

Same Issues, Different Packaging

The new, 108th Congress has inherited a number of information technology policy issues that will have a direct impact on the higher education and library communities. Bills involving digital copyright protection and information security and privacy will be reintroduced, and the discussions will continue. House and Senate committees will parry over jurisdiction, incoming freshmen will jostle for roles among the experienced legislators, and the White House and the Federal Communications Commission (FCC) will be called on for guidance and leadership.

The 107th Congress left town with few of its ambitious IT agenda items accomplished. Despite this, there was progress on some issues:

- Passage of the Technology, Education, And Copyright Harmonization Act (TEACH Act) effectively updates U.S. copyright law, permitting teachers to share copyrighted works with registered students over the Internet. It applies to the virtual classroom the same fair-use standards that are currently allowed in a physical classroom. Educational institutions and libraries enjoining this new law are responsible for instituting the rules and educating their communities. They must also implement technological measures that “reasonably” prevent the unauthorized retention and redistribution of copyrighted works. Higher education and library associations are collaborating to provide guidance on what technology can be utilized to satisfy this provision.
- The Cyber Security Research and Development Act (H.R.3394) seems destined for passage. It will authorize over \$903 million to the National Science Foundation (NSF) and the National Institute of Standards and Technology (NIST) for funding cybersecurity research and training. Additional grant money will be dedicated to improving undergraduate and master’s degree programs in computer and network security, as well as fellowship programs for Ph.D. candidates. Projects to foster partnerships among academia, government, and industry are included in this act as well. Those colleges and universities that want to participate in the programs must be SEVIS (Student and Exchange Visitor Information System) compliant.¹
- Despite budget shortfalls, Congress supports increased funding of the NSF. Recognizing the critical importance of long-term research, both sides of the Hill have requested a 6.5 to 7.9 percent increase in the NSF budget, with an increase of over \$400 million recommended for research and related activities. Higher education institutions often receive the lion’s share of the NSF’s IT grant funding.

Although predicting the future is always a risky venture, at least three topics are sure to appear on the 108th congressional calendar: national security versus individual privacy; peer-to-peer (P2P); and the Digital Millennium Copyright Act (DMCA). National security will continue to dominate the agenda, but the discussion will be tempered by a renewed interest in how security measures

affect individual privacy. Copyright reform bills will focus on the P2P dilemma and will include suggested changes to the DMCA.

National Security versus Individual Privacy

Months after the first anniversary of September 11 and the USA-PATRIOT Act, civil rights groups are becoming more vocal in their protest against the methods used by the government to improve national security. In August 2002, the American Civil Liberties Union (ACLU) filed a Freedom of Information Request for the Department of Justice to provide records on its domestic surveillance activities. Congress, on the other hand, is already trying to amend the act to make it easier for Internet Service Providers (ISPs) to share customer information with law enforcement.

Although the electronic surveillance provisions sunset by December 2005, Congress and the White House are being pressured to reexamine the act and to ensure that any subsequent security laws guarantee privacy rights. The Homeland Security Bill (H.R.5710) passed by the House of Representatives contains a provision creating a privacy officer whose job will be to guarantee that the use of technologies sustains—rather than erodes—privacy. (The White House is also considering creating a privacy advisor position.) The new position will be responsible for evaluating legislative and regulatory proposals involving the collection and use of personal information. Other pending bills would require the Department of Justice to submit to Congress annual reports regarding the use of the DCS 1000 (Carnivore) e-mail sniffer

system and would require any new regulations by federal agencies to be accompanied by a privacy-impact assessment.

Ultimately, the courts may determine how privacy standards are set. Presently the U.S. District Court for the District of Columbia is trying a case in which the Recording Industry Association of America (RIAA) is attempting to force Verizon to release information on its network users accused of unauthorized file trading of copyrighted works. If the RIAA is successful, then ISPs, including higher education institutions, may be forced to turn over customer information whenever a copyright owner claims infringement.

P2P: The Battleground of Content Control

The terms may change—copyright/intellectual property/ digital rights management/ digital asset protection—but the dilemma remains the same: how do we make new and creative content readily available and still compensate the content owners? Every technological advance in information dispersal, from the printing press to the player piano to the VCR, has been challenged with the same question regarding the balance between the needs of consumers and those of creators. Appropriate solutions have been found in the past, and most legal experts agree that the issues today, even P2P, are likewise solvable.

The latest congressional copyright bills prescribe a technological fix to this dilemma, with potentially negative consequences for the higher education and library communities. One bill, the Consumer Broadband and Digital Television Protection Act (S.2048), mandates security system standards for use in all new computers to prevent the unauthorized downloading and redistribution of copyrighted works. Besides the costs involved in making all college and university computers compliant, this could compromise

the privacy of Web browsers and the academy's commitment to fair-use access to information. The P2P Piracy Prevention Act (H.R.5211) limits the legal liability of copyright owners from interfering, blocking, or impairing unauthorized use of their copyrighted works on computers connected to publicly accessible P2P networks. Despite provisions aimed to prevent harm to a computer, colleges and universities have a legitimate fear that a "tech war" will be conducted over their networks as copyright owners aim to shut down the most notorious file sharers,



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who typically reside in the campus dorms. Fortunately, both bills failed to gain momentum in the 107th Congress, and civil liberty groups and computer manufacturers will likely demand that Congress carefully scrutinize these approaches when they are reintroduced.

DMCA Revisited

Not all copyright-related bills introduced in the 107th Congress pose a danger to higher education and research. One bill, introduced by Zoe Lofgren (D-Calif.), focuses on maintaining consumers' rights to make legal copies of material for their

own use. The other, introduced by Rick Boucher (D-Va.), revises section 1201 of the DMCA to allow the circumvention of technological-protection measures for non-infringing use of copyrighted works and for the furtherance of scientific research into such measures. Introduced too late in the session to make any headway, both bills will be place-markers when the 108th Congress convenes. Timely, the bills came just as the Copyright Office will begin its second rule-making proceeding on exemptions from the prohibition on circumvention of tech-

nological measures that control access to copyrighted works. The higher education and library communities are encouraged to submit comments and will have the opportunity to respond in a second round of comments due February 19, 2003.



The 108th Congress is expected to reexamine other pending issues, such as the chilling effect that royalty costs are having on small Webcasters, including college radio stations. In the meantime, congressional staff will be keeping a close tab on how state legislatures address these and other IT issues. Many state legislatures, not content to wait for federal guidance, are crafting their own laws to meet local community needs and standards. Whether the new laws are federal- or state-mandated, the higher educa-

tion and library communities need to remain actively engaged through their associations and their government relations representatives.

Note

1. SEVIS is an Internet-based software application being developed by the Immigration and Naturalization Service (INS). It will provide tracking and monitoring of nonimmigrant students and exchange visitors and their dependents. For more information on SEVIS, see <<http://www.educause.edu/issues/sevis.html>>.

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