

# American Library Association – WO

## Office of Government Relations

### 2007 Midwinter Meeting - Seattle, WA

#### **Privacy, Internet & Telecommunications Update**

Although the House of Representatives' "First One Hundred Hours" will not likely include specific library issues, sponsors in both sides of Congress, within hours of being sworn in, introduced legislative proposals related to Internet policy and telecommunications. Though we may not yet know the full impact of the changes in leadership of the critical Senate and House Judiciary and Commerce committees, we do know that the same set of issues for libraries and information services are being readied for further debate before the 110th Congress.

#### **PRIVACY & INTERNET ISSUES**

##### **Data Retention**

The Department of Justice wants to force Internet service providers (ISPs) to retain massive amounts of data regarding their customers' Internet usage – ostensibly in order to bolster the ability of law enforcement to investigate child exploitation and national security cases. Several lawmakers have signaled their desire to move on the Justice Department's request. Forcing ISPs to retain information for millions of customers raises significant privacy concerns, greatly increases the likelihood of data breach and identity theft, and imposes significant costs on ISPs that would be passed on to customers. The federal government already has significant power to require more targeted "data preservation." Strengthening that authority poses far fewer risks than requiring the mass warehousing of customer data by ISPs.

One of the concerns for libraries is "mission crawl" - that the very existence of this data would lead law enforcement and others to seek and use the data beyond the initial purpose for investigating for child exploitation and national security reasons. ALA will scrutinize these proposals closely.

##### **Wiretap-Friendly Design Mandates for the Internet**

The Justice Department has continued to seek legislation that would amend the 1994 Communications Assistance for Law Enforcement Act (CALEA) to require Internet companies to design their services and applications to be wiretap-friendly. The proposal, which does include a library exemption, would also expand the controls that apply to traditional telecommunications services. If such a measure were enacted it would allow unprecedented government intervention into the design of the Internet, undermining Americans' privacy and security, threatening technological innovation, and imposing significant, even prohibitive, costs on start-ups and new services. Moreover, the administration's reasons why it needs this sweeping authority over technological development have never been articulated. Giving the government design authority over the Internet – assuming the government can even do so – requires careful balancing of complex interests.

##### **FISA Modernization**

It is still anticipated that former Senate Judiciary Committee Chairman Arlen Specter (R-PA) and Rep. Heather Wilson (R-NM) will propose rewriting the law that protects ordinary Americans from government snooping. Couched in terms of "modernization," the bills would legitimize the administration's warrantless surveillance program by granting this and future administrations broader authority to spy on Americans in the United States without judicial review. Cutting the intelligence agencies loose from any checks and balances in this way would potentially harm national security, by enabling unfocused fishing expeditions likely to produce more false leads than valuable intelligence. Meanwhile, new Senate Judiciary Committee Chair Patrick Leahy (D-VT) has indicated his intention to clean up this problem, especially in the use of national security letters.

##### **Interactive Web Applications (IWAs)**

Senator Ted Stevens (R-AK) also introduced a bill during the first week of this Congressional session, on child Internet safety that includes language similar to H.R. 5319, The Deleting Online Predators Act of 2006, which sailed through the House of Representatives last year. These proposals, if passed, would force libraries and schools that receive federal E-rate funding to block virtually all interactivity on their Internet-enabled computers.

Interactive Web Applications, chat rooms, and social networking sites – including many blogging services – would be off limits to the young people who rely on schools and libraries for their Internet access.

ALA strongly opposes such proposals because they would cover forms of free expression that are not only completely legal, but in many cases appropriate and even valuable for minors. In addition to violating the constitutional rights of both speakers and listeners, such requirements would also exacerbate the serious "digital divide" between children whose parents can afford personal computers and children who must use the Internet through their school or library. Librarians and school administrators already deal with the implications of the intersection of children and the Internet, and Congress should not interfere with those local efforts. ALA continues to argue that education is by far the most effective approach to address concerns raised by minors' use of social networking on the Internet. For additional information about IWAs issues see:

<http://wiki.ala.org/iwa>

### **Mandatory Labeling**

There were "labeling" proposals in the last Congress that would have created severe penalties and even imprisonment for web site operators that failed to attach government-sanctioned "sexually explicit" labels to a broad range of online content. Previous proposals would have required labeling of a great deal of constitutionally protected Internet content, including Web pages that depict no nudity or sexual acts and those that already carry an array of voluntary ratings and content labels. ALA argues that a mandatory federal statute would do nothing to protect children and would violate the First Amendment of the Constitution.

## **TELECOMMUNICATIONS**

The debate will start again on all of the complex issues that were part of the failed telecommunications reform legislation in the 109th Congress.

### **Universal Service Reform**

Another bill introduced during the first week of the 110<sup>th</sup> Congress by Former Senate Commerce Committee Chair, Ted Stevens (R-AK) is on Universal Service Reform (USF). It includes proposals that ALA has supported, notably a permanent exemption for the universal service fund, including the E-rate, from complying with Anti-Deficiency Act (ADA) government accounting rules – rules that froze the fund for several months two years ago. But there are many complex parts of the debate on USF reforms – including how contributions to the fund would be determined, what entities must pay, as well as how to administer and control the program at the Federal Communications Commission (FCC). In one of the first news reports about the 110th Congress' telecommunications agenda, Senator Daniel Inouye (D-AK), new chair of the Senate Commerce Committee, commented that "This is just something Stevens is doing. It is not necessarily indicative of where the majority is going."

### **Network Neutrality**

ALA's position is that owners and managers of the "pipelines" should not be able to control the content nor switch some information providers to slower "lanes." While many states are addressing this issue now, there is likely to be another effort at the federal level by both sides on this issue. ALA will continue to support effective network neutrality policies that assure freedom of expression on the Internet and for equity for all types of information providers. It is also hoped that any new discussions will be less polarized and able to come to consensus on this difficult and divisive issue.

### **Related Telecommunications Issues**

Still unknown, will be how the 110th Congress will address broadband deployment, national video franchising, and municipal broadband. Without such legislation in the 109<sup>th</sup> Congress, many states are now taking up these issues, thus making federal legislation moot or harder to complete. The library and school E-rate discounts for traditional telecommunications services has been a priority for ALA, but new ways to promote "big broadband" remains high on ALA's agenda. Within the Washington Office, the ALA Office for Information Technology Policy (OITP) monitors state activities and is seeking resources to support library advocates in the debates in state legislatures or public utility commissions. OITP is also conducting a connectivity study with a grant from the Bill and Melinda Gates Foundation. For further information about this research see: <http://www.ala.org/oitp>