

**CALL Public Affairs Committee**  
**Report on Significant Developments**  
**September - 2002**

Walter Baumann  
Connie Fleischer  
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**Legislative Sessions**

United States Congress: 107<sup>th</sup> Congress, 2<sup>nd</sup> Session  
September 3, reconvened. October 4, Target Adjournment.

Illinois General Assembly: 92<sup>nd</sup> General Assembly, 2002 Spring Session.  
Reconvenes for Fall Veto Session in November.

**Eldred v. Ashcroft**

Spencer Simons – 9/19/02

This critical copyright law case is now before the United States Supreme Court, and oral argument is scheduled for October 9. Eldred addresses the constitutionality under the Copyright Clause (Art. 1, cl.8) and First Amendment of the Copyright Term Extension Act of 1998 (CTEA), which extended the terms of all existing copyrights by 20 years. The D.C. Circuit rejected both lines of constitutional attack on the CTEA in February, 2001 (239 F.3<sup>rd</sup> 372; rehearing denied, 255 F.3<sup>rd</sup> 849), noted that the CTEA "better aligns the terms of United States copyrights with those of copyrights governed by the European Union," and observed that the CTEA is but the latest in a series of Congressional extensions of the copyright term. Lead counsel for petitioner is Lawrence Lessig, Stanford Law professor and prominent scholar on copyright and electronic media issues. The AALL, together with other library organizations, has filed an amicus brief, as have a number of other groups. Petitioner's brief argues that "[b]y repeatedly extending the terms of existing copyrights – as it has eleven times in the past forty years- Congress has adopted a practice that defeats the Framers' plan by creating in practice an unlimited term" (Summary Argument), while the AALL amicus brief argues that the CTEA denigrates the balance struck by the Framers, which gave "incentives for cultural production through limited rewards to creators, while providing an ever-growing arena of ideas and materials available to the public," [Summary Argument] and that the public domain is central to that balance. A decision is expected in early 2003.

[Full text of all decisions, motions, and briefs is available at [http://supreme.lp.findlaw.com/supreme\\_court/resources.html](http://supreme.lp.findlaw.com/supreme_court/resources.html)]

## **GPO Printing Assailed Again**

Walter Baumann – 9/17/02

This past May the executive branch has tried again to circumvent the legal requirement that executive agencies use the printing services of the Government Printing Office (GPO), as currently required under section 501 of Title 44 of the United States Code. Two other such attempts have been made: first, in 1987 during the Reagan administration; and again in 1994, during the Clinton administration. The recent Office of Management and Budget (OMB) Memorandum M-02-07 (<http://www.whitehouse.gov/omb/memoranda/m02-07.pdf>) seeks to exempt the mandatory use of the GPO under the Federal Acquisition Regulation (FAR), relying on a Justice Department opinion regarding the constitutionality of executive agencies using the GPO. (<http://www.usdoj.gov/olc/opgsa3.htm>)

The Public Printer, Michael F. DiMario, in testimony before the Joint Committee on Printing, countered this view, stating that "...unless or until Congress or a Federal court with appropriate jurisdiction changes Title 44, the law requiring executive agencies to use GPO remains in effect. I think it's simply wrong to undermine the statutorily based management of the Government's printing and documents distribution functions with the issuance of a contradictory administrative regulation in the FAR that is based only on the Justice Department's opinion."  
(<http://www.access.gpo.gov/public-affairs/ppjoint.html>)

In addition to the separation of powers argument, OMB Director Mitch Daniels claims that ending the GPO "monopoly" would boost quality, improve service, and reduce prices. (<http://www.govexec.com/news/index.cfm?mode=report&articleid=23354>)

However, as Mr. DiMario points out, about 50% of federal printing is not done through the GPO and approximately three quarters of that which the GPO handles is actually procured from private sector printers. Speaking to the issues of service and prices, Mr. DiMario cites the 1998 Booz-Allen & Hamilton management audit, which found: "These agencies viewed this service that GPO provides as an example of 'Government at its best,' and none of them felt that they wanted to or could do this function better than GPO." The audit also noted that the assumption that individual agencies could get a better deal is not well founded: "...Buying printing is not like buying paper clips, ...A knowledge of printing requirements and processes is essential to ensure the acquisition of the best possible value. GPO printing contracts are developed and carried out by knowledgeable printing experts." Regarding the OMB claim that the government would save \$50- \$70 million per year by ending the GPO requirement, DiMario says, "Their numbers are pure fiction."

Aside from the economic arguments, there is the GPO's very important function of providing copies of publications for public access through the depository library program. Traditionally, this process has provided an efficient and transparent way for relevant agency publications to be identified and made publicly accessible. Even with this process, almost 50% of eligible federal publications become "fugitive documents." Severing this link would almost certainly make this figure even higher. The migration of many government titles to online format will affect this traditional connection between tangible print and depository distribution. However, as Mr. DiMario says, "The fact that electronic information dissemination is now widespread does not mitigate this concern. There is still a substantial amount of Government information for which no reliable online alternative exists."

The OMB memorandum does mention the continuing responsibility of agencies "...to ensure that all government publications, as defined in 44 U.S.C. chapter 19, are made available to the depository library program through the Superintendent of Documents." But

it's in a footnote at the end of the memo! This may be an indication of how seriously OMB & other federal agencies will actually regard their responsibility to provide public access to government information.

Julia F. Wallace, Head, Government Publications Library, University of Minnesota, appearing on behalf of four library associations, stated in her testimony before the Joint Committee on Printing, "it is clear that the OMB directive will lead to more fugitive government publications and less public access to government information. This comes at a time when Congress, the Executive Branch, and the courts instead should be working together to improve public access and to meet the challenges of the electronic environment, particularly regarding the permanent public access to and preservation of electronic government information." (<http://www.arl.org/info/letters/OMBStatement02.html>)

## **AALL Permanent Public Access Project**

Keith Ann Stiverson – 9/20/02

The AALL Permanent Public Access (PPA) Project aims to produce a survey of the 50 states' laws and policies assuring permanent public access to electronic government information. The study, sponsored by the AALL Government Relations Committee and funded by a grant from Aspen, is nearly complete. I volunteered to report on Illinois, and was fortunate to have the assistance of a library science practicum student from Dominican University who did most of the statutory research.

As many of you already know, Illinois has a mixed record on permanent public access. Statutes are in place to ensure access to government information, and Illinois is given a great deal of praise for being a forward-looking state that is using technology effectively to serve its citizens. For instance, Governor Ryan was given the 2001 Digital State Award (up from a ranking of 49<sup>th</sup> in 1998) and was the first Governor to use a digital signature on an administrative order. The Illinois Technology Office has set standards for Illinois government web sites that emphasize user-friendly access that enables citizens to deal with state agencies online. The records management department of the State Archives is investigating standards for electronic access to its records (which is a country-wide issue; the National Archives and Records Administration is too) and hopes to have one in place before long.

On the other hand, librarians know that the state also has a record of providing legal information in a form that is not easily accessible: anyone who has tried to use the Illinois Administrative Code will know what I mean. I am currently contacting various state departments to see what plans are in place for improving state web sites and information products.

One important legislative development to watch: H.B. 4938, which would have amended the State Records Act to include "digitized electronic material" and "databases" in the definition of "record," was vetoed by Governor Ryan on August 2. His veto was based on a conflict between criminal penalties outlined in the bill, not on the substance of the legislation. The bill has is being revised and will be considered again. Stay tuned

## **Legislation - prospective**

Mary Alice Baish, Associate Washington Affairs Representative, recently posted an Action Alert concerning S.2395, the Anticounterfeiting Amendments of 2002, sponsored by Sen. Biden. The bill is intended to create liability for trafficking in illicit authentication features. The library community is concerned that the bill as it stands could create severe problems for libraries and for anybody attempting to exercise fair use.

Mary Alice Baish also reports that there may be a database protection bill introduced into

the House this fall, and that "one of the primary proponents of a broad database protection bill has been asking various Senators to sponsor a bill that our database coalition would find highly objectionable"

(Action Alert, August 12, 2002, [www.ll.georgetown.edu/aallwash/aa08122002.html](http://www.ll.georgetown.edu/aallwash/aa08122002.html))

**Important:** For the full text of this Action Alert, and reports on such important topics as UCITA, the PATRIOT ACT, and threats to PubScience, go to the AALLNET page for the AALL Washington Affairs Office. <http://www.ll.georgetown.edu/aallwash/>

## Illinois

Spencer Simons – 9/19/02

### Bill to Raise County Library Fee – an update

Bills providing for increases in the county library fees that a county board may authorize the clerk of the circuit court to charge litigants in civil cases have failed to come to a vote in the last two sessions. The CALL Public Affairs Committee has been involved in efforts to pass these bills. Richard Matthews, then Committee Chair, worked with Kane County Law Librarian, Halle Mikyska, to support the passage of HB3730 in the Spring 2002 Session. HB3730 died in the House Rules Committee. This matter is likely to be reintroduced in the Spring 2003 Session.

### Illinois Register Index – an update

Last year the Index Department of the Illinois Secretary of State failed to maintain the Cumulative Index and Sections Affected Index to the Illinois Register. Then Public Affairs Committee Chair Richard Matthews contacted the Department to discuss the problem. The CALL Board sent a letter in November, drafted by Richard Matthews and Spencer Simons of the Committee, detailing the concerns of CALL and the library community, and Richard Matthews subsequently discussed the steps being taken to correct the situation with the new Administrator of the Administrative Code Division. Since those communications the indexes have been published on schedule on a quarterly basis. The Committee will continue to monitor.

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