Library of Congress' autonomy in subject heading determinations (see discussion above).

This year for the first time, we were able to live-stream the morning briefings for those who participated in NLLD virtually.

NLLD participants also were afforded a preview of the [inaugural "SPARK" video](#), jointly produced by OGR with HPA. Comprised of 3 -5 minute "shorts" designed to introduce teens and young adults to Congress and federal advocacy, the new video series ([publically announced by ALA](#) on May 2) aims to demystify the advocacy process for young and new advocates, giving them concrete tips on calling legislators' offices, scheduling meetings and planning their own campaigns. Three of eight videos have been completed at this writing with the remainder expected to be released this summer.

Finally, OGR is pleased to report that interest in active advocacy by members and other supporters is strong. In the past year: net subscriptions to [District Dispatch](#) increased and the number of individuals who follow District Digest (the weekly Washington Office newsletter) now stands at 9,825, up 60% (from 6,000); more than 12,700 new advocates signed up to receive legislative alerts through Engage, increasing ALA's pool of recipients by more than 10%; and the Washington Office Tumblr account, [Library Advocates](#), reached the 15,000 follower milestone.

### **Fight for FY 2017 LSTA and IAL Funding Moves into High Gear; Outcome Uncertain**

House and Senate appropriators have begun to move spending bills with an eye towards finishing all 12 bills by October 1, the start of the new fiscal year. If they do, it will be the first time since 1994 that Congress has hit that mark. The odds, however, aren't helped by [Speaker Ryan's commitment](#) to House Republicans that the House would conduct its business pursuant to procedures called "regular order," under which bills may be amended more often and more extensively. Lately, House Democrats have taken advantage of that promise to force the majority to take votes on amendments to appropriations bills on uncomfortable subjects, like "LGBT" anti-discrimination proposals, as the November's elections loom.

To date in the appropriations process, ALA has focused its efforts on opposing the President's recommended cuts in funding under the Library Services and Technology Act (LSTA), among them a nearly \$900,000 cut in the Grants to States program. ALA is urging lawmakers to instead fund that critical program at last year's level of \$182.9 million. The President has recommended, and ALA also is working to support, such "level funding" of \$27 million for the Innovative Approaches to Literacy program, which supports school library acquisitions for the nation's poorest children.

As always, ALA's current appropriations advocacy has taken multiple forms. In mid- and late-March, OGR issued a grassroots call-to-action (to which the grassroots responded splendidly) to urge Senators and Representatives to sign on to the [annual "Dear Appropriator" letters](#). In late March, ALA presented its funding priorities to Congressional staff at a spring Committee for Education Funding briefing coincident with the release of CEF's annual education funding [budget response book](#). Also, in April, ALA Washington Office Executive Director Emily Sheketoff submitted comments to the [House](#) and [Senate](#) Appropriations Committees' again urging at least level funding for LSTA and IAL. Supporting LSTA and IAL funding also was a priority issue at this year's National Library Legislative Day.

ALA's Washington office also participated in dozens of Congressional meetings and [other events](#) in support of funding for LSTA, IAL, and Every Student Succeeds Act Title IV programs. Funding for LSTA, IAL, Title IV and other education programs is expected to be taken up by House and Senate Appropriations Subcommittees in June. Beyond that, the timing of subsequent steps in the legislative process is unclear.

### **Encryption "Back Door" Mandate Debate Continues Unabated Post-Apple/FBI Controversy**

In the wake of the Apple/FBI fight, federal legislation to [mandate a "back door" into encryption systems](#) remains a hotly debated subject in Washington. On paper, there remain two [principal competing legislative vehicles](#) for the debate: a [likely "dead" draft bill](#), the ["Compliance with Court Orders Act of 2016,"](#) by Intelligence Committee Vice-Chairs [Sens. Richard Burr \(R-NC\) and Dianne Feinstein \(D-CA\)](#) that would compel companies to assist law enforcement in accessing encrypted data when so-directed by a valid court order; and the [Digital Security Commission Act \(H.R. 4651\)](#) by House Homeland Security Committee Chairman Michael McCaul (R-TX) and Sen. Mark Warner (D-VA), [summarized here, to](#) establish a national commission to address and make recommendations on the issue.

In addition to working with Congress on the matter, in mid-April ALA and its [coalition partners](#) [also continued to pressure the White House](#) to publicly oppose restrictions on robust encryption or mandates to weaken or circumvent it. Notably, positive legislation also has been introduced in the House. The "ENCRYPT Act" ([H.R. 4528](#)), sponsored by Rep. Ted Lieu (D-CA33) and Rep. Blake Farenthold (R-TX27), would "prevent any state or locality from mandating that a 'manufacturer, developer, seller, or provider' design or alter the security of a product so it can be decrypted or surveilled by authorities." No bill discussed above is expected to have an easy or rapid path to passage.

### **Washington Copyright Plate Full, though Not of Legislative Fare**

**Studies:** As previously reported, earlier this year the Copyright Office announced studies of three aspects of copyright law and invited public input on each issue. The formal comment and reply comment periods on all three have now closed. ALA, in concert with library and/or other coalition partners, participated in each of these proceedings (see links to [key filings here](#)),

which were augmented by the Copyright Office with multi-stakeholder “roundtable” events on all three issues.

**Roundtables:** The first roundtables concerned the controversial “triennial rulemaking” proceeding through which exceptions to the law’s prohibition against “circumventing” a copyright protection mechanism or technology under Sec. 1201 of the Digital Millennium Copyright Act (DMCA) may be requested. A second set also were held to elicit comment on the so-called “safe harbor” provisions of the DMCA, pursuant to which online service providers are granted immunity from liability for facilitating copyright infringement by their users if they agree to “take down” allegedly infringing material from their networks upon receipt of a statutorily dictated notice from a copyright owner. A third proceeding concerns the transferability of “embedded software” like the forms increasingly incorporated in consumer goods and vehicles of every kind.

ALA and several of its partners in the [Re:Create Coalition](#) (including past PLA president Jan Sanders), as well as the group’s Executive Director, participated actively in the roundtables. In all cases, ALA and its fellow Coalition members urged the Copyright Office to make its processes, and the law, substantially more fair use- and consumer-friendly to facilitate scholarship, creativity and national economic health.

**Congress:** In Congress, the House Judiciary Committee’s extensive “review” of the Copyright Act is finally nearing a close. After holding more than two dozen hearings over more than two years, the Committee is currently in the process of meeting with stakeholders who wish to make further suggestions or arguments. Committee Chairman Bob Goodlatte (R-VA6) recently announced publicly, in a [speech to the U.S. Chamber of Commerce](#), that he intends to move legislation on matters of “consensus.” It is unclear to virtually all stakeholders, however, to what the Chairman may have been referring as all potential statutory changes still appear moderately to hotly contested.

In the Senate, action is similarly stalled on possible ratification of the Marrakesh Treaty. A Resolution of Council urging Congress to approve the Treaty and its associated implementing legislation is anticipated at the upcoming Annual meeting. Finally, neither chamber has yet to address modernization of the Copyright Office, or much more controversial proposals to remove it from the Library of Congress.

**Courts:** Finally, in mid-April the U.S. Supreme Court denied without opinion the Authors Guild’s request that the Court hear its appeal from the US Court of Appeals for the Second Circuit’s late-October decision holding the [Google Books project and database to be lawful fair use](#) of books digitized and stored en masse. No further opportunities to litigate this matter are open to the Guild.

## **Open Government Data Bill Introduced in both Chambers and Advances in Senate**

In late April, the “OPEN Government Data Act” was introduced in both the House ([H.R. 5051](#)) and Senate ([S. 2852](#)). These identical bills would establish a comprehensive policy across the federal government to ensure that government data is accessible to the public by requiring federal agencies to publish government data in machine-readable and open formats, and to use open licenses. While the House Committee on Oversight and Government Reform has not yet acted on H.R. 5051, the Senate Committee on Homeland Security and Governmental Affairs approved S. 2852 on May 25<sup>th</sup>, making it “ripe” for potential floor consideration. In early May, ALA joined in expressing its [support for these bills](#) and OGR will continue to work to move them forward in Congress, as possible. With very few actual “legislative days” remaining in the current Congress’ calendar prior to its extended summer recess and the November elections, however, their prospects for passage remain unclear.

## **Legislation Mandating Broad Public Access to CRS Reports Likely Stalled**

As reported previously, ALA joined with a number of other groups to support the early March introduction of the “Equal Access to Congressional Research Service Reports Act of 2016,” [S. 2639](#) and [H.R. 4702](#). Given the compressed congressional calendar, on April 6<sup>th</sup> ALA again teamed with our coalition partners to [urge House and Senate committees to move forward with a markup of the bill](#). While that has not yet happened, Rep. Quigley (who introduced H.R. 4702) attempted to provide access to CRS reports through another avenue, introducing two amendments during the a House Appropriations Committee markup on May 17<sup>th</sup>. Regrettably, both amendments failed.

The first amendment, as proposed in H.R. 4702, would have directed the Government Publishing Office (GPO) to establish and maintain a public website to provide searchable, sortable, and downloadable public access to Congressional Research Service (CRS) reports without charge. When that amendment failed, Rep. Quigley then offered language to the appropriations bill that merely would have required a comprehensive list of all CRS reports produced (properly confidential documents excepted as in H.R. 4702) to be made publicly available. The lack of support during the House Appropriations markup is of concern, but ALA and our partners will continue to try to move this issue forward. That effort is likely to continue in the 115<sup>th</sup> Congress, which will be constituted in early 2017.

## **Net Neutrality, E-Rate, Lifeline Programs Likely Safe from Legislative Attack in Current Congress**

Congressional Republicans have expressed strong opposition to a number of regulations issued by the Federal Communications Commission (FCC) in the past year addressing network neutrality, the Lifeline and E-rate programs, and other policies. While some in the majority have called for Congressional action to nullify the FCC’s net neutrality Order or to enact funding caps on Lifeline (both strongly supported by ALA), it does not appear that Republicans will be able to

gain the bipartisan support needed to pass legislation materially affecting these important FCC initiatives in either chamber of Congress.

In other broadband/communications-related news, in April ALA was invited by the newly created Congressional Rural Broadband Caucus to participate in a briefing for Congressional staff and the public on the role of libraries in providing connectivity for rural businesses and encouraging entrepreneurship. As reported in [District Dispatch](#) by OGR assistant director Kevin Maher, who also attended, in response to questions from Congressional staff Marijke also detailed library service to veterans. OGR will continue to collaborate with the new Caucus to build an understanding of, and support for, library funding and programs among all Members of Congress, particularly those representing rural areas.

### **New Initiative Archives Key Washington Office, COL Documents in Easily Searchable Form**

In close collaboration with ALA archives staff at the University of Illinois, Urbana-Champaign, the ALA Washington Office Information Manager Stephen Mayeaux has initiated a program of metadata curation for, and regular document uploads to, the [ALA Institutional Repository](#) (ALAIR). All deposits will be made available in ALAIR. This effort is part of a long-term content management strategy by the Office intended to facilitate searchable access to past and present Washington Office materials. It is also intended to ensure the long-term storage and discoverability of current, “born digital” office content on a range of federal legislative, regulatory, and library advocacy issues.

Newly archived and preserved materials include: ALA- and coalition-authored letters to federal officials and congressional committees, newsletters, publications, amicus briefs, and comments and submissions on federal rulemaking procedures, among others. To date, more than 1100 documents have been uploaded to the [ALA Washington Office](#) collection. A parallel project also is underway to build a comparable [Committee on Legislation](#) collection.

These projects represent a continuation and expansion of work that the Washington Office has undertaken since the arrival of its Information Manager to upload large quantities of older materials to the Archives that previously were unavailable in digital format elsewhere on [www.ala.org](http://www.ala.org). A complete and fully searchable database of all ALA Council Resolutions addressed by the Committee on Legislation from 2001 forward is now complete. Select other Council Resolutions dating back as far as 1961 also are available. Regular updates of the archives will continue with the goal of making ALAIR a thorough, searchable permanent collection of Washington Office-generated content.

## **Office for Information Technology Policy**

### **ALA Holds First-Ever National Policy Convening**

ALA held a [National Policy Convening](#) in Washington, D.C., April 12–13, to highlight the contributions of libraries to national policy priorities and raise the profile of libraries and ALA

within the policy community. Chaired by ALA President Sari Feldman, the convening included a broad range of speakers that included a U.S. Senator and representatives from the National League of Cities, U.S. Small Business Administration, Aspen Institute, Harvard University Library, Google, Consumer Technology Association, and more. The convening represents one part of the plan and strategy to position libraries in the next Presidential Administration.

### **Application Window for E-rate Extended**

The Schools and Libraries Division of the Universal Service Administrative Company (USAC), which administers the E-rate program, [announced](#) on April 15 that it will extend the current form 471 filing window through May 26. For libraries and consortia, a second window will open to extend the filing window for those two groups until July 21. ALA advocated for this extension and submitted a [formal request](#) for such on April 4.

### **ALA Issues New Report on the Practical Aspects of 3D Printing**

Co-authored by 3DPrint360 CEO Zach Lichaa and OITP's Charlie Wapner, "[Progress in the Making: Librarians' Practical 3D Printing Questions Answered](#)" poses and answers sixteen practical questions related to establishing 3D printing as a library service. All of the questions were fielded from library professionals interested in 3D printing technology. As a by-product of OITP's policy advocacy on 3D printers and libraries, we are able to provide this practical information to assist library professionals.

### **OITP Named as Collaborators on Three IMLS Grants**

In the recent new IMLS awards for the National Leadership Grants for Libraries Program and the Laura Bush 21st Century Librarian Program, OITP was named collaborators on three of them. Such cooperative efforts are key to our policy work, as by working with talented and effective partners, we expand our reach and impact considerably. The projects are:

- Post-master's certificate in youth experience design, University of Maryland (YALSA is also a named collaborator on this project)
- Evaluation of hotspot lending programs for rural libraries, University of Texas
- Digital library design guidelines on accessibility, usability, and utility for blind and visually impaired users, University of Wisconsin—Milwaukee

### **CopyTalk Webinar Discusses State Governments Copyrighting Works**

[Ernesto Falcon](#), legislative counsel with the [Electronic Frontier Foundation](#), recently reviewed California state legislation that would authorize copyright authority to all state agencies, local governments, and political subdivisions—as well as the court decisions that led to its creation and the debate that now faces the state legislature. When drafting the federal copyright law, Congress explicitly prohibited the federal government (and its employees) from having the authority to create a copyright in government-created works. Federal law, however, is silent on state government power to create, hold, and enforce copyrights – resulting in a patchwork of

state copyright laws. In recent years entities of state government have attempted to rely on copyright as a means to suppress dissemination of taxpayer-funded research and to chill criticism but have failed in the courts due to a lack of copyright authority.

### **Nick Gross Appointed as Google Policy Fellow**

Nick Gross, a Ph.D. candidate in media law and policy at the University of North Carolina, Chapel Hill, was named as ALA's 2016 Google Policy Fellow. He will work on a variety of technology and internet policy issues this summer while in residence at the Washington Office. Previously, Nick completed a J.D. at the University of Miami School of Law and worked as a staff attorney for the U.S. Court of Appeals for the Eleventh Circuit. He is a member of the California bar.

### **OITP Adds Media Analytics Summer Intern**

On June 6, Brian M. Clark will begin an internship with ALA's Office for Information Technology Policy (OITP) for the summer. Brian recently completed his junior year at Elon University in North Carolina, where he is majoring in media analytics and minoring in business administration. His projects will focus on social media and the web and how ALA can better leverage communications technologies to achieve more effective policy advocacy.

### **ALA Briefs Congressional Caucus on Value of Broadband for Rural Libraries**

At the April meeting of the bipartisan Congressional Rural Broadband Caucus, OITP Associate Director Marijke Visser and co-panelists from the public and private sectors briefed the caucus, congressional staff and a general audience at a public session entitled "Strengthening Rural Economics through Broadband Deployment." Marijke provided examples of how libraries have helped small businesses develop business plans, conduct market research, foster employee certification, use 3D printers, and even use library software programs to design and print creative menus for a restaurant. Membership in the caucus currently stands at 34 representatives.

### **ALA Joins Roundtable on "What's Your Digital IQ?"**

OITP Deputy Director Larra Clark, speakers from the Council of Better Business Bureaus (BBB), Nielsen and the Multicultural Media, Telecom and Internet Council (MMTC) in a roundtable discussion on the importance of digital empowerment. "What's Your Digital IQ?" was opened by Congressman Gus Bilirakis (R-FL) and former Federal Trade Commissioner Julie Brill talking about the importance of the \$1 trillion digital economy and the need for tools to help people be smart online and protect themselves against hackers and scams. Brill referenced recent [analysis](#) from the National Telecommunications and Information Administration (NTIA) citing that a lack of trust in Internet privacy and security may deter online activities.