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NEWS FROM WASHINGTON

First Amendment Protections Strengthened in New Trademark Revision Law

The Trademark Dilution Revision Act of 2006 was passed by Congress and signed into law in late October (PL 109-312). The new law, which is intended to help owners of famous trademarks protect against dilution of the trademark by “blurring” or “tarnishment” by third parties, was passed when a decision by the U.S. Supreme Court revealed a flaw in the underlying federal trademark statute. Although this aspect of the new law has no direct bearing on book publishers, AAP used the opportunity, while the issue was before Congress, to lobby successfully for clarifications in the anti-dilution law that will help protect authors and publishers from liability in connection with references to famous trademarks in published literary works. The new law restores a “noncommercial use” exception that an earlier, House-passed version would have eliminated, and expands the “fair use” exception in prior law to bar dilution claims based on parody, criticism, and comments on the famous mark.

Postal Reform Legislation Passed

In the final hours of the 109th Congress, the legislative push for postal reform, considered all but dead, was revived by a last minute compromise and the first comprehensive postal reform bill since 1970 was passed and sent to the White House.

The Postal Accountability and En-

hancement Act of 2006 (H.R. 6407) was the result of a hard-won agreement among key Congressional leaders, the Bush Administration, and the mailing community, and is being welcomed as an important victory for businesses, nonprofit organizations, and consumers.

Through the bi-partisan efforts of long-time postal reform leaders including Senators Susan Collins (R-ME), Joseph Lieberman (I-CT), and Tom Carper (D-DE), and Representatives Tom Davis (R-VA), Henry Waxman (D-CA), John McHugh (R-NY) and Danny Davis (D-IL), the legislation includes provisions that will help stabilize mail volume and postal rates by allowing the U.S. Postal Service to price its products in response to market developments, as ordinary businesses do, and by giving the USPS the freedom to customize existing products and introduce innovative new products. The legislation will aid USPS finances by repealing the current law that makes USPS the only agency in the federal government responsible for its employees’ military pension benefits and returning this obligation to the U.S. Treasury, while correcting a flawed pension formula that resulted in massive overpayments that contributed to higher postal rates.

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Pat Schroeder Letter on Google Lawsuit in NYRB

The November 30 issue of *The New York Review of Books* carried a letter from AAP President Pat Schroeder re-stating the reasons behind the publishing industry’s

copyright infringement lawsuit against Google.

Responding to an October 19 article by Jason Epstein in which he called the Google library project “utterly heroic,” Mrs. Schroeder said: “We object to Google’s library project not because of its lofty goals, but because of its shoddy business model—a business model which assumes that a \$120 billion, profit-making corporation can use its size, power, and image to expropriate rights and property that belong to others and then add insult to injury by telling them it’s for their own good.” The complete text of Pat Schroeder’s letter can be found at:

<http://www.nybooks.com/articles/19678>

New DMCA Anti-Circumvention Exemptions Announced

The Librarian of Congress has published the results of the third triennial rulemaking proceeding under Section 1201(a) of the Digital Millennium Copyright Act (DMCA). The rulemaking process examines whether the provision in the DMCA making it illegal to circumvent technologies employed to control access to copyrighted works is likely to have an adverse effect upon non-infringing uses of particular classes of copyrighted works. If there is a clear showing that such an adverse effect is likely, the Librarian is authorized to exempt particular classes of works from the DMCA anti-circumvention provision, with the exemption remaining in effect until the next rulemaking proceeding. Acting on the recommendations of the U.S. Register of Copyrights, the Librar-

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ian authorized six exemptions from the prohibition, including a renewal (with modifications) of a previously-adopted exemption covering “literary works distributed in ebook format when all existing ebook editions of the work (including digital text editions made available by authorized entities) contain access controls that prevent the enabling either of the book’s read-aloud function or of screen readers that render the text into a specialized format.” While questioning the need for this exemption, (as it did in the previous rulemaking proceeding in 2003), AAP did not oppose its renewal in essentially the same form because it could not be shown that the situation had changed from 2003 regarding the enabling of the read-aloud and screen reader functionalities, nor that publishers were actually harmed by the exemption.

AAP ANNUAL MEETING

The 2007 AAP General Annual Meeting entitled, “The Book World Gone Digital...In Debate,” will be held Tuesday, March 6, at the Yale Club in New York City. The program is scheduled to run from 10:00 a.m. - 2:00 p.m. The program will also include the AAP Honors award luncheon.

The program will feature speakers from Adobe, General Atlantic, Time Inc., Rightscom Ltd., and others who will talk about ways in which digital technology has altered publishing and business intelligence as it pertains to content delivery, marketing, and distribution. The final program will be available in the next few weeks.

For out-of-town attendees, AAP has obtained a special room rate of \$175 at the Yale Club, available only until January 15. Early reservations are encouraged. For hotel reservations, call the Yale Club at 212/716-2100 and request the AAP group rate. The Yale Club is located at 50 Vanderbilt Avenue, New York, NY 10017.

An Annual Meeting Registration form is attached to this issue of the *AAP Monthly Report*. We hope you’ll use it, and plan to join us for what promises to be a very important industry gathering.

FREEDOM TO READ

Texas Supreme Court Refuses to Hear Libel Suit Against Harvest House

On December 1 the Texas Supreme Court denied review of the libel suit against Harvest House Publishers brought by a group called The Local Church. In refusing to hear the case, the Texas Supreme Court left standing the ruling of the Texas Court of Appeals in Houston dismissing the suit, and putting an end to a libel action that should never have gotten as far as it did. As reported in the last issue of the *Monthly Report*, AAP led a coalition representing publishers, booksellers, and librarians in an *amicus* brief urging the Texas Supreme Court *not* to review the lower court ruling, and pointing out that “The ‘chilling effect’ of meritless libel litigation occurs because publishers are deterred from engaging in truthful or non-defamatory speech by the enormous costs of defending defamation lawsuits.”

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

Judge Rules Electronic Newsletter Covered by Journalist’s Shield Law

In *Forensic Advisers v. Matrixx Initiatives*, a case being closely watched by First Amendment advocates, a pharmaceutical company is seeking to force the publisher of an electronic financial newsletter in Maryland (which had carried unfavorable articles about the company) to disclose his subscriber list, in an attempt to identify individuals posting derogatory comments about the company to an Internet message board. The publisher sought to quash the subpoena, claiming protection under Maryland’s journalist shield law. In the spring of 2005 AAP joined an *amicus* brief supporting the publisher’s right to keep his subscriber list confidential (see *Monthly Report* June/July 2005). A Maryland state appeals court has now ruled that since other information is also being sought, the publisher’s deposition can go forward, but that the electronic newsletter *falls within the definition of news media for the purpose of the state’s shield law*, and, therefore, the publisher can raise privilege objections to particular questions during the deposition.

Federal Appeals Court Hears Ehrenfeld Case

The U.S. Court of Appeals for the 2nd Circuit heard oral arguments on November 8 in *Ehrenfeld v. Bin Mahfouz*, in which U.S. author

Rachel Ehrenfeld (*Funding Evil*) is seeking to have a British libel judgment against her declared unenforceable in the United States. The British lawsuit and resulting judgment is an egregious example of “libel tourism” and Ehrenfeld asserts that the existence of the judgment is having a chilling effect on her exercise of her First Amendment rights. AAP is one of the media organizations who have filed an *amicus* brief asking the 2nd Circuit to rule in Ehrenfeld’s favor (see *Monthly Report* July/Aug. 2006). For additional information: Judith Platt, AAP Washington (jplatt@publishers.org).

Appeals Court Agrees Illinois Video Game Law is Unconstitutional

On November 27, the U.S. Court of Appeals for the 7th Circuit held unconstitutional an Illinois statute prohibiting the sale of video games with sexual content to minors and ordering retailers to post in-store signs informing customers about video game ratings. In March of this year AAP joined other Media Coalition members in filing an *amicus* brief in the 7th Circuit pointing out that while it is permissible to restrict the sale of sexually explicit material to minors, the Supreme Court has ruled that such restrictions must take into account the serious literary, artistic, political or scientific value of the work as a whole, which the Illinois statute failed to do. The brief also argued that the mandated signs were compelled speech. The appeals court agreed with both arguments and upheld a permanent injunction barring enforcement of the law, which was issued by a federal district court last year.

AAP Joins *Amicus* Brief in Minnesota Video Game Statute Challenge

On November 29 AAP joined with other members of Media Coalition in filing an *amicus* brief to the U.S. Court of Appeals for the 8th Circuit in a legal challenge (*ESA v. Hatch*) to a Minnesota statute regulating the sale of video games. The Minnesota law, which was struck down on First Amendment grounds by a federal district court in Minneapolis, would have imposed a \$25 fine on anyone under the age of 17 who purchased an adult-rated video game and would have ordered retailers to post signs explaining the prohibition. The state of Minnesota has appealed the ruling. The *amicus* brief focuses on the constitutional problems inherent in regulating First Amendment-protected material with violent content, and the serious constitutional questions raised by the state’s attempt to enforce a private rating system.

AAP Joins Brief in Support of San Francisco Chronicle Reporters

On December 8 AAP joined an *amicus* brief filed with the U.S. Court of Appeals for the 9th Circuit in support of the appeal by *San Francisco Chronicle* reporters Lance Williams and Mark Fainaru-Wada of their contempt citation by a federal district court. The reporters are facing 18-month jail sentences and the newspaper is facing fines of \$1,000 a day for refusing to identify confidential sources who provided grand jury transcripts and other information that led to articles (and a book) exposing the widespread use of steroids in professional sports.

The brief, which was filed by a broad coalition of media companies and trade organizations, explains the historical importance of confidential sources in reporting on matters of vital public importance, including recent exposés of the Enron disaster and the prison scandal at Abu Ghraib.

SCHOOL DIVISION

Texastextbooks.org Moves to AAP School Division

The AAP School Division has assumed management of www.texastextbooks.org. Originally developed by a School Division member, the website is an educational resource for organizations interested in instructional materials and the textbook adoption process in Texas. For additional information: Julie Coptly, AAP Washington (jcoptly@publishers.org).

School Division Chair Testifies before Texas Senate Education Committee.

Julie McGee, president/CEO of Harcourt Achieve, Professional & Trade, and chair of the School Division Executive Committee, testified in October before the Texas Senate Education Committee regarding instructional materials funding. Among the recommendations made: Texas should move to a budget-based cycle in order to create more predictability for IM funding. National Geographic School Publishing and Holt, Rinehart and Winston provided staff and materials for a technology demonstration at the hearing.

A Power Point presentation of the testimony is available from Julie Copty, AAP Washington (jcopty@publishers.org).

School Division's 2007 Annual Meeting To Be Held in Austin

The AAP School Division will hold its annual meeting February 8-9, 2007 at the Four Seasons Hotel, Austin, Texas. The theme of the meeting is *Educating the Nation – ELHI Publishing 2007* and panels are scheduled to discuss “Schools of the Future,” “Education and Federalism,” “Hispanic Education,” “The State of the State Standards,” “Economic Outlook for Educational Publishing,” “Educational Outlook in Texas,” and the “State and Federal Outlook.” The luncheon speaker on February 8 is former West Virginia Governor Bob Wise, President of the Alliance for Excellent Education. Other speakers include Texas Lieutenant Governor David Dewhurst, Arizona Governor Janet Napolitano, chair of the National Governors’ Association; Tim Manger, director of the Office of Educational Technology, U.S. Dept. of Education; Texas Education Agency Commissioner Dr. Shirley Neeley, and Texas State Senator Florence Shapiro.

The School Division is seeking corporate sponsorship for annual meeting events and School Division Director Julie Copty points out that sponsorship is an excellent way to raise a corporate profile and acquaint K-12 publishers with products and services offered by the sponsor. For additional information: Julie Copty (jcopty@publishers.org).

For registration information: Lydia Raynor at (202) 220-4547 or email lraynor@publishers.org. You may also register online at www.publishers.org.

INTERNATIONAL FREEDOM TO PUBLISH

AAP Protests Iranian Publication Guidelines

On December 5 AAP wrote to the President of Iran expressing the U.S. publishing industry’s “deep concern” over “Procedural Guidelines for Publication” recently issued by the Iranian Ministry of Culture and Islamic Guidance. Intended to eliminate “unhealthy products” from books, the Guidelines now require a permit from the Ministry for the distribution of all books. Adding its voice to those of the International Publishers Association, International PEN, and Article XIX (the international human rights organization), AAP said that the Guidelines “effectively support the censorship—or banning altogether—of dozens of literary masterpieces and international bestsellers, many published for years in Iran without repercussion.” The letter, signed by AAP President Pat Schroeder and International Freedom to Publish Committee Chairman Hal Fessenden, calls upon the Iranian President to honor his commitment, contained in a recent communication addressed to the American people, to “a common responsibility to protect freedom.”

PROFESSIONAL & SCHOLARLY PUBLISHING

PSP/AMPC Organizes Medical Book Donation Drive

PSP’s American Medical Publishing Committee has organized a book donation drive to be conducted during November and December to get medical textbooks to parts of the world where they are in short supply. AMPC is working with the non-profit Brothers’ Brother Foundation (www.brothersbrother.org), which has extensive experience in delivering needed books abroad. For additional information: Sara Brandwein (sbrandwein@publishers.org).

PSP Urges Congress Not to Make Premature Changes in NIH Policy

PSP Division members sent letters to the Chairmen and Ranking Members of the House and Senate Appropriations Subcommittees, on Labor, Health, and Human Services, which have jurisdiction over National Institutes of Health appropriations. More than 40 publishers signed the letters that went to Senators Arlen Specter (R-PA) and Tom Harkin (D-IA) and Congressmen Ralph Regula (R-16th OH) and David R. Obey (D-7th WI) urging Congress *not* to make premature changes in the current NIH public access policy, which went into effect last year. “We feel it is premature to introduce major changes to the current policy that would transform the current voluntary NIH policy into an unfunded mandate,” the letters state, noting that “...publishers have developed a set of principles to facilitate

implementation of the policy and are working with NIH to increase the deposit of author manuscripts to PubMed Central. In addition, some publishers have begun depositing manuscripts on behalf of authors unless they opt out.” For additional information: Barbara Meredith (bmeredith@publishers.org).

BOOKJOBS TO EXHIBIT AT COLLEGE RECRUITERS MEETING

In ongoing efforts to reach college recruiting professionals nationwide to promote careers in book publishing, AAP’s Diversity Recruit and Retain Committee has signed on as an exhibitor and will mount a Bookjobs.com exhibit at the 2007 National Association of Colleges and Employers National Meeting and Exposition. The meeting, which will be held May 29-June 1 in New York, will allow Bookjobs to reach some 2,000 college recruiting and career services professionals. For additional information about the DRRC and its College Outreach Initiative: Christina Rodriguez, AAP New York (crodriguez@publishers.org).

INTERNATIONAL COPYRIGHT ENFORCEMENT

AAP, PA Announce Raid at Medical College Textbook Center in China

On October 31 AAP joined with the Publishers Association (U.K.) in announcing a raid by Chinese authorities in Hubei Province in which more than 2,000 suspected pirated copies of academic textbooks, includ-

ing works by a wide range of AAP and PA members, were seized at the Tongii Medical College textbook center, affiliated with Huazhong University in Wuhan, People’s Republic of China. Authorities also seized evidence during the raid that the textbook center had produced more than 2,500 copies of the approximately 70 titles identified on the university’s syllabus. The action resulted in an administrative “Punishment Decision” issued by the provincial copyright bureau, imposing the maximum fine allowable under the pertinent regulations. This action follows a number of similar initiatives at universities around China, including several well known universities in Beijing, Shanghai, Guangzhou and Wuhan.

Chinese Government Agencies Issue Notices on Textbook Piracy

As a result of AAP’s ongoing efforts, taken jointly with the Publishers Association (U.K.), to focus the Chinese government’s attention on the problem of textbook piracy on university campuses, the Publications Market Supervision & Administration Bureau (a division of the General Administration of Press and Publication of China), the Ministry of Education, and the National Copyright Administration of China have issued three detailed and comprehensive notices advising their provincial and municipal offices of a concerted crackdown on “the printing, selling and the bulk purchasing of pirated textbooks and reference books” and calling upon local officials to focus special efforts on “the illegal printing, selling and using of foreign textbooks without authorization in the universities and their adj-

acent areas.” This action reflects an unprecedented level of cooperation among government agencies in China, and between government and the private sector, and is seen as a tremendous breakthrough long awaited by the publishing industry. AAP and PA have advised the Chinese government that publishers are encouraged by this latest development, and eager to cooperate with regard to the implementation of these notices.

AAP Copyright Enforcement Director Visits Asia

Patricia Judd, AAP’s Executive Director of International Copyright Enforcement, returned to Washington in late November after a three-week swing through Asia which included meetings with local representatives of AAP member companies, government officials, and AAP local counsel. Her trip took her from Seoul to Beijing, where she participated on November 14 in a Roundtable Discussion of Intellectual Property Rights in China hosted by U.S. Ambassador to China Clark T. Randt, Jr., and to the Philippines.

GET CAUGHT READING

AAP Staff Bring GCR to Antigua

In early November AAP vice president Tina Jordan and communications/public affairs staff member Deidre Huntington traveled to Antigua as guests of the government of Antigua and Barbuda, to present a workshop on the increasingly international Get Caught Reading campaign. The workshop highlighted reading initiatives that foster

excitement for book lovers of all ages and was held in conjunction with the first Annual Caribbean International Literary Festival. Portions of the festival's proceeds were earmarked to help rebuild the island's library, which was destroyed in an earthquake in 1974. In support of the effort, Get Caught Reading posters of Antigua's Prime Minister, Baldwin Spencer, were distributed and featured throughout the festival. Among the authors who participated were Jamaica Kincaid and James Ellison.

TRADE PUBLISHING

Latino Voices Committee Forms Partnership with Instituto Cervantes

AAP's Publishing Latino Voices for America Committee has formed a programming partnership with the New York chapter of Instituto Cervantes. Created by the Spanish government in 1991, Instituto Cervantes is the world's largest organization concerned with the teaching of Spanish, with 42 centers devoted to Spanish and Hispanic American culture and language in more than 20 countries. Eduardo Lagos of the Instituto is scheduled to attend the PLVA meeting in early December. For additional information: Christina Rodriguez (212-255-0200, ext. 262) or crodriguez@publishers.org.

Authors/Publishers Adopt New York City Schools During Children's Book Week

To coincide with the celebration of Children's Book Week (November 13-19), AAP and the Children's

Book Council (CBC) arranged more than 30 author visits at schools throughout New York City as part of the AAP/CBC *Adopt-A-School* program. Plans are underway for future author visits in the spring, and school field trips to publishing houses in New York. Publishers interested in participating in Adopt-A-School should contact Tina Jordan tjordan@publishers.org

SMALLER AND INDEPENDENT PUBLISHERS

Nominations Sought For Miriam Bass Award

AAP's Smaller and Independent Publishers Committee is seeking nominations for the fourth annual Miriam Bass Award for Creativity in Independent Publishing. Deadline for submissions is Thursday, December 21. The award will be presented at the AAP/SIP Annual Meeting on March 7, 2007 at New York University's Kimmel Center. (A registration form for the meeting can be found at the end of this issue).

Nominations are invited from anyone in the book publishing industry. Nominees can come from any type of publishing company as long as it's an independent house, and can represent any area of the business, including back-end operations, publicity, marketing and sales. Last year's winner was Richard Nash, Publisher of Soft Skull Press, in recognition of his extraordinary success in publishing and marketing (see *Monthly Report* December 2005).

Created in 2004 and given annually to honor the late Miriam Bass's contributions to the independent book publishing community, the award is co-sponsored by AAP, Rowman & Littlefield Publishing Group, and National Book Network, and carries a \$5,000 award which is fully funded by Rowman & Littlefield and NBN. For additional information and nomination forms: Tina Jordan, AAP New York (tjordan@publishers.org).

HAPPY HOLIDAYS FROM THE ASSOCIATION OF AMERICAN PUBLISHERS!!

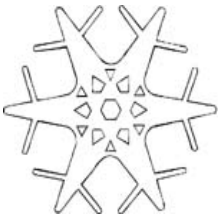
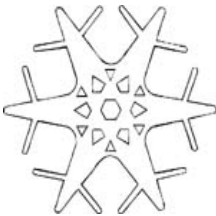


CALENDAR

December 20th, Wednesday
PSP/EIC Meeting, 12:30 p.m. – 2:30 p.m., Rooms 1 and 2 (SARA BRANDWEIN)

December 21st, Thursday
PPTF (tentative) 12:30 p.m. – 2:30 p.m., Rooms 1 and 2 (CHRISTINA RODRIGUEZ)

December 25th – January 1, 2007
AAP offices are closed this week



2007

JANUARY-2007

January 1st, Monday
New Year's Day-AAP offices are closed

January 8th - January 12th, Monday – Friday

PSP Awards Judging, Rooms 1 and 2 (all day) (BARBARA MEREDITH)

January 10th, Wednesday
Freedom to Read (tentative) - site & time of meeting to be announced (JUDY PLATT)

January 11th, Thursday
AAP School Division Test Committee in N.Y.C. (site to be announced) (JAY DISKEY)

January 12th, Friday
PSP Executive Council, 12:00 p.m. – 3:00 p.m. (location to be determined) (SARA BRANDWEIN)

January 15th, Monday
Martin Luther King, Jr. Day-AAP offices are closed

January 16th, Tuesday
Trade Executive Meeting, Rooms 1 and 2 (TINA JORDAN)

January 17th, Wednesday
Freedom to Read, 12:00 p.m. – 5:00 p.m., Rooms 1 and 2 (JUDY PLATT)

January 18th, Thursday
Danish Publishers, 10:00 a.m., Rooms 1 and 2 (TINA JORDAN)
PSP Books Committee, 12:30 p.m. – 2:30 p.m., Rooms 1 and 2 (SARA BRANDWEIN)



January 19th, Friday
PPTF (tentative) 12:30 p.m. – 2:00 p.m., Rooms 1 and 2 (CHRISTINA RODRIGUEZ)

January 22nd, Monday
Copyright Committee, 12:00 p.m. – 2:00 p.m., Rooms 1 and 2 (ALLAN ADLER)

January 23rd, Tuesday
AAP Executive Committee of the Board, 12:15 p.m. – 2:30 p.m., Rooms 1 and 2 (TINA JORDAN)

January 24th, Wednesday
PSP Journals Committee, 12:30 p.m. – 2:00 p.m., Rooms 1 and 2 (SARA BRANDWEIN)

January 25th, 26th, 29th, 30th & 31st Thursday - Wednesday
PSP 2007 Annual Conference Preparation, 9:00 a.m. – 5:00 p.m., Rooms 1 and 2 (SARA BRANDWEIN)

