

Key issues in Congress

The 104th Congress is ending 1995 with many contentious issues and with vigorous debate, trying to find closure before the pending 1996 presidential election battles begin. Key issues ALA has been addressing include:

Cyberporn and reform

One of the hottest issues in Washington is the debate over "cyberporn" in the telecommunications reform legislation in conference committee. There was tremendous pressure from the industry and parts of Congress to complete this legislation before the holiday recess. The prevailing assumption was that little productive work will be conducted on major issues during the election year.

The House version of S. 652 includes the Cox-Wyden amendment which is a somewhat less restrictive and more "carrot" approach to controls of the Internet. The "stick" approach to National Information Infrastructure (NII) controls is inherent in the Exon amendment in the original Senate version of S. 652. Coupled with an amendment by Rep. Henry Hyde (R-Ill.), the Exon approach would subject online service providers (commercial as well as library or "public" providers) to criminal liabilities for merely providing access or conducting usual library functions. (Detailed analyses of these amendments are available in various issues of the *ALA Washington Newsletter*.)

During conference committee proceedings, which began around Thanksgiving, Rep. Rick White (R-Wash.) has been attempting to craft a "compromise" on these cyberporn issues. Although many of his attempts were appreciated, ALA determined the White proposal is not a "fix" for libraries and educators, or for the general public. It still includes criminal penalties and, at this writing, also includes an overbroad "indecent" standard rather than a "harmful to minors" standard for prosecution. ALA's position has been that no new law is needed in this area; existing law is sufficient. Attempts to "control" the Internet and NII would curtail the ben-

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efits of these new telecommunications systems and threaten intellectual freedom in the electronic age.

In a December 4 letter signed by ALA and eleven other library and education organizations, the following points were made: the Hyde amendment would criminalize a vaguely defined and overly broad range of electronic communications, subjecting educational institutions and libraries to criminal

liability, and severely impair the ability of these institutions and libraries to provide access to computer networks. If Congress must proceed with such proposals, then the provisions should 1) assure that no library or educational institution would be subject to liability merely for providing access to the Internet or for performing other traditional library organizational services; 2) that such provisions be geared specifically to protecting minors from "harmful" material rather than dangerously vague "indecent" material (which courts have struggled unsuccessfully to define for decades); and 3) that only those who specifically and intentionally direct harmful material to minors be subject to criminal penalties.

At this writing, S. 652 was likely to be resolved in the first half of December unless the bill became one of those Washington train wrecks. There is still much speculation about whether President Clinton will veto the bill or not. ALA has also worked extensively on the Snowe-Rockefeller-Kerrey-Exon amendment which would provide a type of affordable telecommunications rates for K-12 schools and public libraries. Thus far it has been maintained in the conference committee deliberations.

White Paper update

ALA continues to be an active supporter of the Digital Futures Coalition (DFC), which was organized in November for the purpose of assuring that intellectual property debate on critical legal and social issues is thorough, broad, and balanced. ALA concerns include that the "White Paper" could delay or even prevent the emergence of new commercial technologies which "add value" to digital information by increas-

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ing copyright owners' effective control over data resources and stifle innovation and job creation in the private sector with overbroad prohibitions against manufacture and sale of legitimately useful consumer electronic devices. ALA continues to argue that to reduce educators' and the public's access to digital information by creating a new "transmission right" would make electronic communications "distributions" within the meaning of the Copyright Act. The White Paper would categorize even "browsing" as a potentially infringing "reproduction." (For additional information about the DFC, its other members, and activities contact Adam M. Eisgrau at the ALA Washington Office at (202) 628-8410 or e-mail: AME@alawash.org.)

Copyright term extension legislation

Legislation to extend the term of copyright from "life-plus-50" to "life-plus-70" years remains pending before the Judiciary Committees of both Houses of Congress. Consideration of the measure, however, remains stalled while negotiations on another bill (regarding the licensing of music by commercial and other establishments) continue. ALA, acting in concert with four other national library organizations, has

written to the chairmen of both committees requesting that the legislation be amended to provide libraries with the authority to "use" copyrighted works during the 20-year extension period. Language crafted by the library groups, and endorsed by Register of Copyright Marybeth Peters, would create the presumption that such use was permissible provided that it was neither undertaken with a prior profit motive, nor subsequently affected the market for the copyrighted work adversely. At ALA's request, House Courts & Intellectual Property Subcommittee chairman Carlos Moorhead (R-Calif.) wrote to Peters on November 29 requesting that she bring library and copyright owner industry representatives together to negotiate the text of a "library" amendment acceptable to both groups. At this writing it appeared likely that this meeting, perhaps the first of several, would take place between December 11 and 22. Library groups are acting under the assumption that time is of the essence. While no meeting of Moorhead's subcommittee to consider the term extension bill has been scheduled, should the music licensing issue be resolved, such a session could rapidly be convened before Congress' holiday recess. ■

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access to information on the grounds that it is perceived to be frivolous or lacking value," wave red flags before administrators of campuses. Moreover, just because a professor wants extensive materials in a controversial area, for example, he/she should not warrant ALA Intellectual Freedom championing any more than the professor with a similar level of unrealistic acquisitions expectations in a narrow area of the Classics.

3.) Since Annual Conference another related concern has arisen. It comes from a response made by Judith Krug, who is the very heart and voice of Intellectual Freedom, to a question asking the relationship between intellectual freedom and intellectual participation. In the September 1995 *American Libraries*, she is quoted as saying that "they're one and the same." We do not believe that these issues are the same or that intellectual participation is "just the next step after intellectual freedom."

In fact, the major information problem—the intellectual participation problem—confronting most people today is not having access to or not knowing what information is available to

help them address the problems of their daily lives. These information needs can and do run the gamut from how I can apply for unemployment, to where I can find reliable affordable child care, to what financial help I can get to go to college, to information on a recently diagnosed illness. And ALA's efforts within its Goal 2000 to address this larger issue should not be diminished to an add-on of the IFC's agenda.

As to the electronic interpretation, ACRL is again forwarding to you the memo it gave to you at the annual conference which raises specific concerns that it has regarding the 1.4 version. It would be our hope that the IFC would seriously consider these concerns as well as those raised by other people and make changes so as to allow us to support the interpretation. We also hope that the IFC will give substantive attention to the larger issues raised in this memo and will seek to work more cooperatively with ALA divisional leadership. Meanwhile members of our Board will work with ACRL's IFC in developing specific wording changes in the electronic interpretation for what it will forward to your committee prior to Midwinter. ■