

Advocacy and Public Policy Update

February 22, 2018

ASSOCIATION
OF RESEARCH
LIBRARIES



Table of Contents

Below is an update of key advocacy and policy issues of interest to the research library community in Canada and in the US from September 23, 2017, through February 22, 2018, written by Prudence S. Adler and Krista L. Cox of the Association of Research Libraries (ARL).

Prior advocacy and policy updates can be found at <http://www.arl.org/news/advocacyandpolicyupdates/term/summary>.

US House Approves Bill Limiting Effectiveness of Americans with Disabilities Act	3
US Government Funding of Library, Publishing, Related Programs	4
Trump Administration Releases FY 2019 Budget Cutting 22 Programs and Agencies	
Reform of US Government Printing, Publishing, Depository Library Program Moves Ahead	
Museum and Library Services Act of 2017 Introduced in US Senate	
Copyright Issues	7
Code of Best Practices in Fair Use for Software Preservation: Development Underway	
Digital Millennium Copyright Act Section 1201 Petitions Filed	
Music Copyright Bills Introduced in US Congress	
Copyright Alternative in Small-Claims Enforcement Act Introduced in US House	
Net Neutrality Repealed by Federal Communications Commission	9
Trade Agreements	10
Trans-Pacific Partnership Agreement Renegotiated	
North American Free Trade Agreement Under Renegotiation	

US House Approves Bill Limiting Effectiveness of Americans with Disabilities Act

On February 15, 2018, the US House of Representatives passed the ADA Education and Reform Act of 2017, H.R. 620, by a vote of 225–192. The vote represents a diminishment of the rights of individuals with disabilities concerning their ability to access public accommodations. Although the additional education regarding accessibility issues called for by H.R. 620 is noteworthy, this bill would roll back the civil rights of 57 million Americans with disabilities. The legislation would require a person who encounters an access barrier to send a written notice to the business owner and allow 60 days for an acknowledgment plus another 120 days for the business to make progress on rectifying the access barrier.

[ARL released a statement strongly opposing the bill](#) and will work with other organizations as the bill is considered in the US Senate.

US Government Funding of Library, Publishing, Related Programs

Trump Administration Releases FY 2019 Budget Cutting 22 Programs and Agencies

The US Congress passed legislation to fund the government through March 23, 2018, and also provided a two-year budget agreement for future funding. This agreement lifted the caps previously imposed on both defense and non-defense spending and set higher levels of government funding. The agreement allows the US House of Representatives and the US Senate Appropriations Committees to provide greater detail in the budgets for the next two years to match these new levels of funding—over \$300 billion—in an omnibus bill prior to March 23.

On February 12, the Trump Administration released its FY 2019 budget and, although there was a supplementary appendix reflecting some of the new funding called for in the recent Congressional agreement as signed by President Trump, the Administration still called for the elimination of 22 programs and agencies, including the Institute of Museum and Library Services (IMLS), the National Endowment for the Humanities, the National Endowment for the Arts, the US Department of Education's International Education programs, and the National Historical Publications and Records Commission. Recently, these types of cuts have not been supported by Congress and, with continued advocacy and support, it is hoped that the call for elimination will again be rejected.

In responding to the Trump Administration's proposed FY 2019 budget request, IMLS has informed the community that FY 2018 grant-making will be conducted on schedule. ARL is working through a number of coalitions in support of federal agency FY 2019 appropriations.

Reform of US Government Printing, Publishing, Depository Library Program Moves Ahead

The US government continues efforts to reform its printing and publishing activities, including the dissemination, access, and preservation of government information via the Federal Depository Library Program (FDLP). The Committee on House Administration has held several hearings and released draft legislation that would reform and update government printing and publishing practices and, importantly, provide much-needed updates to the FDLP. The proposed legislation would retain and update the important role of the collaboration between the Government Publishing Office, federal agencies, and US libraries in making US government information broadly available to the public. In addition, the draft bill would provide additional flexibility to all depository libraries both selective and regional and create a new class of “preservation” depository libraries. ARL and other library associations have been working with committee staff as the legislation moves forward. Markup on the bill is expected in the next few weeks.

While the bill does address the majority of issues relating to Title 44 of the US Code, the Committee on Government Oversight is working on changes to Chapter 35 of Title 44 regarding federal agency policies on the life cycle of government information and the “rules of the road” for government information policy. This review and reform, though actively underway, is moving at a slower pace than the work of the Committee on House Administration. ARL is working with the staff of this committee as well while these discussions are underway.

Museum and Library Services Act of 2017 Introduced in US Senate

The [Museum and Library Services Act of 2017](#) (S. 2271) was introduced by Senators Jack Reed (D-RI), Susan Collins (R-ME), Thad Cochran (R-MS), Kirsten Gillibrand (D-NY), and Lisa Murkowski (R-AK). This act would reauthorize the Institute of Museum and Library

Services (IMLS) through the Library Services and Technology Act (LSTA), the federal program that exclusively funds libraries and museums. Authorization for IMLS and LSTA expired in 2016. Without reauthorization, funding for these programs could be subject to cuts during the FY 2019 budget process, though in the past, federal agencies have been provided funding until reauthorization has occurred. This bill is the primary focal point for US libraries and museums and deserves active support by members of the community.

Copyright Issues

Code of Best Practices in Fair Use for Software Preservation: Development Underway

ARL released its first-stage report for a project to create a *Code of Best Practices in Fair Use for Software Preservation*. The report, [*The Copyright Permissions Culture in Software Preservation and Its Implications for the Cultural Record*](#), is the result of interviews with software preservation professionals. The report documents high levels of concern among professionals worried that while seeking permission to archive software is time-consuming and usually fruitless, preserving and providing access to software without express authorization is risky. Meanwhile, digital materials languish, and the prospects for their effective preservation dim.

This report will set the stage for further input, including several small focus groups to be held in spring 2018, and ultimately culminating in the publication of a *Code of Best Practices* in fall 2018. The final *Code* will help cultural heritage institutions overcome legal uncertainty by documenting a consensus view of how fair use applies to core, recurring situations in software preservation.

Digital Millennium Copyright Act Section 1201 Petitions Filed

ARL, as part of the Library Copyright Alliance (LCA), submitted several petitions with other organizations requesting exemptions to the provisions under Section 1201 of the Digital Millennium Copyright Act (DMCA) that prohibit the circumvention of technological protection measures used to control access to copyrighted content. Under the DMCA, petitioners for exemptions must submit requests every three years. After years of criticism, the US Copyright Office has taken a new approach to its petition process, streamlining petitions that had been previously granted. In addition to supporting previously granted exemptions, LCA submitted comments to allow circumvention for:

the preservation of computer programs and computer program-dependent materials; accessibility of audiovisual materials for those with hearing impairments; and an expanded exemption for clips of audiovisual works for the purpose of criticism or content.

Opposition to various petitions were filed by several organizations and posted on February 12, 2018, with nearly all petitions facing opposition. The Copyright Office will hold hearings on these petitions in April. For more information, see the [Copyright Office website](#).

Music Copyright Bills Introduced in US Congress

Several bills related to copyright and music are currently under consideration by the US Congress. One of these bills, known as the CLASSICS Act, addresses pre-1972 sound recordings. The CLASSICS Act, which was introduced in the House of Representatives in the summer of 2017 (H.R. 3301), has now been introduced in the Senate (S. 2393). The Library Copyright Alliance (LCA) has submitted comments advocating for the expansion of limitations and exceptions to copyright and also for a fixed copyright term limit, to ensure that pre-1972 sound recordings are not granted more protection than post-1972 sound recordings, especially in the educational context.

Copyright Alternative in Small-Claims Enforcement Act Introduced in US House

In late 2017, the Copyright Alternative in Small-Claims Enforcement Act, known as the CASE Act, was introduced in the US House of Representatives (H.R. 3945) to create a small claims court for independent artists that would operate as an “opt-out” system. The bill would create a Copyright Claims Board (CCB), run by the US Copyright Office, without oversight from the traditional courts. Under the CASE Act, the CCB could award damages up to \$30,000, an amount that is five times the average limit on damages in other small claims courts. LCA, along with other organizations, has opposed the CASE Act.

Net Neutrality Repealed by Federal Communications Commission

On December 14, 2017, the Federal Communications Commission (FCC) completely reversed its 2015 Open Internet Order and replaced strong protections—including provisions prohibiting blocking, throttling, and paid prioritization of content—with mere transparency rules, meaning that internet service providers (ISPs) can engage in harmful behavior that breaks the internet down into fast lanes and slow lanes. The FCC's new rules will officially go into effect on April 23, 2018.

The 3–2 vote, along party lines, was highly controversial after several lawmakers unsuccessfully pushed to delay the vote pending an investigation into the millions of fake comments submitted during the FCC's rulemaking process, including half a million comments traced to Russian email accounts.

Several state attorneys general have already filed initial lawsuits challenging the FCC's action. ARL plans to engage in the court proceedings as amicus filers, highlighting the importance of net neutrality to the research, library, and higher education community.

In addition to judicial oversight, the Senate will vote under the Congressional Review Act on whether to overturn the FCC's decision. The bill currently has 50 senators to support overturning the FCC's rule, with just one more Senator needed to pass. However, it is unclear whether the House of Representatives will vote on the Senate bill and, even if the bill passes in the House, it is unlikely to be signed by the President. Regardless of the outcome of the Congressional Review Act, Congress may still choose to rewrite the Communications Act and change the scope of the FCC's current rule.

Trade Agreements

Trans-Pacific Partnership Agreement Renegotiated

After President Trump took office in January 2017, he quickly withdrew the United States from the Trans-Pacific Partnership Agreement (TPP). The remaining 11 countries in the TPP (Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam) renegotiated the agreement, renaming it the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). The final version of the CPTPP, expected to be signed in March, suspended many of the more controversial intellectual property provisions, including copyright term extension and technological protection measures.

North American Free Trade Agreement Under Renegotiation

In the current renegotiations of the North American Free Trade Agreement (NAFTA), rightsholders are pursuing inclusion of stronger rights without the balancing provisions on copyright limitations and exceptions found in the final text of the Trans-Pacific Partnership Agreement. ARL has opposed copyright term extension and has advocated for balancing language and safe harbors limiting liability for copyright infringement to be included in NAFTA.

Association of Research Libraries

21 Dupont Circle, NW
Suite 800
Washington, DC 20036
T 202.296.2296
F 202.872.0884

ARL.org
pubs@arl.org

This work is licensed under a [Creative Commons Attribution 4.0 International License](https://creativecommons.org/licenses/by/4.0/).

