



## The Washington Office Has a New Blog

If you've been to the Washington Affairs Office (WAO) Web site recently, you've probably noticed we have a new, exciting way to update you on the activities of the WAO—a new blog! Our blog will highlight bills we're tracking in Congress, Action Alerts, resources like interesting articles and Web sites, exciting events we're participating in, and more.

You can keep up with our regular updates by subscribing to the RSS feed or by visiting the blog for the latest news ([www.aallnet.org/aallwash](http://www.aallnet.org/aallwash)). We hope our blog serves as another way to keep you informed about the WAO. 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 fiscal year (FY) 2009. This caused quite a stir not only on the Hill but also within the large community that pours 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 (GPO) quickly announced it would publish the budget in print and distribute one or two sets at no cost to members of Congress. GPO will also distribute the print version of the new budget to federal depository libraries.

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, which applies the same technology GPO uses to authenticate the online versions of public and private laws. Hill staffers, who are used to pouring 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*. "Frankly, it is no fun staring for hours at a computer screen to

find obscure spend-out rates," he says. "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 law librarians follows a victory we reported here last month—the enactment of the *OPEN Government Act of 2007* that reforms the *Freedom of Information Act (FOIA)*. 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 (DOJ), 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-Texas), 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 input from museums,

libraries, publishers, and other content owners. The House held a hearing on orphan works in March 2006. Maria Pallante, 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 in February on what a new orphan works bill should include, we focused on how to define a "reasonably diligent search." We were 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 that 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.

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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 Association of Public Television Stations, the Center for Democracy and Technology, the Computer and Communications Industry Association, the Consumer Electronics Association, the Printing Industries of

America, and Public Knowledge. Stay tuned for further developments on both these issues. ■

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