

Advocacy and Public Policy Update

April 20, 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 February 22 through April 20, 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>.

FDLP Modernization Measure Approved by US House Committee	3
Open and Transparent Government Measure Approved by US House Committee ...	4
US Appropriations Update	5
ARL Joins Amicus Brief on Trump Administration Travel Ban	6
Copyright Issues	7
Music Modernization Act Approved by US House Committee	
Register of Copyrights Selection and Accountability Act	
Fair Use/Fair Dealing Week 2018 Highlights Available Online	
Net Neutrality Update	9
International Agreements	11
Marrakesh Treaty Ratification and Implementing Legislation	
Trans-Pacific Partnership Agreement	

FDLP Modernization Measure Approved by US House Committee

On April 12, the US House Committee on House Administration unanimously approved HR 5305, the [FDLP Modernization Act of 2018](#). The committee hopes that the full House will vote on the bill very shortly, possibly within the next few weeks. The Federal Depository Library Program's (FDLP) statutory authority has not been updated in many decades. HR 5305 provides more flexibility for regional libraries and selective libraries alike and calls for a new category of preservation libraries. Importantly, the bill retains no-fee access to government information and recognizes a “national collection” of information dissemination products produced by the federal government. This is a distributed collection accessible from the Government Publishing Office's (GPO) online repository, Federal Depository Libraries, and through agreements with other entities. Provisions in the bill strengthen the preservation of government information by establishing partnerships with libraries and other entities and directing GPO to preserve government publications in its online repository. The Superintendent of Documents is also authorized to digitize historical publications and include them in the online repository. The Association of Research Libraries (ARL) worked closely with House Administration Committee staff and other library associations as drafting of legislative recommendations emerged. ARL, the American Library Association (ALA), the American Association of Law Libraries (AALL), and the Chief Officers of State Library Agencies (COSLA) [voiced support](#) for the legislation.

Open and Transparent Government Measure Approved by US House Committee

The House Committee on House Administration has approved the [Access to Congressionally Mandated Reports Act](#), HR 4631. This bill requires the Government Publishing Office (GPO) to establish and maintain a publicly available website containing copies of all reports ordered by Congress. The website must feature, in addition to certain descriptive information related to such reports: (1) the ability to retrieve a report through specified types of searches; (2) a means for downloading reports individually or in bulk; (3) an electronic means for federal agencies to submit reports to the GPO, as required by the bill; and (4) in tabular form, a list of all reports that can be searched and sorted by time frame or submission status. ARL with many others [wrote in support](#) of this open and transparent bill.

US Appropriations Update

Following the passage of the bipartisan omnibus funding legislation that finalized appropriations for 2018 and set spending levels for 2018–2019, the US House and Senate are now focused on 2019 spending measures. The current approach is to try and move through “regular order,” which means each of the 12 appropriations committees review and pass bills within their specific jurisdictions. Regular order has been superseded in recent years by omnibus bills or mini-omnibus bills due to the inability of committees and elected officials to resolve contentious issues.

The Trump Administration is said to be working on a bill to roll back recently approved budget figures due to the high cost of the recently passed omnibus legislation that President Trump signed. The likelihood of such a bill passing both houses of Congress is slim, especially with midterm elections approaching. The Institute of Museum and Library Services (IMLS), National Endowment for the Humanities (NEH), National Endowment for the Arts (NEA), and other agencies, such as the National Institutes of Health (NIH) and National Science Foundation (NSF), received important boosts in funding under the agreement.

ARL Joins Amicus Brief on Trump Administration Travel Ban

ARL joined 32 higher education associations in an [amicus brief](#) before the US Supreme Court challenging the Trump Administration ban on immigration from selected countries. The administration issued its first travel ban in January 2017, causing chaos in airports across the country. The Supreme Court planned to review a second iteration of the travel ban in October 2017, until the administration replaced it with another travel ban on September 24, 2017. The court agreed in January to take up the new and current ban, which places restrictions of varying degrees on entry to the United States from Iran, Libya, Syria, Yemen, Somalia, Chad, North Korea, and Venezuela. The Supreme Court will hear the case, *Trump v. Hawaii*, on April 25, the last oral argument day of the term.

Copyright Issues

Music Modernization Act Approved by US House Committee

On April 11, the House Judiciary Committee unanimously approved the [Music Modernization Act](#) (HR 5477), a bill that merged several elements of different bills related to copyright provisions on music. The Music Modernization Act addresses music licensing and royalties, including for recordings created prior to 1972. Under current copyright law, royalties for recordings made prior to 1972 are covered by state law rather than federal.

ARL continues to engage with congressional staff regarding the term of protection, although some of ARL's concerns were addressed in the merged bill, including additions of Sections 110(1) and 110(2) (provisions addressing classroom use and the TEACH Act) to the list of exceptions and exclusions of pre-1923 sound recordings from the scope of the bill. Under the current bill, the term of protection granted for sound recordings fixed between 1923 and 1972 would go far beyond the 95-year term for most corporate works. For more information, see the [Library Copyright Alliance's letter](#) to House Judiciary Chair Goodlatte (R-VA) and Ranking Member Nadler (D-NY).

The bill has bipartisan support and the Senate is expected to address a companion bill in the coming weeks.

Register of Copyrights Selection and Accountability Act

ARL continues to closely follow developments in the Register of Copyrights Selection and Accountability Act ([S 1010](#), [HR 1695](#)), which passed the House of Representatives but has not yet been voted on in the Senate. This bill would make the Register of Copyrights position subject to Presidential appointment and Senate confirmation. This bill is part of larger discussion on whether the Copyright Office should remain part of the Library of Congress or whether the

office should become an independent agency or move into another agency within the Executive Branch. ARL is closely monitoring developments in this area and engaging with key Senate offices.

Fair Use/Fair Dealing Week 2018 Highlights Available Online

ARL organized the fifth annual [Fair Use/Fair Dealing Week](#) celebration February 26–March 2, which grew in participation to 153 organizations and numerous individuals. This year’s event was celebrated around the world, with participants in Australia, Canada, Colombia, Kenya, Pakistan, Tanzania, Uganda, the United Kingdom, and the United States.

In celebration of Fair Use/Fair Dealing Week, ARL released a new infographic, “[Fair Use Promotes the Creation of New Knowledge](#)” and the Canadian Association of Research Libraries (CARL) released a “[Fair Dealing in Canada: Myths and Facts](#)” infographic. Numerous other resources, including infographics, webinars, videos, podcasts, and blog posts were also created. See [ARL’s highlights from the week](#).

Net Neutrality Update

Portions of the Federal Communications Commission's (FCC) reversal of the 2015 Open Internet Order are scheduled to go into effect on April 23, 2018, with the bulk of the rules going into effect after approval by the Office of Management and Budget (OMB). ARL is closely monitoring and engaging in activities in different venues to address the loss of net neutrality, including in the courts, in Congress, and through state and local action. An issue of [*Research Library Issues focusing on net neutrality*](#) was released on April 20.

Immediately following publication of the FCC's reversal in the *Federal Register*, numerous parties—including internet companies, associations, and states—filed lawsuits in the Courts of Appeals for the DC Circuit and Ninth Circuit. The DC Circuit, which previously upheld the 2015 Open Internet Order, will hear the case, currently captioned as *Mozilla et al. v. FCC*, addressing plaintiffs' arguments that the order was arbitrary and capricious, in violation of the Administrative Procedures Act, among other issues. ARL will file an amicus brief in the DC Circuit with other higher education and library organizations.

Additionally, ARL is closely monitoring potential legislative action. Congress could reverse the FCC's decision through the Congressional Review Act (CRA), with resolutions already filed in the House and Senate. The Senate resolution has 50 co-sponsors and needs just one more vote. However, the bill is unlikely to pass in the House, and Congress is running out of time to act because action using CRA must be done within 60 legislative days of publication of the rules in the *Federal Register* (which occurred on February 23). Alternatively, Congress could rewrite legislation to restore at least partial protections for net neutrality. However, any bill that emerges from the legislative process is likely to represent a compromise position between internet service providers, companies and consumers.

ARL is also tracking the large volume of state governments that

have either already acted or are considering action through executive measures or legislation to protect an open internet.

International Agreements

Marrakesh Treaty Ratification and Implementing Legislation

On March 15, the [Marrakesh Treaty Implementation Act \(S 2559\)](#) was introduced in the US Senate by Judiciary Committee Chair Grassley (R-IA), Ranking Member Feinstein (D-CA), Foreign Relations Committee Chair Corker (R-TN), Ranking Member Menendez (D-NJ), and Senators Hatch (R-UT), Harris (D-CA), and Leahy (D-VT), to ratify and implement the [Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled](#). The Marrakesh Treaty, concluded in June 2013 and signed by the United States in October 2013, provides minimum standards for limitations and exceptions to copyright law to create and distribute accessible formats for people with print disabilities and allows for the cross-border exchange of these formats. The treaty is in force, with 35 contracting parties, currently.

The implementing legislation makes some technical changes to Section 121 of the Copyright Act, including expanding the scope of works that may be reproduced and distributed to include dramatic works or musical compositions fixed in text or notation. Section 121 would apply for domestic activity regarding the creation and distribution of accessible-format works. The bill also creates a new Section 121A to address activities involving cross-border exchange, limiting export to authorized entities or eligible persons to those in countries that are members to the Marrakesh Treaty. The bill requires authorized entities operating under Section 121A to establish and follow “[the authorized entity’s] own practices, in keeping with its particular circumstances” to ensure that the authorized entity is serving eligible persons; discourage reproduction and distribution of unauthorized copies; and “maintain due care in, and records of, the handling of copies of works by the authorized entity, while respecting the privacy of eligible persons on an equal basis of others.” Section 121A also provides that nothing in the section establishes a new cause

of action or basis for federal regulation, nor does it “limit the ability to engage in any activity otherwise permitted under this title.”

The Senate Foreign Relations Committee held a [hearing on April 18](#) on the Marrakesh Treaty. Witnesses included Manisha Singh (Department of State), Allan Adler (Association of American Publishers), Scott LaBarre (National Federation of the Blind) and Jonathan Band (Library Copyright Alliance). During the hearing, members of the Foreign Relations Committee and witnesses repeatedly noted that there is no known opposition to the treaty and that accessibility is an important human rights issue. ARL continues to work with allies to encourage swift ratification in the Senate and passage of the implementing legislation in both houses of Congress.

Trans-Pacific Partnership Agreement

Although President Trump campaigned against the Trans-Pacific Partnership Agreement (TPP) and withdrew the United States from the agreement soon after taking office, Trump has now proposed rejoining the TPP provided that the terms are “improved.” In the wake of the United States’s withdrawal from the agreement, the remaining parties suspended a number of provisions, including the extension of copyright term and rules regarding technological protection measures.

The TPP (now renamed the Comprehensive and Progressive Agreement for the Trans-Pacific Partnership (CPTPP)) currently has 11 members—Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam—and reentry by the United States or re-inclusion of suspended provisions would require agreement of all its members. A number of TPP parties have already stated that substantial renegotiation would be extremely difficult.

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