



**Celebrating 30 Years
of Library Advocacy**

30th Annual National Library Legislative Day
May 4, 2004



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(as of April 28, 2004)

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ALA Office of Government Relations

Key Issues Brief April 2004

FY 2005 Appropriations

Funding for Lifelong Learning: Fund the Library Services and Technology Act (LSTA) at \$232 million. By providing \$232 million for LSTA we will enhance shared public access to information, promote the use of technology, encourage the sharing of resources, and other collaborations and outreach not feasible across local and state boundaries. The Administration proposes to fund LSTA at \$220 million in FY 2005.

Fund the Improving Literacy Through School Libraries at \$100 million. At this level, we can expand this program to every state and increase student achievement by providing books, professional development for school librarians, increase collaborations among teachers and librarians, and expand access to the school library during non-school hours.

Museum & Library Services Act of 2003

Please thank Members of Congress for supporting the passage of Museum and Library Services Act of 2003 (P.L. 108-81), which reauthorized the Library Services Technology Act (LSTA). The legislation received bi-partisan support from Congress and enthusiastic backing from the library and museum communities. The House of Representatives approved the measure on March 6 by a vote of 416-2 and was unanimously approved by the Senate on August 1. On September 23, 2003, President Bush signed the Act into law.

The Museum and Library Services Act reauthorizes library activities at the Institute of Museum and Library Services (IMLS) from FY 2004 through 2009.

Another Database Bill!

H.R. 3261, the database protection bill opposed by libraries, was reported favorably out of the House Judiciary Committee in January. However, the persistent underlying disagreement that has characterized the database legislation debate for years was apparent once again when the House Energy and Commerce Committee in March unfavorably reported out

the bill and introduced an alternate version, H.R. 3872. This new version takes a more narrowly focused approach to the misappropriation of databases and has library support. It is unlikely that either bill will pass this year. Please thank your Representatives on the House Energy and Commerce Committee for their help in providing a reasonable alternative bill, H.R. 3872.

H.R. 107 Needs Sponsors

Rep. Rick Boucher (D-VA) and Rep. John Doolittle (R-CA) are great library allies in our efforts to maintain fair use. H.R. 107, the Digital Consumer Media Rights Act (DMCRA), proposes key changes to the Digital Millennium Copyright Act (DMCA) and reaffirms fair use in the digital environment. H.R. 107 currently has 14 co-sponsors but more are needed for the bill to move this year.

ACTION NEEDED: Urge your Representatives to co-sponsor this important bill. Go to the ALA Legislative Action Center for talking points and lists of representatives.

PATRIOT ACT: Protect the Freedom to Read

Security and Freedom Ensured (SAFE) Act: Ask Senators to co-sponsor and support S. 1709, introduced by Senators Craig, Durbin and others. The bill would return the standards for the FBI to get orders from the FISA Court to the standards that applied pre-USA PATRIOT for such orders – by requiring that the FBI specify the records sought. It would require the FBI to articulate specific facts to the Court that the FBI has "reason to believe" that the person whose records are sought is "a foreign power or an agent of a foreign power" (a suspected terrorist or spy) and for the FISA Court to "find" these specific facts to be the case.

The SAFE Act would also exempt libraries from 'national security letters' (under Sec. 505) and add Sec. 505 to the provisions that will sunset on December 31, 2005.

Ask Representatives to co-sponsor and support the SAFE Act in the House (H.R. 3352) and the Freedom to Read Protection Act (H.R. 1157).

LSTA - Thank You for Passing the Museum and Library Services Act!

The Museum and Library Services Act, which includes the Library Services and Technology Act (LSTA) was signed into law last September following strong grassroots lobbying from library supporters. National Library Legislative Day (NLLD) is a unique opportunity to personally show the library community's appreciation to all the senators and representatives who supported LSTA. Please acknowledge the passage of LSTA and say THANK YOU during your Hill visits. Whenever feasible, describe the specifics of how LSTA has served your library and your state and invite congressional representatives, senators and Hill staff to visit your library to see for themselves how libraries are adapting and changing to the opportunities and challenges of the Digital Age.

E-RATE - Thank You for making telecommunications affordable!

With \$2.25 billion dollars annually distributed to K-12 public and private schools and public libraries as part of universal service programs under the Federal Communications Commission (FCC), the E-rate is a real success. These discounts, ranging from 10% to 90%, have brought affordable telecommunications services and related internal wiring to thousands of communities. There is no pending legislation threatening the E-rate at this time, but the E-rate program will come under scrutiny when Congress reopens debate on the Telecommunications Act in the next congressional session. Again, NLLD is an opportunity to say THANK YOU to E-rate supporters and to describe to your Congressional Representatives and Senators the positive impact that this discount program has made in bringing equitable access to students and library users.

Preserve Access to Government Information

A strong democracy is based upon having an informed citizenry. That is why ALA has, for many decades, made equitable access to government information a strong principle to be protected and supported. ALA focuses on a variety of public access issues in this arena, including funding for the Federal Depository Library Program (FDLP) and the Government Printing Office (GPO), legislative and policy proposals related to the administration, publication, distribution, and organization of government information as well as Community Right-to-Know and related access issues. While there is no particular legislation regarding government information issues and the Federal Depository Library Program, this is another opportunity to emphasize the importance of maintaining strong policies and adequate funding for key government information programs. In addition to adequate funding, the library community is also asking for Congress to promote permanent public access to these materials and to maintain and strong an healthy Depository Library Program.

ALA Office of Government Relations Appropriations FY2004 - 2005

What Do We Want?

Fund the Library Services and Technology Act (LSTA) at \$232 million.

While the library community was pleased with the increase proposed for LSTA in the Administration's budget at \$220 million, funding LSTA at the recently reauthorized amount of \$232 million for FY 2005 would further improve the effectiveness and reach of federal funding. LSTA funding promotes the use of technology and the sharing of resources, as well as other collaborations and outreach not feasible across local and state boundaries. This is especially true at a time when libraries and local communities are trying to serve a growing number of users, while facing cut backs in state and local funding. The ability of libraries to offer programs for families, new readers, new English speakers, and people in the community in need of special outreach services cannot be expanded without an increased federal investment.

The request would also provide essential funding for IMLS programs for the recruitment and education of a new general of library professionals who are prepared to tackle the technological challenges of the information age.

Fund the Improving Literacy Through School Libraries at \$100 million.

As part of the No Child Left Behind Act (P.L. 107-110), Congress authorized the Improving Literacy Through School Libraries program to provide students and schools in our country with up-to-date reading material and technology so students can increase their literacy skills and develop a life-long love for reading. Multiple studies have affirmed that there is a clear link between the quality of library media programs in schools staffed by an experienced school library media specialist and student academic achievement.

The President's FY 2005 budget freezes funding for the Improving Literacy Through School Libraries program at the FY 2004 level of \$19.5 million. As a result, when inflation is taken into account, this will leave less money for our most severely distressed communities to upgrade substandard library collections, to contribute to improved student achievement, and for professional development. By providing \$100 million for the Improving Literacy Through School Libraries program, we ensure that every state receives funding.

Support full funding for the Federal Depository Library Program and Government Printing Office.

No fee, public access to government information is ensured through the operations of the Federal Depository Library Program.

Support funding for the National Commission on Libraries and Information Science (NCLIS).

Since its establishment in 1970 as an independent agency within the executive branch, NCLIS has carried out its founding purpose to "advise the President and the Congress on the implementation of national policy" by carrying out hearings, issuing reports and studies and assessment the library and informational needs of the Nation. The President's FY 2005 request would be \$1,000,000.

Support other library and library related programs.

(See the reverse chart for details)

(over)

Federal Library Funding
(Amounts in thousands)

Funding for Selected Programs	FY03 Final	FY04 Admin. Request	FY04 Final	FY05 Admin. Request
GPO-Office of Sup. of Docs.	\$29,468	\$34,456	\$34,252	\$33,033
Library of Congress	532,100	576,000	559,300	602,120
Institute of Museum and Library Services (IMLS)*:	243,889	242,024	262,240	262,240
Library Services	180,097	207,594	198,242	220,490
Museum Services	28,637	34,030	31,403	42,000
National Agriculture Library	23,000	21,000	21,000	24,000
National Commission on Libraries and Information Science (NCLIS)	1,010	1,000	994	1,000
National Library of Medicine (includes MLAA)	300,135	316,040	309,796	325,147
Library-Related Programs				
Title I, Grants to Local Education Agencies (ESEA I-A)	11,688,664	12,350,000	12,342,309	13,3342,309
Even Start (ESEA I-B-3)	248,375	175,000	246,910	0
Reading First State Grants (ESEA I-B-1)	993,500	1,050,000	1,023,923	1,125,000
Early Reading First (ESEA I-B-2)	73,767	100,000	94,439	132,000
Improving Literacy Through School Libraries (ESEA I-B-4)	12,419	27,500	19,842	19,842
Education Technology (ESEA II-D-1 &2)	695,947	700,500	691,841	691,841
21 st Century Community Learning Centers (ESEA IV-B)	993,500	600,000	999,070	999,070
Innovative Ed. Prog. Strategies (ESEA V-Part A)	382,498	385,000	296,549	296,549
Inexpensive Book Distribution (RIF) (ESEA V-D, 5)	25,334	24,000	25,185	25,185
Star Schools (ESEA V-D, 7)	27,341	0	20,362	0
Special Education (IDEA) State Grants	8,874,398	9,528,533	10,068,106	11,068,106
Adult Education & Literacy	587,217	591,032	590,233	590,233
Community Technology Centers (ESEA V-D, 11)	32,205	0	9,941	0
College Work Study (HEA Title IV-C)	1,004,428	1,011,000	998,502	998,502
Institutional Development (HEA Title III)	388,869	385,248	399,961	418,800
International Ed. (HEA VI)	107,795	102,500	103,680	103,680
Postsecondary Ed. Improvement Fund (HEA VII-B)	171,068	39,138	157,700	32,000
Institute of Education Sciences (formerly OERI):	447,956	375,915	475,893	371,496
Educational Research	139,090	185,000	165,518	185,000
Educational Statistics	89,415	95,000	91,664	91,664
Educational Assessment	94,767	95,915	94,763	94,763
Other Agencies & Programs				
Head Start	6,668,000	6,816,000	6,775,000	6,943,580
NTIA Information Infrastructure Grants (TOP)	15,402	0	14,912	0
National Archives & Records Adm.	248,251	294,105	255,185	304,000
National Endowment for the Arts	115,731	117,480	120,971	139,400
National Endowment for the Humanities	124,936	152,000	137,000	162,000
National Historical Publications & Records Commission	6,458	5,000	9,941	3,000

*The IMLS funding totals include congressionally-directed earmarks.

American Library Association Office of Government Relations 2004 Copyright Agenda

ALA supports efforts to amend the Digital Millennium Copyright Act (DMCA) and to urge the courts to restore the balance in copyright law, ensure fair use and protect and extend the public domain.

For further details: www.ala.org/copyright

<p>“Digital Media Consumers’ Rights Act of 2003” (DMCRA) (H.R. 107)</p> <p>Sponsors: Reps. Boucher (D-VA), Doolittle (R-CA) Introduction: January 7, 2003</p>	<ul style="list-style-type: none"> ● Proposes 3 key changes to sections of the flawed Digital Millennium Copyright Act (DMCA) ● The bill reaffirms fair use in the digital environment and is an important first step in recognizing the rights of copyright users
<p>“Consumers, Schools and Libraries Digital Rights Management Awareness Act of 2003” (S. 1621)</p> <p>Sponsor: Sen. Sam Brownback (R-KS) Introduction: September 16, 2003</p>	<ul style="list-style-type: none"> ● Creates voluntary notice and labeling standards for digital media products using digital rights management (DRM) technology ● Prevents manufacturers from using DRM technologies to restrict consumer resale of digital media products they lawfully own or elect to donate to educational institutions and libraries
<p>“Public Domain Enhancement Act” (H.R. 2601)</p> <p>Sponsor: Reps. Lofgren (D-CA), Doolittle (R-CA) Introduction: June 25, 2003</p>	<ul style="list-style-type: none"> ● Provides a simple mechanism to ensure that abandoned copyrighted works pass into the public domain
<p>“Public Access to Science Act” (H.R. 2613)</p> <p>Sponsor: Rep. Martin Sabo (D-MN) Introduction: June 26, 2003</p>	<ul style="list-style-type: none"> ● Works resulting from substantially federally funded “scientific research” would be excluded from copyright protection
<p>“Benefit Authors without Limiting Advancement or Net Consumer Expectations Act of 2003,” (“BALANCE Act”) H.R. 1066</p> <p>Sponsor: Representative Zoe Lofgren (D-CA) Introduction: March 4, 2003</p>	<ul style="list-style-type: none"> ● Bill proposes to protect fair use, allow first sale rights of digital content and provides for permissible circumvention to enable fair use and consumer expectations
<p>“Digital Consumer Right to Know Act,” (S. 692)</p> <p>Sponsor: Senator Ron Wyden (D-OR) Introduction: March 24, 2003</p>	<ul style="list-style-type: none"> ● Requires producers of information and entertainment content to inform consumers about technological features that would restrict their use of the content ● Requires Federal Trade Commission to issue rules for disclosing technological measures that restrict consumer use

American Library Association Office of Government Relations 2004 Copyright Agenda

Threats to fair use continue unabated. As Congress becomes increasingly sympathetic to content providers' complaints about the economic impact of Internet piracy, we expect continued efforts to pursue database protection and digital rights management legislation that would enable copyright holders to restrict access to and use of their content. At the state level, "Super-DMCA" bills implement provisions that are more draconian than DMCA Section 1201 and quiet relatives of UCITA also are expected to appear.

For further details: www.ala.org/copyright

<p>"Database and Collections of Information Misappropriation Act of 2003" (H.R. 3261) Sponsor: Rep. Coble (R-NC) Introduction: October 8, 2003</p> <p>"Consumer Access to Information Act of 2004" (H.R. 3872) Sponsor: Rep. Stearns (R-FL) Introduction: March 2, 2004</p>	<ul style="list-style-type: none"> • H.R. 3261 provides overly broad and unnecessary protection for commercial database producers. • Inadequate exception for educational, scientific, research institutions • Approved by House Judiciary Committee in Jan. 2004 • House Energy and Commerce Committee unfavorably reported out H.R. 3261 in March 2004, then favorably reported H.R. 3872, a narrowly focused approach to misappropriation of databases • Libraries support H.R. 3872 as a reasonable alternative bill
<p>Other Federal Copyright Protection Legislation</p> <p>Proponents of legislation to permit copyright owners to control access to and use of their products are aggressively pushing for help from Congress. In 2004 proposed legislation emphasizes deterrence of piracy and enforcement with stiff penalties. The Department of Justice announced the formation of an Intellectual Property Task Force in April 2004.</p> <p>Note: Copy protection systems are also referred to as digital rights management (DRM). The need for government mandated DRM standards is controversial.</p>	<p>"Piracy Deterrence and Education Act of 2004" (H.R. 4077) Sponsor: Rep. Smith (R-TX) Introduction: March 31, 2004</p> <ul style="list-style-type: none"> • to educate the public about copyright infringement • Makes it an offense to record, transmit or make copies of a motion picture in a theater with an audiovisual recording device (federal version of state "camcorder" legislation) • Amends Copyright Act to allow criminal prosecution of someone who "makes available" one work worth \$10,000 or more, or 1,000 or more works of undetermined value • Markup hearing held March 31, 2004 <p>"Artists' Rights and Theft Prevention Act of 2003" (S. 1932) Sponsors: Sen. Cornyn (R-TX), Feinstein (D-CA), Hatch (R-UT), Smith (R-OR), Alexander (R-TN), Graham (R-SC) Introduction: November 22, 2003 (N.B. H.R. 4077)</p> <ul style="list-style-type: none"> • Makes it an offense to record, transmit or make copies of a motion picture in a theater with an audiovisual recording device (federal version of state "camcorder" legislation) <p>"Protecting Intellectual Rights Against Theft and Expropriation Act of 2004" ("PIRATE Act") (S. 2237) Sponsors: Sen. Leahy (D-VT), Hatch (R-UT) Introduction: March 25, 2004</p> <ul style="list-style-type: none"> • Amends Copyright Law to allow government to seek civil penalties, as well as criminal penalties, for willful copyright infringement • Directs Justice Dept. to develop civil enforcement program <p>"Anticounterfeiting Amendments of 2004" (H.R. 3632) Sponsor: Rep. Smith (R-TX) Introduction: March 31, 2004</p> <p>"Anticounterfeiting Act of 2004" (S. 2242) Sponsors: Sen. Biden (D-DE) and Nelson (D-NE) Introduction: March 26, 2004</p> <ul style="list-style-type: none"> • Prohibits trafficking in illicit authentication features, counterfeit documentation and packaging that is attached to computer program, motion picture, or audiovisual work. • Current language in both bills could inadvertently apply to legitimate electronic distribution of copyrighted works • Markup on House bill held March 31, 2004

American Library Association Office of Government Relations 2004 Copyright Agenda

For further details: www.ala.org/copyright

<p>State Copyright-related Legislation Content owners are also promoting their copyright protection agenda at the state level with several obscure enforcement bills with overly broad language that could apply to libraries and educational institutions.</p>	<p>Uniform Computer Information Transactions Act (UCITA) is a proposed state contract law that validates enforceability of “shrink-wrap” contracts. Despite lack of promotion by drafters, UCITA continues to have potential for introduction.</p> <ul style="list-style-type: none"> • Anti - UCITA “bomb-shelter” legislation is active in MA and LA • Troublesome UCITA-friendly amendments to Articles 1 and 2 of Uniform Commercial Code expected in 2004 <p>“Super DMCA” bills propose to update existing state laws prohibiting theft of cable and satellite service by implementing provisions similar to DMCA anti-circumvention prohibition, but without the narrow exceptions and limitations that permit libraries to conduct legitimate activities.</p> <ul style="list-style-type: none"> • 2004 activity: CO, MD, MI, SC, TN • Bills have already passed in AK, CO, FL, PA, MD, DE, IL and MI <p>“Camcorder” Legislation is another effort to stop digital piracy by prohibiting the recording of movies in a facility in which a motion picture is being shown. The term facility is often not defined and could apply to libraries.</p>
<p>Court case: MGM, Inc. v. Grokster, Ltd. Case on appeal in U.S. Court of Appeals (9th Circuit) involves companies that produce software for peer-to-peer file sharing. Libraries joined <i>amici curiae</i> (“friends of the court”) brief on behalf of Grokster (September 26, 2003).</p>	<ul style="list-style-type: none"> • The record companies and movie studios sued Grokster et al. (P2P companies) for contributory copyright infringement and vicarious liability. • The plaintiffs in this important case are challenging the validity of the landmark <i>Sony v. Betamax</i> case, in which U.S. Supreme Court held that the makers of the VCR should <u>not</u> be held liable for copyright infringement simply because the device could be used for infringing purposes. • Oral arguments were held Feb 3, 2004.
<p>Court cases: RIAA v. Pacific Bell Internet Services (U.S. Court of Appeals, 9th Circuit) RIAA v. Verizon Internet Services (U.S. Court of Appeals, D.C. Circuit) RIAA v. Charter Communications (U.S. Court of Appeals, 8th Circuit)</p>	<ul style="list-style-type: none"> • ALA joined <i>amicus</i> briefs filed on behalf of the Internet service providers resisting efforts by RIAA to obtain identities of users alleged to infringe copyright. These cases challenge the propriety of the recording industry serving subpoenas on ISPs without judicial oversight. • U.S. Court of Appeals for D.C. Circuit ruled Dec. 19, 2003, in favor of Verizon; other cases are still pending in the appeals courts.
<p>FCC “Broadcast Flag” Rulemaking Nov. 2003: Federal Communications Commission mandated the use of copy protection mechanisms for DTVs (digital televisions), personal computers</p>	<ul style="list-style-type: none"> • In Jan. 2004 libraries and other public interest organizations petitioned U.S. Court of Appeals for the D.C. Circuit to set aside the FCC’s rulemaking. • Petition charges the FCC acted in excess of its authority and contrary to the factual evidence in the record.
<p>International Copyright Issues International agreements and trade treaties may adversely impact libraries and U.S. copyright law</p>	<ul style="list-style-type: none"> • ALA is a member of the U.S. Delegation to the Hague Convention on Exclusive 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)

Fair Use Legislation

Libraries support copyright legislation that would restore the balance in copyright law. There are currently six proposed bills that seek to recalibrate and restore consumer and public rights by trimming back the excesses of the Digital Millennium Copyright Act (DMCA), promoting the doctrine of fair use in the digital environment, favoring open access to certain copyrighted works or placing limitations on the use of digital rights management technologies in copyrighted digital content.

These bills are crucial responses to the tide of legislation sponsored by the content industries that threatens to undermine the carefully crafted principle of fair use. (See Threats to Fair Use brief)

H.R. 107, Digital Media Consumers' Rights Act (DMCRA), "Boucher-Doolittle Bill"

Sponsored by Reps. Rick Boucher (D-VA) and John Doolittle (R-CA), H.R. 107 proposes three key changes to sections of the Digital Millennium Copyright Act (DMCA) and reaffirms fair use in the digital environment.

H. R. 107 assumes that Congress did not intend to prevent someone from circumventing a technological lock in order to make a non-infringing use (i.e., a use permitted by the copyright law for fair use, classroom, preservation or similar provisions) of a lawfully acquired copyrighted work. The library associations have argued that technological "locks" could have an enormous impact on the ability of libraries to provide access to, lend, and archive material, as well as adversely affect the ability of library users to make full legitimate use of its resources. Libraries do not believe that a provision in the DMCA for the Librarian of Congress to issue exceptions to the prohibition has worked.

H.R. 107 would:

- Amend Section 1201 of the DMCA to allow circumvention of a technological measure that controls access to and use of a copyrighted work, if the circumvention does not result in infringement of the work
- Decriminalize anti-circumvention tools when they have substantial non-infringing uses
- Allow scientists to research the strength and reliability of technological locks without subjecting themselves to civil and criminal penalties
- Require proper labeling of "copy-protected" compact disks so that consumers know what device a CD can be played on

Action needed: Ask your Representatives, particularly those who are members of the House Judiciary and Energy and Commerce Committees, to sign up as co-sponsors.

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**Benefit Authors without Limiting Advancement or Net Consumer Expectations Act
BALANCE Act, H.R. 1066, "Lofgren bill"**

Reintroduced by Rep. Lofgren (D-CA), H.R. 1066 would give lawful consumers the ability to make personal uses of digital entertainment such as music, movies and books.

H.R. 1066 would

- Amend Copyright Act Sec. 107 to make clear fair use is applicable to digital transmissions
- Amend Copyright Act to allow expressly for lawful users to make backup copies and display digital works privately
- Limit enforcement of shrink-wrap (non-negotiable) licenses of digital works
- Provide for digital First Sale Doctrine so that an owner of a work can donate or sell it as long as he does not retain a copy
- Amend DMCA to allow circumvention of access control measures for non-infringing uses
- Amend DMCA to allow manufacture, import, etc. of technology to circumvent access control measures, for the purpose of making non-infringing uses of works

Digital Consumer Right to Know Act (S. 692) "Wyden Bill"

Introduced by Sen. Ron Wyden (D-OR), S. 692 requires the Federal Trade Commission to issue rules for informing consumers about technological measures that could restrict their ability to flexibly use and manipulate digital information and entertainment content: such as restrictions on time-shifting, fair use, secondhand sale or transfer.

Public Domain Enhancement Act (H.R. 2601)

Sponsored by Reps. Lofgren (D-CA) and Doolittle (R-CA), H.R. 2601 provides a simple mechanism to allow abandoned copyrighted works to pass into the public domain. Copyright owners would pay a \$1 fee fifty years after a copyrighted work's publication and every five years thereafter to retain the copyright. Otherwise, the work would fall into the public domain.

Consumers, Schools and Libraries Digital Rights Management Awareness Act of 2003 (S. 1621)

Introduced by Sen. Brownback (R-KS), S. 1621 gives manufacturers a year to create voluntary notice and labeling standards for digital media products that include DRM technology. The bill requires that consumers, educational institutions and libraries must be informed about how the DRM will impact their use of the digital media product and prevents manufacturers from using DRM to restrict consumer resale of digital media products they lawfully own or elect to donate to a library or educational institution.

ALA Office of Government Relations

Database Protection Legislation

DUELING DATABASE BILLS

House Judiciary bill

Despite more than two years of negotiations, an unacceptable database protection bill, H.R. 3261, the "Database and Collections of Information Misappropriation Act," was introduced in October 2003 and approved by the House Committee on the Judiciary in January 2004. Although H.R. 3261 was supposed to be a compromise bill, it still fails to respond to the fundamental concerns of its many diverse opponents including libraries.

The bill seeks to prohibit the misappropriation of certain databases by making it illegal to take a "quantitatively substantial" part of the information in a database and make it commercially available in the same market without the authorization of the database owner.

Although the bill provides several narrow exceptions, these can still be overridden by "shrink-wrap" or "click-wrap" contracts.

House Commerce Bill

On March 2, following on the heels of the House Judiciary Committee's favorable referral of H.R. 3261, the House Energy and Commerce Committee reported the Judiciary bill with "an unfavorable recommendation." Rep. Stearns (R-FL) and 18 co-sponsors then introduced a narrow, alternative version of database protection legislation, H.R. 3872, the Consumer Access to Information Act of 2004.

H.R. 3872 narrowly defines the definition of misappropriation of a database and calls for Federal Trade Commission oversight and enforcement while prohibiting private parties the right to sue.

The Energy and Commerce Committee, under its new Chairman Joe Barton (R-TX), approved the bill with no amendments. ALA supports H.R. 3872 because it is a narrowly focused attempt to prevent misappropriation of works.

Who are ALA's partners?

We are part of a broad and diverse coalition of consumers, educators, libraries, and businesses (including telecommunications, financial services, and high technology). Many of our coalition members are themselves database producers and we fully appreciate the efforts of those who want to provide relief through the adoption of a database protection law. We are concerned, however, that the measure could have unintended, and harmful, consequences, as set out above.

BACKGROUND

The proponents of database protection legislation are chiefly large database producers, such as publishing companies.

Under copyright law, basic factual information is in the public domain and is not entitled to copyright protection. However, many databases – which consist of individual pieces of information that have been organized in one collection so that the data are easier to access – are protected because of the creative way that the information in them is selected, coordinated and arranged. Databases may also be protected from copying under other federal laws, such as the No Electronic Theft (NET) Act, and under state laws, such as misappropriation and trespass laws.

Nevertheless, some commercial database producers want additional assurances of protection for their works, in which

they have considerable investment, and feel that current law does not give them the protection from piracy they need.

Digital works available over the Internet particularly are considered vulnerable to unauthorized copying and dissemination.

H.R. 3261 Talking Points

▶ We believe that current laws are more than adequate to protect database producers' interests and therefore H.R. 3261 is not needed.

▶ H.R. 3261 is so vaguely written that it will create uncertainty in the law and increase the likelihood of litigation. Such a legal climate will likely chill investment in innovative information products.

▶ H.R. 3261 seeks copyright protection for facts which the Supreme Court has ruled are not eligible for such protection.

▶ H.R. 3261 allows a producer or publisher unprecedented control over uses of information, including downstream, transformative use of facts.

▶ H.R. 3261 will lead to reduced competition and provides no safeguards against monopolistic pricing.

▶ H.R. 3261 could hinder the progress of science, education and research by not allowing researchers and educators access to and use of information and facts.

For more details, see www.ala.org/washoff/database.html

2004 ANTI-PIRACY LEGISLATION

Piracy deterrence and punishment are the themes of five copyright-related bills being considered in the 108th Congress. Three bills in the Senate and two in the House of Representatives would give law enforcement authorities more options in prosecuting alleged copyright infringers and would stiffen both civil and criminal penalties for even non-commercial infringement.

As part of its unbalanced anti-piracy agenda, the content industry, represented primarily by the Motion Picture Association of America (MPAA) and the Recording Industry Association of America (RIAA), has convinced many in Congress that existing laws are inadequate and that new laws with lower standards for copyright infringement are needed. **Libraries do not agree.**

- **Libraries are not opposed to the effort to deal with legitimate concerns about copyright infringement**
- **However, libraries do not favor the current trend toward further criminalizing copyright law**
- **Libraries support enforcing the existing laws that have clear standards for infringement and oppose adding broad criminal provisions with vaguely defined standards**
- **The ambiguous and overly broad language in these bills will lead to potential risks for libraries and educational institutions**

REFER TO "2004 COPYRIGHT AGENDA" FOR HIGHLIGHTS OF EACH BILL.

Senate

S. 2237: "Protecting Intellectual Rights Against Theft and Expropriation Act of 2004"

S.1932: "Artists' Rights and Theft Prevention Act of 2003" (H.R. 4077 includes provisions of S. 1932)

S. 2242: "Anticounterfeiting Amendments of 2004"

House

H.R. 4077: "Piracy and Deterrence and Education Act of 2004"

H.R. 3632: Anticounterfeiting Amendments of 2004"

E-Rate Discounts for Libraries

ALA Office of Government Relations

E-rate Makes the Difference for America's Libraries

Say THANK YOU to your elected representatives for the E-rate discounts and ask for their continued support of this vital and successful program!

The E-rate is working and making Internet access affordable by providing discounts to public libraries and K-12 schools on telecommunications and related services. Without the E-rate, now in its seventh year, many local communities could not afford to provide Internet access in the vast majority of public library branches and classrooms.

Annually, the E-rate program provides \$2.25 billion in discounts on telecommunications services and internal wiring to public libraries and K-12 schools. The program fund is capped, despite huge increases each year in applications for the funding. Despite the huge strides made in library technology and connectivity over the last seven years, libraries will continue to depend upon E-rate funding in the future to maintain vital services. Library technology presents substantial monthly, annual, and ongoing costs to maintain hardware, software and connectivity. A recent public library survey showed that hypothetically removing E-rate funding caused connectivity costs to jump from the lowest to the highest in a list of concerns related to public access computing. This reliance upon E-rate funding is particularly pronounced in rural and inner-city areas.

Grassroots efforts - including repeatedly telling the story of the benefits of the E-rate discounts in helping local libraries and schools serve their communities - will show legislators the value of this important program.

Talking Points on the E-Rate

- * In 1996, only 28% of public libraries offered Internet access. Today, seven years into the E-rate program, that number has increased to more than 95%.
- * E-rate-funded connectivity at public libraries is an important tool of economic empowerment for underserved communities, including rural and inner-city areas.
- * Research has shown that certain ethnic groups and people of lower socioeconomic levels rely exclusively upon the library's Internet connectivity - much of it funded by E-rate - at a greater rate than the general population.
- * Librarians play a vital role in developing Internet skills in patrons who might not otherwise learn them; E-rate makes much of this possible.
- * Library connectivity through E-rate has led to increased patron visits - particularly in rural communities - and has raised the library's profile in the community.
- * The reliability of E-rate discounts has helped public libraries maintain high levels of service in uncertain economic times.
- * E-rate leaves technology decisions in the hands librarians, who know patron needs best; it is local, flexible and successful.

For Background Information:

<http://ala.org/washoff>
<http://edlinc.org>

American Library Association Office of Government Relations 2004 Privacy Agenda

ALA supports efforts to amend the USA PATRIOT Act to restore the privacy of library users.
For further details: www.ala.org/patriotfix

<p>SECURITY AND FREEDOM ENSURED (SAFE) ACT</p> <p>S 1709 Sponsors: Senators Craig (R-ID), Durbin (D-IL) & Others</p> <p>H.R. 3352 Sponsors: Reps. Otter (R-ID), Sanders (I-VT) & Others</p>	<p>Amends Section 215 – Requiring Production of Any Tangible Thing S 1709</p> <ul style="list-style-type: none"> ▪ Requires that the FBI specify the records sought. <p>Both bills require that the FBI</p> <ul style="list-style-type: none"> ▪ Name a person ▪ Show “reason to believe” that the person whose records are sought is “a foreign power or an agent of a foreign power” (a suspected terrorist or spy). <p>S 1709 requires that the FISA Court “find” that</p> <ul style="list-style-type: none"> ▪ There are specific and articulable facts that give reason to believe that the named person whose records are sought is “a foreign power or an agent of a foreign power.” 	<p>Amends Section 505 – Miscellaneous National Security Authorities– National Security Letters</p> <ul style="list-style-type: none"> ▪ Excludes libraries (as defined in LSTA) from being considered “a wire or electronic communication service provider,” thereby ▪ Exempting libraries from National Security Letters ▪ Subjects Section 505 of USA PATRIOT to the same sunset provisions Section 215 & others.
<p>FREEDOM TO READ PROTECTION ACT</p> <p>HR 1157 Sponsors: Reps. Sanders (I-VT) and Others</p>	<ul style="list-style-type: none"> ▪ Changes made in Section 215 of the USA PATRIOT Act to Section 501 of the Foreign Intelligence Surveillance Act (50 USC 1861) do not apply in libraries/booksellers. 	<p>Does not address. Had not been identified as an issue at time bill was introduced.</p>

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Preserving Access to Government Information ALA Office of Government Relations

As the federal government provides more access to its information by electronic means, libraries of all sizes and types increasingly serve as a dissemination and reference service to the American public for government information. In partnership with the expertise and collections of the libraries of the Federal Depository Library Program, all libraries need to contact their Congressional delegation to assure compliance with the "Key Principles on Government Information."

While there is no particular legislation regarding government information access and the Federal Depository Library Program at this time, it is important to reiterate to Congress the importance of maintaining strong, sound policies and adequate funding for key government information programs and services. In addition to needed funding, the library community is asking for Congress to support permanent public access to these materials and to maintain a strong and healthy Depository Library program.

The message to Congress can be summarized from recent testimony presented on behalf of ALA and the other library associations at a Congressional oversight hearing on April 27th:

"As we move into the 21st Century, we ask that all members of Congress reaffirm these basic principles of public access to government information that have guided the Federal government's commitment to the Federal Depository Library Program for more than one hundred years.

- * The public has the right to no-fee access to government information.
- * The government has an obligation to disseminate and provide broad public access to its information.
- * The government has an obligation to guarantee the authenticity and integrity of its information.
- * The government has an obligation to preserve its information and make it permanently accessible.
- * Government information created or compiled by government employees or at government expense should remain in the public domain."

Five Key Points From Library Associations' Joint Testimony

First, the library community commends Public Printer Bruce James for bringing his energy and enthusiasm to the GPO as he works with Congress, the Executive Branch, and GPO's stakeholders to make its operations more efficient and strengthen the FDLP.

Second, we believe strongly that the FDLP and depository libraries will continue to be crucial access and service points for the public in the 21st Century and we are committed to our role in this important partnership with Congress.

Third, the Federal government must ensure the authenticity, permanent public access to and preservation of electronic government information.

Fourth, we believe that GPO must consider user needs in determining which format they use to disseminate information to depository libraries.

And fifth, the cost of collecting, collating, storing, disseminating, and providing for permanent public access to government information should be supported by appropriation of public funds.

ALA's efforts advocating and defending access to government information are guided by statements including the January 2004 "Key Principles on Government Information." The full document can be found at:

<http://www.ala.org/ala/washoff/WOissues/governmentinfo/keyprins.htm>

Library Facts for Legislators

@ your library®

Libraries are changing and dynamic places. Librarians are techno-savvy, on the forefront of the information age. In a world that's information rich, they are information smart, and help ensure a society where everyone is information literate.

- A 2002 study conducted for the ALA shows that Americans are using their libraries more than ever; that when the economy went down, library use went up.
- 91% of Americans believe libraries will play an important role in the future, despite the wealth of information available through the Internet. U.S public library cardholders outnumber Amazon customers by almost 5 to 1.

Libraries bring you the world. Libraries are unique. In person. Online. Where else can you have access to nearly anything on the Web or in print as well as personal service and assistance in finding it?

- Holding advanced degrees, librarians are information experts, guiding you to the right information in print or online.
- Reference librarians in the nation's public and academic libraries answer more than 7 million questions weekly. Standing single file, the line of questioners would stretch from Boston to San Francisco.
- For many libraries, miles are meaningless. Libraries today are connected to information and resources around the world. Pittsburgh reaches Paris, Boise accesses Beijing. Today's library technology means that information from around the world is just a few clicks away.

Libraries are places of opportunity. Libraries are part of the American dream. They are a place for education and self-help. And because they offer free access to all, they bring opportunity to all.

- Public libraries are the number one point of online access for people without Internet connections at home, school or work.
- Research shows the highest achieving students attend schools with good library media centers.
- A recent Gates Foundation survey found that Americans are willing to pay higher taxes to support free access to computers and the Internet in public libraries. Most think free access to computers helps narrow the gap between the wealthy and poor in our society.

The future of America is @ your library. We must ensure our libraries have a future with sustained funding and support. Millions of people pass through the library each year, but without adequate support, these resources may not be there when you need them. Everyone loves libraries. But libraries cannot live on love alone.

- In a recent national poll, 63% of Americans supported increased funding for libraries. Right now, the funds Uncle Sam sends our school libraries don't even pay for 1/2 of a book for each child in this country.
- Libraries serve 63 % of the public every year for less than the cost of a hard-cover novel. Your library is worth as much to your community as any bridge, road or utility in town.
- College libraries receive less than three cents of every dollar spent on higher education.
- Americans spend more than three times as much on salty snacks as they do on public libraries.

For more information, contact the ALA Public Information Office at pio@ala.org or 312.280-5041/5044.

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