

The USA Patriot Act

In barely six weeks of activity, Congress finalized passage of anti-terrorism legislation only modestly changed from that originally proposed by Attorney General John Ashcroft immediately following the terrorists' attacks. Working with our colleagues from the American Association of Law Libraries (AALL) and the Association of Research Libraries (ARL), ALA identified several fundamental areas of concerns in the draft legislation. These issues included: expansion of pen register and trap and trace devices to the Internet; expansion of access to business records; expansion of access to educational institution records; expansion of the definition of terrorism; and new mandates for technology.

During this entire period, ALA and our sister library associations worked closely with the Center for Democracy and Technology (CDT) and the broad coalition of organizations brought together under the title of "In Defense of Freedom" Coalition (IDOF) by the ACLU. IDOF includes ACLU as well as Free Congress Foundation, Friends Committee on National Legislation, Gun Owners of America, The Eagle Forum, the American Muslim Council, Americans for Tax Reform, and many other diverse groups.

On October 2, ARL, AALL, and ALA released a joint public statement, signed by our respective government relations staff, on each of our Web sites and subsequently all of our associations signed onto the IDOF statement. Later the Medical Library Association also signed onto the library statement. View the statement at: <http://www.ala.org/washoff/terrorism.pdf>.

On October 3, the House Judiciary Committee passed H.R. 2975 unanimously. Although there were some amendments made during the markup, none were related to two of our chief concerns: business records (including library and student records) and computer trespassing.

On October 11, the Senate passed S. 1510. The next morning the Senate bill language was

substituted for the original House bill in a procedural move by the House Rules Committee. With no opportunity to add amendments or get other reconsiderations, the House passed the "new" (basically the Senate bill) H.R. 3108 in a vote of 357 to 66 on October 12. Many members complained about the unusual process or lack thereof. Changes in the final language included a sunset on the electronic surveillance and a provision for judicial oversight of the use of the FBI's Carnivore system. Some observers are now speculating whether the lack of hearings or any other kind of public record will subject the law to legal challenges because of lack of a legislative history.

During the Senate proceedings, the library associations focused on amendments proposed by Senator Russ Feingold (D-Wisconsin), subsequently offered during floor debate. Unfortunately, these amendments were defeated in a procedural move to table. The Senate passed S. 1510 in a 98 to 1 vote late on October 11. During floor debate on the business records and computer trespass amendments, key senators referenced the library issues in particular. In a procedural vote on the business records amendment, 11 senators voted with Feingold, including Senator Arlen Specter (R-Pennsylvania).

The next week, a conference committee met to negotiate the differences between the Senate and House versions. There was no opportunity to wiggle in some other definition or report language to accomplish some of our objectives. President Bush signed the bill on October 26.

ALA is now working with outside legal advisors to provide a systematic analysis of the law. For example, the section on business records raises complicated questions relative to state and other privacy laws. New privacy provisions do not automatically preempt existing state confidentiality laws regarding library records unless an investigation is related to foreign intelligence and anti-terrorism investigations. In a related matter, we are also addressing the "take-down" of government information from Web sites and the depository library programs. Watch for additional reports; there is much more to come. ■

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