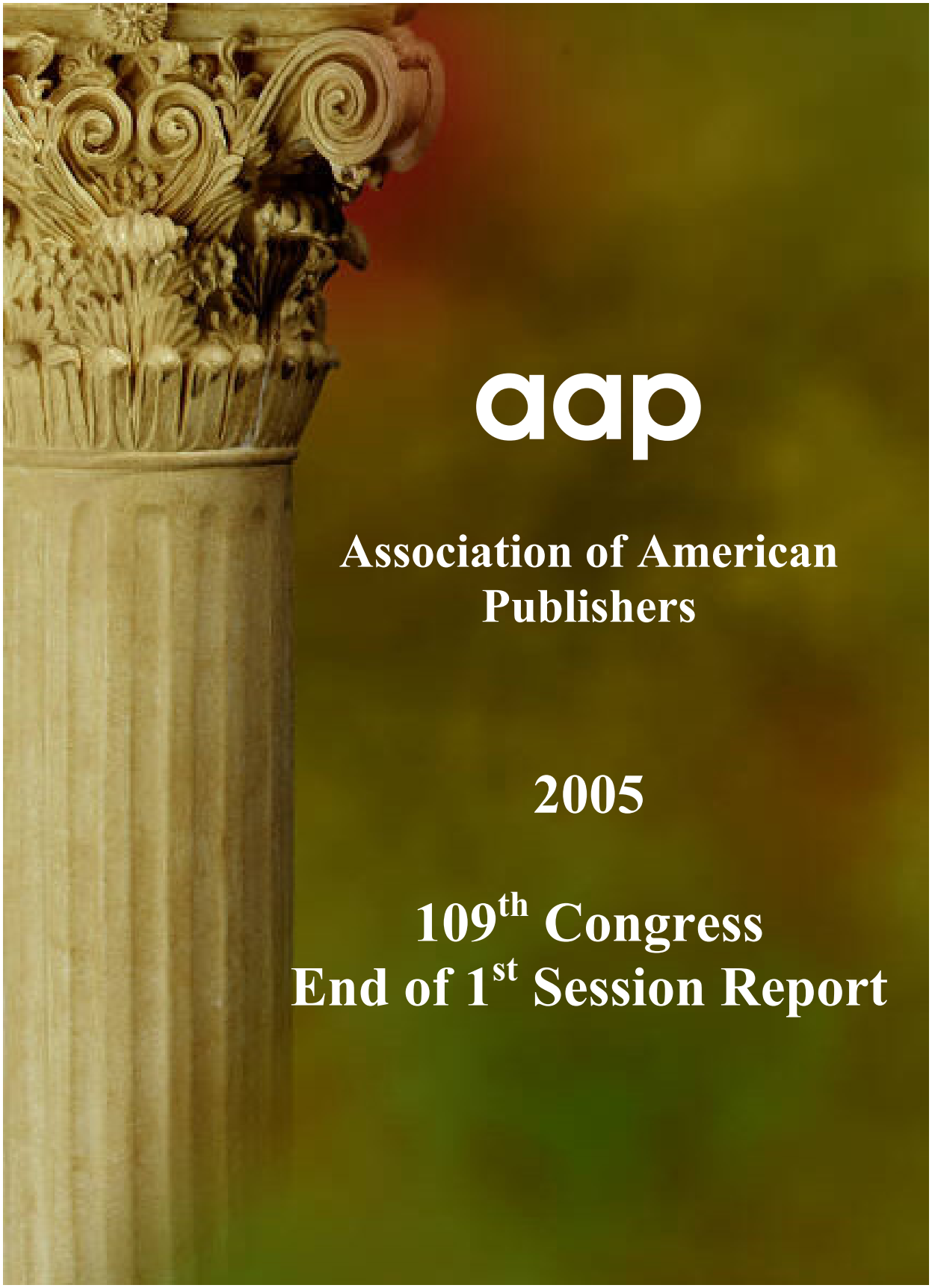
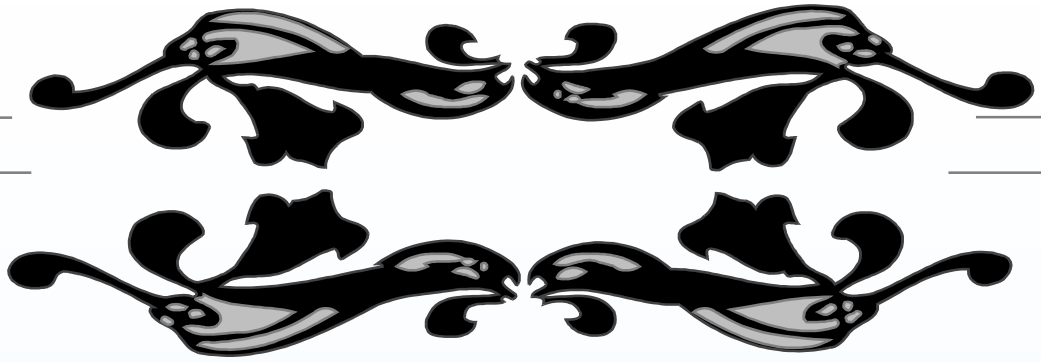


aap

Association of American Publishers

2005

109th Congress
End of 1st Session Report



109th Congress – End of the First Session Report 2005

The First Session of the 109th Congress was marked by an exacerbation of the previous Congress' bitterly partisan election-year politics, which continued to be dominated by inter-party disputes over the Bush Administration's Iraqi war policies, high-profile judicial nominations, and a succession of stalemates between the House and Senate over the Congressional appropriations process. While most copyright initiatives were put on the legislative back-burner pending the Supreme Court's resolution of the Grokster case on secondary liability for peer-to-peer online infringements, a variety of legislative activities of interest to AAP members continued to percolate in both the House and Senate.

As the Second Session of the 109th Congress gets underway, AAP members can now review some of the significant legislative activities that were the focus of attention in the AAP's Washington office on their behalf. At the same time, this report provides a timely opportunity to alert publishers to some of the public policy issues that likely will require AAP's attention midway through the 109th Congress.

This report focuses on legislative actions that affect book and journal publishing interests primarily concerning **(1)** intellectual property protection, **(2)** freedom of expression, **(3)** new technologies and "e-commerce," and **(4)** educational issues. However, we also report on significant developments regarding **(5)** tax and **(6)** postal matters.

A summary, text, and status report for each piece of referenced legislation, whether enacted or not, can be found online in the Congressional Legislative Reference Service of the Library of Congress at http://thomas.loc.gov/. Simply look under the "Legislation" heading at either "Bill Summary" or "Bill Text," click on the icon labeled "109th Congress," and follow the instructions from there.

If you have questions or comments on any of the material in this report, you can contact Allan Adler or Emilia Varga-West by phone (202/347-3375), fax (202/347-3690) or e-mail adler@publishers.org or evargawest@publishers.org.

Allan Adler & Emilia Varga-West

Copyright Issues

Family Entertainment and Copyright Act of 2005
(S. 167; Public Law No.109-9; April 27, 2005)

Introduced by Senator Orrin Hatch and cosponsored by four other members in January 2005, the Family Entertainment and Copyright Act ("FECA"), which became law in April of last year, primarily addresses copyright protection issues for the motion picture industry, but contains a provision that will also be helpful to book publishers.

Among other things, the FECA establishes a new provision amending the US Code to penalize the unauthorized act of using or attempting to use a video camera to transmit or record any audiovisual work in any theater or other exhibition facility. It also makes it a felony to engage in "willful pre-commercial online distribution" of an audiovisual work. Although the statutory provision on pre-release distribution does not specifically cover literary works, a related provision that calls for regulations to establish a pre-registration procedure to protect works prior to commercial release made it possible for literary works to qualify for such pre-registration protection if the Register of Copyrights determined in a subsequent rulemaking that such works have a "history of copyright infringement prior to commercial distribution" similar to that which has plagued motion pictures. AAP filed comments in the rulemaking, demonstrating the existence of such a "history" for highly anticipated books prior to their publication, and the Register included literary works as eligible for the pre-registration procedure when rules were issued to govern that process.

NON-ENACTED LEGISLATION

Two copyright-related bills of interest to AAP were introduced during the First Session and remain pending before Congress:

The proposed **"Digital Media Consumers' Rights Act of 2005"** (H.R. 1201) would, among other things, amend the Digital Millennium Copyright Act ("DMCA") to permit the circumvention of technological access and use controls for non-infringing purposes and to legalize tools that would facilitate such circumvention. Because its sponsors have never been able to gain traction in the House Judiciary Committee with earlier versions of this bill in previous Congresses, the pending version of this legislation, like a version that died in the 108th Congress, was referred to the House Energy and Commerce Committee based on its inclusion of provisions that would authorize the Federal Trade Commission to regulate unfair and deceptive practices in the sales of digital music disc products through labeling requirements.

The proposed **"Public Domain Enhancement Act"** (H.R. 2408) would establish a copyright "renewal" process that would strip works of their copyright protection and place them in the public domain if the copyright owners fail to renew their rights in compliance with a specified procedure requiring timely payment of a "maintenance fee" within a specific timeframe and every 10 years thereafter until the end of the copyright term. The bill's ostensible purpose is to identify so-called "orphan works" whose copyright owners cannot be identified or located, or have abandoned any interest in economic exploitation of the works, in order to permit those works to be used in otherwise infringing circumstances without risk of infringement liability for

the user. However, the bill's approach to the "orphan works" issue has been rejected by the Copyright Office in a recent study of the issue that concludes with legislative recommendations to codify a different approach to "orphan works" that has garnered much more support among users and producers of copyrighted works, including book publishers.

Both of these bills would be harmful to the copyright interests of book publishers. Accordingly, AAP will remain alert for any attempts to advance these measures through the legislative process, and will continue to oppose their enactment.

Freedom of Expression Issues

NON-ENACTED LEGISLATION

Proposals to Amend the PATRIOT Act

Lingering discomfort among members of Congress regarding some of the more controversial provisions enacted in the US PATRIOT Act in 2001 produced a high-visibility public debate over whether Congress should reauthorize certain provisions of that Act that were due to expire before the end of last year. Few issues in this context had a higher profile than the struggle over Section 215 of the PATRIOT Act, which provided few safeguards for privacy and freedom of expression in authorizing federal officials to access library, bookstore and other third-party "business records" as part of an investigation into alleged terrorist activities.

During early spring of 2005, the proposed **"Freedom to Read Protection Act"** (H.R. 1157) and the proposed **"Library, Bookseller and Personal Records Privacy Act"** (S. 317), reintroduced by Rep. Bernie Sanders (I-VT) and Senator Russell Feingold (D-WI), respectively, were among numerous bills that were offered by legislators seeking to strengthen civil liberties protections that were weakened by various provisions of the US PATRIOT Act and other post-9/11 antiterrorism legislation. Both proposals had in common to restore the requirement that federal law enforcement agencies seeking such records must show probable cause to believe that the individual who is the subject of the records is involved in espionage or terrorism-related activities.

Similarly, the proposed **"Security and Freedom Enhancement (SAFE) Act"** (S. 737), which was introduced by Senator Larry Craig (R-ID) as a narrowly crafted bipartisan effort to address the most serious concerns with respect to Section 215, would restore a standard of individualized suspicion and establish procedural safeguards to prevent abuse of that statutory authority. Specifically the Act states that 1) the government would need to show there was reason to believe the individual whose records were sought was an agent of a foreign power, 2) the recipient of a Foreign Intelligence Surveillance Act ("FISA") order would have the right to quash it, 3) the government would need to demonstrate the need for a gag order, 4) a time limit, which could be extended by the court, would be placed on the gag order, and 5) the individual whose records are sought would have to be notified if the government seeks to use those records in a subsequent proceeding, and would have a right to challenge the use of such records.

Last June, the House, by a 238-187 vote, approved an amendment offered by Rep. Sanders to the Justice Department's appropriations legislation to cut off funding for FBI searches of bookstores and libraries under Section 215. It was an unexpected victory because the Administration had defeated a similar amendment proposed in 2004. AAP's joint "Campaign for Reader Privacy" with the American Booksellers Association, the American Library Association and PEN American Center, played a significant role in securing the positive vote. However, the victory proved short-lived, as President Bush threatened to veto the appropriations legislation unless the Sanders amendment was removed, and the House subsequently passed the proposed **"USA PATRIOT Improvement and Reauthorization Act of 2005"** (H.R. 3199), which would make relatively cosmetic changes to Section 215 that would not satisfy the Campaign members. This time, Rep. Sanders was blocked from offering his legislation as an amendment to the bill. At

about the same time, an equally insufficient measure to reauthorize Section 215 and other expiring provisions of the PATRIOT Act came out of the Senate Intelligence Committee (S. 1266), which was reported to Senate without any amendment.

The battle took another turn in July when the Senate unanimously passed its own version of the proposed **"USA PATRIOT Improvement and Reauthorization Act of 2005"** (S. 1389), which included some of the crucial safeguards for protecting library, bookstore and other third-party business records that AAP had been advocating for more than two years. The differences between the two proposals were significant. Under the Senate version, the recipient of a Section 215 order would have the right to consult an attorney and to challenge the order in the FISA Court. The FBI would also have to present facts to the FISA court demonstrating a reason to believe that the records pertain to individuals suspected of espionage or terrorism and those who are in contact with them, thus reducing the possibility of a government "fishing expedition." Regarding library and bookstore records, the agent would need prior written approval from the Director or Deputy Director of the FBI before seeking such an order. Under the Senate bill, Section 215 would "sunset" in four instead of ten years as proposed by the House bill, which would significantly weaken the opportunity for meaningful Congressional oversight.

After House and Senate conferees met to reconcile the separate bills passed by the House and Senate, AAP expressed grave disappointment in the legislation that emerged from the conference committee in November, due to its failure to provide adequate civil liberties protections for Section 215. The conferees had rejected several key changes sought by AAP and proposed in S. 1389, including the establishment of a standard of individualized suspicion as the basis for obtaining bookstore and library records. The final bill failed to provide any meaningful way for a recipient to challenge the secret court order and rejected the four-year "sunset" approved by the Senate, proposing instead to extend the provision for another seven years.

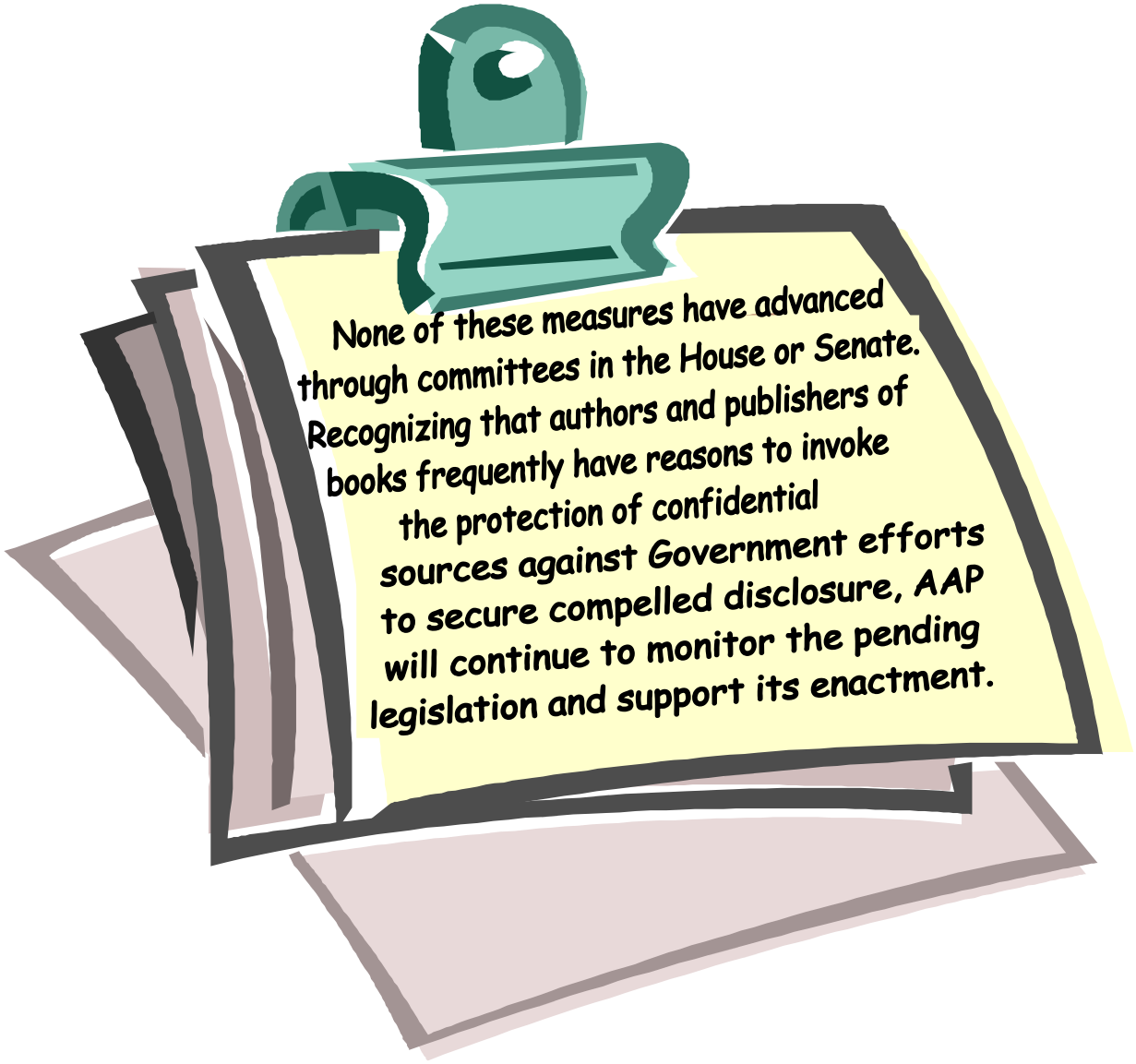
Congress, however, was not able to pass the conference report in the House and Senate before the First Session of the 109th Congress adjourned. Instead, it enacted **S. 2167 (PL. 109-160)**, extending the expiring provisions of the PATRIOT Act until February 3, 2006 in order to permit Congress to take up the issues again in the Second Session this year.

Bills to Provide Confidential Source Protection for Journalists

In the wake of several highly publicized and publicly criticized "leak" investigations by the Bush Administration, the question of whether federal law provides a "confidential source" privilege for journalists has been raised in Congress as well as in the federal courts. In the absence of federal statutory protection, the issue has generally been addressed through State statutes and claims based on the First Amendment. However, in response to recent judicial rulings that have rejected the existence of an unqualified constitutional "reporter's privilege" under the First Amendment, several members of Congress have introduced bills to establish federal statutory protection for confidential news sources.

The proposed **"Free Flow of Information Act of 2005"** (H.R. 581) would permit Federal entities to compel a "covered person" (identified as media outlets or their employees) to testify or to provide requested documents only if the testimony could not be obtained from other sources and it is vital to an investigation, prosecution or defense in a federal criminal case. At the same time, the bill also specifies that no media person could be required to reveal the identity of confidential source unless the person received an opportunity to resist such disclosure in federal court. A bill identical to this House measure is also pending in the Senate (S. 340).

The proposed "**Free Speech Protection Act of 2005**" (S. 369), introduced by the Senate sponsor of the original House bill, would go one step further than the other legislation by providing that journalists cannot be compelled to disclose any information or documents (including notes, video or sound tapes, outtakes, photographs) that were acquired during the process of newsgathering but were not disclosed to the public. Subsequently, the House and Senate sponsors of the original source protection legislation introduced new versions (H.R. 3323 and S. 419) of those bills containing provisions similar to the additional protection in S. 369, but also specifically limiting press protections by permitting compelled disclosure in cases where "imminent and actual harm to national security" is otherwise expected to result and would outweigh the public interest in protecting the free flow of information.



Bills to Improve Public Access to Federal Agency Records Under the FOIA

The freedom to obtain access to information, especially from the Executive Branch of the Federal Government, is often an important precondition to the exercise of freedom of expression with respect to Federal Government activities and policies. Continuing dissatisfaction with the Bush Administration's marked penchant for government secrecy, particularly with respect to its

stewardship over agency compliance with the federal Freedom of Information Act ("FOIA"), has led several members of Congress to introduce legislation to strengthen the public's ability to obtain access to federal agency records under the FOIA.

The proposed **"OPEN Government Act,"** which was simultaneously introduced in the House and Senate (H.R. 867 and S. 394), would amend the FOIA to facilitate the granting of fee waiver requests from freelance journalists and other news media representatives who lack institutional affiliations. The legislation would require Federal agencies to take the requester's publication history (including through books, articles, and television and radio broadcasts) into consideration when determining eligibility for a waiver of search and copy fees. Agencies would be required to assign a tracking number to each waiver request, indicate its status in response to an online or telephone inquiry, and make a determination on granting the request within 20 days of its receipt.

When neither of these bills advanced, one of the primary Senate sponsors, Senator John Cornyn (R-TX), introduced two other measures that made progress in the Senate. The proposed **"Faster FOIA Act of 2005"** (S. 589), which would establish a Commission on Freedom of Information Act Processing Delays to study and report to Congress on reducing such delays and ensuring efficient and equitable FOIA administration through the Federal Government, was reported by the Senate Judiciary Committee and awaits action by the full Senate. Cornyn's second, **untitled bill** (S. 1181), took a provision from the earlier House and Senate bills and managed not only to get it reported out of Committee but passed by the full Senate in June. The provision would require that any future legislation to establish a new exemption from disclosure under the FOIA must be explicitly identified as such within the text of the bill. The Senate-passed bill, along with a companion measure introduced in the House (H.R. 1620), is pending further action in the House.

Books – like newspapers, magazines, TV and radio programs, and various Internet sites – often disclose important information obtained from federal agency records to the public when addressing subjects that directly or indirectly concern Federal Government actions and policies. AAP supports a strong and efficient FOIA as an important tool for authors and publishers, and will continue to monitor these pending bills and support their enactment.

Education Issues

Higher Education Extension Act of 2005
(H.R. 3784; Public Law No: 109-81; September 30, 2005)
Second Higher Education Extension Act of 2005
(H.R. 4525; Public Law No: 109-150; December 30, 2005)
Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act of 2006
(H.R. 3010; Public Law No: 109-149; December 30, 2005)

As the end of the First Session rapidly approached, the prospects for enacting legislation to reauthorize the Higher Education Act of 1965 continued to elude Congress, much as they did in the previous Congress. As a result, Congress was forced to forego proposals to substantively revise various programs authorized under the Act, and to twice enact legislation to extend the current authorization for those programs until full reauthorization legislation can be enacted. The first extension provided continued authorization for higher education programs until the end of the year, and the second extension – made necessary by Congressional failure to meet that deadline – gave the programs continued authorization through March 31 of this year.

At the same time, Congress enacted legislation (H.R. 3010) to appropriate funds for programs under the aegis of the federal Department of Education through the fiscal year ending September 30, 2006.

NON-ENACTED LEGISLATION

As noted above, legislation intended to reauthorize the Higher Education Act of 1965 was not enacted last year, so Congress extended the current authorization for existing programs under that Act. When Congress resumes consideration of the issue in the Second Session of the 109th Congress, two bills pending in the House (H.R. 609 - **College Access and Opportunity Act of 2005**) and Senate (S. 1614 - **Higher Education Amendments of 2005**) are expected to be the primary vehicles for reauthorization legislation.

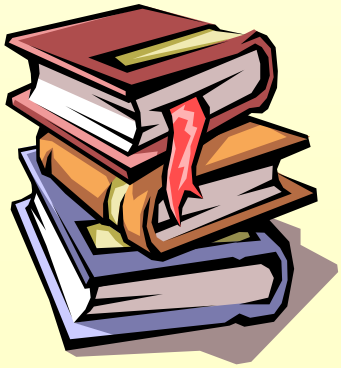
An investigation of textbook pricing by the General Accounting Office ("GAO"), which was initiated at the request of House committee leaders during the summer of 2004, concluded in June 2005 with somewhat flattering results for the publishing industry's efforts to use new technologies to enhance the learning experience. Still, some of the report's less favorable findings regarding cost increases for textbooks in recent years ensured that negative national media coverage continued and AAP was bombarded with press calls. When H.R. 609 was reported out of committee, the bill included a non-binding "Sense of the Committee" provision listing brief "Findings" and suggested actions that "should occur to make college textbooks more affordable for students."

In Congress, the impact of the GAO report was otherwise fairly muted, with no reprise of the House subcommittee hearing held in 2004, and only a single piece of responsive legislation introduced in the House and Senate. The proposed "**Affordable Books for College Act,**" which was introduced simultaneously in the House by Rep. Tim Ryan (D-OH) (H.R. 3259) and in the Senate by Senator Charles Schumer (D-NY) (S. 1384), would establish a demonstration program

in college bookstores allowing students to rent course materials. This legislation has attracted no cosponsors, even among Democrats, in either body and appears unlikely to be picked up as an amendment to pending reauthorization legislation. Nevertheless, AAP will continue to monitor this legislation and remain alert for similar proposals.

One additional bill noted by AAP last year raises the specter of censorship in school library programs. The proposed "**Parental Empowerment Act of 2005" (**H.R. 2295), which was introduced by Rep. Walter Jones (R-NC) with five Republican cosponsors, was apparently inspired by a popular children's book that spins the fairy tale story-line of the search for a Prince's consort so that it ends with the Prince's choice of a male, rather than female, consort. The bill calls for the establishment of "parent review and empowerment councils" by all local and state educational agencies to ensure appropriate oversight and input concerning the acquisition of library and classroom-based instructional materials, excluding textbooks, for elementary schools. The bill would make the establishment and maintenance of such councils a condition for States to receive federal educational funding.

AAP's interest in reauthorization of the Higher Education Act, as well as its interest in appropriations for the Department of Education, is usually limited to the provisions in both pieces of legislation that impact federal student loan and grant programs which provide funding that may be used by college students to purchase their books and other instructional materials. Last year, however, the news media coverage of student complaints regarding the price of college textbooks, building on the results of the GAO investigation, raised the possibility that members of Congress might utilize the reauthorization or appropriations legislation as vehicles to propose measures addressing those complaints which might be inimical to the interests of book publishers. Although nothing of consequence occurred on this matter, AAP will continue to closely monitor the issue in Congress. Similarly, although it appears unlikely that Congress will move any legislation that encourages the censorship of book purchasing by school libraries, AAP will remain alert on that issue as well.



Tax Issues

Katrina Emergency Tax Relief Act of 2005

(H.R. 3768; Public Law No: 109-73; September 9, 2005)

On several occasions over the last few years, Senate legislation has contained proposals to modify the existing Internal Revenue Code provisions establishing a charitable deduction for contributions of book inventory to organizations for educational purposes. When the Senate passed the Charity Aid, Recovery, and Empowerment (CARE) Act (S. 476) by an overwhelming 95-5 vote in April 2003, it looked as though AAP would score another rare victory on tax issues. That legislation, which was a bipartisan, compromise version of President Bush's Faith-based and Community Initiative, included the Contributions of Book Inventory Amendment, sponsored by Senator Orrin Hatch (R-UT). Unfortunately, the House did not take up the Senate-passed version of S. 476 but instead passed its own version of the Care Act (H.R. 7), which did not include any provision regarding charitable deductions for book inventories.

Originally introduced as a stand-alone bill (S. 680), the Senate amendment would have enhanced the charitable tax deduction incentives under existing law for book publishers to contribute excess book inventory to educational organizations, public libraries and literacy programs. During the previous Congress, Senator Hatch had made sure that a similar provision was included in the Senate-passed version of the Administration's major tax legislation, the RELIEF Act of 2001, but it was dropped with many other provisions from the final version of the tax legislation that the President signed into law. AAP staff had worked with Senator Hatch's staff to improve that version of the inventory contributions provisions, and several of the issues raised by AAP resulted in changes in the amendment as introduced and passed in the Senate.

Under current law, a charitable tax deduction for donation of a taxpayer's inventory is limited to the taxpayer's basis (cost) in the inventory. However, a taxpayer may be eligible for an enhanced deduction, which is equal to the lesser of (1) the basis plus one-half of an item's appreciated value or (2) two times the basis, if the items donated are to be used "solely for the care of the ill, the needy, or infants." Unfortunately, book publishers are often prohibited from receiving an enhanced deduction for charitable contributions of their book inventories because of the requirement that the donation be used solely for the care of the ill, the needy, or infants rather than that it be made to charitable organizations that can use the books.

Under the revised Senate-passed amendment, a special rule would have been carved out for book publishers to receive an enhanced deduction for charitable contributions of their book inventories to schools, libraries, and literacy programs for educational purposes. For qualified book contributions, the ceiling on the enhanced deduction for book publishers would have been the amount by which the fair market value of the contributed materials exceeds twice the taxpayer's basis in the materials. A "qualified book contribution" would have referred to a charitable contribution of books to: (1) an educational organization that normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on (schools); (2) a public library; or, (3) a 501(c)(3) entity that is organized primarily to make books available to the general public at no cost or to operate a literacy program. "Fair market value" would have been determined by reference to a "bona fide published market price" as determined (1) using the

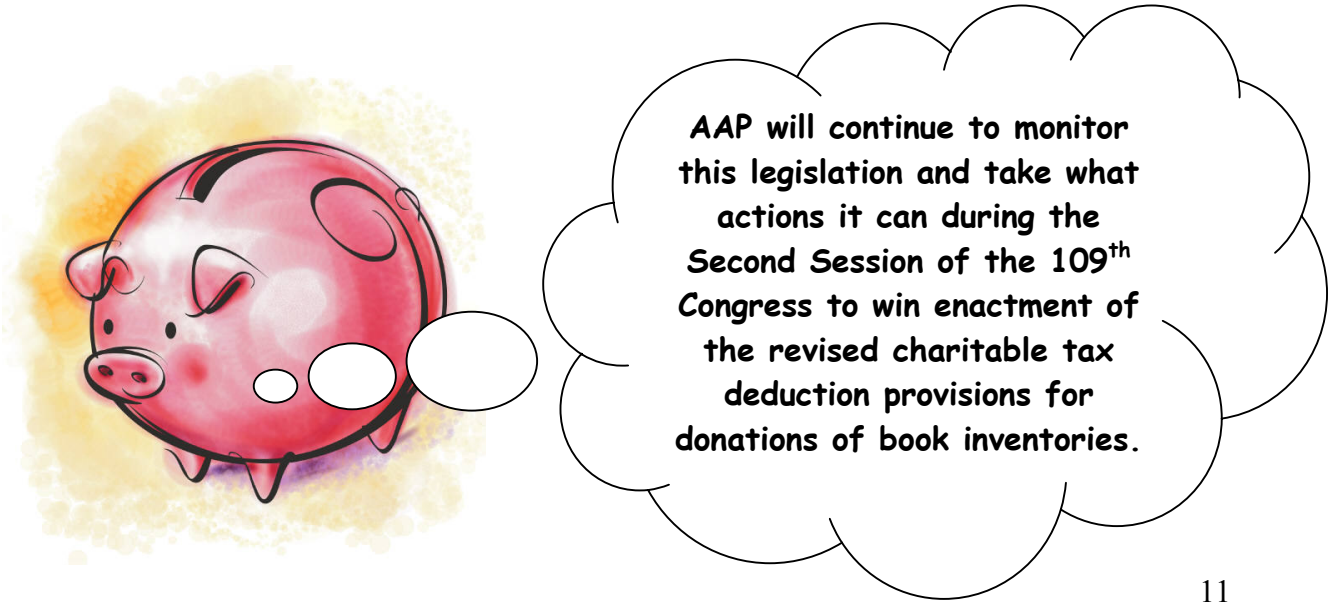
same printing and edition; (2) in the usual market in which the book is customarily sold by the taxpayer; and (3) by the validity of the taxpayer's showing that the taxpayer customarily sold such books in arm's length transactions within 7 years preceding the contribution. In practical terms, this meant that the "bona fide published market price" for contributed books could not be based on the price from the publisher's own price list or catalogue, but instead must be an independently verifiable reference to actual sales of those books. Under the amendment, the donee organization would have to (1) use the books consistent with their exempt purpose; (2) not transfer the books in exchange for money, other property, or services; and (3) certify in writing both that the donated books are suitable, in terms of currency, content and quantity, for use in the organization's educational programs, and that the books will be used in such educational programs.

Unfortunately, the lack of necessary offsets to pay for the costs of new charitable tax deductions in the CARE Act apparently doomed the effort by the bill's lead sponsors, Senators Rick Santorum (R-PA) and Joseph Lieberman (D-CT), to attach the bill's provisions to that Congressional session's only major tax bill, which Congress eventually enacted as the American Jobs Creation Act.

The same provision, with minor modifications, is now contained in a new CARE Act title of the proposed **"Marriage, Opportunity, Relief and Empowerment Act" (MORE Act)** (S. 6), which was introduced last year by Senator Rick Santorum (R-PA), but saw no movement.

In the aftermath of Hurricane Katrina, bipartisan pressure to provide tax relief to the victims of the devastation led Congress to examine a number of tax relief proposals that were pending but not moving through the legislative process. One of these was the charitable deduction for book inventories. However, in keeping with the narrow focus of disaster relief, Congress did not enact the revised deduction as it has appeared in several successive legislative proposals, but only provided a limited tax deduction for the charitable contribution of book inventories to public schools educating children from kindergarten through grade 12. Intended to help Gulf Coast schools replace lost school library collections, the provisions provided only a limited window for this tax relief, applying only to donations made between August 28 and December 31, 2005.

Although the book inventory charitable donation deduction provisions remain pending as part of the proposed MORE Act legislation, the current tight budgetary situation makes its enactment highly unlikely for the same reason (lack of offsets) it was not enacted in earlier versions.



Postal Issues

NON-ENACTED LEGISLATION

Comprehensive Postal Reform Legislation

The proposed **"Postal Accountability and Enhancement Act"** (H.R. 22) and its Senate counterpart (S. 662) made it back to Capitol Hill last year after failing to reach the floor in either body during the previous Congress. House passage of H.R. 22 last July and Senate committee approval of S. 662 shortly thereafter, have given the legislation's sponsors and supporters hope of securing its enactment during the current Congress. However, there are still substantial obstacles blocking enactment.

Among other things, the legislation features reforms that would (1) shift rate regulation from its current litigation model to one tied to the Consumer Price Index for market –dominant products while permitting flexible market pricing for competitive products; (2) define "postal services" and limit USPS offering of non-postal products; and (3) give the renamed Postal Regulatory Commission subpoena power and broaden its regulatory and oversight functions. Some of these provisions, particularly those establishing new rules for the postage rate-setting process, continue to be the subject of negotiations.

But the most problematic provisions in the bill, which have raised veto threats from the Bush Administration, are clearly those that would eliminate the escrow account and military pension policy implemented with passage of the Postal Civil Service Retirement System Funding Reform Act of 2003. That legislation arose out of a financial analysis that the Office of Personnel Management (OPM) conducted at the request of the General Accountability Office (GAO), revealing that the USPS had almost fully funded its retirement obligation for postal employees and that additional payments at the current rate would over-fund USPS liability by approximately $71 billion. The new law was the Congressional response to this analysis, and was intended to prevent the overpayment by correcting the statutory formula for the USPS contributions to the CSRS, while stipulating that the funds saved are to be used by the USPS to (1) pay down its debt to the Treasury Department; (2) maintain current postage rates without any increases until 2006 at the earliest; and (3) fund postal retiree health benefits.

Now, however, the provisions of the legislation that would transfer pension cost obligations connected with military service credit for postal employees from USPS to the Treasury, in addition to abolishing the 2006 escrow requirement in order to delay the need for a rate case, have been targeted by the Bush Administration as budget-busters. In addition, the Administration has also questioned whether the legislation has gone far enough in providing transparency to prevent cross-subsidization of competitive products with monopoly product revenue, as well as in providing flexibility to reduce high labor costs.

Even if, as appears likely, the Senate passes S. 662 during the Second Session, the chances for enactment of this legislation during the current Congress will hinge on resolving the Administration's budgetary concerns.

At present, it is not clear how that can be accomplished consistent with the desire of both the Postal Service and Congress to use the escrowed funds to put off the need for another postal rate hike so soon after the most recent rate case settlement raised postal rates at the beginning of this year.

AAP will continue to support enactment of comprehensive postal reform legislation in the current Congress.