

**Chicago Association of Law Libraries  
Public Affairs Committee  
November 20, 2008  
November 2008 UPDATE**

Todd Ito  
Heidi Kuehl  
Co-Chairs

**Open Government Update**

**Need for Transparency in the Financial Bailout Plan**

Openthegovernment.org is working on organizing a clearinghouse for information on the lack of transparency in the financial bailout plan. They have a page of news and other resources at

<http://www.openthegovernment.org/article/articleview/342/1/115/>

The organization notes that:

“Any credible solution to today's economic crisis must address one of the crisis' fundamental causes - corruption and other abuses of power sustained by secrecy. Unfortunately, thus far the government has been slow to let the public know how it is using taxpayer money to help out ailing financial markets.”

**Recommendations on Transparency in the Government**

OMB Watch is leading a group of organizations, including AALL, in making recommendations on transparency for the new administration. Areas covered by the recommendations include government openness, reform of the regulatory process, government performance issues, and treatment of charities by counterterrorism authorities. The projects that produced the recommendations started before the recent elections. More information is available at

<http://www.ombwatch.org/article/archive/551>.

**Midnight Regulations**

OMB Watch is also tracking regulations the Bush administration is believed to be intending to finalize in November so they can't be easily undone by a new administration because they would be both final and in effect before January 20, 2009. Environmental protection, worker leave, and auto safety are among the areas where regulations are expected.

The list is available at [www.ombwatch.org/article/blogs/entry/5494](http://www.ombwatch.org/article/blogs/entry/5494).

A background article explains that the new administration's options to rescind or reverse the rules would be limited to lawsuits, restarting the rulemaking process, and not much more. See <http://www.ombwatch.org/article/articleview/4400/>

### **Third Circuit Eliminates Secret Case Dockets**

Reporters Committee for Freedom of the Press reports that the United States Court of Appeals for the Third Circuit has issued a notice that court dockets will no longer be sealed. This notice applies to docket information only. Individual documents within the case may still be sealed. The notice is available at [http://www.ca3.uscourts.gov/Public%20Notices/seal\\_dockets\\_webNov08.pdf](http://www.ca3.uscourts.gov/Public%20Notices/seal_dockets_webNov08.pdf).

The Reporters Committee and other news organizations had sought Supreme Court review and public access to a Pennsylvania employment case that had been kept secret for seven years. The Third Circuit notice was issued a few days before the Supreme Court declined to accept review of the case, *New York Law Publishing Company v. Doe*. The Reporters Committee amicus brief is at <http://www.rcfp.org/news/documents/20081014-amicusbrie.pdf>.

Lucy Moss  
Chicago-Kent College of Law

### **District Court for D.C. Allows White House E-Mail Case to Go Forward**

Last week, the U.S. District Court for the District of Columbia denied a motion to dismiss a lawsuit concerning the preservation of White House e-mails. The consolidated suit, filed last year by Citizens for Responsibility and Ethics in Washington (CREW) and the National Security Archive (NSA) at George Washington University, alleges that the White House violated the Administrative Procedure Act and Federal Records Act by failing to establish a system that adequately captures, preserves, and categorizes e-mail messages.

The plaintiffs estimate that over 5 million e-mails, sent between March 2003 and October 2005, may have been deleted from the servers. The White House discontinued the Automated Records Management System that had been in use from 1994 through 2002 and failed to install a preservation system.

The court rejected several arguments made by White House attorneys, including claims that the court lacked jurisdiction. Judge Henry Kennedy Jr. also found that the plaintiffs were able to show that they suffered adequate injury in fact, since they have active FOIA requests to the White House for the missing e-mails.

The National Security Archive has published a helpful chronology of this case at <http://www.gwu.edu/~nsarchiv/news/20080417/chron.htm>

The full opinion is available on the District Court's website at [https://ecf.dcd.uscourts.gov/cgi-bin/show\\_public\\_doc?2007cv1707-90](https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2007cv1707-90)

Todd Ito  
University of Chicago, D'Angelo Law Library

## **GPO prepares first public release of FDsys**

The first public release of GPO's Federal Digital System (FDsys) is scheduled for late December. This first release will initiate the migration from GPO Access to FDsys. GPO gave a technical overview of FDsys and demonstrated some of the improved search functionality at the Fall Depository Library Council meeting in Arlington, VA in October. Slides from the meeting and more information are available on GPO's FDsys blog at <http://fdsys.blogspot.com/2008/10/gpo-depository-library-council-meeting.html>.

At launch, *Federal Register*, *Congressional Record*, *Weekly Compilation of Presidential Documents*, Public and Private Laws, and Congressional Bills, Reports, Documents, and Hearings will all be available through FDsys. GPO Access and FDsys will run simultaneously until the completion of the migration, planned for summer of 2009. Two weeks of beta testing will be conducted in December, and GPO will offer online FDsys training webinars beginning in January.

GPO also continues to move forward on authentication. Having already rolled out authentication for 110<sup>th</sup> Congress Public and Private Laws and the 2009 *Budget of the United States Government*, GPO will begin authenticating Congressional Bills for the 111<sup>th</sup> Congress, and more titles are in the works. For background and examples, see GPO's authentication web page at <http://www.gpoaccess.gov/authentication/>

Kevin McClure  
Chicago-Kent College of Law

## **Network Neutrality News**

The issue of Network Neutrality has been in the news quite a bit in the last couple of years. Now, the focus will be on what an Obama administration means for this important issue. The *Washington Post* had an interesting article about President-elect Barack Obama's likely views on this topic at <http://www.washingtonpost.com/wp-dyn/content/article/2008/11/13/AR2008111303830.html> . There is also a brief

discussion of Obama's net neutrality views at the following website:  
<http://www.savetheinternet.com/blog/2008/11/07/obama-wants-your-media-reform-ideas/> . President-elect Barack Obama's website also articulates the administration's technology goals and includes the goal of an open Internet:  
<http://www.barackobama.com/issues/technology/> .

The FCC Commissioner, Deborah Taylor Tate, recently spoke about the issues surrounding a free Internet at a Telecommunications conference in New Orleans. Her statements summarize some of the main net neutrality issues. See [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-286851A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-286851A1.pdf).

Chairman Kevin Martin also released the following statements about network neutrality at a conference in Copenhagen, Denmark on September 30, 2008:  
[http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-285830A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-285830A1.pdf) .

For more information on Network Neutrality and those who will be affected, see:

1. <http://www.savetheinternet.com/=threat#abuse> (describing the threats against Internet freedom and those affected when access to the Internet is restricted)
2. [http://www.fcc.gov/broadband\\_network\\_management/](http://www.fcc.gov/broadband_network_management/) (FCC website for broadband network management issues and recent documents on this topic)
3. <http://www.fcc.gov/headlines.html> (posting of recent FCC headlines and often includes recent network neutrality issues)

Heidi Frostestad Kuehl  
Pritzker Legal Research Center, Northwestern University School of Law

## Copyright Law

The AALL Copyright Committee expects a lot of Congressional activity on intellectual property issues after the 111th Congress convenes in January, but it is difficult to predict when IP will take the lead, given that the new president will take office with a full agenda and many crises that need Congressional attention.

John Conyers (D-Mich), chair of the House Judiciary Committee, will abolish the Subcommittee on Courts, the Internet, and Intellectual Property in the new Congress and instead keep intellectual property issues at the full committee level. The same thing happened in the Senate a few years ago.

Last month the U.S. Copyright Office gave notice that it will receive written comments until December 2 on possible exceptions to the prohibition against

circumvention of technological measures that control access to copyrighted works. You will recall that the Digital Millennium Copyright Act, P.L. No. 105-304 (1998), added chapter 12 to Title 17 of the United States Code, which among other things prohibits circumvention of access control technologies employed by or on behalf of copyright owners to protect their works. The statute provides an exception to the prohibition for persons "who are users of a copyrighted work which is in a particular class of works, if such persons are, or are likely to be in the succeeding 3-year period, adversely affected by virtue of such prohibition in their ability to make noninfringing uses of that particular class of works..." Every three years the Copyright Office must make the determination of possible exceptions in a rulemaking proceeding. See 73 Fed. Ref. 58073 (Oct. 6, 2008) or visit <http://www.copyright.gov/1201> for more information.

Keith Ann Stiverson  
Chicago-Kent College of Law