Report on Washington Office Activities

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I. Federal Budget/Appropriations

FY 2006 Federal Budget and Appropriations

Following the passage of the Congressional Budget Resolution (H.Con.Res. 95), Chairman Jerry Lewis (R-CA) then took the $843 billion allocated to the Appropriations Committee and divided it among the 11 spending bills. The Labor, Health and Human Services, Education and Related Agencies Subcommittee received an allocation of $142.514 billion—that is $924 million higher than the President’s request, but $163 million less than last year’s funding level. This means that there will be even less money available for all the highly popular and vital programs (including LSTA and the Improving Literacy Through School Libraries program) competing for funding within the Labor, Health and Human Services, Education and Related Agencies Subcommittee.

LSTA and Improving Literacy Through School Libraries

The Washington Office sent letters to all the members of the House and Senate Appropriations Subcommittees asking them to support the President’s request for $221 million for LSTA and to increase the appropriation for Improving Literacy Through School Libraries to $100 million. We are asking for that amount to make the program a national formula, with money going to each state, rather than the current grant program.

The Washington Office met with Appropriations staff and made the same request. Senators Reed (D-RI) and Collins (R-ME) and Representatives Grijalva (D-AZ) and Simmons (R-CT) circulated a "Dear Colleague" letter to the chairmen and ranking members of the House and Senate Labor, Health and Human Services, Education and Related Agencies Appropriations Subcommittee. In the House, we finished with 80 signatures, 26 more than last year. In the Senate, thanks to the efforts of National Library Legislative Day participants, 37 Senators signed on in support of our funding requests for LSTA and Improving Literacy Through School Libraries program—4 more than last year.

Vocational and Technical Education

In order to help defray some of the burden libraries across the nation assume when participating in vocational and technical education programs, ALA is working with Members of Congress in both the House and the Senate to insert language in bills reauthorizing the Carl D. Perkins Career and Technical Education Improvement Act.

Both the House and the Senate have passed their own versions of the legislation (S. 250/H.R. 366) that include language that permits the use of funds for “publications.” However, the Senate language is much stronger and permits the use of funds “for leasing, purchasing, upgrading, or adapting instructional equipment, including support for library resources, such as business journals, publications, and other related resources designed to strengthen and support academic and technical skill achievement.”

The ALA Washington Office is waiting for conferees to be appointed to advocate for the stronger Senate language.
Job Training
On March 2nd, the House passed H.R. 27, the Job Training Improvement Act, by a vote of 224-200. ALA supports new language specifying the ability of public libraries to be optional partners within one-stop workforce systems. As partners, public libraries will be better integrated into local workforce systems and have the ability to provide unemployed and underemployed patrons improved access to information related to training services and employment opportunities.

ALA also supports language included as part of the Committee Report for H.R. 27, which clarifies the ability of local workforce boards to contract with local public libraries to carry out intensive services.

On May 18th, the Senate Health, Education, Labor and Pensions (HELP) Committee approved S. 1021, the Workforce Investment Act Amendments of 2005, by voice vote. Under National Leadership Activities of S.1021, which are designed to enhance the quality of adult education and literacy, public libraries are permitted to receive grants, contracts, or cooperative agreements. There is no word yet on when the bill will be considered by the full Senate.

Head Start
Washington Office staff met with the CEO of the National Head Start Association and created a collaboration on the reauthorization of Head Start. Head Start is supporting our efforts to encourage their program leaders to work with local libraries and librarians.

ALSC has been very active on this issue. President Carol Brey-Casiano and ALSC President Gretchen Wronka have written a joint letter to Head Start congratulating them on 40 years of effective work on behalf of children. Gretchen is also helping the Washington Office get a Member of the Congressional Committee to sponsor our library language in the bill.

On May 18th, the House Education and Workforce Committee passed H.R. 2123, School Readiness Act of 2005, by a vote of 48-0. The bill encourages Head Start programs to conduct outreach as well as to coordinate and collaborate with libraries. Further, it includes language that will permit libraries to enter into memoranda of understanding with local Head Start programs — allowing libraries to potentially be reimbursed for any expenditure they make in support of Head Start programs.

The Senate Health, Education, Labor and Pensions Committee approved S. 1107, the Head Start Improvements for School Readiness Act, by voice vote on Wednesday, May 25th. Thanks to the support and influence of Sen. Jack Reed (D-RI), S. 1107 includes numerous references to libraries and language encouraging increased collaboration and coordination with them. Moreover, it includes language permitting the head of the State library administrative agency on the State Advisory Council.
The ALA Washington Office and ALSC are working to add report language to both bills that will clarify the important role libraries play in Head Start programs nationwide.

**Appropriations Committee Reorganization**

On Wednesday, March 2, Senate Appropriations Committee Chairman Thad Cochran (R-MS) persuaded his Senate colleagues to approve a reorganization plan that more closely aligns the panel with its House counterpart by cutting one subcommittee and reshuffling the jurisdictions of many of the 12 that remain.

The plan eliminates the subcommittee that funds veterans' housing and NASA programs, reallocating its jurisdiction to other panels. Unlike the House, the Senate will maintain its District of Columbia and Legislative Branch Subcommittees.

In early February, ALA sent a letter to Chairman Lewis and Chairman Cochran expressing concern about the proposed elimination of the Legislative Branch Subcommittee and the negative effects it could have on the oversight duties of the Appropriations Committee, particularly on such agencies as the Government Printing Office (GPO).

**Other Appropriation Related Issues**


The ALA Washington Office has also sent a letter of support to the House and Senate Labor, Health and Human Services, Education and Related Agencies Subcommittees for the Innovative Education Program Strategies (Title V) at the Department of Education. Title V is a proven program that provides flexible funding to states and localities for innovative educational programs, including support for library services and instructional and media materials. After being cut $98 million last year, the President proposed cutting it an addition $98.4 million in his FY 2006 budget.

II. Telecommunications

**E-rate Taskforce**

E-rate representatives now participate in bi-weekly conference calls with the E-rate task force, the FCC and SLD. This has been a very successful effort. Communicating regularly with representatives across the country has been helpful for building support for essential E-rate legislation.

**E-rate and the FCC**

President Bush has promoted Kevin Martin from a Commissioner to Chairman of the Federal Communication Commission. Martin has a history of being quiet on E-rate, so we are anxious to see how he treats this important program.
In March 2005, the FCC announced that it contracted with the National Academy of Public Administration (NAPA), a nonprofit consulting group, to study the E-rate program to determine if it can be better managed. The study was recommended by the FCC's inspector general, and is expected to take 5-6 months to complete.

As part of the ALA Washington Office's Legislative Day, OITP led a small group of librarians to the FCC for a series of meetings on E-rate. The librarians met with one commissioner, the staff of another, and even spent some time with the Chairman himself. The discussions focused on ways the program could be improved for libraries, possible simplifications, and ways to address waste, fraud and abuse.

E-rate Legislation
Senator Olympia Snowe (R-ME) introduced legislation (S. 241) which would permanently exempt the E-rate program from the Anti-Deficiency Act. This would prevent situations like the one last fall when a change in accounting rules stopped the flow of money to libraries for over four months. This bi-partisan bill currently has 21 co-sponsors. ALA is leading the grassroots advocacy effort among library supporters as part of a larger effort to get this bill passed.

Although Congressional staffers report that there will be several bills introduced that address "telecommunications reform," there have been no bills introduced at this writing. The Capitol Hill timeline has been substantially slowed for reasons that include (but are not limited to) the Senate filibuster, key staff changes in Hill offices and on telecommunications subcommittees in both the House and Senate, and complications with the various corporate stakeholders. In addition to an E-rate reform proposal there will likely be bills addressing digital television, municipal ownership/community broadcast, and broadcast decency. ALA continues to monitor all of these issues very closely.

III. Access to Information

Government Printing Office (GPO)
At ALA's Midwinter Meeting, the Superintendent of Documents told the community that GPO would not ask for more money than it got from Congress for FY 2005 and that it would be only distributing in print those titles on the "Essential Titles" list
http://www.access.gpo.gov/su_docs/fdip/pubs/estitles.html. On March 1, GPO issued a statement on its plans:

"GPO will continue to expand electronic information offerings through the FDLP and will continue to provide for dissemination of tangible products to depository libraries in accordance with existing policy, in full consultation with the library community. GPO will ensure that the necessary resources are applied to these tasks for FY 2005 and 2006
without requiring additional resources beyond those that have been approved and requested.

All ongoing work on improvements to GPO's electronic information dissemination systems—including those projects associated with the authentication, preservation, and establishment of standards for electronic information products—will continue. GPO's Superintendent of Documents will actively seek the guidance and input of the library community in planning for and implementing changes in the dissemination of Government information products in either electronic or tangible formats.

To begin this consultation, the Superintendent will convene multiple sessions on the future of tangible information products in the FDLP at the Spring 2005 meeting of the Depository Library Council to the Public Printer, in Albuquerque, NM (April 17-20). The Superintendent will also conduct a survey of Federal depository libraries nationwide on the same subject. No changes in existing policy or program practice regarding the dissemination of tangible products will be implemented until the results of these efforts have been fully reviewed in consultation with the library community and GPO's oversight committees in Congress.

At the Depository Library Council meeting in Albuquerque, NM in April, GPO agreed to work with the Council to institute a methodology to more accurately ascertain the needs of various kinds of libraries for materials in tangible form.

Right-to-Know
The Washington Office has been actively engaged in promoting the public's "Right to Know" information created and collected by or for the federal government. This concept is an expansion and strengthening of the long-standing principle that government should make this information available. The public's right to information has come under steady pressure and challenge since September 11th, 2001. This year, right-to-know efforts were observed with a series of events that took place during "Sunshine Week," March 13 - March 20. Librarians were specifically invited to participate in the events, and we will work with media organizations to increase our involvement next year. For more information see www.sunshineweek.org.

FOIA Legislation
Senators Cornyn (R-TX) and Leahy (D-VT) have proposed bipartisan legislation to make procedural changes to the law that would improve implementation of the Freedom of Information Act. They have introduced two bills: "Faster FOIA" (S. 589) and the "OPEN Government Act" (S. 394/H.R. 867). Sen. Leahy has also re-introduced the "Restore FOIA Act" (S. 622). There has been no movement yet on the bills.

Less and Less Access to More and More Information
In February 2005, the Nuclear Regulatory Commission proposed a new rule that elaborates controls on unclassified "Safeguards Information" (SGI) that is deemed too
sensitive for public release. "An individual's access to SGI requires both a valid 'need to know' such information and authorization based on an appropriate background investigation," according to the NRC.

As of March 31, the U.S. Air Force "orbital element" (characterizing the orbits of satellites in Earth orbit) database, which has been freely available to the public through NASA's Orbital Information Group for nearly twenty years, will be replaced by Space Track. The new site introduces restrictions on data distribution.

On January 18, in a Final Rule in the Federal Register (Volume 70, Number 11), the Department of Transportation expanded the authority of its senior officials to designate information related to transportation security as "sensitive security information" (SSI) to which public access is prohibited. The authority was extended to the Administrators of all Department of Transportation (DOT) agencies, the General Counsel, and the Director of Intelligence and Security.

In one spot of sunshine, on January 6th, the Department of Homeland Security said, "Never mind," about its policy requiring employees to sign non-disclosure agreements in order to gain access to unclassified information that is marked "for official use only" or "sensitive but unclassified." Among other provisions, these agreements gave the government permission to "conduct inspections at any time or place for the purpose of ensuring compliance." In its January 11th memo transmitting the revised guidelines, the Department said that the "NDA's previously signed by DHS employees...will no longer be valid" and that "DHS will take reasonable steps to retrieve these documents and destroy them."

The Transportation Security Administration (TSA) invoked "Sensitive Security Information" recently. It demanded that airplane pilots avoid flying near nuclear power plants. If pilots pass near the facilities, fighter jets will intercept them and force a landing. TSA then refused, however, to provide locational data for the nuclear plants so the pilots could comply. In an effort to help pilots abide by the order, the Aircraft Owners and Pilots Association spent several days compiling a list of facility locations from public information and posted it on the Internet. TSA demanded that the private group take the information down because the agency believed it could assist terrorists. This publicly-available information, when compiled into one place, is now considered SSI.

Senator Rick Santorum (R-PA) has introduced legislation, "National Weather Services Duties Act of 2005" (S. 786), that would prohibit the NWS from providing, or assisting other entities in providing, a product or service other than: the preparation and issuance of severe weather forecasts and warnings designed for the protection of life and property of the general public; the preparation and issuance of hydrometeorological guidance and core forecast information; the collection and exchange of meteorological, hydrological, climatic, and oceanographic data and information; and the provision of reports, forecasts, warnings — that is or could be provided by the private sector unless — the Secretary of Commerce determines that the private sector is unwilling or unable to provide such product or service; or the United States Government is obligated to provide such product
or service under international aviation agreements to provide meteorological services and exchange meteorological information. Weather service officers or employees or agents of NOAA would not be allowed to impart (directly or indirectly) any weather data, etc.—including forecasts—that "might influence or affect the market value of any product, service, commodity, tradable, or business."

The American Chemical Society is calling on Congress to shut down the National Institute of Health's PubChem, a freely accessible database on small organic molecules. PubChem is an important component of NIH's Molecular Libraries Initiative, which is a key element of the NIH "road map" for medical research. On May 24th, ALA, its sister library associations, and others wrote to Rep. Ralph Regula (D-OH) expressing our enthusiastic support for continuation of PubChem, and rejecting the American Chemical Society (ACS) contention that PubChem will compete with the giant Chemical Abstracts Service (CAS). The letter notes that "not only is it implausible that NIH's modestly funded program would be a substitute for the wide range of resources integrated by CAS, but there appears to be remarkably little overlap in either content or likely users of PubChem and CAS."

IV. Privacy/ PATRIOT Act

Freedom to Read Protection Act
Rep. Bernie Sanders (I-VT) re-introduced the "Freedom to Read Protection Act" (H.R. 1157) on March 6th. The bill has 124 co-sponsors and would exempt libraries and bookstores from the provisions of Section 215 of the PATRIOT Act. Under this legislation, the FBI would still have access to these records with a court-ordered search warrant under other laws. Other provisions of law authorizing physical searches require some type of reasonable cause. H.R. 1157 also calls for public reporting to determine how provisions of the USA PATRIOT Act are being implemented in order to better assess civil liberties implications.

PATRIOT Study
With grants from the Knight and Ford Foundations, ALA contracted with Abby Goodrum, Syracuse University, to conduct two studies on the PATRIOT Act. The first is an online survey of public and academic libraries to determine the level and type of law enforcement activity going on in libraries. The second study consists of guided interviews with library staff and library patrons to discover any changes in library policies after September 11 or any changes in library uses. The study aims to determine if the PATRIOT Act or related laws have had a "chilling effect" on library use.

The researchers working on OITP's behalf have completed data collection on the survey and structured interviews that comprise the study of law enforcement activity in libraries. They are currently completing data analysis; study results will be announced at Annual at a press conference and as part of the Saturday morning Washington Office Update.
Library, Bookseller, and Personal Records Privacy Act
Sen. Russ Feingold (D-WI) introduced the Library, Bookseller, and Personal Records Privacy Act (S.317) on February 8. The legislation has ten co-sponsors. The bill would apply pre-PATRIOT restrictions on the FBI's use of FISA Court orders (Sec. 215) by requiring that applications for such orders "shall specify that there are specific and articulable facts giving reason to believe that the person to whom the records pertain is a foreign power or an agent of a foreign power' and that the FISA Court must "find" that "there are specific and articulable facts giving reason to believe that the person to whom the records pertain is a foreign power or an agent of a foreign power."

The bill also contains privacy protections on government access to information on computer users at booksellers and libraries in regard to Sec. 505 of the PATRIOT Act. This section permits the FBI to generate administrative subpoenas (National Security Letters) compelling production of transactional records of computer use. S. 317 amends the PATRIOT Act to require that, when a request under this section is made to a bookseller or library, the certification shall specify that there are specific and articulable facts giving reason to believe that the person or entity to whom the records pertain is a foreign power or an agent of a foreign power.

Electronic Security, Privacy & You (E-SPY)
There have been a number of significant developments in the last few weeks related to privacy.

The House and Senate Judiciary and Intelligence Committees have each held hearings on reauthorization of those provisions of the PATRIOT Act that sunset this year. The Senate Intelligence Committee continues to meet in secret to markup a proposed expansion of the USA PATRIOT Act.

The SAFE Act was introduced on April 6th. It is a narrowly-tailored bi-partisan bill that would revise several provisions of the USA PATRIOT Act. It would retain all of the expanded authorities created by the PATRIOT Act but place important checks and balances on these authorities. Among its provisions are two of particular interest to the library community:

Section 4. Privacy Protections For Library, Bookseller, and Other Personal Records
Under Foreign Intelligence Surveillance Act Of 1978. (Pertaining to Section 215 of the USA PATRIOT Act): The government would be able to obtain records from any entity -- including libraries, but only if they could show they had reason to believe the person whose records they seek is an agent of a foreign power. As is required for grand jury subpoenas, the SAFE Act would give the recipient of a FISA order the right to quash the order, require a showing by the government that a gag order is necessary, place a time limit on the gag order (which could be extended by the court), and give a recipient the right to challenge the gag order. The SAFE Act would require notice to the target of a FISA order if the government seeks to use the records obtained from the order in a
subsequent proceeding, and give the target an opportunity to challenge the use of those records. Such notice and challenge provisions are required for other FISA authorities (wiretaps, physical searches, and pen registers and trap and trace devices).

Section 5. Procedural Protections For National Security Letters (Pertaining to Section 505 of the USA PATRIOT Act): The SAFE Act would restore the "agent of a foreign power standard" for using an NSL – the government would have to show they had reason to believe the person whose records they seek is an agent of a foreign power. As is the case for grand jury subpoenas, the SAFE Act would give the recipient of an NSL the right to challenge the letter and the nondisclosure requirement, and place a time limit on the nondisclosure requirement (which could be extended by the court). As is the case for FISA authorities, the SAFE Act would give notice to the target of an NSL if the government seeks to use the records obtained from the NSL in a subsequent proceeding, and give the target an opportunity to challenge the use of those records.

The SAFE Act would also require increased public reporting. It has 37 co-sponsors in the House and 12 in the Senate. Representative Sanders is an original co-sponsor.

COPPA
ALA filed comments before the FTC on a proposed rule change on the Children's Online Privacy Protection Rule (the implemented form of COPPA). COPPA provides protection for children in situations where web sites request personal information from them. This recent proposed rule change was to make the sliding scale approach to verifying parental consent permanent. Our comments support this change. View them online at: http://www.ftc.gov/os/comments/COPPA%20Rule%20Ammend/514511-00013.pdf

Toward a National ID
The supplemental appropriations bill for troops in Afghanistan and Iraq that passed in Congress in April includes the REAL ID Act of 2005 (H.R. 418). Title II, Section 202 (Titled: "Minimum document requirements and issuance standards for federal recognition") repeals the driver’s license provision in the just-passed (November, 2004) intelligence reform law. The REAL ID Act outlines and imposes federal standards for issuance of drivers’ licenses and IDs; if states don’t comply, their drivers’ licenses and IDs can’t be accepted as proof of identity by federal agencies (to get on a plane, for instance). It makes proof of legal immigration status a requirement for obtaining a driver’s license or state-issued ID. Driver’s licenses are commonly used by the public as a means of identification for obtaining a library card and, in some states, public bodies have already been prohibited from accepting non-U.S. identification cards for receipt of public services. Non-US persons (citizens and resident aliens) could be precluded from access to public libraries.

Title II of the bill was opposed by the National Governors Association, the National Council of State Legislators, and the Council of State Governments, among others.
RFID
On February 25, OITP and OIF co-sponsored with the Book Industry Study Group (BISG), a meeting on RFID and Privacy at the University of California-Berkeley’s Boalt Law School. Convened by Deirdre Mulligan, Director of the Samuelson Law, Technology & Public Policy Clinic at Boalt, the meeting brought together approximately 20 librarians technologists, vendors, printers, publishers' staff, graduate students, and ALA representatives. The meeting's goal was to help identify issues and needs for information on the part of libraries considering the adoption of RFID in a way that protects privacy.

Civil Liberties and Privacy Oversight Board
The Civil Liberties and Privacy Oversight Board within the Executive Office of the President created by the Intelligence Reform and Terrorism Prevention Act of 2004 has not been appointed. There is speculation that the Administration considers it unnecessary as it had already established the President's Board on Safeguarding Americans' Civil Liberties. The board, we understand, housed in the Justice Department and led by the Deputy Attorney General James Comey and the Department of Homeland Security's Under Secretary for Border and Transportation Security Asa Hutchinson. Other members include officials from the Central Intelligence Agency, the National Security Agency, the Terrorist Threat Integration Center and the Pentagon, along with privacy officials such as Homeland Security's chief privacy officer, Nuala O'Connor Kelly.

Rep. Carolyn Maloney (D-NY) has introduced a bill (H.R. 1310) to remove the Board created by the Intelligence Reform act from the Executive Office of the President and make it an independent agency within the Executive branch.

Privacy Officers
Rep. Tom Davis (R-VA) has introduced a bill (H. R. 1271) to repeal the provision, in the Section 522 of the Transportation, Treasury, Independent Agencies, and General Government Appropriations Act, 2005, that required every agency to have a chief privacy officer.

V. Copyright

Copyright Legislation

Digital Media Consumers Rights Act of 2005 (H.R. 1201)
Congressmen Rick Boucher (D-VA), John Doolittle (R-CA) and Joe Barton (R-TX) introduced a fair use bill, H.R. 1201, the "Digital Media Consumers Rights Act of 2005." The bill, introduced in March, is a new version of H.R. 107, which was introduced in the 108th Congress and which was the subject of a day-long hearing in May, 2004.

ALA is urging Representatives to co-sponsor the bill, which would:
- Amend Section 1201 of the Digital Millennium Copyright Act (DMCA) to allow bypassing a technological lock that controls access to and use of a copyrighted work - if the circumvention does not result in infringement of the work.
- Codify the U.S. Supreme Court's 1984 ruling that a copying technology (in that case, the videocassette recorder) is permissible under the Copyright Act so long as it can be used for non-infringing as well as infringing purposes.
- Broaden allowances for anti-circumvention scientific research (for example, to 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 when they buy a CD what device it can be played on.

**S. 167, Family and Entertainment Copyright Act of 2005**
On April 19th, the House of Representatives passed S. 167, a copyright bill that had been approved by the Senate on February 1st. The President signed the bill as Public Law No: 109-9 on April 27th. Libraries supported passage of this bill, which:

- Criminalizes the unauthorized recording of motion pictures in a movie theatre.
- Makes clear that technology that allows consumers to skip over offensive material in motion pictures does not infringe copyright.
- Reauthorizes the National Film Preservation Board and the National Film Preservation Foundation, and will help ensure the preservation of our national film heritage.
- Amends (in Title IV of the bill, the "Preservation of Orphan Works Act") Section 108 of the Copyright Act to allow libraries to engage in preservation, scholarship and research of musical works, motion pictures, and other audiovisual works during the last 20 years of their copyright term.

**"Public Domain Enhancement Act" - H.R. 2408**
Rep. Zoe Lofgren (D-CA) introduced H.R. 2408 on May 17th to amend the Copyright Act to allow abandoned copyrighted works to enter the public domain after 50 years. The bill provides a simple mechanism to help ensure that abandoned copyrighted works pass into the public domain.

**Copyright Office Inquiry on Orphan Works**
The library community on May 9th filed reply comments with the U.S. Copyright Office in further support of a proposal to change copyright law to address issues surrounding orphan works. Orphan works are those copyrighted works whose owners are difficult or even impossible to find. The five major U.S. library associations filed as the Library Copyright Alliance, the new name for our longtime coalition on copyright matters.

The Copyright Office issued a Notice of Inquiry on January 26, 2005, soliciting advice on the problem of orphan works. Many organizations have taken advantage of this important opportunity to address the problem of using works still protected under the ever lengthening copyright but whose owners cannot be identified.
The library associations worked with many in the non-profit community including the Glushko-Samuelson Intellectual Property Clinic (at American University's Washington College of Law), the College Art Association (CAA), the American Historical Association, cultural institutions, and public interest groups in developing a "legislative fix" to the Copyright Act to address the issues associated with orphan works. That proposal was put forward in the comments submitted by the Glushko-Samuelson Intellectual Property Clinic.

Approximately 600 comments were filed by the initial March deadline. Those comments and the 165 reply comments are available on the Library of Congress Copyright Office website at: http://www.copyright.gov/orphan/index.html.

Open access and publishing mergers
ALA joined last year with ARL, AALL, MLA, ACRL, SLA and SPARC to form a coalition called the Information Access Alliance, whose purpose is to advocate for greater scrutiny of proposed mergers of publishing firms. The coalition sponsored a day-long seminar to address and publicize these issues at Georgetown Law Center in February. http://www.informationaccess.org/ats/symposium.html

Library of Congress Section 108 Study Group
The Library of Congress has convened a "Section 108 Study Group" to prepare findings and make recommendations to the Librarian of Congress by mid-2006 for possible alterations to the law that reflect current technologies. The group, named after the section of the U.S. Copyright Act that provides limited exceptions for libraries and archives, held its inaugural meeting at the Library of Congress on April 14-15. The U.S. Copyright Office will then hold public hearings before submitting recommendations to the U.S. Congress.

The Section 108 Study Group is co-chaired by Lolly Gasaway, director of the law library and professor of law at the University of North Carolina, and Richard Rudick, former vice president and general counsel of John Wiley and Sons. The 17 other members are from various interests and sectors and bring a broad range of perspectives to the group. The Study Group was limited to 19 members to ensure efficiency and to meet the mid-2006 deadline for making recommendations. The Study Group plans on holding sessions outside of its regular meetings for the public and press, and a Web site will be launched shortly to provide information on the work of this group to the public. Miriam Nisbet is a member of the Study Group.

Copyright Court Cases

ALA v. FCC
ALA v. FCC is a case in the U.S. Court of Appeals for the D.C. Circuit in which libraries and other public interest and consumer groups have successfully challenged the Federal Communications Commission. On May 9th, the court ruled in our favor, striking down the FCC’s "broadcast flag" rule governing digital television content.
Last year the FCC issued broadcast flag copyright protection rules that were to go into effect in July, 2005. The order required that all digital electronic devices, such as television sets and personal computers, include code (known as the "broadcast flag") that accompanies DTV signals to prevent redistribution of the digital content over the Internet. The FCC ruling marked another step toward giving content providers extensive control over what users can do with electronic content.

The appeals court heard oral arguments in the case in February. On March 15th, the court issued an order directing the library organizations to file affidavits by March 29th to answer questions about the standing of the organizations to bring the suit. The court noted that though the FCC had not challenged the standing of our groups, the Motion Picture Association of America had done so, and the court needed additional information in order to resolve the issue.

On March 29th, we filed affidavits from a number of individuals, including librarians at Vanderbilt University, North Carolina State University, University of California-Los Angeles, and American University, and an ALA member who teaches at the American University. In each instance they explained and illustrated how the broadcast flag, if it goes into effect in July 2005, would hamper their use of broadcast materials for teaching and scholarship.

On May 6th, the Court of Appeals issued a unanimous decision striking down the FCC’s rule. The court relied in large part on a declaration filed by Peggy Hoon, Scholarly Communication Librarian at N.C. State University, who explained the adverse impact that the flag would have on distance education activities at NCSU. We expect that there will be attempts by the entertainment industry to promote the introduction of legislation to overturn the court’s decision and we will be meeting with congressional staff to educate them on the issues.

**MGM Studios, Inc. v. Grokster, Ltd.**

On March 1st, library associations joined an amici curiae (friends of the court) brief with the American Civil Liberties Union, the Internet Archive and Project Gutenberg, in the case MGM Studios, Inc. v. Grokster, Ltd. The U.S. Supreme Court heard oral arguments in the case on March 29th. All the briefs filed in the case, which were numerous, can be found at [http://www.eff.org/IP/P2P/MGM_v_Grokster/](http://www.eff.org/IP/P2P/MGM_v_Grokster/).

The ACLU took the lead in writing the brief in support of the companies Grokster and Morpheus, which offer peer-to-peer file-trading software. The record companies and movie studios sued the companies for contributory copyright infringement and vicarious liability. Both the federal district and the appeals court concluded that Grokster and Morpheus could not be held secondarily liable for the infringements of users of their software. The courts relied on the 1984 ruling of the U.S. Supreme Court in which the Supreme Court held that the maker of the Betamax video cassette recorder (the Sony Corporation) should not be held liable for copyright infringement simply because the device could be used for infringing purposes. The district court in the current case found
that it was undisputed that there are substantial non-infringing uses for the file-sharing software, such as to share public domain materials and government documents.

During the Supreme Court argument, Justice Stephen G. Breyer noted that there are "excellent uses" of file-sharing technology, including by libraries and other institutions that transfer documents that are not copyrighted. The Court's opinion is expected by the end of June.

_Faulkner v. National Geographic Society_

The U.S. Court of Appeals for the Second Circuit on March 4th issued an opinion in _Faulkner v. National Geographic Society_, ruling in favor of the NGS. The case concerns whether publishers of collective works and others who may choose to legitimately digitize them can re-publish those works in a digital format without seeking permission of authors or other contributors. Several freelance photographers, as well as some writers, sued the National Geographic Society (NGS) for copyright infringement because some of their works are included in a CD-ROM produced by the NGS. The CD-ROM contains photo-scanned images of the entire print version of the National Geographic magazine from 1888 to 1996 in a searchable format. A lower court found that the publication on CD-ROM is permissible under the Copyright Act. The library and archives associations filed an amici curiae (friends of the court) brief asking the U.S. Court of Appeals for the Second Circuit to affirm that decision (which it now has). It is likely that the case will be appealed to the U.S. Supreme Court.

International Copyright Issues

_World Intellectual Property Organization Treaties_

In September 2004, ALA joined several hundred other non-governmental organizations and individuals in signing the Geneva Declaration on the Future of the World Intellectual Property Organization. The declaration demanded changes to the United Nations' approach to intellectual property laws, saying that current rules are unfair to developing countries. In February, Miriam Nisbet, for ALA, joined AALL and IFLA in representing the library community at a two-day meeting in Geneva to discuss a possible WIPO "Access to Knowledge" treaty. Library issues, including library exceptions and limitations in copyright law and distance education, were among those explored at the conference. (Although WIPO has agreed to consider proposals for correcting what many perceive as imbalanced intellectual property protection regimes, it is unclear at this time how willing WIPO is to address the "development agenda" in a meaningful way.)

In May, the Office of International Relations worked with the Washington Office to file an application for permanent observer status with WIPO for the Library Copyright Alliance -- the coalition of the five library associations to work on copyright matters. WIPO will act on the application in September.

_UNESCO_

We also began working last fall, with the Institute of Museum and Library Services, to provide our views to the U.S. Department of State on a proposed UNESCO convention
on cultural diversity. Libraries as well as other parts of the U.S. cultural community should benefit from an international treaty that is intended to promote the importance of culture and art in realizing "human rights and fundamental freedoms" and to enhance public access to diverse cultural expressions. Our concern, however, is to ensure that the convention does not become yet another trade treaty promoting stricter (and unbalanced) intellectual property laws.

Also in February, under the auspices of IFLA, we represented the library community at an "experts meeting" at UNESCO, convened to work on a draft "convention on the protection of the diversity of cultural contents and artistic expressions." (IFLA is an accredited non-governmental organization (NGO) with UNESCO; ALA is not yet accredited.) There was another experts meeting on the draft convention from May 25th to June 4th which was attended by IMLS staff.

Libraries' message to UNESCO is that we are natural partners for UNESCO's efforts in the development and exchange of cultural resources. Our concern is that the convention not become yet another trade treaty promoting stricter (and unbalanced) intellectual property laws.

Hague Convention

Work is continuing on the draft Hague Convention on Exclusive Choice of Courts Agreements. The draft convention would make "choice of court" terms in contracts (including those governing copyrighted materials, such as software) enforceable if the parties resort to the courts to settle a legal dispute. The convention also would ensure that judgments rendered by the courts designated in such agreements are enforced by other courts. On March 25th and May 9th, Miriam Nisbet (who represents ALA as a member of the U.S. Delegation to The Hague Conference) participated in meetings convened by the U.S. Department of State to solicit views on the current draft convention, particularly with regard to intellectual property issues.

There is a Diplomatic Conference scheduled in The Hague from June 14th -30th, but there are still many issues to work out before then. Among the more contentious issues is whether non-negotiated contracts (such as shrink-wrap and click-on agreements) will be excluded from the scope of the convention. Libraries have consistently said that we do not want the convention to apply to non-negotiated contracts and we are continuing to work with other like-minded organizations to try to achieve that result.

Library Copyright Alliance

OITP sponsored a one and half day retreat with the library lobbyists (formerly the Shared Legal Capability consisting of the 5 major library associations-MLA, SLA, AALL, ARL, and ALA) and ALA policy specialists who work on copyright. At the retreat, the group identified short term priorities (the pending Supreme Court Grokster decision, WIPO and new partnerships with international library groups including LIBRA, the request for comments from the US Copyright Office on orphan works, and the upcoming Copyright Office study of Section 108 of the copyright law that deals with reproductions by libraries
and archives). The group also considered its successes and failures over the last several years and developed new criteria and outcome measures to determine success.

One topic that generated a lot of discussion was digitization, partly brought on by the recent announcement of large scale digitization activities of Google and four major research libraries.

The group established a new name for itself - the Library Copyright Alliance (LCA). This name will help the lobbyists distinguish themselves on the Hill and is more descriptive than the “shared legal capability” moniker previously used. The Alliance will continue to share resources to support lobbying activities, primarily collecting group funds for legal counsel. New communication modes for the LCA to better communicate with the library community are underway.

**Fair Use Summit**
OITP co-sponsored with Columbia University a summit on the current state of fair use and other exceptions and limitations of the US copyright law and international intellectual property treaties. Fifty individuals representing libraries around the world were invited to participate. Four papers were commissioned to inform the discussions. These papers and key objectives generated at the meeting are available at http://correctingcourse.columbia.edu/program.html. The MacArthur Foundation provided support for the meeting, masterfully hosted by Jim Neal, Dean of Libraries at Columbia.

**Copyright Education**

**Copyright Education Focus Groups**
OITP hired the consultant group Belden Russonelle and Stewart to hold focus groups with school teachers, school librarians, high school seniors, and college freshman to better gauge their understanding of copyright law. Focus groups were held in January. The final report is complete and has been shared with AASL and is available to anyone who is interested.

Some key findings:

- Students will respond to copyright education and messaging that is framed in terms of "rights" not just rules about infringement. They "tune out" when they hear a lecture that lists everything that they cannot do.

- Brief messages are better - educational posters in the library or TV spots on MTV like the "vote or die" campaign.

- Teachers and librarians accept that ALA should play an education role that promotes and protects rights regarding copyright law. Mention of Constitutional underpinnings of copyright law were particularly well-received and a surprise to many.
• Teachers, librarians and students often confuse plagiarism with copyright infringement.

• Education of librarians and teachers is just as important as student education.

• Librarians and teachers feel that copyright education should be part of the curriculum, preferably before high school.

• Teachers and librarians have no more knowledge of the copyright law than does the general public previously tested by the consulting firm. Teachers and librarians were only able to see copyright as a way to protect copyright holders and encourage creation.

• Teachers and librarians would respond favorably to short educational pieces like bookmarks or small brochures.

“Copyright Issues and the Academic Library”
VII. Grassroots Efforts

Legislative Action Center (March 2005 to May 2005)
A total of 3,424 messages were emailed and faxed by members to Congress over the past six months. The most popular messages sent to Congress were:

1) Support Funding for America’s Libraries
2) Strengthen Head Start
3) Do Not Expand the Patriot Act
4) Drop the Proposed FOIA Exemption
5) Protect the Balance in Copyright Law

National Library Legislative Day
National Library Legislative Day (NLLD) 2005 was a great success. Over 480 library supporters from across the nation participated in briefing day and congressional visits on Capitol Hill. At least 40 library supporters were first time participants. The theme for this year’s event was “Fund America’s Libraries.” Additionally, as many as 200 library supporters participated in “Virtual Federal Library Legislative Day,” a new annual event designed to allow members who cannot come to Washington to participate in NLLD to do so from their home states. Preparations have already begun for National Library...
VIII. Meetings/ Events

Blogging, Journalism and Credibility Conference
OITP co-hosted the conference "Blogging, Journalism and Credibility: Battleground and Common Ground" with Harvard's Berkman Center for Internet and Society and Shorenstein Center on the Press, Politics and Public Policy in January. The conference brought together journalists and bloggers to explore the topic of credibility in both arenas. Attendees included a blogger from the library world who reminded participants repeatedly of the key role of the user in the information transaction.

The full conference report is linked from the OITP Web site - http://www.ala.org/oitp.

Madison & Cooke/Madison Awards
The 2005 James Madison Award was presented on March 16 to the family of Richard M. Schmidt, Jr. The award is a fitting tribute to the memory of a man who devoted a long and illustrious career to the pursuit of open government and a free press, both of which he considered integral to a flourishing democracy. He was persistent in resisting the erosion of the First Amendment and in refusing to let others accept those erosions. Indeed, some in the First Amendment community have called him their own personal James Madison. Schmidt's son accepted the award on his father's behalf. His remarks, which touched on the great value Richard Schmidt put on libraries and the American Library Association, are attached to this report.

The inaugural Eileen Cooke State and Local Madison Award was presented to the Minnesota Coalition on Government Information. The award is named for Eileen Cooke, former director of the ALA Washington Office and an extraordinary leader in building grassroots awareness of core library issues including access to information. Cooke was a tireless advocate for the public's right to know and a mentor to many librarians and trustees.

Library Business Alliance
The LBA met in March and ten companies sent officials to Capitol Hill with the following library messages:

- Support the President's request of $221 million for LSTA
- Increase Improving Literacy Through School Libraries funding to $100 million, so that this can be a formula program with money going to each of the 50 states, distributed by formula based on number of population living in poverty.
- Support Senator Snowe's permanent fix for the E Rate program, S241.

Internet Credibility and the User Symposium
The Department of Homeland Security approached ALA about libraries participating in "September is Preparedness Month." We have joined a national coalition of over 80 organizations to promote this effort. Attendees took part in a wide-ranging discussion related to the topic and possible solutions. Discussions covered three broad areas: user skills and information literacy, technological tools for credibility assessment, and the role
of institutional intermediaries such as libraries. They also responded to a number of
commissioned papers. Symposium papers are available at:
http://staff.washington.edu/kruns/credibility/index.htm

IX. Miscellaneous

New Property
ALA purchased the 1615 New Hampshire Avenue property on February 15, 2005. Since
then, the layout and design of the new office space has been completed, engineering and
electrical consultants have reviewed the property and prepared reports for our architects.
The build-out construction for the Washington Office’s new location is continuing to go
well and the construction completion target date of July 31st, 2005 is still a good date
barring any unforeseen delays. The new furniture ordered for the office has already been
shipped and will be available when the building is ready for occupancy. All vendors
associated with providing build-out services for the new space have been selected, such
as the voice/data cabling company, telephone company, and security company.

IMLS Advisory Board
The Senate confirmed Kim Wang for the IMLS Advisory Board. Ms. Wang has worked
for the Los Angeles County Law Library, University of Southern California Law Library,
and Hughes Aircraft Technical Library. She presently sits on the Cultural Arts
Commission for the city of Torrance, California. She was appointed by former Governor
Pete Wilson to serve on the California Library Services Board (which was renamed
Library of California) and was reappointed by him. For the past 20 years, Wang has
worked as a property manager and real estate broker. She is a graduate of the University
of Colorado with a history major; she received her master of library science degree from
the University of California, Berkeley. (Term expires December 6th, 2004)