



## *American Association of Law Libraries*

MAXIMIZING THE POWER OF THE LAW LIBRARY COMMUNITY SINCE 1906

### **The AALL Washington E-Bulletin**

<http://www.aallnet.org/aallwash/>

Vol. 2008, Issue 3

March 27, 2008

#### **IN THIS ISSUE**

##### [UPDATES FROM THE HILL AND THE WASHINGTON OFFICE](#)

- House Holds Hearings on Network Neutrality, Orphan Works, and EPA Library Closures
- New FOIA Legislation Would Further Improve Freedom of Information Act
- House Passes FISA Legislation

##### [OUTSIDE THE BELTWAY: CHAPTER NEWS](#)

- Sunshine Week Webcast a Big Success!
- NOCALL/SLA Hold Exciting Sunshine Week Program
- Maryland Legislation to Cut Funding to Circuit Court Libraries Rejected in House

##### [FREE TIME WELL SPENT: Further Reading for the Information Policy Junkie](#)

- Never Too Late for Some Sunshine
- Clinton's First Lady Schedules released
- Declassification Board Offers Recommendations to President

## **UPDATES FROM THE HILL AND THE WASHINGTON OFFICE**

### **House Holds Hearings on Network Neutrality, Orphan Works, and EPA Library Closures**

March was a bustling time on Capitol Hill, with several hearings of interest to AALL taking place in the middle of the month.

#### **Network Neutrality**

First, on Tuesday, March 11, the [House Judiciary Committee Antitrust Task Force](#) held a hearing on network neutrality to examine whether there is a need for legislation to assure the continuation of an open and non-discriminatory Internet. The hearing brought together an interesting set of bedfellows, including Michele Combs, Vice President of Communications Christian Coalition of America and Caroline Fredrickson, Director of the ACLU Washington Legislative Office, who both testified in support of net neutrality. The Christian Coalition of America, the ACLU, and AALL are members of the [Savetheinternet.com Coalition](#), which bands hundreds of individuals, non-profit organizations, businesses and bloggers together to support net neutrality.

Also testifying at the hearing in support of net neutrality were Damian Kulash, Lead Vocalist and Guitarist of the band OK Go (which has relied on the internet to popularize its music videos), and Susan P. Crawford, Visiting Associate Professor of Law at Yale Law School. Christopher S. Yoo, Professor of Law and Communication and Director of the Center for Technology, Innovation, and Competition at University of Pennsylvania Law School, argued against mandating network neutrality, and Rick Carnes, President of the Songwriters Guild of America testified that internet regulation would harm the fight against internet piracy. Testimony is available on the [Committee website](#).

As we reported in the last edition of the [Washington E-bulletin](#), legislation in the Senate and the House was recently introduced to ensure that Congress protects the principle of an open and free Internet. [Sen. Byron Dorgan](#) (D-ND) introduced the *Internet Freedom Preservation Act* ([S.215](#)) which amends the Communications Act of 1934 to ensure net neutrality. On February 12, [Rep. Edward Markey](#) (D-MA-7) introduced a House version of the bill ([H.R. 5353](#)).

#### **Orphan Works**

On March 13, the [House Judiciary Committee's Subcommittee on Courts, the Internet, and Intellectual Property](#) held a hearing on "[Promoting the Use of Orphan Works: Balancing the Interests of Copyright Owners and Users](#)." The term orphan works refers to the large volume of works that are likely still protected by copyright although their owners cannot be located after a reasonable effort. AALL has been actively engaged in the orphan works issue since a [2005 investigation](#) and subsequent report on orphan works

by the U.S. Copyright Office led to the introduction of the *Orphan Works Act of 2006* ([H.R. 5439](#)).

Speaking in support of the need for orphan works legislation were Register of Copyrights Marybeth Peters; Karen Coe, Associate Legal Counsel for the U.S. Holocaust Memorial Museum; and Allan Adler, Vice President of Legal and Government Affairs for the Association of American Publishers. Representatives of textile manufacturers and photographers also testified, expressing their continued concerns with the 2006 bill. [Testimony of all witnesses](#) is available on the Committee website.

Before the hearing, the [Library Copyright Alliance](#), of which AALL is a member, sent a [letter to subcommittee members](#) supporting Ms. Coe's statement. The letter describes how libraries are not making orphan works publicly available for fear of copyright owners coming forward and demanding unknown amounts of compensation. It was clear from the hearing that the Subcommittee wants to move forward on a new bill while at the same time responding to concerns from the photographers and textile manufacturers. We are hopeful that a new orphan works bill will be introduced in the near future.

### **EPA Library Closures**

Also on March 13, the [House Committee on Science and Technology Subcommittee on Investigations and Oversight](#) held a hearing titled, "[EPA Library Closures: Better Access for a Broader Audience?](#)" Witnesses included John Stephenson (Government Accountability Office), Charles Orzechoskie (American Federation of Government Employees), Francesca Grifo (Union of Concerned Scientists), Jim Rettig (President-Elect of the American Library Association), and Molly O'Neill (Assistant Administrator for the Office of Environmental Information (OEI) and Chief Information Officer at the Environmental Protection Agency). [Witness statements](#) are available on the Subcommittee website. AALL signed onto ALA's statement in support of renewed library access.

Subcommittee Chairman [Brad Miller](#) (D-NC-13) criticized the Environmental Protection Agency (EPA) for its failure to talk to stakeholders and the public *before* closing the libraries and its continued failure to engage stakeholders on its plan to reopen the libraries, as authorized by the FY 2008 appropriations omnibus bill. EPA began closing regional libraries and its Headquarters library in 2006.

As we [reported](#) in the January edition of the E-Bulletin, the FY 2008 appropriations omnibus bill gave a [\\$1 million order](#) to the EPA to restore its library services across the country. The order included a direction to EPA to produce "a report on actions it will take to restore publicly available libraries to provide environmental information and data" to the Appropriations Committee by March 26. The report will include an explanation of EPA's plan and progress for reopening the libraries. O'Neill asserted that EPA's regional libraries and Headquarters library will open this year.

AALL has been outspoken on the EPA library closures since the issue arose in 2006. We are pleased that, after much delay, the Government Accountability Office (GAO) has released its report on the library closures. The report, "[EPA Needs to Ensure That Best](#)

[Practices and Procedures Are Followed When Making Further Changes to Its Library Network](#),” recommends that EPA justify its decision to reorganize the network, improve its outreach efforts, ensure sufficient oversight and monitoring of the reorganization, implement procedures for the proper dispersal and disposal of library materials. We applaud GAO’s recommendations.

## **New FOIA Legislation Would Further Improve Freedom of Information Act**

Just off the success of the OPEN Government Act ([P.L. 110-175](#)) to amend the Freedom of Information Act (FOIA), the bill’s co-sponsors [Sen. Patrick Leahy](#) (D-VT) and [Sen. John Cornyn](#) (R-TX) introduced new legislation to on March 12 to further improve government transparency and FOIA by limiting the ability of lawmakers to create new FOIA exemptions without transparency. Section (b)(3) of the [Freedom of Information Act](#) allows members of Congress to create hundreds of exemptions to the FOIA, burying them in laws passed by Congress. The new Senate bill, the *OPEN FOIA Act of 2008* ([S. 2746](#)), would require lawmakers to “explicitly and clearly” state when they are creating such exemptions to FOIA in all future bills. Similar legislation passed in the 109th Congress by unanimous consent in the Senate.

## **House Passes FISA Legislation**

On March 14, the House of Representatives passed the *FISA Amendments Act of 2008* ([H.R. 3773](#)) to modify the Foreign Intelligence Surveillance Act (FISA) by a vote of [213-197](#). We are pleased that the House bill did not include a controversial provision to provide retroactive immunity to telecommunications companies that participated in the NSA warrantless surveillance program. To move forward on FISA legislation, the House and Senate must either go into conference on their differing bills, or the Senate will have to pass H.R. 3773. However, the Senate bill provides immunity to the telecommunications companies, so it seems unlikely the Senate will be willing to pass the House bill. President Bush has repeatedly [asserted that he would veto](#) any FISA amendment legislation that did not include the immunity provision. Congress must now determine how to proceed.

## **OUTSIDE THE BELTWAY: CHAPTER NEWS**

If you have news on policy or legislative issues in your AALL Chapter, please [let us know](#). News might address legislation you are tracking, events your chapter is hosting, or anything you think might be of interest to others. We'd love to hear from you!

### **Sunshine Week Webcast a Big Success!**

Thanks to all of the law libraries, chapters, and individuals who participated in the Sunshine Week webcast sponsored by OpenTheGovernment.org and AALL! The program, [Government Secrecy: Censoring Your Right to Know](#), was webcast to sites around the country, many of who organized their own local programs on open government issues. AALL sites included: Lake County Law Library (OH); the Lyon County Law Library (KS); the Westminster Law Library at Sturm College of Law, University of Denver; the Law Librarians of Puget Sound (LLOPS) with the Washington State Library; and the Northern California Association of Law Libraries (NOCALL) with the San Francisco Bay Region Chapter of the Special Libraries Association.

The event included two panels, the first moderated by Director of OpenTheGovernment.org [Patrice McDermott](#), and featuring [Anne Beeson](#), Director of U.S. Programs at the Open Society Institute; [Mickey Edwards](#), Director of the Aspen Institute-Rodel Fellowships in Public Leadership and former Republican member of Congress from Oklahoma for 16 years (1977-92); and [John Podesta](#), President and Chief Executive Officer of the Center for American Progress, and Chief of Staff to President William J. Clinton from October 1998 until January 2001. The second panel highlighted creators of websites that help the public learn more about the government. Speakers included Sheila Krumholz, [Center for Responsive Politics/OpenSecrets.org](#); David Moore, [OpenCongress.org](#); Sean Moulton, [FedSpending.org](#); Daniel X. O'Neil, [EveryBlock](#) and moderator Greg Elin of [Sunlight Labs](#).

There were over one hundred people attending the event at the National Press Club, twenty-two host site events which included hundreds of participants around the country, and over seven hundred registrants for the webcast. You can now watch the archived version of the webcast on the [National Press Club site](#). The webcast will soon be permanently available on [OpenTheGovernment.org's website](#).

An online gallery of Sunshine Week highlights, including newspaper and broadcast packages, events, special reports, and official proclamations will soon be posted on the [Sunshine Week website](#). Please send your contributions to [dghernandez@asne.org](mailto:dghernandez@asne.org).

### **NOCALL/SLA Hold Exciting Sunshine Week Program**

NOCALL GRC and the Special Libraries Association, San Francisco Bay Region Chapter, presented their annual [Sunshine Week program](#) on March 21<sup>st</sup>, 2008, in San Francisco. The

“Government Secrecy: Censoring Your Right to Know” webcast comprised the first part



of the NOCALL/SLA program. It was followed by a luncheon panel of local invited speakers who are open government advocates.

Carl Malamud, president of [Public Resource.Org, Inc](#), covered a number public access issues, including how the courts are the most closed branch of the government. Mr. Malamud's organization is working with the Smithsonian Institution to release items from their photography archives. His organization supports the web cast of congressional hearings and works toward making databases of public domain information available to the general public, not only the wealthy.

Marcia Hoffman, staff attorney with the [Electronic Frontier Foundation](#) (EFF), addressed the difficulty of obtaining information through the FOIA. Ms. Hoffman reported that the EFF has urged that the National Security Letter (NSL) provision be struck down, on the basis that the FBI can use NSLs to obtain private communication without court approval. NSLs are an expansion of federal surveillance law, supported by the PATRIOT Act.

Brewster Kahle, Digital Librarian, Director and Co-Founder of the [Internet Archive](#), invented WAIS (Wide Area Information System) in 1989. The Internet Archive, which is part of the Open Content Alliance, an initiative to provide free digital access to works in the public domain. Mr. Kahle called upon librarians to promote the development of a digital library and offered to work with librarians to build targeted digital collections.

*-Submitted by Michele Finerty, Gordon D. Schaber Law Library, Pacific McGeorge School of Law*

## **Maryland Legislation to Cut Funding to Circuit Court Libraries Rejected in House**

Good news! [HB527](#) and [SB86](#), which would have cut funding to circuit court libraries, received unfavorable votes in the Maryland House Judiciary Committee and the Senate Judicial Proceedings Committee this month. When Marion Francis, president of the [Maryland Library Association](#) (MLA), testified in opposition to this bill at the beginning of February, one sponsor of the bill remarked, "Madam, I believe you have just killed my bill."

The testimony provided by the MLA president is evidence of the value of working with other library organizations. [Law Library Association of Maryland](#) (LLAM) has participated in the Maryland Library Association's Annual Library Day at the Legislature for the last three years. Library Day was held this year on February 6. LLAM sponsored the breakfast and briefing held at the Anne Arundel County Public Law Library in the morning before librarians from across the state visited their respective delegates. This event has allowed LLAM members to meet non-law librarians and learn more about the issues concerning the greater Maryland library community.

*-Submitted by Joan M. Bellistri, Anne Arundel County Public Law Library*

## **FREE TIME WELL SPENT: Further Reading for the Information Policy Junkie**

### **Never Too Late for Some Sunshine**

In honor of Sunshine Week, many organizations released reports and surveys highlighting issues relating to open government and access to government information. Here are the highlights:

- A [Sunshine Week survey](#) by Scripps Howard News Service and Ohio University found that 74 percent of those polled view the federal government as very or somewhat secretive, up from 62 percent of those surveyed in 2006. Almost all of those interviewed, 92 percent, said open government is important to them in assessing candidates for state offices such as governor or attorney general.
- A new report by OMB Watch, [Top Open Government Questions for Candidates](#), names the top five open government questions that Americans would like candidates for federal office to answer before the November elections, based on a survey of more than 2,000 people. The questions can be used by voter groups, the media, and the general public to query candidates on openness and secrecy. The top five open government questions address:
  - 1) Manipulation of Facts
  - 2) Executive Privilege
  - 3) Whistleblowers
  - 4) Presidential Records
  - 5) Health, Safety & Environment
- The National Security Archive at the George Washington University released the results of a [Knight Open Government Survey](#) on the Freedom of Information System. The survey found that President Bush's [Executive Order 13392](#) for a "citizen-centered" and "results-oriented" Freedom of Information system did improve customer service at federal agencies, but has failed to make consistent progress on backlogs and has not significantly improved compliance with electronic FOIA requirements. The Archive also awarded its [fourth annual Rosemary Award](#) for the worst performance by a federal agency under the Freedom of Information Act to the Treasury Department.

For more books and articles on open government issues, see [OpenTheGovernment.org's Resource Page](#).

### **Clinton's First Lady Schedules released**

Have you heard? The National Archives in conjunction with the William J. Clinton Presidential Library has opened 11,046 pages of First Lady Hillary Rodham Clinton's White House schedules. These Presidential records are available in the Clinton Library research room and [online](#).

This file series includes schedules for 2,888 days. Arranged chronologically, these records document in detail the activities of the First Lady, including meetings, trips, speaking engagements and social activities for the eight years of the Clinton Administration. While processing the records, Clinton Library archivists noticed that the schedules for 32 were not included within the series. Fortunately, schedules for 27 of those days have now been located, and will be processed as soon as possible. In addition, of the 11,046 pages of schedules that are being opened, 4,746 have redactions, the majority of those pertaining to the privacy interests of third parties.

Schedules for the first 19 days in January 1993, prior to the inauguration of President Clinton and prior to Mrs. Clinton's tenure as First Lady, have been closed in full in accordance with the Presidential Records Act.

For information on other First Ladies:

1. The Library of Congress Manuscript Division has the nation's oldest and most comprehensive presidential library, holding the papers of twenty-three Presidents of the United States, from George Washington to Calvin Coolidge, and the papers of many First Ladies. Check out the [Library's resources](#).
2. After Coolidge, subsequent presidents have their own libraries administered by the National Archives and Records Administration (NARA). You can [learn more](#) about the National Archives holdings from NARA.
3. See also, the [National First Ladies' Library](#)

*-Submitted by Camilla Tubbs, Yale Law School Lillian Goldman Library*

## **Declassification Board Offers Recommendations to President**

On March 17, 2008, the [Public Interest Declassification Board \(PIDB\)](#) heard public comments on its recent report, [Improving Declassification](#). The report, released in December 2007, is the culmination of the several years of work by the PIDB, an advisory committee established by Congress in order to promote public access to declassified historical federal records related to national security. The report addresses 15 issues and makes 49 recommendations. Executive branch agency heads are required to respond to the PIDB's recommendations by April 15, 2008.

The National Coalition for History offers a [detailed summary](#) of the PIDB public hearing, which included comments from Tom Blanton, Director of the National Security Archive at George Washington University; Dr. Arnita Jones, Executive Director of the American Historical Association (AHA); Patrice McDermott, Director of OpenTheGovernment.org, and others. McDermott focused her remarks on what she referred to as a government-wide to implement a successful electronic records management system.

Emily Feldman  
AALL Advocacy Communications Assistant  
(202) 662-4058  
[ejf33@law.georgetown.edu](mailto:ejf33@law.georgetown.edu)

Mary Alice Baish  
AALL Acting Washington Affairs  
Representative  
(202) 662-9200  
[baish@law.georgetown.edu](mailto:baish@law.georgetown.edu)

© 2008 American Association of Law Libraries