

aap MONTHLY

REPORT

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

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NEWS FROM WASHINGTON

House Subcommittee Moves Quickly on “Orphan Works” Bill

A bill introduced on May 22 (H.R. 5439, the “Orphan Works Act of 2006) to address the problem of “orphan” copyrighted works whose owners cannot be located was “marked up” on May 24 by the House Subcommittee on Courts, the Internet and Intellectual Property, and sent on to the full House Judiciary Committee for approval. AAP, which has been working closely with members of Congress and the U.S. Copyright Office in seeking a workable solution to facilitate the use of orphan works, welcomed the Subcommittee’s quick action on the bill. “In light of the limited number of legislative days remaining in this Congress, we are encouraged by Subcommittee Chairman Lamar Smith’s determination to move the bill quickly toward passage this year,” said Allan Adler, AAP’s vice president for government and legal affairs.

Mr. Adler pointed out that AAP has long been on record as supporting the development of a legislative solution to the orphan works problem. “It’s important to remember that publishers are not only copyright owners, they are users of copyrighted works eager to see a rational system in place to allow the use of orphan works in the creation of new works. In publishing works of history, biography, criticism, and virtually all kinds of literary works and educational materials, AAP member publishers have considerable experience in seeking permission to use discrete copyrighted works such as photographs and correspondence. They understand the problems that can arise when a copyright owner cannot be identified and

located in order to obtain necessary permissions, and they would welcome a change in the copyright law that helps to address these issues,” he said.

He noted that the bill introduced on May 22 by Congressman Smith is the outgrowth of a year-long study conducted by the U.S. Copyright Office, in which AAP participated. At House hearings in March of this year, AAP urged Congress to follow most of the Copyright Office recommendations by “fine-tuning” existing law, taking a minimalist approach in creating new provisions governing the use of copyrighted orphan works (see *Monthly Report* March/April, 2006). AAP took part in extensive negotiations among the various interested parties to draft the current legislation. “While not perfect, H.R. 5439 goes a long way in establishing a rational approach to provide that if the user of a copyrighted work has performed a reasonably diligent but ultimately unsuccessful search to locate the copyright owner, and that owner later turns up and sues for infringement, the user would be entitled to have the benefit of limitations on the compensation and injunctive remedies that the owner could obtain,” Mr. Adler said.

New Reporters’ Shield Bill Introduced in Senate

A new bill that would provide some degree of protection for journalists and authors against compelled testimony in federal court regarding confidential sources was introduced in the Senate on May 18. S. 2831, the Free Flow of Information Act of 2006, was introduced by Senator Richard Lugar (R-IN), joined by Senators Arlen Specter (R-PA), Christopher Dodd (D-CT), Lindsey Graham (R-SC), and Charles Schumer (D-NY). Senators Lugar and Dodd had

co-sponsored an earlier version of the legislation, which, while it contained stronger protections for journalists, was seen to have had little chance of passage in this Congress. It is hoped that the sponsors’ leadership positions (Senator Lugar is Chairman of the Foreign Relations Committee, Senator Specter is Chairman of the Judiciary Committee, and Senator Dodd is the Ranking Member of the Senate Rules and Administration Committee; Senators Graham and Schumer both serve on the Judiciary Committee) will give the revised bill enough momentum to pass this year.

The legislation, which attempts to balance the government’s legitimate law enforcement interests with the need to maintain a free and vigorous press, would protect journalists and the companies that employ or have contracts with them (including book publishers) from being compelled to reveal the identity of confidential sources except in limited circumstances, including national security threats. The legislation would also protect information held by communications providers, including ISPs and telephone companies, if such information could lead to the identification of confidential sources.

“Over the past several years, publishers have watched with growing alarm the erosion of fundamental protections for investigative journalists and authors,” said AAP President and CEO Pat Schroeder. “This legislation establishes some ground rules to protect journalists and help safeguard the public’s right to be informed.”

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Senate Resolution Urges Action to End Copyright Infringement on College Campuses

On May 22 the Senate approved a Resolution (S. Res.488) urging institutions of higher learning to “adopt policies and educational programs on their campuses to help deter and eliminate” copyright infringement occurring on campus computer systems and networks. The Resolution was introduced by Senator Lamar Alexander (R-TN), joined by Senators Leahy (D-VT), Hatch (R-UT), Nelson (D-FL), and Senator Majority Leader Bill Frist (R-TN).

AAP President Pat Schroeder noted that “While Resolutions don’t have the force of law, they certainly send an important message. We are very pleased that the Senate has gone on record on this issue.” The resolution urges colleges and universities to “continue to take a leadership role in educating students regarding the detrimental consequences of online infringement of intellectual property rights,” and urges them to “take steps to deter and eliminate unauthorized peer-to-peer use on their computer systems.”

FREEDOM TO READ

California Supreme Court Dismisses “Friends” Sexual Harassment Case

In February 2005 AAP joined with other members of the Media Coalition in filing an *amicus* brief to the California Supreme Court in *Lyle v. Warner Brothers*, a sexual harassment case with significant First Amendment ramifications.

The case was brought by Amaani Lyle, a writer’s assistant hired to take notes

during brainstorming sessions of the writing team for the TV sitcom “Friends.” Fired for lack of typing skills, Lyle filed a sexual harassment suit against Warner Brothers, claiming that the sexual content of the conversation in the writers’ room, although not directed at her, created a hostile work environment. The case was dismissed by the trial court but reinstated by California’s intermediate appellate court which ruled that a jury must determine whether the speech in the writers room was “necessary to the creative process.” Our brief argued that the ruling threatened the ability of authors and book editors to create works of fiction and non-fiction “with a free exchange of ideas and information during the creative and editorial process,” and threatened booksellers and librarians because of its inevitable chilling effect.

On April 20 the California Supreme Court dismissed the case, and while the majority opinion deals with California law without reaching the First Amendment issue, a concurring opinion issued by one of the state Supreme Court justices finds violation of the First Amendment and quotes from our *amicus* brief.

Joint Program Will Look at “Intelligent Design” in a First Amendment Light

The AAP Freedom to Read Committee will join with the ALA Committee on Intellectual Freedom and ABFFE in presenting *Nothing But the Facts: Why Preventing The Discussion of Intelligent Design in Science Classes is Not a Free Speech Issue*, at the upcoming ALA Annual Conference in New Orleans. The program will debunk the contention of the religious right that their First Amendment rights are being violated when discus-

sion of intelligent design is kept out of sciences classes. Rev. Barry Lynn, executive director of Americans United for Separation of Church and State will be joined by Professor Michael Ruse who teaches the history and philosophy of science at Florida State University and is an internationally recognized expert on Darwin and evolution. The program will be held Monday, June 26 from 1:30 until 3:30 p.m. in Room 294 of the Morial Convention Center. AAP member publishers planning to be at the ALA Conference are urged to attend what promises to be a provocative and important discussion.

ANTI-PIRACY

China Piracy of US Books and Journals is “Staggering” Pat Schroeder Tells Government Panel

By conservative estimates American publishers lost \$52 million from the piracy of books and journals in China last year *without even factoring in digital piracy on the internet*, AAP President and CEO Pat Schroeder told a U.S. government commission on June 7, and called upon the U.S. government for more help in bringing about “meaningful change in the Chinese market place.”

Mrs. Schroeder testified before the U.S.-China Economic and Security Review Commission, created by Congress in 2000 to monitor and investigate national security implications of the bilateral trade and economic relationship between the U.S. and the People’s Republic of China, and to submit an annual report to Congress providing recommendations for legislative and administrative action.

Mrs. Schroeder spelled out some details of the “market-stifling effects of widespread and systemic piracy.” She cited the illegal commercial-scale photocopying of academic materials which is taking place “with either the tacit or active consent of the universities themselves,” as being “far and away our most pressing concern.” However, she noted, print piracy and illegal translations of bestsellers such as the Harry Potter books, John Grisham’s novels, and political autobiographies, are having a profound effect on the market as well, with pirate editions in English and Chinese available even before legitimate books can reach the market. These pirated books are being sold “without fear by the vendors of any government action.”

Mrs. Schroeder told the panel that Internet piracy is the publishing industry’s fastest growing problem in China, pointing out that complaints from publishers about scanned books being traded online “have increased tenfold” over the last six months. In addition, U.S. publishers are being hurt by trademark counterfeiting. Pirates are appropriating the names of well respected U.S. publishers and using them on books that bear no content ever published by those publishers. Finally, she stressed that the question of piracy cannot be divorced from the issue of market access. Foreign publishers are restricted and constrained in accessing the Chinese market by a host of unacceptable Chinese government regulations, preventing them from being able to appropriately tailor their products for the Chinese market. “Government to government dialogue is necessary to bring about meaningful change,” she said.

Piracy in China not only hurts U.S. publishers but legitimate publishers in

China as well, and one hopeful sign Mrs. Schroeder pointed to are cooperative efforts between AAP and the Publishers Association of China to address the problem. She noted that at a jointly-sponsored program on intellectual property protection held at BookExpo America in Washington in late May (see *Monthly Report* March/April 2006), Chinese publishers told AAP: “We’ve got to work together to solve this problem. It is a scourge on us all.”

The full text of Mrs. Schroeder’s remarks can be found on the AAP web site at: <http://www.publishers.org>.

SCHOOL DIVISION

Jay Diskey Takes Over As Head of AAP School Division

Jay Diskey, a communications and public policy professional with extensive experience in the field of education, took over as Executive Director of the AAP School Division on June 5, replacing Stephen Driesler, who retired in March. Mr. Diskey is headquartered in the AAP Washington office.

A native of Fort Wayne, Indiana, Mr. Diskey holds a B.A. in philosophy and a master’s degree in journalism from Indiana University. Before joining AAP, he headed Diskey & Associates, his own public relations and public affairs consultancy specializing in policy areas of education and workforce development. Prior to that, he served as Communications Director for the House Committee on Education and the Workforce and for Committee Chairman Congressman Bill Goodling (R-PA), and as Vice President of the education practice at Hager Sharp Inc., a Washington-

based public relations firm. He was the communications planner and press aide to U.S. Secretary of Education Lamar Alexander, having been Alexander’s communications officer when he was President of the University of Tennessee. Mr. Diskey also has experience as a working journalist, at the *Knoxville News-Sentinel* and the *Evansville Press*.

Noting that the School Division Search Committee had interviewed a number of highly qualified candidates, Julie McGee (Harcourt Professional & Trade), Chair of the School Division Executive Committee, said: “At the end of this process we were convinced that Jay brings a special set of qualifications and understanding and will prove to be a strong advocate for educational publishers at the national and state level.”

TRADE PUBLISHING

Pat Schroeder Speaks at “Big Read” Launch

AAP President and CEO Pat Schroeder was on hand May 9 at Carnegie Hall in New York for the launch of “The Big Read,” a new initiative by the National Endowment for the Arts to encourage literary reading by helping to unite communities through books and getting Americans back on “the same page.”

“Publishers congratulate the NEA for not only highlighting the problem of declining literary readership in their 2004 report *Reading at Risk*, but for moving beyond the study to take action to remedy the problem. We all hope that the launch of The Big Read will begin to rekindle passion for the great books this nation continues to produce,” Mrs. Schroeder said. She

pointed out that following the release of the NEA report “Reading at Risk” in the summer of 2004, AAP provided a \$19,000 grant to help cover the costs of reprinting the report and to facilitate a nationwide series of *Reading at Risk* presentations at which professional NEA staff members talked about the study and its implications with educators, policymakers and scholars.

Noting that there are too many children in this country who are not being exposed to books and reading, Mrs. Schroeder pointed out that a recent study of scholastic ability in 43 countries (including the U.S.) revealed that a child from a family having 500 books at home scored, on average, 112 points higher on a standardized achievement test than one from an otherwise identical family having only one book—even after factoring in the parents educational level, occupation and income. And for children who don’t have books at home, Mrs. Schroeder said, it becomes even more important that they have high quality children’s books available to them in daycare and access to well-stocked, professionally staffed libraries at school. “Access to books in school libraries has been shown to be the most powerful predictor of academic achievement, and the quality of the school library even more important than socio-economic status in predicting academic success. We will never realize the dream of ‘No Child Left Behind’ as long as school libraries are left behind and denied essential funding,” she said.

AAP, CBC Join in Supporting New York School Libraries

Throughout the month of May, AAP and the Children’s Book Council carried on a series of speaking engage-

ments as part of the New York City School Library System’s Spring 2006 Development Conference. The focus of this year’s conference was Reading Motivation and the two groups made presentations to some 700 elementary, middle school, and high school librarians throughout the City’s five Boroughs. The presentations covered the groups’ respective Get Caught Reading and Children’s Book Week programs, and information on how to create a successful author visit.

On May 25 AAP and CBC also hosted an informational program at the AAP New York office at which 30 librarians and publishers heard about the Adopt-A-School program. Intended to enrich students with the joys of books and reading, the program matches publishers with a New York City school to schedule an author visit during Children’s Book Week and to support the schools’ libraries and enrich their collections with books and promotional materials from member publishing houses. Approximately 50 schools were identified by the New York City School system, based on Library REACH grants received from the Fund for Public Schools in collaboration with the Department of Education’s Office of Strategic Partnerships and Office of Library Services.

Barbara Stripling, Director of Library Services for the NYC School Library System, said that “Librarians are thrilled to be able to partner with the publishing industry to help bring books and authors alive for our students,” a sentiment echoed by Harmonica Kao, Community Associate in the Office of School Library Services, who talked about making “reading and dreaming a part of the learning journey for young children by letting them

see, hear, and feel the energy of real authors and illustrators.”

Publishers interested in participating in Adopt-A-School will be matched with area schools by the beginning of the next school year. AAP members interested in the program should contact Tina Jordan, AAP New York (tjordan@publishers.org).

AAP SEMINAR ON ACCESSIBLE BOOKS TO BE HELD JULY 28

AAP’s Rights and Permissions Advisory Committee (RPAC) will join with the AAP Higher Education Critical Issues Task Force and the AAP School Division in sponsoring a seminar on *Accessible Books for Readers with Print Disabilities* on July 28. The full-day program (9:00 a.m. to 5:00 p.m.) will be held at the Helen and Martin Kimmel Center at New York University.

The seminar will include sessions on end-user perspectives; K-12 textbooks; accessible instructional materials at the post-secondary level; trade books, national service organizations, and non-print materials.

Additional information on the seminar can be found online at: <http://www.publishers.org/conference/eventdetail.cfm?EventID=78>

PROFESSIONAL & SCHOLARLY PUBLISHING

PSP Publishers Oppose Federal Open Access Bill

AAP’s Professional and Scholarly Publishing Division has formally ex-

pressed to Congress, on behalf of the PSP membership and a host of other concerned publishers, the strong opposition of the academic and scientific publishing community to S.2695, the Federal Research Public Access Act. The legislation would require that final manuscripts of peer-reviewed journal articles based on federally funded research be made freely available on government-run web sites six months after their publication by commercial and not-for-profit publishers.

In a May 23 letter to Senator Susan Collins (R-ME), Chair of the Homeland Security and Government Affairs Committee, PSP Executive Council Chairman Brian Crawford (American Chemical Society) said: "This unnecessary legislation would adversely impact the existing peer review system that ensures the high quality of scientific research in the United States. In addition, it would impose costly new mandates on federal agencies."

The letter stresses the fact that researchers with access to federal research funds also already have had widespread access to an invaluable resource of peer-reviewed literature, much of it published by the diverse organizations, societies and commercial publishing houses who signed the letter. The letter points out that "There is a misconception that the peer review process is provided by volunteer experts at no cost to publishers. This is simply not true. Commercial and not-for-profit publishers invest hundreds of millions of dollars each year in the existing process of independent peer review," a process that insures that "all research articles undergo rigorous technical review by experts in specialized fields prior to publication." The proposed legislation would "effectively expropriate the substantial investments in peer review made by professional and scholarly

journal publishers—many of them scholarly not-for-profit societies" and in addition would impose an unfunded mandate on government agencies that would "divert millions of dollars away from federal research grants and towards the databases' costs."

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

Journals Committee Program Looks at the Changing Role of Subscription Agents

The PSP Journals Committee will sponsor a luncheon roundtable at the AAP New York Office from noon until 3 pm on Wednesday, August 9. Entitled "Is Everything in Order? The Changing Role of Subscription Agents in the 21st Century," the program is appropriate for anyone involved in journals management: circulation, editorial, finance, fulfillment, marketing or sales.

With the growth of online publishing, the role of the subscription agent is changing, and the seminar will look at a host of new ways of doing business.

For additional information: Sara Brandwein, AAP New York (sbrandwein@publishers.org).

Annual Medical Publishing Practicum to be Held in November

PSP's American Medical Publishers Committee will sponsor a concentrated one-day workshop for editorial, production and marketing staff on November 8 in Philadelphia. The *Medical Publishing Practicum* is designed to provide an intermediate-level review of key operations in medical publishing, and is appropriate for publishing staff at all levels. Four sess-

ions led by senior industry professionals will focus on editorial, production, and marketing concepts, tools and techniques.

For additional information: Sara Brandwein, AAP New York (sbrandwein@publishers.org).

NOTEWORTHY

RIF and Target Launch Summer Reading Challenge

Minneapolis-based national retailer Target stores has joined with Reading is Fundamental (RIF) in a summer reading program that can give youngsters an opportunity to win a Target gift card. Designed to counter the "summer slide" in reading skills that can occur during summer months, especially among children from low-income families, the program encourages youngsters 5-15 to track the number of hours they spend reading and log their reading achievements onto RIF's summer reading portal (www.rif.org/summer). Kids who achieve and log their goals by August 11 will have an opportunity to win a gift card from Target. To meet the challenge, children 5-7 must read for five or more hours; 8-10 year olds for seven or more hours; 11-12 year olds for ten hours; and 13-15 year olds for a total of 15 hours.

AAP President Pat Schroeder applauded the RIF/Target initiative for trying get kids and books together during the summer months, traditionally regarded as leisure time for having fun. "If we can get kids to connect books with enjoyment, we can make them lifelong readers. This summer reading challenge is a great opportunity to let them know that reading is not only Fundamental, it's also just plain FUN," she said.