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Legally Speaking-Copyright

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Legally Speaking

Copyright Update: ALA Midwinter Meeting and Beyond

by Virginia Seiser (Associate to the Dean of Library Services, University of New Mexico)

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Copyright was a hot topic during 1996, both nationally and internationally, culminating in the debate at the December meeting of the World Intellectual Property Organization (WIPO) in Geneva. There was a lot to report at the American Library Association Midwinter Meeting in Washington D.C. in February 1997. There were significant accomplishments in the fight to preserve access to information but librarians were warned that there are more challenges to come in 1997.

The ALA Committee on Legislation used the Midwinter Meeting to present a mid-year Legislative Update. The lead agenda item and the largest share of the time allotted went to "Discounted Telecommunications Rate," an important objective in ALA's Goal 2000 plan and an issue with ramifications that will affect the daily operating expenses of libraries throughout the country. Copyright was sandwiched between reports on the Communications Decency Act and the next generation Internet, in an agenda item titled "Other Technology Policy Issues." It would have been easy to miss if you were scanning the conference program for relevant meetings to attend.

The Legislative Update on copyright was presented by Adam Eisgrau, ALA Washington Office Legislative Counsel. He had a lot to cover in the relatively brief time allotted to copyright on that agenda and he was but one of a long string of speakers on state and federal issues of concern to librarians. Fortunately, he was a featured speaker at at least two other meetings devoted solely to copyright, the meetings of the ALA Subcommittee on Intellectual Property and the Association of College and Research Libraries (ACRL) Copyright Committee. He reported on international treaty negotiations, federal legislative proposals, Supreme Court action, and other national initiatives.

On the international front, ALA representatives attended the WIPO Diplomatic Conference in Geneva in December 1996. WIPO is a United Nations agency. The conference was called to negotiate additions to two long-standing international treaties on protection of copyright, taking into account technological developments in electronic and networked information. One of the three provisions to be negotiated was a highly controversial proposal on database protection. As originally drafted it would have significantly curtailed access to information now readily available. ALA was part of a broad-based coalition that successfully blocked the database treaty from being considered at the WIPO conference. However, consideration of the database treaty was deferred, but not defeated. A WIPO working group was scheduled to meet in late March 1997 to formulate a timetable for future consideration of the proposed database treaty. We will be hearing more about this issue.

On the federal front, several pieces of proposed legislation were introduced in the last Congress that worried those who see a dangerous shift in the direction of treating intellectual property as a commodity. One of these was an attempt to move copyright jurisdiction out of the Library of Congress and into the Department of Commerce as part of an Omnibus Patent Reform Bill. ALA lobbied against that provision and it was not enacted. However, a bill titled the Patent System Improvement Act (H.R. 400) has been introduced in the current Congress that would privatize the Patent Office, creating a government corporation with broadly defined responsibilities that could be inferred to include copyright. ALA is expected to lobby against such wording.

ALA successfully lobbied against the Copyright Term Extension Act of 1995 that would have increased the number of years before a copyright-protected work would enter the public domain. The Extension Act of 1995 was defeated but a new copyright extension bill (H.R. 604) has been introduced in 1997. The new bill includes a library exemption which is being studied.

Another bill ALA was concerned about in the last Congress has resurfaced in the current Congress: the Intellectual Property Antitrust Protection Act (H.R. 401). Don't be misled by the title. If enacted, the bill would make it very difficult for consumers or competitors to use anti-trust legislation to challenge copyright holders for monopolizing the market. Large software manufacturers would be among those benefiting most from such protection.

Perhaps the most significant piece of copyright legislation in the last Congress was the National Information Infrastructure Copyright Protection Act of 1995, based on the NII White Paper. ALA joined 35 other public and private sector organizations to form the Digital Future Coalition, which lobbied against the bill, preventing it from being put to a vote. The NII White Paper was also the

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source of the official U.S. government position on the WIPO database protection treaty, discussed above. The clear lack of national consensus on the issue was one of the strongest arguments for keeping the database treaty off the table in Geneva. Further developments are expected.

Eisgrau went on to report on activity at the Supreme Court. ALA filed an Amicus Brief on behalf of Michigan Document Services (MDS) in its appeal of a lower court decision that it illegally infringed on publishers' copyrights when it photocopied material for coursepacks sold to university students. (Update: in April 1997, the Supreme Court officially declined to hear the MDS appeal. The Appeals Court ruling that MDS is in violation of copyright law stands.)

ALA has been an active participant in an initiative that grew out of the NII White Paper, the Conference on Fair Use (CONFU). CONFU was convened in 1995 by Patent Commissioner Bruce Lehman to bring copyright users, producers, owners and publishers together to negotiate fair use guidelines for intellectual property in the electronic environment. Five broadly representative working groups were formed. ALA representatives were active on all five. They were originally scheduled to present draft guidelines by November 1996. However, a consensus on appropriate guidelines has failed to emerge. Eisgrau reported ALA "concluded that it is presently premature to adopt formal fair use Guidelines at this time given the degree to which both technology and public policy in this vital area are and will remain in flux...." Other library organizations and educational groups represented in the CONFU process have reached similar conclusions. A final CONFU meeting is scheduled for May 1997.

Paralleling the CONFU process, but outside it, the Consortium of College and University Media Centers (CCUMC) convened a group also representing copyright users, producers, owners and publishers to draft fair use guidelines for educational purposes. ALA was consulted but declined to endorse the resulting document "Fair Use Guidelines for Educational Multimedia." According to Eisgrau, this statement is "opposed by many other major public sector library and educational organizations." At Midwinter Meeting, the ACRL Copyright Committee discussed the guidelines and voted not to endorse them.

(Update: In spite of the lack of consensus, CCUMC delivered a live teleconference by satellite feed to sites all over the country on February 20, 1997, less than a week after ALA Midwinter Meeting. The title of the teleconference, "Fair Use Guidelines for Educational Multimedia: The Final Document and Its Implementation," implied that the debate was over. While the teleconference panelists did acknowledge that some participating organizations have not endorsed these guidelines and panelists did field questions that challenged the guidelines from the television audience, no representatives of ALA or other dissenting groups were included on the twelve-person panel.)

The debate about copyright and fair use is by no means over. Librarians, and their representative organizations continue to be important players in shaping that debate. Its outcome will determine our access to information now and for decades to come.