

**CALL Public Affairs Committee
Report on Significant Developments
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FEDERAL

Proposed Legislation – 108th Congress

Several bills have been introduced in the 108th Congress having to do with the scope of the government's ability under the USA PATRIOT Act and other applicable statutes to investigate terrorism and possible terrorists within the United States. The most important of these for libraries are:

The Freedom to Read Protection Act of 2003

Introduced by Representative Bernard Sanders of Vermont on March 3, 2003, the Freedom to Read Protection Act of 2003 (H.R. 1157) would amend the Foreign Intelligence Surveillance Act (FISA) to provide that no application could be made under Section 501 (the provision added by the USA PATRIOT Act that permits the FBI to seize business records) "...with either the purpose or effect of searching for, or seizing from, a bookseller or library documentary materials that contain personally identifiable information concerning a patron of a bookseller or library." The Act would also expand the reporting requirements under FISA to require disclosure every six months of the number of applications made and orders granted, modified or denied under Section 501. The bill was referred to the House Committees on the Judiciary and on Intelligence.

The Domestic Surveillance Oversight Act of 2003

Senator Patrick Leahy, also of Vermont, introduced S. 436 on February 25, 2003. S. 436 would amend FISA to require that the DOJ issue a public annual report on the number of U.S. persons targeted and the number of times the Attorney General has authorized that information collected pursuant to a FISA order be used in a criminal proceeding and to require that the semiannual report the FBI makes to the intelligence and judiciary committees include a separate category for requests made to public libraries or institutions of higher education. The bill has been referred to the Senate Committee on the Judiciary. In his remarks upon introduction of the bill, Senator Leahy referred to a report entitled "FBI Oversight in the 107th Congress by the Senate Judiciary Committee: FISA Implementation Failures," stating that it "...sets forth our bipartisan disappointment

with the DOJ and FBI's non-responsiveness to our oversight efforts and the resulting necessity for better oversight tools, such as the bill we introduce today." That report is available online at http://www.fas.org/irp/congress/2003_rpt/fisa.html .

Orrin Hatch proposal to repeal the sunset provisions of the USA PATRIOT Act.

Several provisions of the USA PATRIOT Act will expire unless extended by Congress on or before December 31, 2005. This sunset clause was frequently cited in the legislative history and subsequent public debate about the USA PATRIOT Act as a safeguard of civil liberties impacted by the Act. Senator Orrin Hatch has drafted a proposal that would repeal these sunset provisions which is under discussion in the Senate Judiciary Committee. See an April 9, 2003 article in the New York Times "Republicans Want Terror Law Made Permanent" reprinted at

<http://www.commondreams.org/headlines03/0409-01.htm> .

(Contact: Margaret Schilt)

Updates on Previously Reported Pending Legislation

Senate Resolution 54 – Internet Access to Certain Congressional Documents

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.

AALL is one of more than thirty organizations that signed a letter endorsing S.Res. 54.

The AALL Washington Affairs Office is working with the sponsors' staff to develop amending language that "public access" be "permanent." 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.

Current Status: Two new co-sponsors, Senators Feingold and Cornyn, have been added. The resolution has been referred to the Committee on Rules and Administration.

(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.

Current Status: There are now 11 co-sponsors. The bill has been referred to the Subcommittee on Courts, the Internet, and Intellectual Property.

(Contact: Keith Ann Stiverson)

The Proposed Domestic Security Enhancement Act of 2003 (so-called Patriot II)

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. Continuing vigilance is needed to ensure that this is not introduced and passed without serious debate, as was the USA PATRIOT Act. (contact: Margaret Schilt)

STATE LAW

UCITA

UCITA was introduced in Nevada in late March, but was withdrawn by the Senate Judiciary Committee after a hearing. Law librarians and the insurance lobby were instrumental in getting the legislation withdrawn. There has been no recent movement that we can discover to introduce UCITA in Illinois. If any of you hear something to the contrary, please contact Keith Ann Stiverson (kstivers@kentlaw.edu) of the Public Affairs Committee.

State DMCA legislation

Eight state legislatures, including Illinois, have passed model or revised legislation that focuses on digital piracy. In Illinois, Public Act 92-0728 was approved July 25, 2002, and became effective January 1, 2003 as an amendment to the Criminal Code. Overall, the legislation seeks to protect online content by expanding the scope of theft of communication services. It has the potential of converting an ordinary breach of contract into a criminal infraction. This legislation largely duplicates the intention and the protective mechanisms inherent in the Digital Millennium Copyright Act (DMCA) passed by Congress in 1998 with the stated purpose of preventing digital piracy. However, unlike the DMCA, which builds in certain exceptions and limitations to permit legitimate activities, the state versions do not.

The other states are: Arkansas, Colorado, Delaware, Michigan, Oregon, Pennsylvania and Wyoming. Similar bills also are pending in Florida, Texas, Tennessee, Massachusetts, and South Carolina.

The Federal DMCA remains controversial because it has had a chilling effect on academic research, access to information, and the ability of libraries to preserve digital material. (Contact: Keith Ann Stiverson)

Illinois

County Law Library Filing Fee – House Bill 475

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 as originally drafted would have amended 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 was amended in the House Committee on the Judiciary I-Civil Law Committee to authorize a fee not in excess of \$13, with no escalation schedule. The bill has been re-referred to the House Rules Committee. (Contact: Spencer Simons)