

2003 Copyright Agenda

ALA supports efforts to amend the DMCA and to urge the courts **to restore the balance in copyright law** and ensure fair use:

For further details: www.ala.org/copyright

<p>“Consumers, Schools and Libraries Digital Rights Management Awareness Act of 2003” (S. 1621)</p> <p>Sen. Sam Brownback (R-KS) introduced the bill on September 16, 2003</p>	<ul style="list-style-type: none"> ● Gives private sector a year to create voluntary notice and labeling standards for digital media products that incorporate digital rights management (DRM) technology. Standards must inform consumers, educational institutions and libraries how the DRM will impact their use of digital media products ● Prevents manufacturers of digital media products from using DRM technologies to restrict consumer resale of digital media products they lawfully own or elect to donate to educational institutions and libraries.
<p>“Public Access to Science Act” (H.R. 2613)</p> <p>Rep. Martin Sabo (D-MN) introduced the bill on June 26, 2003</p>	<ul style="list-style-type: none"> ● Amends copyright law to exclude from copyright protection works that resulted from “scientific research” substantially funded by the Federal Government.
<p>“Public Domain Enhancement Act” (HR 2601)</p> <p>Reps. Lofgren (D-CA) and Doolittle (R-CA) introduced the bill in June 2003</p>	<ul style="list-style-type: none"> ● Provides a simple mechanism to ensure that abandoned copyrighted works pass into the public domain ● Requires that copyright owners pay a \$1 fee fifty years after a copyrighted work has been published (and every 5 years thereafter); otherwise, the work passes into the public domain
<p>“Digital Media Consumers’ Rights Act of 2003” (DMCRA), H.R. 107</p> <p>Reps. Boucher (D-VA) and Doolittle (R-CA) introduced in October 2002</p>	<ul style="list-style-type: none"> ● Proposes three key changes to sections of the flawed Digital Millennium Copyright Act (DMCA) of 1998 ● Reaffirms fair use in the digital environment. Although the bill primarily focuses on the concerns of consumers, it is an important first step in recognizing the rights of copyright users
<p>“Benefit Authors without Limiting Advancement or Net Consumer Expectations Act of 2003,” (“BALANCE Act”) H.R. 1066</p> <p>Representative Zoe Lofgren (D-CA) introduced in March 2003</p>	<ul style="list-style-type: none"> ● Another signal to Congress that copyright law must be recalibrated to restore consumer and public rights ● Bill proposes to protect fair use, allow first sale rights of digital content and provides for permissible circumvention to enable fair use and consumer expectations
<p>“Digital Consumer Right to Know Act,” S. 692</p> <p>Senator Wyden (D-OR) introduced the bill in March 2003</p>	<ul style="list-style-type: none"> ● “The purpose of this Act is to ensure that consumers of digital information and entertainment content are informed in advance of technological features that may restrict the uses and manipulation of such content.” ● Requires Federal Trade Commission to issue rules regarding the disclosure of technological measures that restrict consumer use of such content.
<p>Court cases: MGM, Inc. v. Grokster, Ltd.</p> <p>Case on appeal in the U.S. Court of Appeals (Ninth Circuit) involves companies that produce software for peer-to-peer file sharing</p>	<ul style="list-style-type: none"> ● The record companies and movie studios sued Grokster et al. for contributory copyright infringement and vicarious liability. The plaintiffs are challenging the validity of the landmark Sony v. Betamax case. ● Libraries joined with the ACLU, Internet Archive, and Project Gutenberg in filing “friend of the court” brief (September 26, 2003) on behalf of Grokster.

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Threats to fair use continue unabated. As Congress becomes increasingly sympathetic to content providers' complaints about the economic impact of computer piracy, we expect continued efforts to pursue database protection and to expand the control of copyright holders under the guise of digital rights management legislation. At the state level, "Super-DMCA" bills attempt to strengthen telecommunications anti-theft laws with provisions that are more draconian than DMCA Section 1201. Librarians must continue to be in the forefront of fighting for fair use.

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<p>Federal and State Copyright Protection Legislation</p> <p>Proponents of legislation to permit copyright owners to control access to and downstream use of their products are aggressively pushing for help from Congress. There were several bills in the 107th Congress that would undermine the careful balances of the copyright law and we expect at least some of the bills to be re-introduced in the 108th Congress.</p> <p>Similar bills known as "mini-DMCA" or "super-DMCA" bills are also now being pursued in state legislatures.</p>	<p>Note: Copy protection systems are also referred to as digital rights management (DRM), the standards for which are usually set by representatives of private industry, such as entertainment and consumer electronics. One significant issue is the extent to which government should be involved in mandating DRM or copy protection.</p> <p>"Piracy Deterrence and Education Act of 2003" (H.R. 2517) was introduced in the House by Rep. Smith (R-TX) in June 2003</p> <ul style="list-style-type: none"> Enhances criminal enforcement of copyright laws, requires the FBI to educate the public about the application of copyright laws to the Internet Bill does not distinguish between unauthorized copying that is legal from unauthorized copying that is illegal <p>The "Author, Consumer and Computer Owner Protection and Security Act of 2003" H.R. 2752 was introduced in the House in July 2003 by Reps. Conyers (D-MI) and Berman (D-CA)</p> <ul style="list-style-type: none"> Strengthens domestic and international enforcement of copyright laws Bill would make anyone who uploads a single unauthorized copyrighted work to a public network a felon <p>"Super DMCA" bills are being pursued by movie industry in state legislatures. Such bills propose to update existing laws prohibiting theft of cable and satellite service by implementing provisions similar to DMCA anti-circumvention prohibition, but without the narrow exceptions and limitations that permit libraries to conduct legitimate activities.</p> <ul style="list-style-type: none"> Bills have passed in AK, CO, FL, PA, MD, DE, IL and MI Bills are being considered in GA, MA, SC, TN, TX
<p>"Database and Collections of Information Misappropriation Act of 2003" (H.R. 3261)</p> <p>Rep. Coble introduced the bill on Oct. 8, 2003</p>	<ul style="list-style-type: none"> After several years of negotiation with stakeholders, H.R. 3261 still provides overly broad and unnecessary protection for commercial database producers. Libraries continue to oppose. Bill referred to Judiciary Committee. Inadequate exception for educational, scientific, research institutions Hearings were held on Sept. 23, 2003.
<p>Copyright Protection Rulemaking</p> <p>Federal Communications Comm'n requests comments on proposed FCC rule mandating "broadcast flag" copy protection for digital television</p>	<ul style="list-style-type: none"> The broadcast flag and other copy protection mechanisms present a serious potential adverse impact for libraries and educational institutions by preventing them and their patrons from exercising fair use and other rights under copyright law. Libraries filed comments Dec. 2002; reply comments filed Jan. 2003.
<p>DMCA Section 1201 anti-circumvention</p> <p>Triennial rulemaking by U.S. Copyright Office to determine exemptions, if any, to the prohibition on circumventing technological</p>	<ul style="list-style-type: none"> Previous Rule issued by Library of Congress, effective October 28, 2000, recognizing two narrow exemptions from the anti-circumvention prohibition in Section 1201(a)(1) of Copyright Act Libraries filed comments (Dec. 18, 2002 and Feb. 19, 2003. Hearings were held in Washington, D.C. and California in April and

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<p>protection measures placed on copyrighted works</p>	<p>May 2003.</p> <ul style="list-style-type: none"> • Next rule will go into effect October 2003
<p>Uniform Computer Information Transactions Act (UCITA)</p> <p>Proposed state contract law that validates enforceability of “shrink-wrap” contracts</p>	<ul style="list-style-type: none"> • NCCUSL (the drafter of UCITA) has decided not to promote UCITA in state legislatures and has discharged the UCITA Standby Drafting Committee. However, UCITA remains a uniform act that can be promoted by other proponents. • UCITA remains law in Virginia and Maryland. The need for anti-UCITA “bomb-shelter” legislation remains as strong as ever.
<p>International Copyright Issues</p> <p>International agreements and trade treaties may adversely impact libraries and U.S. copyright law</p>	<ul style="list-style-type: none"> • Hague Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Cases • Free Trade Area of the Americas Agreement (FTAA) and bi-lateral FTAs • Continuing implementation of the World Trade Organization's (WTO) General Agreement on Trade in Services (GATS)