

Chicago Association of Law Libraries Public Affairs Committee May 2009 UPDATE

Todd Ito
Heidi Kuehl
Co-Chairs

Open Government Update

Transparency

Openthegovernment.org features report cards on transparency in President Obama's first hundred days. The three report cards, originating from OMB Watch, Institute for Policy Studies, and Brennan Center for Justice at New York Law School, are available online at:

<http://www.openthegovernment.org/article/articleview/384/>

OpenTheGovernment.org's Bailout Watch Project, which replaces the site's Bailout Transparency Pages mentioned in the February CALL Public Affairs Update, is available online at:

<http://www.bailoutwatch.net/>

Public Access to CRS Reports and Pacer

Public Access to CRS Reports is number one on a list of ten most wanted federal documents in *Show Us the Data: Most Wanted Federal Documents*, a report issued by Center for Democracy and Technology and OpenTheGovernment.org. On May 14, 2009, 40 organizations, including AALL sent a letter to the Senate Rules Committee asking for improved access to CRS Reports and support for other open government issues.

Open public access to federal court documents on Pacer was number three on the list of most wanted documents. While the public can register and wait for a password to arrive via U.S. mail, Pacer's per page charges for viewing and downloading pose a barrier to public access. According to the report, Pacer makes a profit on the page charges. The report is available on at:

<http://www.openthegovernment.org/otg/TopTenReport.pdf>

Lucy Moss
Chicago-Kent College of Law

White House Office of Administration Not Covered by FOIA

On May 19, 2009, the United States Court of Appeals for the District of Columbia ruled that the White House Office of Administration is not covered by the Freedom of Information Act (FOIA). The court reasoned that since the Office of Administration “performs only operational and administrative tasks,” it lacks “substantial independent authority” and is not considered an agency under FOIA. The lawsuit was brought by Citizen for Responsibility and Ethics in Washington (CREW), who sought information concerning millions of missing White House emails.

CREW also recently joined a number of other organizations in sending a letter to the White House requesting that the current administration reverse the Bush administration's policy that the Office of Administration is not subject to FOIA. As of the date of publication, there has been no response.

The opinion is available online at:

<http://pacer.cadc.uscourts.gov/common/opinions/200905/08-5188-1181329.pdf>

Todd Ito
University of Chicago, D'Angelo Law Library

Copyright Update

Roger V. Skalbeck, Vice-Chair Elect of the AALL Copyright Committee, delivered testimony at a U.S. Copyright Office hearing on May 6 in Washington. The testimony, drafted by the AALL Copyright Committee, was presented on behalf of AALL and the Medical Library and Special Libraries associations. It is hoped that an exemption to the prohibition on circumvention of access controls will be given to faculty of non-profit law and health sciences programs who need to use short film and TV clips in their teaching. Roger's testimony is available on the AALL Government Relations web site at:

<http://www.aallnet.org/aallwash/testimony.asp>

Questions? Contact Keith Ann Stiverson, Chair, AALL Copyright Committee, via email at kstivers@kentlaw.edu or by phone at 312-906-5610.

Network Neutrality

The following are some interesting news articles on the issue of network neutrality. Be sure not to miss the AALL program (C-1, 4:15 p.m. on Sunday, July 26th - http://www.aallnet.org/events/09_PreProgram.pdf) on “Network Neutrality: The Debate Over the Internet Superhighway.” See recent news articles:

Cohen, Stephen M., *EU Lawmakers Vote to Introduce Net Neutrality*, LIB. STUFF (May 7, 2009), available at <http://www.librarystuff.net/2009/05/07/eu-lawmakers-vote-to-introduce-net-neutrality/> .

Hatch, David, *Copps Says FCC To Strengthen ‘Net Neutrality’ Guidelines*, NAT. J. CONG. DAILY (Apr. 3, 2009), available at <http://www.lexisnexis.com/lawschool/> .

Hatch, David, *FCC To Consider Extra Measure to Enforce Net Neutrality*, NAT. J. CONG. DAILY (May 14, 2009), available at <http://www.lexisnexis.com/lawschool/> .

Mark, Roy, *Skypes iPhone App May Force FCC Hand on Wireless Net Neutrality*, EWEK (Apr. 6, 2009), available at <http://www.eweek.com/c/a/Mobile-and-Wireless/Skypes-iPhone-App-May-Force-FCC-Hand-on-Wireless-Net-Neutrality-527564/> .

Marshall, Rosalie, *European Parliament Issues Blow to Net Neutrality*, VNUNET.COM (May 8, 2009), available at <http://www.computing.co.uk/vnUNET/news/2241956/eu-issues-blow-net-neutrality> .

Nichols, Shaun, *FTC Seeks to Clarify Net Neutrality*, VNUNET.COM (May 12, 2009), available at <http://www.vnUNET.com/vnUNET/news/2242053/ftc-seeks-clarify-net> .

Noyes, Andrew, *FTC Might See Expanded Role in Net Neutrality Discussion*, NAT. J. CONG. DAILY (May 7, 2009), available at <http://www.lexisnexis.com/lawschool/> .

Wallis-Jones, Seth, *CTIA Lobbies Against Wireless Net Neutrality, RUS Programme Scrutinised*, GLOBAL INSIGHT (Apr. 17, 2009), available at <https://www.communicationsdirectnews.com/do.php/140/35170?199> .

Wallis-Jones, Seth, *Pressure for Net Neutrality Legislation Recedes in U.S.*, GLOBAL INSIGHT (Apr. 3, 2009), available at <http://www.lexisnexis.com/lawschool/> .

Wireless Firms Wary on Net Neutrality, WCA Panelists Say, WASH. INT. DAILY (May 7, 2009), available at <http://www.lexisnexis.com/lawschool/>.

Heidi Frostestad Kuehl
Pritzker Legal Research Center
Northwestern University School of Law

Illinois Reform Commission Urges Better Transparency

The Illinois Reform Commission, a panel established in the wake of the arrest last December of then-Governor Rod Blagojevich, issued its report in April calling for sweeping changes to address political corruption in Illinois. The Commission's *100-Day Report* recommended far-reaching reforms on a broad range of issues, including elections and campaign fundraising, fairness in procurement, tougher law enforcement, implementing open and non-partisan redistricting, and limiting terms for legislative leadership positions.

Of particular interest to law librarians, the report also devoted a chapter to improving transparency and facilitating access to public documents. The Commission found that laws in place to promote transparency were "neither adequately enforced, nor broad enough in scope to create a sufficiently transparent government. This lack of transparency gives corrupt government and misguided officials the ability to conduct their business without significant scrutiny." Accordingly, the report recommended:

- 1) enforcing the existing statutes with renewed vigor by adopting a presumption in favor of full public access to information and documents;*
- 2) amending relevant statutes to increase transparency and accountability;*
- and*
- 3) using technology to make public documents readily and easily accessible to the public through the Internet and online databases without waiting for specific requests from the public.*

In testimony before the Commission, Attorney General Lisa Madigan proposed amendments to the state's FOIA law (see Appendix C) to advance the "fundamental obligation of government to operate openly so that the public may scrutinize all public actions." One of Madigan's proposals would establish a Freedom of Information officer within each state agency, with the responsibility to ensure timely and material responses to requests. Drawing on some of Madigan's other proposals, the Commission also recommended new limits on the fees agencies can charge for supplying requested information, and stronger penalties for officials who willfully violate FOIA.

The Commission also recommended changes in the state's Open Meetings Act to include the General Assembly and to restrict the leeway of public bodies to meet in closed session.

Finally, the Commission made recommendations to promote transparency through better use of technology, including online disclosures by public officials and lobbyists, and online dissemination of regulatory and legislative information. Notably, the Commission recommended that this dissemination "should use modern online security methods to ensure that the information originates from authorized sources. This will prevent attempts to mimic government information and mislead citizens."

The report is available online at: <http://www.reformillinoisnow.org/>

Kevin McClure
Chicago-Kent College of Law

Illinois Open Government Laws

Midwest Democracy Network has issued a report, An Analysis of Open Government Laws in the Midwest, a study conducted by Citizen Advocacy Center. Of the five states studied, Illinois open government laws were the weakest because of many exemptions to the open meetings requirements and lack of penalties that would result in effective enforcement. This is a link to the Illinois section of the report, which was issued in March 2009.

http://midwestdemocracynetwork.org/files/pdf/CAC_GovReports_IL_DigitalFA.pdf

Lucy Moss
Chicago-Kent College of Law

Legislature Approves County Law Library Fee Hike

A bill to allow county boards in Illinois to authorize gradual increases in law library fees over the coming three years has passed both houses of the General Assembly and awaits Governor Quinn's signature. The bill, HB0146, permits county boards to raise county law library fees from the current \$13 to \$18 this year, \$19 in 2010, and \$21 in 2011. The bill passed the Senate on May 15 by a vote of 44-5 after winning House approval in March.

Kevin McClure
Chicago-Kent College of Law

Indiana Government News: SB348 Dies in Committee

In the February 2009 update of Indiana Government News, we discussed Indiana Senate Bill 348 supported by the Indiana Library Federation, the Indiana Public Library Association, and the Indiana Library Trustees Association which created a County Level Public Library Service Planning Process. Unfortunately for its supporters, this bill died in committee after a lot of maneuvering by both Republicans and Democrats. Library supporters hoped that the bill, which established a public library service planning committee in each county, would result in positive outcomes for libraries and avoid the potentially disastrous consequences of various tax reduction efforts in the state.

Apparently, instead of being considered on its own merits, the bill was caught in the crossfire of intense game playing about whether the legislature would embrace significant changes in the structure of local and county government put forward by Governor Mitch Daniels. The law-makers side-stepped decision making related to these changes, and did not even pass a state budget during the regular session, resulting in a called special session. It is unknown whether a similar library planning bill will be proposed in the next session.

Beverly Burmeister
Valparaiso University School of Law Library