

# Advocacy and Public Policy Update

January 26, 2017

ASSOCIATION  
OF RESEARCH  
LIBRARIES



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Below is an update on key advocacy and policy issues of interest to the research library community in Canada and in the US from September 27, 2016, through January 26, 2017, written by Prudence S. Adler and Krista L. Cox of the Association of Research Libraries (ARL).

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## **US Appropriations Update**

In early December, the US Congress passed a stopgap funding measure to keep the federal government open until April 28, 2017. This continuing resolution provides Congress and the new Administration time to set their priorities regarding federal spending and policy. Significant cuts to discretionary programs and agencies are anticipated in order to fulfill campaign promises regarding the size of the federal government, congressional priorities, and the need to fund the new Administration's priorities, such as investment in infrastructure. ARL staff anticipates that there will be many serious challenges to federal agencies, programs, and policies that ARL members support and/or benefit from. For example, it has been reported that the Administration plans to defund and eliminate the National Endowment for the Humanities and the National Endowment for the Arts. ARL will monitor these issues and take action on behalf of research libraries when needed.

## **Diversity, Inclusion, and Accessibility**

### **BRIDGE Act Introduced in US Congress**

ARL joins many others in US higher education in strong support of the Bar Removal of Individuals who Dream and Grow our Economy (BRIDGE) Act ([S. 128](#) and [H.R. 496](#)). Signatories of a [January 25 letter to Congress \(PDF\)](#) noted, "We agree with the intent of the BRIDGE Act to provide temporary relief to the more than 752,000 individuals, also known as DREAMers, from deportation and ensure employment authorization to those who are eligible for the Department of Homeland Security's Deferred Action for Childhood Arrivals (DACA) program. The DACA program has allowed these young people to come out of the shadows and temporarily have an opportunity at the American dream. However, DACA and the BRIDGE Act are only stopgap measures; what is needed is the passage of the

DREAM Act and ultimately fair, just, and comprehensive immigration reform.” Sen. Lindsey Graham (R-SC) and Sen. Dick Durbin (D-IL) introduced the bill in the Senate and Rep. Mike Coffman (R-CO) and Rep. Luis V. Gutiérrez (D-IL) introduced the bill in the House.

## **US Access Board Updates Information and Communications Technology Rule**

The United States Access Board, a federal agency that promotes equality for people with disabilities, published on January 18 a [final rule](#) that “jointly updates requirements for information and communication technology covered by Section 508 of the Rehabilitation Act and Section 255 of the Communication Act. The Section 508 Standards apply to electronic and information technology procured by the federal government, including computer hardware and software, websites, multimedia such as video, phone systems, and copiers. The Section 255 Guidelines address access to telecommunications products and services, and apply to manufacturers of telecommunication equipment.

The final rule jointly updates and reorganizes the Section 508 standards and Section 255 guidelines in response to market trends and innovations, such as the convergence of technologies. The refresh also harmonizes these requirements with other guidelines and standards both in the US and abroad, including standards issued by the European Commission and with the Web Content Accessibility Guidelines (WCAG), a globally recognized voluntary consensus standard for web content and ICT [information and communications technology].” (See <https://www.access-board.gov/guidelines-and-standards/communications-and-it/about-the-ict-refresh>)

## **Broadway Musical “Hamilton” Sued for Violations of Americans with Disabilities Act**

A class action lawsuit is underway against the producers of the Broadway musical *Hamilton* for failure to provide assistive technologies to patrons who are blind or visually impaired. The lawsuit is asking for the defendants to provide patrons with a device that plays audio narration describing visual elements. The plaintiffs are seeking for the defendants to supply such assistive technology once per week, with 25 devices available for that show.

## **Public Access and Open Educational Resources**

### **White House Transition Teams in Some Federal Agencies Limit Public Communication**

Soon after the presidential inauguration on January 20, several US government agencies received instructions from the White House transition teams to discontinue speaking to members of Congress and the press, to stop issuing news releases and official correspondence, and to cease using agency social media accounts. Each agency received different instructions. For example, the Environmental Protection Agency appears to have the most restrictions of all the agencies, including the freezing of grants and awards and the requirement that scientific findings must be reviewed by the Administration on a “case by case” basis prior to being disseminated publicly. The Agricultural Research Service of the Department of Agriculture was instructed to stop releasing “any public-facing documents,” including, but not limited to, “news releases, photos, fact sheets, news feeds, and social media content.” The Department of Health and Human Services received a memo that called for the agency to first clear all official correspondence to other public officials with senior Administration officials, who will contact the White House for its policy position. The National Institutes of Health was directed to “to hold on publishing new rules or guidance in the Federal Register or other public forums and discussing them

with public officials until the Administration has had an opportunity to review them.” The Department of the Interior and the Department of Energy have either halted or limited their social media postings. Finally, federal workers at the Department of Transportation were instructed to refrain from publishing news releases or using social media until they receive guidance from the new Administration.

These directives seem to target federal agencies involved in environmental sciences. ARL is closely monitoring these agency actions and participates in two coalitions that are focused on open and transparent government.

### **Data Principles Released by Obama Administration**

In December, the White House Office of Science and Technology (OSTP) issued [\*Principles for Promoting Access to Federal Government-Supported Scientific Data and Research Findings through International Scientific Cooperation\*](#). Although the principles do not include new positions by the federal government, the report summarizes previous principles that are the basis of US national and international cooperation. As noted by OSTP, “the principles demonstrate the United States’ commitment to increasing access to unclassified scientific data generated by federal agencies or resulting from federally funded research...to further international cooperation in science and technology to address global challenges. The principles apply to government-supported scientific data, which can include primary data (e.g., observations and measurements) and derived data (resulting from computations performed on the primary data), together with accompanying metadata that exist in digital form. The principles also summarize how US policies apply to publications that result from federally funded scientific research.”

## **US Department of Education Issues Open Licensing Rule**

On January 17, the Department of Education released a [regulation to expand access to educational resources through open licensing](#). The following key points are included in the regulation.

- The open licenses will give the public permission to use and reuse deliverables created in whole or in part with competitive grants funds provided by the Department of Education.
- The requirement applies both to grant deliverables (e.g., teacher professional development training modules) and any final version of program support materials necessary to the use or reuse of the deliverables.
- Grantees or sub-grantees will provide a dissemination plan and may select the open license appropriate to their grant deliverables.
- Based on feedback from public comments and input from other federal agencies, the Department of Education has added certain categorical exceptions, such as for the Ready to Learn Television grant programs.
- The Department of Education will fully implement this rule for all applicable competitive grant programs in FY 2018.

## **OPEN Government Data Act Passed by US Senate**

In December, the Senate passed [S. 2852](#), the Open, Public, Electronic, and Necessary (OPEN) Government Data Act. The act would codify President Obama's Executive Order on government-produced data and would require government data made available by federal agencies to be published in machine-readable form. The data must be available: (1) in an open format that does not impede use or reuse

and that has standards maintained by a standards organization; and (2) under open licenses with a legal guarantee that the data be available at no cost to the public and with no restrictions on copying, publication, distribution, transmittal, citing, or adaptation. It is expected that the OPEN Government Data Act will be reintroduced in the House of Representatives and in the Senate, as the House did not pass the bill before adjourning for the year.

## **Copyright Issues**

### **Save the Date for Fair Use/Fair Dealing Week**

Fair Use/Fair Dealing Week 2017 is fast approaching and will be observed February 20–24. Last year, 136 organizations participated to celebrate these essential limitations and exceptions to copyright, allowing the use of copyrighted materials without permission from the copyright holder under certain circumstances. While fair use and fair dealing are employed worldwide on a daily basis, Fair Use/Fair Dealing Week provides a time to promote and discuss the opportunities presented, celebrate successful stories, and explain these doctrines. For more information or ideas on how to participate in this community event coordinated by the Association of Research Libraries, visit the website [fairuseweek.org](http://fairuseweek.org).

### **Library Copyright Alliance Files Additional Comments on US Copyright Office Study on Section 1201**

The Copyright Office is currently conducting a study on Section 1201 of the Digital Millennium Copyright Act (DMCA), the provision governing circumvention of technological protection measures. In [comments \(PDF\)](#) submitted on October 27, 2016, the Library Copyright Alliance (LCA) addresses the questions set forth in the Copyright Office’s Notice of Inquiry, but also recommends that exemptions for educational uses of audiovisual works be made permanent. LCA’s comments also support new, permanent exemptions for assistive

technologies for people with print disabilities and for obsolete technologies. Additionally the comments support an amendment to provide an exception to the anti-trafficking provision for the purpose of making and distributing tools necessary to exercise an exemption.

### **Amicus Brief in *BMG Rights Management v. Cox Communications***

On November 14, ARL joined the American Council on Education and other higher education and library associations in an [amicus brief \(PDF\)](#) in *BMG Rights Management v. Cox Communications*, a case involving safe harbors for Internet service providers under the DMCA. The amicus brief does not support either party but instead describes the important role that educational institutions and libraries play in providing Internet access. The brief notes that uniform policy requiring termination of repeat infringers of copyright would be burdensome and inappropriate.

### **US to Withdraw from Trans-Pacific Partnership Agreement**

Soon after his inauguration, President Trump signed an executive order announcing his intention to withdraw the United States from its membership in the Trans-Pacific Partnership (TPP) Agreement, a large regional trade agreement with 12 negotiating parties: Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States, and Vietnam. The TPP, which contained controversial intellectual property provisions and was widely criticized because of its lack of transparency, is no longer expected to enter into force without significant re-negotiation by the remaining 11 parties. The final text of the TPP required ratification by the United States and Japan before entering into force.

While the TPP itself may no longer enter into force, Trump has signaled that he will start bilateral trade negotiations with the TPP

parties, as well as a renegotiation of the North American Free Trade Agreement (NAFTA). Such actions could have an impact in the US on copyright provisions as well as immigration and visa rules.

## **Email Privacy Act Reintroduced in US House of Representatives**

On January 9, Rep. Kevin Yoder (R-KS) and Rep. Jared Polis (D-CO) reintroduced the Email Privacy Act ([H.R. 387](#)) for the 115<sup>th</sup> Congress, a bill that would update a 1986 law governing privacy for online communications and that passed unanimously through the House of Representatives last year. The Email Privacy Act would update the Electronic Communications Privacy Act, a 30-year-old law that allows the government to seize online documents and communications older than 180 days without a warrant, leading to an absurdity that grants greater protections to hard-copy documents than digital communications. The Email Privacy Act would rectify this absurdity and restore Fourth Amendment protections to the digital world by requiring a warrant for content. ARL has continued to support passage of the Email Privacy Act through coalition letters, blog posts, and meetings with Congressional staff.

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