

Washington Brief
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The Washington Office's New Blog!

If you've been to our website recently, you've probably noticed we have a new, exciting way to update you on the activities of the Washington Office: a new blog! Our blog will highlight bills we're tracking in Congress, action alerts, resources like interesting articles and websites, exciting events we're participating in, and more! You can keep up with our regular updates by subscribing to the RSS feed, or just visit the blog for the latest news. We hope our blog serves as another way to keep you informed about the Washington Office. Please let us know what you think!

OMB Moves to Online Budget

On February 5, the White House released an online-only version of the 2,200 page budget for FY 2009. This caused quite a stir not just on the Hill but within the large community that pores over the budget numbers each year. The move to primarily electronic documents is an important issue for us, since accessibility, reliability, official status, and usability are often threatened with the move to online-only. Usability is especially important for Congressional materials that, like the budget, are often very long and complex. Fortunately, the Government Printing Office quickly announced it would publish the budget in print and distribute 1 or 2 sets at no cost to members of Congress. GPO will also distribute the print version of the new budget to federal depository libraries. Applying the same technology GPO uses to authentic the online versions of public and private laws, GPO has also made available, with the approval of the Office of Management and Budget (OMB), an authenticated online version of the budget through GPO Access. Hill staffers, who are used to poring through the massive print document, now have to pay \$200 for a print copy. Interestingly, the media really picked this up as an issue that impacts them almost as much as legislators and their staff. Tom Kahn, staff director of the House Budget Committee, was quoted in the *Washington Post* as saying that, "Frankly, it is no fun staring for hours at a computer screen to find obscure spend-out rates. You can't underline, can't make a note on the page, and who wants to read a computer in bed?"

White House Efforts to Weaken OPEN Government Act

Another issue of concern to us follows a victory we reported here last month—the enactment of the *OPEN Government Act of 2007* that reforms the Freedom of Information Act. The Bush Administration's proposed FY 2009 budget attempts to change the provision in the Act that establishes a new Office of Government Information Services (OGIS) at the National Archives and Records Administration (NARA). Congress clearly intended that the OGIS be an independent body, thus its location at NARA. However, the FY 2009 budget gives the Department of Justice, which is responsible for representing the government in FOIA lawsuits, the funding needed to establish the OGIS.

Allowing DOJ to oversee the office in charge of FOIA mediation services creates a major conflict of interest and contradicts both the spirit and the letter of the law. AALL signed onto a letter organized by OpenTheGovernment.org that was sent to Congressional appropriators to express concern. In addition, the original co-sponsors of the *OPEN Government Act*, Senators Patrick Leahy (D-VT) and John Cornyn (R-TX), sent OMB Director Jim Nussle a letter expressing their strong opposition to the proposal. We hope that the appropriators will provide the necessary funds to establish the Office of Government Information Services at NARA, as the *OPEN Government Act* requires.

Copyright in the 110th Congress

Things have been quiet for the past year on the copyright front because patent reform has been the top priority for the House and Senate Judiciary Committees. We hope to see the patent bills go to the floor shortly so that the Committees can turn their attention to some of our important copyright issues. Key among them is “orphan works.” The term refers to the large volume of works that are likely still protected by copyright although their owners cannot be located after a reasonable effort. In 2005, the Copyright Office began an investigation into the problems raised by orphan works that included in-put from museums, libraries, publishers and other content owners. The House held a hearing on orphan works in March 2006. Maria Pallante, the then-Associate General Counsel and Director of Licensing at The Solomon R. Guggenheim Foundation who now works at the Copyright Office, testified on behalf of 17 organizations, including AALL, in support of a legislative fix.

We strongly supported the *Orphan Works Act of 2006* (H.R. 5439) introduced in May 2006 but the bill never made it out of committee. Importantly, the House Judiciary Committee recognized that the availability of statutory damages would inhibit a wide range of beneficial uses of orphan works. The 2006 bill would ensure that remedies for infringement of a copyrighted work would be limited if the user had made a “reasonably diligent search” for the copyright owner. In our initial discussions with congressional staff this month on what a new orphan works bill should include, we are focusing on how to define a “reasonably diligent search.” We are concerned that the best approach may not necessarily be a definitive list of steps that need to be taken given the wide range of different types of works.

On a closely-related issue, we have been monitoring the recently introduced *Prioritizing Resources and Organization for Intellectual Property Act of 2007* or PRO IP Act (H.R. 4279). This bill would weaken the long-established “one work” rule which imposes a measure of certainty on how copyright statutory damages are calculated. Under current law, a copyright plaintiff may ask for up to \$150,000 per work infringed. However, in the case of compilations, the one work rule recognizes that the compilation is being marketed as one work, although it may in fact consist of multiple components. Under Section 104 of the PRO IP Act, however, a plaintiff could claim that works such as magazines or software are compilations and then seek damages for each component of the work. For example, current law authorizes a statutory damages award of up to \$150,000 for a single infringement of a magazine containing 100 photos, or a software application containing

100 modules. The proposed changes in Section 104 would allow a plaintiff to claim up to \$15 million for the same act of infringement.

The Library Copyright Alliance, of which AALL is a member, strongly opposes Section 104 because it would exacerbate the orphan works problem with respect to compilations. Fortunately, our concerns are shared by many other groups, including the Computer & Communications Industry Association, the Consumer Electronics Association, Public Knowledge, the Center for Democracy & Technology, the Association of Public Television Stations and the Printing Industries of America. Stay tuned for further developments on both these issues.

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