



American Association of Law Libraries

MAXIMIZING THE POWER OF THE LAW LIBRARY COMMUNITY SINCE 1906

Statement to The Obama-Biden Transition Team:

**Public Policy Positions of
The American Association of Law Libraries**

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Public Policy Positions of The American Association of Law Libraries

The American Association of Law Libraries (AALL) is a nonprofit educational organization with over 5000 members nationwide who respond to the legal information needs of many constituents: legislators, judges, and other public officials at all levels of government, corporations and small businesses, law professors and students, attorneys and members of the general public. AALL's mission is to promote and enhance the value of law libraries, to foster law librarianship, and to provide leadership and advocacy in the field of legal information and information policy.

Law libraries are affected by a broad span of public policy concerns, ranging from the dissemination of government information to developments affecting intellectual freedom and intellectual property. The exponential growth of the Internet as a central point of access to information raises new legislative and policy concerns that are critical to our libraries and our users.

AALL worked with other open government advocates in developing "Moving Toward a 21st Century Right-to-Know Agenda: Recommendations to President-elect Obama and Congress." We have endorsed its recommendations which, when implemented, will achieve greater openness in government and a more participatory democracy. We are pleased that President-elect Obama will appoint a chief technology officer to oversee the dissemination of government information.

AALL has been engaged in the debate over net neutrality, and we applaud the President-elect's steadfast commitment to protecting the openness of the Internet. We commend the Obama-Biden Plan for its recognition of

“the immense transformative power of technology and innovation and how they can improve the lives of Americans. They will work to ensure the full and free exchange of information through an open Internet and use technology to create a more transparent and connected democracy.”

AALL's information policy goals relate to the following categories of issues that are more relevant than ever before due to the rapid development of digital technologies: the importance of the public's right to access government information as a basic tenet of our democracy; the preservation of the historic balance in copyright law between rights holders and users; and the protection of personal privacy.

The Public's Right to Access Government Information

AALL believes that a democratic society should afford its citizens complete, equitable and permanent access to its information. We believe that public information on government Web sites must be available without charge or restriction, and that it must be trustworthy and reliable, comprehensive and complete, and that information of historical value should be preserved for permanent public access.

- *Government's responsibility for managing the life cycle of online information.*

AALL believes that the government is responsible for the entire life cycle of its information. As agencies embrace the Internet, this includes the application of robust finding tools; version control to identify changes that have been made to a particular document (while maintaining access to earlier versions); authentication to ensure that the information is reliable and has not been altered or changed; permanent public access to ensure that important information is not removed from agency Web sites; and long-term preservation. The development and use of metadata is crucial to properly manage electronic government information throughout its life cycle.

The Executive Office of the President and federal agencies should take into consideration that the preservation of digital materials begins at the point of creation and storage. They cannot afford to wait until a change of Administration is imminent to figure out how to preserve their history. We believe that the Obama Administration should begin to work closely with the National Archives and Records Administration from day one to plan for the electronic record keeping of their digital materials, including the use of non-proprietary systems that are crucial to digital preservation.

- *A public domain citation system for legal information.*

Citizens must have complete access to the laws that govern them. Although government entities have turned to the Web as a mechanism for providing the public with direct access to their information, citizens still do not have complete access to public documents because there is no standard method for citing primary legal information, including court opinions, beyond the physical volumes and page numbers of a print resource. Since the early 1990s, AALL has promoted the move to a public domain citation system, a style of citation that does not favor a particular source, forum, format, or medium. To date, a number of states have successfully adopted and used a public domain citation format. They have found that technology allows implementation that is neither difficult nor expensive.

The *E-Government Act of 2002* (P.L. 107-347 §205(a)(5), 116 Stat. 2899, 2913) requires that all federal courts establish Web sites that contain “access to the substance of all written opinions issued by the court.” A public domain citation system would make these online opinions citable directly without research into another source. The result is an easier and fairer system for finding the law.

- *Adequate annual funding to the Administrative Office of the United States Courts for no-fee public access to PACER.*

It is a core principle of AALL that information on government Web sites must be available to all people without charge. In order to provide all Americans with the same level of access to information from the federal courts as they have from Congress and federal agencies, adequate funding should be provided annually to the Administrative Office of the United States Courts to support the federal courts' important automation programs and to provide the public with no-fee access to PACER.

- *Agency cooperation with the U.S. Government Printing Office's Federal Digital System.*

In early January 2009, the U.S. Government Printing Office (GPO) will launch the first public release of its Federal Digital System (FDsys) that has the capacity to accept, authenticate and provide continuous public access to information from all three branches of government. AALL applauds GPO's efforts and believes that FDsys offers agencies an excellent model for the management of their Web content. We hope that the Obama Administration will work with GPO to ensure information compatibility, and the authentication, permanent public access to and preservation of government information on the Web.

Copyright in the Digital Age

AALL believes that an equitable balance between the rights of users of information and the rights of copyright owners and licensors is essential to innovation and to the free flow of information. Government should help maintain this balance by encouraging the free distribution of government information in all media and formats.

Article I, Section 8 of the Constitution emphasizes that Congress shall have the power "to promote the progress of science and useful arts." We believe that the Executive Branch can foster our Nation's progress by pursuing an agenda that encourages creative innovation. For science and education to flourish, our citizens need predictable ways to fairly use existing ideas and sources to create new works. Through access to scientific knowledge and information about our government's activities, Americans are able to create new tools and develop new ideas to help our country achieve greatness.

- *Protection and promotion of fair use.*

AALL supports the doctrine of fair use, especially in the areas of criticism, commentary, education and research. We believe that the language of 17 U.S.C. § 107 is sound and relevant in the digital age; however, we need to explicitly address circumstances where legal uncertainty can inhibit uses that would otherwise promote the progress of science and our country's innovative heritage. In addition, we need to update protections for libraries and archives. We must adapt permissible archival activities to modern technological means, lest our cultural and scientific institutions be forced to decide between the risks of material loss and litigation.

- *Balance in free trade agreements and treaties.*

Fair use provisions also should be reflected in any free trade agreements or international treaties. In addition, when the United States pursues changes to patent and copyright protection, our citizens need a transparent process. For example, only after media leaks and heightened criticism occurred did the United States Trade Representative release information to the public about the draft Anti-Counterfeiting Trade Agreement (ACTA). In international negotiations, the United States needs some protected interaction with other governments; however, AALL hopes that the new Administration will constantly promote openness and transparency in trade and treaty negotiations, especially where those actions have an impact on copyright and the free flow of goods and ideas.

- *Orphan works legislation.*

AALL and other library organizations have been working with the Copyright Office and other concerned stakeholders for several years to develop consensus for new legislation that would allow libraries to digitize and make publicly available “orphan works.” The term refers to materials whose copyright owners cannot be found despite extensive and costly searches. All too often, the risk of a lawsuit is a barrier to important digitization efforts. Without a legislative solution, the risk remains too high to make these materials, many of which have great cultural and historic significance, broadly available for education and scholarship. Greater predictability for orphan works will help many creators of new works, including citizen journalists and documentary film makers, while also rewarding original creators with equitable compensation.

Privacy

The American Association of Law Libraries is committed to preserving the privacy rights and civil liberties of library users and all Americans.

- *The 2009 reauthorization of provisions of the USA PATRIOT Act.*

The *USA PATRIOT Improvement and Reauthorization Act of 2005* (P.L. 109-177) extended the sunset date for Section 215 (the so-called “library” provision) to December 31, 2009. Section 215, codified as 50 U.S.C. § 1861, authorizes the Director of the Federal Bureau of Investigation or a designee to apply for a court order requiring production of any tangible thing (including books, records, papers, and documents) for foreign intelligence and international terrorism investigations. The section also includes a “gag order” preventing those receiving the court order from disclosing that fact to anyone other than attorneys and those who need to know in order to comply with the order. While the reauthorization act established a few procedural safeguards with regard to the use of Section 215, we believe that the provision still inhibits the free use of libraries and should not be reauthorized.

Although not due to sunset, expanded national security letter power has proven to be a larger privacy problem than anyone expected, as reports by the Office of the Inspector General have shown. The library exemption that was included in the USA PATRIOT Reauthorization Act is so ambiguous that no library can be certain it is exempt. We believe that the library exemption should be clarified so that libraries providing computer access—all libraries—are not, by that fact alone, subject to a national security letter. We also believe that the scope of national security letters should be returned to the pre-USA PATRIOT Act standard, that there be “clear and articulable facts” that are relevant to an ongoing authorized investigation before a letter is issued. This protects the privacy of all.

We commend President-elect Obama’s bi-partisan efforts during negotiations over the 2005 reauthorization Act, including his introduction of the *SAFE Act*. We urge the Obama Administration to ensure that government has the necessary tools to track down terrorists without trampling on our civil rights, and that government is held more accountable.