

Copyright expectations for the 117th Congress

Advocates for balanced copyright policy might assume, now that both houses of Congress have a slim Democratic majority, that any copyright-related legislative activity would be more favorable to the public. That assumption would be wrong.

Members of both parties are interested in securing broader rights for rights holders and expanding piracy protections. (I once attended a reception at the Motion Picture Association offices in Washington, D.C., and during the program the invited U.S representative actually said that Congress was here “to serve the rights holders.”) ALA is here to remind Congress of library and user rights.

The Senate Judiciary Committee is where most decisions about copyright policy are made. As of this writing, no chair of the Senate Judiciary Committee Intellectual Property subcommittee has been selected. The current chair is Senator Thom Tillis (R-NC). Now that the Democrats have a narrow margin in the Senate, there is a chance that a change in leadership means a change in priorities. This would be welcome news for the public if it means Senator Tillis’s Digital Copyright Act of 2012 discussion draft, released in December 2020, is quashed.

Tillis’s most recent efforts at digital copyright reform are detrimental to public access. For example, regarding third party liability provision in Section 512, Tillis’s proposal supports a system where online service providers are asked to do more to control piracy on their platforms by moving from “notice and take down” to a “notice and stay down.” Libraries’ ability to provide Internet access to the public would be threatened for fear of litigation. Increased

filtering would limit free speech, fair use, and block lawful content.

The legislation also gives the U.S. Copyright Office more regulatory power by removing it from the Library of Congress and making it an agency in the Department of Commerce. As threatened on multiple occasions previously, this legislation makes the Register of Copyrights a presidential appointment, politicizing the process and removing hiring authority from the Librarian of Congress. It seeks to micromanage the operations of the U.S. Copyright Office by making registration requirements less stringent and making digital deposit the default for registration. Deposit of best edition copies would be optional, although the Library could request one to add to the collection. Library priorities that were communicated to Tillis, including facilitating distance education and preempting, contractual restrictions are not reflected in the discussion draft.

The proposed legislation does include measures that ALA supports. Some changes to the 1201 anti-circumvention provisions are welcome, such as making permanent exceptions for noninfringing activities that enable blind or visually impaired persons to use assistive technologies. Ideally, there should be no violation of Section 1201 without a nexus to infringement. The discussion draft of the bill also included clear direction on policy related to orphan works (those whose author cannot be found).

ALA will continue to monitor developments on Capitol Hill. To stay up to date on the latest policy news related to copyright, watch the ACRL Insider blog for information on our monthly webinar series, CopyTalk, held the first Thursday of each month (2:00-3:00 ET). The February 4, 2021, CopyTalk features Jonathan Band, longtime ALA counsel and foremost expert on intellectual property. A recording will be made available after the live event. *zz*

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