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NEWS FROM WASHINGTON

Orphan Works Bill Appears Dead for this Congress

The failure of the fully House Judiciary Committee to mark up H.R. 5439—the “Orphan Works Act of 2006”—before Congress adjourned on October 6 until after the November elections virtually precludes action on the bill this year. AAP has long been on record in support of a legislative solution to the problem of “orphan works” – copyrighted works whose owners cannot be located by third parties wishing to use them—and worked closely with members of Congress and the U.S. Copyright Office in seeking that solution. While admittedly not perfect, H.R. 5439 was seen as a good beginning for providing a rational approach to the problem. While the failure to pass legislation this year is disappointing, lobbying for enactment of a good legislative remedy will be an AAP priority when the new Congress convenes in January.

COPYRIGHT

AAP, Cornell University Announce New Copyright Guidelines for Digital Course Materials

On September 19 AAP and Cornell University issued a joint press release announcing a new set of copyright guidelines governing the use of electronic course materials on the library’s electronic course reserves system, on faculty and departmental web pages, and through various “course management” websites

used at Cornell. An outgrowth of ongoing discussions over the manner in which the university provides copyrighted course content in digital format, the guidelines affirm that the use of such content is governed by the same legal principles that apply to printed materials.

The guidelines, which were jointly drafted by Cornell and AAP, make it clear that faculty must obtain permission to distribute such works to the same extent as permission is required with respect to reproductions and distributions of publishers’ copyrighted works in hard-copy formats.

“Cornell and AAP concur that instructional use of content requiring the copyright owner’s permission when used in a printed coursepack likewise requires permission when used in an electronic format,” said John Siliciano, Vice Provost of Cornell.

“The Publishers and the authors they represent are gratified that Cornell has responded positively to their concerns and has taken a leadership role on this issue in the academic community,” said Pat Schroeder, former Congresswoman and head of the AAP. “With more and more content now available in digital form, it is important to clarify the copyright responsibilities that accompany use of that content – and to be sure that colleges and universities are enforcing the rules they adopt.”

Mrs. Schroeder continued, “AAP hopes that Cornell’s actions will set an example for other colleges and universities and provide them an opportunity to review their own

practices and institute similar guidelines.”

Discussions are ongoing between AAP and Cornell concerning additional approaches that may be appropriate to encourage compliance with copyright law so that instructors’ postings of electronic course content conform with legal requirements.

A copy of Cornell’s revised electronic course content copyright compliance guidelines can be found at:

SCHOOL DIVISION

AAP School Publishers Welcome IG’s Report on Reading First

In a statement issued on September 28, AAP and its School Division welcomed the release of a report by the U.S. Department of Education’s Inspector General criticizing the implementation of Reading First and calling for substantive changes in the administration of the program. Reading First is a federal initiative designed to help schools, especially those serving low-income students, adopt the best practices and implement the most effective research-based reading programs to prevent or remediate reading failure.

AAP President Pat Schroeder said that the IG’s recommendations “will go a long way in correcting a number of problems with Reading First.”

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Mrs. Schroeder noted that AAP has expressed concern over the past four years about the lack of transparency and fairness in the process of reviewing and evaluating programs, a process which she said “failed to provide schools and school districts with flexibility in choosing from a variety of instructional programs.” The statement urged the Department of Education to move quickly to implement the recommendations and to follow the Department of Education Organization Act, which “prohibits Department officials from exercising any direction, supervision, or control over the curriculum of program instruction of any educational institution, school, or school system.

The complete text of Mrs. Schroeder’s statement can be found at: <http://www.publishers.org/SchoolDiv/>

FREEDOM TO READ

AAP Joins Amicus Brief in National Security Letter Case

On September 29 AAP joined with ALA, ABFFE and other groups in filing an *amicus* brief in federal district court in New York supporting a legal challenge to the National Security Letter (NSL) provision of the USA Patriot Act. The challenge was brought in an amended complaint filed by the ACLU in July of this year, which argues that changes made by Congress in the USA Patriot Act do not bring the NSL provision into compliance with constitutional requirements.

In the spring of 2004 the ACLU filed its original challenge, on behalf of a “John Doe” Internet service provider, to Section 2709 of the Electronic Communications Privacy Act as amended by the USA Patriot Act, which gives the government virtually unlimited power to obtain electronic communication transactions using National Security Letters (NSLs)—administrative subpoenas issued without judicial oversight. In September 2004 Judge Victor Marrero of the U.S. District Court for the Southern District of New York ruled that the NSLs violate the Fourth Amendment’s ban on unreasonable searches and seizures, and that the accompanying gag order constitutes a prior restraint of speech in violation of the First Amendment. The government appealed to the U.S. Court of Appeals for the 2nd Circuit, and AAP joined an *amicus* brief urging the appellate court to uphold the district court ruling. Before the 2nd Circuit could rule on the appeal, Congress amended the Patriot Act, and the case was remanded to Judge Marrero.

AAP Amicus Brief Supports Harvest House Publishers in Libel Suit

Led by AAP, a coalition of groups representing publishers, booksellers and librarians filed a brief on October 16 urging the Texas Supreme Court *not* to review a ruling by the Texas Court of Appeals in Houston, an intermediate appellate court, which granted summary judgment to Harvest House Publishers in a libel action brought by a group called The Local Church. The brief characterizes the ruling by the Texas Court of Appeals as “correct in all respects.”

At issue was *The Encyclopedia of Cults and New Religions*, published by Harvest House, an Evangelical Christian publishing house and an AAP member. The 730-page book makes mention in its introduction and appendix of unflattering characteristics of some cults and new religions. While The Local Church did not challenge any portion of the *Encyclopedia* that mentioned them directly, they claimed that the very fact that they were included in a book of “cults and new religions” was defamatory because of the general comments regarding characteristics of cults. The Texas trial court denied a motion for summary judgment, but the Texas Court of Appeals reversed. In dismissing the case, the Texas Court of Appeals cited the Texas Supreme Court ruling in *New Times v. Isaacks*, (a case involving the right to satirize public officials in which AAP had filed an influential *amicus* brief) and holding that a “reasonable reader” would not believe that all of the characteristics cited applied to all of the groups listed. In addition, the Texas Court of Appeals held that the determination that a group is a cult “is not actionable because the truth or falsity of the statement depends upon ones’ religious beliefs, an ecclesiastical matter which cannot and should not be tried in a court of law.”

Citing the Local Church’s “history of suing its critics,” the *amicus* brief points out that that “The ‘chilling effect’ of meritless libel litigation occurs because publishers are deterred from engaging in truthful or nondefamatory speech by the enormous costs of defending defamation lawsuits.... While they assume the role of victim, the transparent weakness of petitioners’ arguments reve-

als that their real aim is to punish speech they do not like.” Our brief argues that if accepted by the court, The Local Church’s “untenably expansive interpretation of the ‘of and concerning’ requirement would open authors and publishers of compendia and survey texts to liability for general introductory commentary that no reasonable reader would take to apply to every person or group discussed in the book.”

The brief, which was written by AAP Freedom to Read Counsel Jonathan Bloom (Weil Gotshal & Manges), was joined by ABFFE, the Freedom to Read Foundation, and the Association of American University Presses.

First Amendment Forum Sends a Powerful Message

In celebration of the 25th annual observance of Banned Books Week (September 23-30) AAP joined with its partners in the Campaign for Reader Privacy (ALA, ABA, PEN American Center) and ABFFE, in hosting a forum at the National Press Club in Washington on September 28 featuring Pulitzer Prize-winning *New York Times* reporter James Risen, journalist and author Mark Feldstein, ABC Nightly News reporters Brian Ross and Richard Esposito, and four “John Doe” librarians from Connecticut who successfully challenged a National Security Letter. Each of the participants has, in one way or another, come face-to-face in recent months with a government that is increasingly intruding into the private lives of its citizens while it hides its own actions behind a veil of secrecy. The panelists offered an eloquent and sobering picture of a free press in crisis.

As Brian Ross of ABC News said: “I think what we’re really looking at is the criminalization of investigative journalism in this country.” An audio of the program can be downloaded from the Campaign for Reader Privacy website (www.readerprivacy.org). AAP Freedom to Read Director Judith Platt expressed special thanks to BookExpo America for providing funding to record the event. A DVD is available for loan to AAP members. Contact Judith Platt in the Washington office (jlplatt@publishers.org).

HIGHER EDUCATION

AAP Testifies at Advisory Committee on Student Financial Assistance

AAP President Pat Schroeder testified September 19 at a hearing of the Advisory Committee on Student Financial Assistance, a congressionally-appointed group studying the cost of higher education, telling the panel that publishers are offering new types of textbooks and learning tools to help students, faculty and institutions meet growing challenges in higher education. She urged the panel to focus on the increasingly central role publishers are being asked to play in insuring student success. “Colleges depend on publishers to invest in, produce and provide more textbooks, learning tools, class management systems and faculty services to help ensure students are getting the education they are paying for,” Mrs. Schroeder said.

The tremendous range of materials made available to faculty and stud-

ents by American publishers has grown out of the need to serve an increasingly diverse student body, many of whom are not prepared for college-level work, at a time when reductions in state subsidies for higher education have necessitated cost-cutting measures by colleges and universities. “As financial support for post-secondary institutions has been reduced, schools have had to increase class size, reduce classroom support staff and employ more part-time faculty,” Mrs. Schroeder said.

Mrs. Schroeder also told the Advisory Committee that a survey recently released by the respected research firm Zogby International found a majority of faculty members believe many entering freshmen are not ready for college studies and that tools produced by publishers are helping them stay in school and graduate. “More than three out of four professors said that supplemental materials clearly enhance most students’ learning,” she told the panel.

Among the recommendations offered by AAP:

- Encourage more states to remove sales taxes on textbooks; the Advisory Committee was urged to draft sample legislation that could be provided to stakeholders in their states.
- End the practice of selling sample textbooks, which has become a “mini-industry” for book dealers who solicit faculty, purchase instructors’ sample copies and re-sell them at mark-ups as high as 400 percent.

- Support the production and sale of more electronic books, which reduce costs for students. E-books also offer faculty greater flexibility and the option to update or add supplemental materials more easily.
- Examine the positive impact that new supplemental materials and instructional technologies are having on student learning and performance, specifically underserved students.

The full text of Mrs. Schroeder's testimony can be found on the AAP website at:

<http://www.publishers.org> or www.textbookfacts.org.

AAP White Paper on College Textbooks Released

On September 19, in an effort to counter misinformation regarding college textbook costs that has been put forward in various statements and reports originating from the Public Interest Research Group (PIRG), AAP's Higher Education Publishers group produced a white paper, *Myths and Facts About College Textbooks: Errors in PIRG Reports on the Textbook Market*. The white is available on the AAP website at: <http://www.publishers.org/highered/pdfs/Why%20PIRG%20is%20Wrong.pdf>

College Freshmen Increasingly Unprepared-Textbooks Can Help

More than half of college instructors say this year's entering freshmen are not ready for college

level studies, according to a new Zogby International study that was released September 14 by AAP. The figure is even higher at two-year colleges, 75 percent of faculty members consider incoming students to be unprepared. To address this growing challenge, a majority of college professors are using some form of textbook supplement or integrated learning tools in their classrooms.

"These findings are a wake-up call for anyone who is concerned about the future of higher education and American competitiveness," said AAP President Pat Schroeder. "Too many college students are not ready for college work, and they need new types of learning tools to succeed. To meet the needs of diverse student populations, college instructors are relying on more heavily on new types of learning tools that accompany today's modern textbooks and personalize the learning process," Mrs. Schroeder said. "The fact that adoption for these materials have increased 11 percent over a year and a half ago is a clear sign that professors are seeing positive results from these materials, and that means academic success for more students."

Zogby International conducted the nationwide survey of more than 500 college or graduate school instructors at two-year and four-year institutions. To view the complete survey results:

<http://www.publishers.org/highered/pdfs/AssnAmPub%20final%20report.doc>

INTERNATIONAL FREEDOM TO PUBLISH

American Publishers Express Sorrow, Outrage at Murder of Russian Journalist

AAP issued a statement on October 12 expressing sorrow and outrage at the murder of Russian journalist Anna Politkovskaya, joining publishing colleagues throughout the world in demanding a thorough investigation into her death and a serious commitment to bring her murderers to justice.

A harsh critic of the war in Chechnya and a fierce advocate for human rights, Ms. Politkovskaya worked for the biweekly publication *Novaya Gazeta*. According to the international press freedom group Reporters Without Borders, she was readying an article about torture in Chechnya for this week's edition. She was found murdered in her apartment building in Moscow on October 7. Reporters Without Borders has called for an international commission of inquiry into her death.

"The barbaric act which ended the life of a courageous journalist was meant to send a message of terror to other advocates of human rights and press freedom, but Anna Politkovskaya's murderers made the same mistake others have made. Killing a journalist, or an author, or a publisher, doesn't obliterate their words or their work. And there will always be others willing to take up the fight," said AAP President Pat Schroeder. "We urge our govern-

ment to exert whatever pressure it can to effect and immediate and serious investigation to find her killers and bring them to justice," Mrs. Schroeder said.

TRADE PUBLISHING

AAP President Protests Cut-Back in Book Coverage at Dallas Paper

In a letter of September 8, AAP President Pat Schroeder expressed dismay and disappointment at the news that the paper's long-time book critic Jerome Weeks and books editor Charles Ealy were leaving and that there were no plans to replace them.

"We understand that cost-cutting measures and editorial realignments are underway at newspapers across the country in the face of challenges from the Internet. We believe, however, that in severely curtailing book coverage or eliminating it altogether, newspapers not only fail the communities they serve, they defeat their own interests in regaining those elusive and essential advertising dollars. Research has shown that 90 percent of the items advertised in newspapers are purchased by women, and that when polled about features they most value in a newspaper, women put book reviews at or near the top of the list! Men may want expanded sports coverage, and may even buy a newspaper to get it, but they're not the ones buying most of the products advertised, and advertisers are not unaware of this conundrum," Mrs. Schroeder said.

Replying to Mrs. Schroeder's lett-

er *Dallas Morning News* editor Bob Mong said: "I can assure you that we will continue to provide our readers with strong books criticism and coverage will be displayed in space comparable to what we provide today." However, Mrs. Schroeder noted that people familiar with the situation maintain that the quality of the book coverage has deteriorated since the paper started using more wire reviews and canned coverage and fewer free lance reviewers. She said that the basic problem remains convincing advertisers that affluent and well-educated readers of book reviews comprise a demographic worth targeting.

Speakers Sought for BookExpo 2007 Events

AAP members who exhibit at BookExpo America are invited to submit entries for BEA 2007 Special Events and Education Programs. BEA 2007 will be held May 31 – June 3 at the Jacob K. Javits Center in New York City. Application requests and submission proposals for BEA Special Events, including adult author breakfasts, luncheons, evening events, as well as the Editor and Bookseller Buzz Forum should be sent to Roger Bilheimer at bilheim@aol.com. Deadline for submissions is December 15, 2006.

Submission proposals for BEA's Education Program, including seminars addressing critical industry issues, should be directed to Mark Dressler at mhdressler@chartermi.net.

Deadline for educational programming submissions is December 16, 2006. For more information:

Tina Jordan, AAP New York (tjordan@publishers.org).

INTERNATIONAL FREEDOM TO PUBLISH

AAP Presence Felt in Asia, Africa

Patricia Judd, AAP's executive director for international copyright enforcement and trade policy, participated in an international publishing forum and other programs at the Beijing Book Fair in September and met with Chinese authorities, representatives of AAP member companies, and local counsel in Beijing and Hong Kong. Later in September she traveled to Namibia to speak at an Anti-Piracy Training conference jointly organized by UNESCO and the International Federation of Reproduction Rights Organizations (IFRRO), to educate local law enforcement officials on reducing piracy and promoting copyright protection.

In mid-October, Ms. Judd met with Margaret Chen, Secretary General of the Taiwan Intellectual Property Office (IPO) to discuss ongoing efforts to combat illegal photocopying in Taiwan, including plans for raids in the coming weeks, educational campaigns, and cooperation between the IPO, right holders, and the Taiwan Ministry of Education in combating on-campus infringement. Ms. Judd is also preparing to participate in the International Intellectual Property Alliance (IIPA) delegation to the PRC from November 7-14, and will represent the publishing industry at the Internet-focu-

sed Ambassador's Roundtable on Intellectual Property Rights on November 14.

AAP Raids in Korea and Hong Kong; Internet Scanning Project in China

Over the past several weeks, AAP conducted anti-piracy enforcement raids in the Republic of Korea and in Hong Kong. Korean enforcement authorities, cooperating with AAP investigators, raided several copy shops adjacent to university campuses, confiscating 449 illegal copies of twelve titles published by six AAP member companies. In Hong Kong the Customs and Excise Department carried out two raids against five copy shops and one warehouse, resulting in the seizure of 225 infringing copies of books, seven photocopy machines, and three binding machines. Seven suspects were arrested for infringement.

On another front, in early October AAP concluded a massive Internet piracy scanning project in the People's Republic of China to document web-based piracy of AAP member publishers' products. Members of the AAP International Copyright Protection Committee are currently reviewing and assessing the scanning project's findings.

PROFESSIONAL & SCHOLARLY PUBLISHING

PSP Publishers Tell 53 College Presidents that S.2695 Is Misguided and Dangerous

On September 13 members of AAP's Professional and Scholarly Publishing Division sent a letter to

53 college presidents who had expressed support for the Federal Research Public Access Act of 2006 (S.2695), voicing the strong opposition of professional and scholarly publishers to the act, which would *mandate* free global posting on government-run websites of author manuscripts *only six months* after their publication in peer-reviewed journals, if the underlying research has been funded by the government.

"S.2595 threatens to undermine the existing system that supports scholarly peer review—a system that ensures the highest quality of scientific research in the United States. It risks damaging the integrity of the scientific record, and will act as a powerful disincentive for publishers to invest in the scientific publishing process," the letter states.

Noting that federal funds that support research do *not* cover the costs of peer review, formatting, editing, search engine development, printing, online publication, and database management for permanent archiving, which can range from \$2,500 to \$10,000 *per article*, the letter states: "For publishers who now cover these costs through the sale of subscriptions internationally, a federal policy ordering world-wide free access after six months will be disastrous....Many journals...will simply cease to exist."

For additional information: Barbara Meredith, AAP New York (bmeredith@publishers.org).

NIH Reauthorization Minus Mandated Article Submission

Members of AAP's Professional and Scholarly Publishing Division

welcomed the news on September 20 that the House Energy & Commerce Committee had approved the National Institutes of Health reauthorization bill *without* an amendment that would have made the submission of articles based on NIH-funded research mandatory, rather than voluntary. PSP and member publishers worked hard to education committee members about the problems inherent in such an amendment, and will continue to communicate publishers' concerns as the bill moves to the full House.

DIGITAL POLICY

Digital Issues Seminar Scheduled November 29

AAP will host a seminar on "Managing and Delivering Digital Assets" at the New York office on November 29. The program is being presented jointly by AAP and the International Digital Publishing Forum (IDPF) and is designed to educate members about emerging digital publishing standards and their application in production workflow and distribution. More information is available at: <http://publishers.org/conference/eventdetail.cfm?EventID=86>

NOTEWORTHY

Highlights of 2006 Compensation Survey to be Presented at November Seminar

For more than 20 years AAP has commissioned an annual study of compensation and personnel practices within the U.S. book publishing industry. Total Compensation Solutions, the firm which produced the report for AAP, will present

some of the highlights of the 2006 survey from 9:00 a.m. to 11:30 a.m. on November 16 at the AAP New York Office at AAP's Annual Human Resources Seminar. The seminar will also include keynote and roundtable discussions of trends in salary administration and human resources. For additional information contact Tina Jordan at tjordan@publishers.org.

2004 Nobel Peace Prize Laureate Will Speak to AAP Group

Professor Wangari Maathai, 2004 Nobel Peace Prize Laureate and founder of the Green Belt Movement will address the AAP Paper Issues Working Group in New York on October 18. The mission of the AAP Paper Issues Working Group is to provide its members with a forum to obtain concise and accurate information on issues pertaining to the environmental aspects of the production of paper used in books. The information compiled may be used independently by AAP member companies to make decisions regarding their paper supply. The Group convenes regularly with various constituents with interests in book production and the environment.

For more information on joining the AAP Paper Issues Working Group, contact Tina Jordan at tjordan@publishers.org or Edward McCoyd at emccoyd@publishers.org

PEN Organizes Petition Drive for Press Freedom

Responding to recent attacks on

newspapers and reporters for breaking stories on anti-terrorism programs, and disturbed by calls from members of Congress to prosecute newspapers and individual reporters for espionage, PEN American Center has organized a petition drive condemning these threats and calling upon elected officials and ordinary citizens to reaffirm America's support for a free, unfettered and independent press.

The first batch of petitions, containing more than 1,100 signatures of PEN members, including some of the most respected authors in the United States, and supporters, were hand-delivered to Representative Adam Schiff (D-CA) on September 28. Others are being mailed to members of Congress.

The petition can be found and signed at: <http://www.pen.org/viewmedia.php/prmMID/818/prmID/1331>

Save the Dates: AAP Annual Meeting, SIP Annual Meeting

The AAP Annual Meeting will be held on Tuesday, March 6, 2007, at the Yale Club in New York. Reservations are being accepted by the Yale Club at the AAP rate of \$175 a night if booked by January 15. Reservations can be made by phone at 212/716-2100. The Smaller & Independent Publishers Annual Meeting will be held the following day on Wednesday, March 7, 2007 at the Kimmel Center, New York University. Program details will be available soon.

CALENDAR

OCTOBER 2006

October 20th, Friday

PSP Books Committee, 12:30 p.m. – 2:30 p.m., Rooms 1 and 2 (SARA BRANDWEIN)

October 23rd, Monday

Copyright Committee, 12:00 p.m. – 2:00 p.m., Rooms 1 and 2 (ALLAN ADLER)

October 30th, Monday

PSP Journals Committee, 12:30 p.m. – 2:30 p.m., Rooms 1 and 2 (SARA BRANDWEIN)

NOVEMBER 2006

November 2nd, Thursday

Compensation Seminar, Rooms 1 and 2 (all day) (TINA JORDAN)

November 6th, Monday

PSP Books Committee (tentative) 12:30 p.m. – 2:30 p.m., Rooms 1 and 2 (SARA BRANDWEIN)

November 7th, Tuesday

AAP Board of Directors, 12:15 p.m. – 2:30 p.m., Rooms 1 and 2 (TINA JORDAN)

November 8th, Wednesday

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

PSP/AMPC Seminar in Philadelphia, PA, 9:00 a.m. – 5:00 p.m. (SARA BRANDWEIN)

November 9th, Thursday

Trade Executive Meeting, 12:30 p.m. – 2:30 p.m., Rooms 1 and 2 (CHRISTINA RODRIGUEZ)