

CALL Public Affairs Committee
Report on Significant Developments
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FEDERAL

Senate Resolution 54 – Internet Access to Certain Congressional Document

Senate Resolution 54 was introduced by Senators McCain, Leahy, Lieberman, and Harkin on February 11, 2003. The resolution mandates and provides a mechanism for making certain Congressional documents available to the public through the Internet. Reports and Issue Briefs by the Congressional Research Service (CRS) are to be included in a database to be developed by the Sergeant-at-Arms of the Senate, and made available to the public only through Senators' and Senate Committees' web pages. Senators and Committees could choose which documents to make available. Excluded from the database are: information determined to be confidential by the Director of the CRS or the heads of Federal departments or agencies that provided the information to the CRS; and documents that are the products of an individual, office, or committee research request, except for CRS Issue Briefs and Reports that are available to Members of Congress through the CRS website. In addition, S.Res. 54 provides that certain public records of the Senate, including committee information, documents and proceedings, reports and official transcripts of committee meetings that are open to the public are to be provided to the public by the Secretary of the Senate's Office of Public Records through the Senate website.

AALL is one of more than thirty organizations that signed a letter endorsing S.Res. 54. A copy of the resolution and the letter may be found at: <http://www.fas.org/sgp/congress/2003/sr54.html>

The AALL Washington Affairs Office is working with the sponsors' staff to develop amending language that "public access" be "permanent." More information should be available soon from the AALL Washington Affairs Office. In the meantime, members are encouraged to call their Senators to urge them to cosponsor S.Res. 54 and to make these publications permanently available to the public through the Internet.

(contact: Spencer Simons)

The Digital Media Consumers' Rights Act of 2003 (the DMCRA or "Boucher Bill")

H.R. 107 was introduced on January 7 by Rep. Boucher of Virginia, a strong supporter of fair use and consumer rights. The bill would empower the Federal Trade Commission to ensure adequate labeling on non-standard "copy protected compacts discs," which are causing confusion and increased burdens on consumers. The bill also would amend Section 1201 of the Digital Millennium Copyright Act (DMCA) to "restore the historic balance in U.S. copyright law" that fair use provisions formerly ensured. An AALL Washington Affairs Office action alert asks members of the Association to write to their Member of Congress to urge that the Member co-sponsor the Boucher bill. The bill deserves our active support. (contact: Keith Ann Stiverson)

Update: USA Patriot Act Litigation

On August 21, 2002, the American Booksellers Foundation for Free Expression, the ACLU and the Electronic Privacy Information Center joined in a FOIA request to learn how many subpoenas have been issued to libraries, bookstores and newspapers under the Act. The Justice Department granted expedited status to the request, but had not responded as of October 24, 2002. Suit was filed. On

November 26, U.S. District Judge Ellen Huvelle ordered the Justice Department to complete its processing of the FOIA request by January 15. On that date, the Department of Justice released over 200 pages of material in response to the FOIA request; however, according to ACLU staff attorney Jameel Jaffer, "...none of those pages addresses our concerns about the new surveillance powers. Much of the material is so heavily redacted that it is meaningless." ("ACLU Presses for Full Disclosure on Government's New Snoop Powers," American Civil Liberties Union, <http://www.aclu.org/news/NewsPrint.cfm?ID=1638&c+206>, accessed January 17, 2003.) Many documents were withheld altogether because of national security concerns and the FBI withheld others because it could not access its own computer files. According to a Gannett News Service article of January 27, 2003, the ACLU is considering whether to press on with the lawsuit (Roth, Susan, "Civil libertarians fear Patriot Act, but some say changes needed," Gannett News Service; McLean; Jan. 27, 2003).

The Proposed Domestic Security Enhancement Act of 2003

Early in February, a draft dated January 9, 2003 of a proposed Domestic Security Enhancement Act of 2003 was leaked to the Center for Public Integrity, which immediately posted the draft on its website, www.publicintegrity.org. This Act is designed to expand the powers for government surveillance given to the Department of Justice under the USA PATRIOT Act. The DOJ's new proposal contains some very troubling provisions, including:

Permission for the government to strip U.S. citizenship from any United States person who joins, serves in or provides material support to a terrorist organization. Sec. 501.

Permission for Attorney General or the Secretary of Defense to collect and use DNA samples from terrorists or suspected terrorists. A "suspected terrorist" may be a person whom the Attorney General or the Secretary of Defense has reason to believe is a member of a terrorist organization. Sec. 302-304.

Providing a penalty for violation, inter alia, of the "gag order" contained in Sec. 215 of the PATRIOT Act with respect to the execution of FISA orders requiring the production of business records, documents or other tangible things. Violation of the non-disclosure provisions is a misdemeanor punishable by up to a year of imprisonment, unless the unlawful disclosure was committed with the intent to obstruct the terrorism or espionage investigation, in which case the offense would be punishable by up to 5 years in prison. Sec. 129.

We are fortunate that this proposed Act has come to light now, providing the opportunity for full public discussion and dialogue prior to its introduction and consideration in Congress. (contact: Margaret Schilt)

STATE LAW

UCITA

The Uniform Computer Information Transactions Act (UCITA) was dealt another blow at the recent ABA meeting in Seattle. The National Conference of Commissioners on Uniform State Laws (NCCUSL) had asked the ABA House of Delegates to pass a resolution indicating their approval of UCITA, but NCCUSL then withdrew the resolution before it could be considered. The Business Law, Intellectual Property Law, Litigation, and Tort Trial & Insurance Practice sections all had voted to defer the resolution indefinitely or to reject it. Then members of the ABA House of Delegates indicated that the resolution was not likely to be passed. Thanks to the CALL Board for their letters to the Illinois members of the ABA House of Delegates – those letters made a difference. The CALL Public Affairs Committee will continue to monitor developments on UCITA, although we have found no indication that the proposed uniform law is likely to be considered again in Illinois. (contact: Keith Ann Stiverson)

ILLINOIS Online Availability of the Illinois Administrative Code Status Report

The Illinois Administrative Code was originally required to be made fully available online by the end of the 92nd General Assembly. It was the responsibility of the Illinois Legislature's Joint Commission on Administrative Rules (JCAR) to place the full Code online. JCAR indicated that they have a partial list of the Code available at www.legis.state.il.us, but it has not yet appeared. The Administrator of the Index Department noted that the JCAR version does not and will not show emergency rulings despite

recommendations from the Index Department to include emergency rulings.

The Index Department has decided that they will build an official web-based version of the full Code (with emergency rulings). They have developed the database for this project, and plan to launch the Code title by title onto the Internet. The Administrator of the Index Department anticipates that Title 1 will be available within the next 2-3 weeks. All other titles will be added one-by-one as quickly as possible after this time.

Thus, when JCAR and the Index Departments Codes are complete, there will be two versions of the Administrative Code available to the public on the Internet. The Administrator of the Index Department stated that their version would be the one held up in a court of law as the official version. This could, of course, create some confusion for our users and the users of the general public. The CALL Public Affairs Committee will continue to monitor this perplexing situation. (contact: Joanne C. Kiley)

AALL Permanent Public Access Project

The 50-state survey on permanent public access (PPA) will be published soon. The Illinois portion of the survey indicates that our state is in the forefront of trying to solve PPA issues, although problems remain (most notably the publication of important legal materials, such as the Illinois Administrative Code). The Public Affairs Committee will send an announcement about the publication when it is available. Our former colleague Richard Matthews is largely responsible for the success of the entire project, and deserves our thanks. (contact: Keith Ann Stiverson)

Amendment to State Records Act

Public Act 92-0866 of the Illinois General Assembly, which was passed during the special session held in November, amended the State Records Act to add a statement of policy about the importance of preserving public records. The definition of "record" also was amended, and now includes 'digitized electronic material' and 'databases' as well as more traditional public records. The new law strengthens authority for the preservation of government publications in all formats. (contact: Keith Ann Stiverson)

County Law Library Filing Fee – House Bill 475

Those who have been following this issue will recall that bills to increase the county law library fees for civil cases have been introduced in the previous two sessions of the Illinois Legislature, but died in committee each time. These fees are the primary source of funding for county law libraries. The effort has been renewed this year, with the introduction of House Bill 475 by Rep. Mark H. Beaubien, Jr. (R – 52nd Dist.). The bill would amend the Counties Code (55 ILCS 5/5-39001), to provide that a county board may authorize the clerk of the circuit court to charge litigants in civil cases a fee, not to exceed \$19. This maximum would be increased by \$1 per year from 2004 through 2008. The bill has been referred to the House Committee on the Judiciary I-Civil Law Committee, with a hearing scheduled for February 20. (Contact: Spencer Simons)

Public Access to Government Information (PAGI) Award Nomination

The State of Illinois was nominated by CALL to receive the AALL PAGI Award. The nomination was made largely as a result of the State's leadership in joining with the State Library of Ohio and UIUC to get a grant from the federal Institute of Museum & Library Services (IMLS). The grant was made to develop software that helps to identify online file changes more efficiently, thereby improving the ability to properly archive government files and Web sites. It is expected that the software will be adopted by other states. The new software will debut later this spring. (contact: Keith Ann Stiverson)