

# aap MONTHLY REPORT

A News bulletin  
for Members of  
The Association  
of American  
Publishers  
ISSN07488-8173  
Vol. XXII No.



## WHAT'S NEWS

### SENATE FAILS TO APPROVE PATRIOT ACT CONFERENCE REPORT, EXTENDS CURRENT ACT FOR SIX MONTHS; HOUSE CUTS EXTENSION TO FIVE WEEKS

Opposition to the lack of safeguards in the conference-approved bill resulted in a Senate-approved 6-month extension that was cut back to 5-weeks by the House.

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### PROGRAM ON INTERNATIONAL LIBEL AND PRIVACY SET FEBRUARY 28

AAP's Freedom to Read Committee joins MLRC and Bloomberg News to sponsor a symposium for editors and legal personnel on international libel and privacy issues

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### ASSOCIATIONS JOIN IN ISSUING CAMPUS COPYRIGHT POLICY GUIDE

Groups representing higher education institutions, libraries and publishers have joined in creating a new guide for colleges and universities in reviewing copyright policies

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### AAP JOINS IN PROTESTING REMOVAL OF BOOKS FROM SCHOOL LIBRARIES

School library censorship incidents in Washington State and Maryland provoke strong protests

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### SOFT SKULL PRESS PUBLISHER WINS MIRIAM BASS AWARD

Richard Nash, publisher of Soft Skull Press, will receive the award at AAP's SIP Annual Meeting in March

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### UPDATE ON AAP ANTI-PIRACY ACTIVITIES

Overseas copyright enforcement and education activities continued to gain momentum in 2005

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## NEWS FROM WASHINGTON

### Senate Balks at House-Approved Patriot Act Reauthorization, Agrees on 6-Month Extension; House Reduces Extension to Five Weeks

As reported in the last issue of the *Monthly Report*, when Congress adjourned for the Thanksgiving recess, opposition was building in the Senate to the PATRIOT Act reauthorization legislation that emerged from a House-Senate conference committee. That opposition resulted in a vote by the Senate to temporarily extend the current Act, allowing more time to address the issue of civil liberties safeguards. The Senate action was warmly welcomed by AAP and other reader privacy advocates.

On December 14, the House overwhelmingly approved the conference report on legislation to re-authorize the USA PATRIOT Act, making permanent 14 of the 16 provisions due to expire at the end of this year and extending the others for 4 years. As reported in the last issue of the *Monthly Report*, the conference-approved bill failed to provide basic safeguards to protect reader privacy and other sensitive records from government fishing expeditions under Section 215.

Serious concerns over the lack of civil liberties safeguards in the conference-approved legislation stalled the bill in the Senate. On December 16, a move to shut off debate and bring the act to a final vote failed when four Republican Senators joined Democratic colleagues, denying the Republican leadership the 60 votes needed to invoke cloture. A three-month extension of the PATRIOT

Act urged by Senator Patrick Leahy (D-VT), ranking minority member of the Senate Judiciary Committee, and others, to allow more time for negotiation was flatly rejected by the Bush Administration.

On December 21, with key provisions of the Act due to expire in 10 days, a letter signed by 52 Senators (including 8 Republicans) was sent to Senator Majority Leader Bill Frist (R-TN) urging a three-month temporary extension.

Late in the evening on December 21 the Senate approved a compromise that would extend the expiring provisions for six months, with a commitment to revisit the civil liberties concerns early in the new year. The Bush Administration said it would go along with the six-month extension.

However, when the proposed six-month extension went to the House for approval, Judiciary Committee Chairman James Sensenbrenner refused to accept it, asserting that it would allow the Senate “to duck the issue until the last week in June.” Instead, on December 22 the House approved Sensenbrenner’s recommended five-week extension, later accepted by the Senate. Senator Russ Feingold (D-WI), who has been unshakable in his determination to see adequate safeguards put back into the Act, said he had “no problem” with the five-week extension. “No one should make the mistake of thinking that a shorter extension will make it possible to jam the unacceptable conference report through the Congress,” Feingold said. Senator Leahy added that “The amount of time is less impor-

tant than the good-faith effort that will be needed in improving the Patriot Act to strike the right balance in respecting Americans’ liberty and privacy, while protecting their security.”



## COPYRIGHT

### Associations Join in Issuing Campus Copyright Policy Guide

On December 6, organizations representing higher education, research libraries, and publishers joined in encouraging colleges and universities across the nation to review their policies for complying with copyright law to ensure they are in line with recent legal and technological developments.

To help institutions carry out such reviews, AAP joined with the Association of American Universities, the Association of Research Libraries, and the Association of American University Presses in writing and distributing *Campus Copyright Rights & Responsibilities: A Basic Guide to Policy Considerations*. The document, which was four years in the making, is intended to present a clear summary of copyright issues in the higher education setting, reflecting the concerns of institutions of higher learning as well as those of the publishing industry, with which they routinely interact. It has been endorsed by the American Council on Education and the Authors Guild.

The sponsoring groups stressed that the document does not propose specific policies, but rather encourages colleges and universities to review existing policies. It provides information to facilitate that review, with the understanding that each campus is likely to have its own policies for complying with the law. "Although stakeholders in copyright law interpret various provisions and principles differently, higher education associations, librarians, and publishers cooperated on the development of the guide in a good-faith effort to frame a common understanding of the law," the sponsoring groups said.

The complete publication, in pdf format, can be found on the AAP web site at:

<http://www.publishers.org/press/pdf/finalr&rdocument.pdf>

### MIRIAM BASS AWARD TO GO TO RICHARD NASH OF SOFT SKULL PRESS

AAP has announced that the Miriam Bass Award for Creativity in Independent Publishing will be given to Richard Nash, publisher of Soft Skull Press. The award will be presented on March 15, 2006 in New York at the AAP Annual Meeting for Small and Independent Publishers.

The award, given annually, was created in memory of Miriam Bass to honor her many contributions to the book publishing community and is co-sponsored by AAP, Rowman & Littlefield Publishing Group, and National Book Network (NBN). It carries a \$5,000 cash prize, which is fully funded by Rowman & Littlefield and NBN.

A judging committee representing a cross-section of the publishing indus-

try selected Mr. Nash based on his visionary work, single-handedly taking a struggling publishing house and turning it into one that has become synonymous with excellence in literary fiction, non-fiction and poetry. He has demonstrated a remarkable ability to find and publish exciting and challenging new works and skill and creativity in getting his titles noticed, reviewed and publicized. Soft Skull titles have been featured and reviewed by national publications including *The New York Times Book Review*, *Entertainment Weekly*, *Publishers Weekly* and *Vanity Fair*; and on television programs such as "The Today Show," "20/20" and "48 Hours." *The Neighborhood Story Project*, a community documentary program in New Orleans, attracted national attention as well when Mr. Nash and other printers donated printing services and published books by four young authors.

Delighted to be chosen as this year's Miriam Bass Award winner, Mr. Nash called the award a "celebration of the remarkable ecology that is independent publishing."

### FREEDOM TO READ

#### Program on International Libel and Privacy Set for February 28

The AAP Freedom to Read Committee will join with the Media Law Resource Center and Bloomberg News in co-sponsoring a symposium on *International Libel & Privacy: Navigating the Minefield*, on Thursday evening, February 28. The program should prove highly informative for editorial as well as legal personnel at AAP member publishing houses.

Books often contain controversial ideas and information and publishers are all too aware of the danger of being sued for libel by those who don't like what's been written about them. In the United States, the First Amendment places a heavy burden of proof on libel plaintiffs. In support of the public's right to be informed on important issues of public concern, that burden is even heavier when public figures sue the media. Following the Supreme Court ruling in *New York Times v. Sullivan*, public figures must prove "actual malice" – not only that the allegedly defamatory statements are false, but that the publisher knowingly acted with "reckless disregard for the truth" in publishing them.

These same safeguards do not exist in other parts of the world. Significantly, in the U.K. and Commonwealth nations such as Canada and Australia, the burden of proof is on the publisher or author. American publishers find themselves increasingly threatened by "libel tourism" — disastrously expensive litigation brought by wealthy plaintiffs in plaintiff-friendly foreign jurisdictions with no substantial connection to either the publication or the parties involved. The emergence of the Internet as a publishing medium has further complicated this situation.

The February 28 program, which will begin at 6:00 p.m. with a wine and cheese reception followed by a panel discussion at 7:00, is being held in conjunction with the publication of the *International Libel & Privacy Handbook: A Global Reference for Journalists, Publishers, Webmasters, and Lawyers* (Bloomberg Press).

Edited by Bloomberg News media counsel Charles J. Glasser, Jr. (who will be one of the panelists), with contributions from an impressive array of international legal experts, the *Handbook* looks at libel and privacy standards around the world as well as the implications of publishing in cyberspace.

Participating on the panel along with Mr. Glasser will be Kurt Wimmer (Covington & Burling), Elisa Rivlin (Simon & Schuster), and Stephen Fuzesi, Jr. (Newsweek). Dave Tomlin (Associated Press) will serve as moderator.

The symposium will be held in New York at Bloomberg News headquarters at 731 Lexington Avenue (58<sup>th</sup> Street). There will be no charge for the program but because of security at Bloomberg, *advance RSVPs are required*.

For additional information, and to RSVP: Judith Platt, AAP Washington (jplatt@publishers.org).

### **AAP Joins in Protesting Removal of Books from School Libraries**

AAP has joined with the National Coalition Against Censorship, the National Council of Teachers of English and others in voicing strong protests over two recent book banning incidents involving school libraries, one in Washington State, the other in Carroll County, Maryland.

In a letter to the Superintendent of the University Place School District in Washington, the groups protested a decision to remove Brent Hartinger's novel *Geography Club*

from school libraries on the grounds that the book, which includes a depiction of gay youths contacting each other via the Internet, could encourage students to engage in "risky" behavior. The letter states that while the original complaint about the book was based on its promotion of homosexuality, the decision to remove the book cited the danger of risky behavior. "Even if minimizing risk is the real motive for your actions, we think the decision is still impermissible," the letter asserts, citing the Supreme Court decision in the *Pico* case to underline the special status of school libraries in supporting students' First Amendment rights. "Censoring books is no substitute for teaching students about the risks of the Internet, which is the only realistic way to minimize those risks. We strongly urge you to reverse your decision to remove *Geography Club* and instead turn this episode into a 'teachable moment'," the letter states.

In Carroll County, Maryland, the groups protested the removal of Carolyn Mackler's novel *The Earth, My Butt, and Other Big Round Things*, from school libraries by the School Superintendent, in direct opposition to the recommendation of a 12-member review committee comprising administrators, parents, students, teachers and media specialists. "In this case, we are especially concerned about reports that you overruled the school district's own reconsideration committee after only 'skimming passages of the book.' ...At minimum, only compelling pedagogical concerns would be sufficient to override the committee's decision," the letter says.

## **ANTI-PIRACY**

### **Update on AAP's International Copyright Protection Program, Fall/Winter 2005**

AAP's peripatetic executive director for international copyright enforcement and trade policy, Patricia Judd, has spent much of the last few months "on the road" in Asia and elsewhere, as AAP's overseas copyright enforcement efforts continue to gain momentum. The following is a year-end roundup of the program.

#### *The Asia Trip*

Beginning with a month in Asia in September for meetings with local representatives of AAP member publishing houses, government officials and local publishers in the People's Republic of China, the Republic of Korea, Hong Kong SAR, and Taiwan, she was joined in Beijing by AAP President Pat Schroeder and high-level representatives of a number of AAP member companies for groundbreaking talks with Chinese government officials on issues including textbook piracy at university "textbook centers," market access and the Internet, and business opportunities for publishers in China.

Key discussions, arranged in cooperation with the U.K. Publishers Association and the Publishers Association of China, occurred at a joint, invitation-only event entitled "Intellectual Property in the Global Economy: China's Place in the World Publishing Community," held near the site of the Beijing International Book Fair. The event brought representatives of the PRC and US governments together with Chinese

scholars and industry representatives for a dialogue on intellectual property protection for books in China. From AAP's viewpoint, the discussion was productive. AAP representatives were able to address the piracy situation in China, stressing the industry's willingness to work with the government to find solutions and highlighting potential investments by AAP and PA member companies in China given assurances that it is a safe market to enter. The AAP delegation was pleased that several Chinese government officials were willing to speak directly to the problem as well.

The seminar was followed by a series of smaller meetings with Chinese government officials to discuss piracy, market access and next steps. AAP will continue to work with the Chinese government in attempts to reduce the size of the piracy problem faced by member companies in China.

In South Korea, Ms. Judd met with Ministry of Education officials to discuss ongoing concerns about the level of textbook piracy on South Korean campuses. AAP is working with the Ministry of Education to develop strategies for reducing the magnitude of the problem. The Ministry's level of involvement has greatly increased in recent months, beginning with a letter from the Minister of Education to every university in Korea last spring asking that an action plan for reducing book piracy on campus be put in place at each institution. The letter resulted from an AAP-initiated U.S. government request. At the September meeting, the results of the campaign were presented in an encouraging

continuation of the dialogue between the ministry and the U.S. publishing industry. Ms. Judd also met with representatives of the newly organized Copyright Protection Center (CPC), a quasi-governmental organization with an enforcement mandate. AAP plans to monitor the CPC's activities in the coming months.

Successful raids on rogue copying facilities have been carried out in South Korea all year, and AAP members were engaged in raids during Ms. Judd's visit. AAP plans to expand its educational and enforcement activities in 2006.

The focus of the Hong Kong visit was a long-term legislative battle, now in its final stages, pertaining to revisions of the copyright law. Most of Ms. Judd's meetings centered on this issue, and although substantive progress has been made since the battle began in 2001, the end-result is problematic. AAP is working to preserve its international position and will monitor the market following passage of the bill to measure its effect.

Contrasting with the Hong Kong government's policy positions, enforcement authorities in the territory are eager to work with AAP to attack an elusive problem. With copyshops increasingly moving underground, enforcement authorities must be willing to change the way they operate to deal with new challenges. The Hong Kong authorities are evidencing this flexibility and on the eve of Ms. Judd's visit, the Hong Kong Customs & Excise Department conducted a successful raid on an underground facility which resulted in a substantial seizure. Hong

Kong's willingness to adapt to changes will help ensure that their enforcement efforts remain effective.

The Taiwan representatives group, having partnered with local publishers to form their own organization, remains AAP's most active group in Asia. The organization, the Taiwan Book Publishers Association (TBPA), now has a full time staff of two and is working closely with government officials and other industry representatives on a number of policy issues, educational initiatives and enforcement efforts. They are funded partly by an AAP contribution and partly by individual member assessments. This is clearly a model for other programs in the region.

Along with TBPA representatives, Ms. Judd met with a number of high-ranking government officials during her visit. Visits included the Ministry of Justice (in charge of police and prosecution units), the Ministry of the Interior (in charge of the specialized intellectual property police unit), the Taiwan Intellectual Property Office (in charge of copyright policy and educational initiatives) and the Ministry of Education. As in South Korea, the Ministry of Education meeting was very productive, with the Vice Minister of Education making a commitment to address the issues raised and making assignments to his staff during the meeting.

An interesting development resulted from a meeting with the Vice Minister of the Interior. A dentist by training, the Vice Minister was appalled at the quality of the medical

illustrations contained in an illegally photocopied book obtained the previous day at Taiwan's most prestigious medical college. This led to a serious discussion of the ways in which such books compromise the quality of education in Taiwan. The Vice Minister was quite concerned and she expressed doubt that any student could pass the course using a book whose illustrations were indecipherable. She assumed that students would eventually all have to buy the legitimate copies with the full color illustrations in order to pass, asserting that the photocopying phenomenon could not be taking over the market. Ms. Judd assured her that students are, in fact, learning from inferior illegal photocopies alone.

Ms. Judd will return to Asia in January 2006, to visit China, Hong Kong, the Philippines, Singapore and India, following up on the progress made and visiting some of AAP's other priority territories. Other trips are planned later in the year.

#### *Enforcement Activities*

AAP is carrying out raids throughout the year as programs expand. The *Monthly Report* for June/July 2005 provided an overview of the summer raids. These were followed by a series of enforcement activities in the fall.

The Hong Kong Customs & Excise Department (C&E) has not only continued to work with rightsholders to run enforcement actions, adapting them to the increasingly underground nature of Hong Kong's photocopy facilities, but also launched a reward scheme in October

aimed at increasing the number of underground targets. Raids by C&E in August resulted in the confiscation of four copiers and five binding machines, the arrest of seven individuals and the seizure of illegally copied books valued at more than HK\$82,000.00. Raids of an underground facility in September produced 179 illegally copied books, with authorities seizing four copies and making three arrests. The same day, authorities searched two additional shops, seizing machinery and illegal publications valued at HK\$120,000 and arresting the two shop owners. Further raids at two residential premises in October underscored the seriousness of underground photocopying. In a press briefing following the raids the Hong Kong C&E announced the confiscation of 1,510 infringing photocopies of textbooks, along with three machines. C&E investigated twelve additional photocopy centers throughout the territory on the following day, resulting in the confiscation of 962 illegal copies of books and three photocopiers, results which Patricia Judd called "phenomenal." Enforcement actions are continuing in Malaysia as well. Following the June raids (reported previously in the *Monthly Report*), AAP, in collaboration with local Malaysian authorities, carried out productive raids in July and August hitting six copyshops, three located within easy access of the National University of Malaysia.

In the Philippines, another problem area, attention has focused on a notorious medical pirate, Multilinks Book Shop, whose owner was convicted last year as a result of an AAP-generated prosecution. Despite the conviction, the pirate con-

tinues to operate and was documented by AAP representatives selling illegal products. As a result, police raided the operation seizing 21 boxes of books, mostly medical textbooks, 3 copy machines and 1 computer. The owners were arrested again and the case passed on to the prosecutor. AAP is pressing for implementation of the first conviction as well as pushing the second pending case.

In September, with the advent of the new university term, enforcement focus shifted to South Korea. AAP investigators and officers from the local prosecutors office raided Woosung Munhwasa, a notorious pirate copy chop in Seoul. The owner admitted to producing illegal copies of more than 10,000 copyrighted books over the past three years. The September raid yielded almost 1,000 books, including titles from AAP members John Wiley and Sons, Thomson Learning, Pearson Education, McGraw-Hill, and Oxford University Press. A criminal complaint has been filed. Another raid was conducted against Jip-Hyun-Jeon copyshop. This action yielded several confiscated illegal copies of major publishers including a number of university presses. Criminal complaints are being prepared.

The beginning of the new university term in Taiwan was marked by several raids carried out in primarily in Taipei City and County and Taoyuan County. In the five locations raided, officers seized 29 titles and 179 infringing copies of titles belonging to AAP publishers including Thomson Learning, Pearson Education, McGraw-Hill, John Wiley & Sons and Elsevier.

Cases are pending. The raid produced a number of Chinese as well as English titles, indicating that the piracy problem is not limited to English titles.

#### *IFRRO AGM Report*

Ms. Judd attended the annual meeting of the International Federation of Reproduction Rights Organizations (IFRRO) held in Madrid in October. A longtime IFRRO member, AAP has a particular interest in the organization's activities this year, in part due to their increased involvement in anti-piracy matters.

The meeting was accompanied by additional seminars highlighting issues of import to rightholders and collective management organizations, including a half-day panel on digital issues and a full-day seminar entitled "Copyright Creating Access," exploring the link between copyright protection and access to materials, especially in the contexts of research and education.

The lawsuits initiated by AAP and the Authors Guild against Google were of particular interest to meeting participants. RROs and rightholder groups represented at the conference expressed strong international solidarity with AAP and the Authors Guild, resulting in a resolution issued by the IFRRO Board in support of the legal action. Digital issues were clearly at the forefront of the conference, with much discussion about the impact of digitization on publishers' markets, and the role and function of RROs.

The assembly discussed two position papers put forward by the Board dealing with open access and piracy

(available on the IFRRO web site [www.ifrro.org](http://www.ifrro.org)). Although neither was formally approved, both documents generated substantial discussion. The piracy paper provoked debate about the pitfalls of attempting to define "piracy," with AAP and others arguing the dangers of limiting the definition to "for profit" activities, particularly in light of the digital piracy threat.

A number of presentations at the conference focused on the effects of piracy on local industry and anti-piracy efforts in areas such as Latin America and Africa. AAP hopes to build partnerships with the organizations in these areas to facilitate cooperation and the exchange of information.

For additional information on AAP's international anti-piracy and market access program: Patricia Judd, AAP Washington ([pjudd@publishers.org](mailto:pjudd@publishers.org)).



#### CALENDAR

### JANUARY 2006

#### **January 9<sup>th</sup> – 13<sup>th</sup>, Monday – Friday**

PSP Awards Judging, 9:00 a.m. – 5:00 p.m., Rooms 1 and 2 (BARBARA MEREDITH)

#### **January 11<sup>th</sup>, Wednesday**

Freedom to Read, 12:00 p.m. – 4:00 p.m.

Weil, Gotshal & Manges, LLP  
(767 Fifth Avenue, NYC)  
(DEIDRE HUNTINGTON)

#### **January 13<sup>th</sup>, Friday**

PSP Executive Council (site-tba),  
12:00 p.m. – 3:00 p.m. (SARA BRANDWEIN)

#### **January 17<sup>th</sup>, Tuesday**

AAP Executive Council, 12:30 p.m. – 2:30 p.m., Rooms 1 (KATIE BLOUGH)

#### **January 18<sup>th</sup>, Wednesday**

Trade Executive Council, 12:30 p.m. – 2:30 p.m., Rooms 1 and 2 (KATIE BLOUGH)

#### **January 19<sup>th</sup>, Thursday**

Copyright Committee, 11:00 p.m. – 3:00 p.m., Rooms 1 and 2 (ALLAN ADLER)

**HAPPY  
HOLIDAYS  
FROM THE  
ASSOCIATION OF  
AMERICAN  
PUBLISHERS!!**

**FEBRUARY 2006****February 6th-8th, Monday-Wednesday**

PSP 2006 Annual Conference @ the Renaissance Mayflower Hotel (1127 Connecticut Avenue, NW) in Washington, DC (SARA BRANDWEIN)

**February 8th, Wednesday**

Freedom to Read, 12:00 p.m. – 4:00 p.m., Rooms 1 and 2 (DEIDRE HUNTINGTON)

**February 9th and 10th, Thursday and Friday**

School Division 2006 Annual Meeting @ the Trump International Sonesta Beach Resort in Sunny Isles Beach, Florida (STEVEN DRIESLER)

**February 13th, Monday**

Copyright Committee, 11:00 p.m. – 3:00 p.m., Rooms 1 and 2 (ALLAN ADLER)

**MARCH 2006****March 2nd, Thursday**

Trade Executive Committee, 12:30 p.m. – 2:30 p.m., Rooms 1 and 2 (TRACY KAUFMAN)

**March 8th, Wednesday**

Freedom to Read, 12:00 p.m. – 4:00 p.m., Rooms 1 and 2 (DEIDRE HUNTINGTON)

**March 14th, Tuesday**

2006 AAP General Annual Meeting @ The Millennium Broadway Hotel (145 West 44th Street, 10036-4012, NYC) (KATIE BLOUGH)

**March 15th, Wednesday**

SIP Annual Meeting all day, (KATIE BLOUGH)

2006 SIP Annual Meeting in NYC Kimmel Center @ New York University (60 Washington Square South) (KATIE BLOUGH)

**March 20th, Monday**

Copyright Committee, 11:00 p.m. – 3:00 p.m., Rooms 1 and 2 (ALLAN ADLER)

**APRIL 2006****April 17th, Monday**

Copyright Committee, 11:00 p.m. – 3:00 p.m., Rooms 1 and 2 (ALLAN ADLER)

**April 19th, Wednesday**

Freedom to Read, 12:00 pm - 4:00 pm, Rooms 1 and 2 (DEIDRE HUNTINGTON)

**MAY 2006****May 10th, Wednesday**

Freedom to Read, 12:00 p.m. – 4:00 p.m., Rooms 1 and 2 (DEIDRE HUNTINGTON)

**May 22nd, Monday**

Copyright Committee, 11:00 p.m. – 3:00 p.m., Rooms 1 and 2 (ALLAN ADLER)

**JUNE 2006****June 13th, 14th and 15th, Tuesday, Wednesday and Thursday**

AAP Board of Directors (tentative), Rooms 1 and 2 (KATIE BLOUGH)

**June 14th, Wednesday**

Freedom to Read, 12:00 p.m. – 4:00 p.m., Rooms 1 and 2 (DEIDRE HUNTINGTON)

**June 15th, Thursday**

Trade Executive Committee, 12:30 p.m. – 2:30 p.m. (TRACY KAUFMAN)

**June 19th, Monday**

Copyright Committee, 11:00 p.m. – 3:00 p.m., Rooms 1 and 2 (ALLAN ADLER)

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