

New Congress, old copyright issues

The 110th Congress may be over, but many of the copyright issues academic libraries have been following over the last two years—or in some cases even longer—are certainly expected to re-emerge in the 111th.

Not quite as certain, however, is what action will be taken on matters, such as orphan works, which always seems to be on Congress' agenda but never on its list of final accomplishments.

Though the 110th Congress took orphan works legislation further than any other Congress—the Senate passed a reasonable and relatively useful version of the bill—because the bill ultimately died in the House, it's back to square one now that the 111th has begun. Unfortunately, with the dissolution of the U.S. House of Representatives Subcommittee on the Courts, the Internet and Intellectual Property, it is unclear whether this bill will even be reintroduced.

In addition to this issue, two other federal copyright matters for academic libraries to monitor are the DMCA Section 1201 Rulemaking regulatory activity and the Google Book Search Settlement Agreement.

Section 1201 of the Digital Millennium Copyright Act provides for exemptions from the prohibition on circumvention of technological locks that control access to copyrighted works.

Exemptions are available to users of "classes of works" who would be "adversely affected by virtue of such prohibition in their ability to make non-infringing uses" of those works.


During the last round of rulemaking in 2007, the Library of Congress's Copyright Office granted an exemption that permitted film and media studies professors to avoid encryption to create their own compilations of film clips for classroom instruction.

In October 2008, the Library of Congress announced the start of the latest triennial review process to determine not only which classes of works may be exempted, but also who should be able to circumvent access-control technologies and under what circumstances.

In response, ALA, as member of the Library Copyright Alliance, along with the Music Library Association, requested that the current exemption granted to film and media studies professors should be extended to all professors in higher education. In the coming months, ALA will work to provide recommendations and participate in hearings scheduled by the Copyright Office as it works to make decisions on the exemptions that will be granted or renewed.

Also in late October, Google, the Authors Guild, and the Association of American Publishers announced a major preliminary settlement agreement resolving the class-action lawsuit (*The Authors Guild et al. v. Google Inc.*), brought by book authors and publishers in response to Google's Book Search digitization project.

The ALA Washington Office has been reviewing the extensive agreement to determine what possible implications there may be for all types of libraries and released "A Guide for the Perplexed: Libraries and the Google Library Project Settlement," by Jonathan Band. The guide was designed to help the library community better understand the terms and conditions of the settlement agreement, with special emphasis on the provisions that apply directly to public and academic libraries. Additional information about the proposed Google Book Search settlement agreement is available at wo.ala.org/gbs.

While it's too early to tell what's really coming down the pike, it never hurts to be prepared! As we move forward, ALA will depend on the academic library community to use its influence to speak out on these important issues. 

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