

An Action Plan for the Legislative Session

The increasing awareness in Congress of the impact of information technology (IT) and telecommunications issues may be a mixed blessing for higher education.¹ While working hard to educate themselves on IT issues, members of Congress and their already overworked staff have become increasingly reliant on outside organizations for information. Industries and other corporate-sponsored coalitions are often all too willing to explain the impact of proposed legislation in their own terms, providing Congress with only their half of the story.

EDUCAUSE has emerged to serve as a focal point for the higher education community, providing information about and recommendations for legislative action on IT and telecommunications issues. The EDUCAUSE policy project seeks to educate members of Congress through direct communication with Capitol Hill and through articles in EDUCAUSE's online and traditional publications.

Following is a snapshot of some of the issues that EDUCAUSE members and the EDUCAUSE policy team have identified as crucial to the higher education community, along with the current actions being taken to influence federal and, in some cases, state policy-makers.

Database Protection Legislation

The House Judiciary Committee has marked up database protection legisla-

tion—H.R. 354, the “Collections of Information Antipiracy Act”—that would threaten access by colleges and universities to data needed for research and education programs. The library and higher education communities feel that the bill provides overly broad protection for databases and that its exemptions for education and research uses are either too narrow or too vague to ensure appropriate access to databases and their component data. The combination of broad protection and narrow exemptions could create liability for information uses that are acceptable today.

U.S. Copyright Office Recommendations on Digital Distance Education

As directed by the 1998 Digital Millennium Copyright Act (DMCA), the U.S. Copyright Office submitted a final report to Congress in May 1999, providing balanced recommendations on how to best promote digital distance education while protecting the rights of copyright owners. Even though the Senate Judiciary Committee lauded the report, it did not offer any legislation during the first session of the 106th Congress. EDUCAUSE, along with



The House Commerce Committee's passage of H.R.1858, the “Consumer and Investor Access to Information Act,” provided appropriately targeted protection for databases while preserving essential access to components of those databases. The higher education community has actively encouraged Congress to support H.R. 1858, while urging members of the House Judiciary and Commerce Committees to work out a compromise position.

other higher education and library associations, is working toward introducing congressional legislation that would codify the Copyright Office recommendations.

Prohibiting Circumnavigation of Technological Protection Measures

Section 1201 of the DMCA prohibits the circumnavigation of access control technologies employed by copyright owners to protect their works. Access

under fair use rights is permitted, provided an identical copy of that work is not available in another form. Section 1201(f) of the act allows for “reverse engineering” of encryption technology for “good faith” encryption research. However, the use of descrambling software under the provision is being challenged in two federal courts. Both have rendered temporary injunctions against the use and against Web posting of the specific software. The potential ramifications for scholarly research are unclear at this time.

The Copyright Office sought public comment regarding whether certain copyrighted works should be exempted from this prohibition because some people will be inhibited in their ability to make noninfringing uses of that particular class of works. The Association of American Universities and the Association of Research Libraries were among those that submitted initial comments.² EDUCAUSE submitted written comments during the reply period in mid-March.

Section 1201 directs the Copyright Office to consider numerous factors

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during its study, including the impact that such a prohibition will have on the availability of works for nonprofit archival, preservation, and educational purposes and on teaching, scholarship, and research. An exemption for nonprofit libraries and educational institutions, allowing them to make a “good faith determination” of whether to acquire a copy of a copyrighted work, is also included. This provision will go into effect on October 28, 2000.

UCITA

The goal of the Uniform Computer Information Transactions Act (UCITA) is, essentially, to establish a new commercial law for the information economy—first at the national and then, through the influence of the United States, at a global level.

UCITA is a proposed “uniform law.” The goal of uniform laws is to help provide a consistent framework of laws from state to state. Uniform laws are created by an organization of attorneys called the National Council of Commissioners on Uniform State Laws (NCCUSL), with representatives from all fifty states. The NCCUSL approved UCITA last July, and the proposed act is now being considered in the fifty state legislatures.

UCITA is designed to harmonize the law regarding computer information transactions. For example, when a dispute occurs regarding a software license, a court would look to UCITA for default rules and for help in interpreting the provisions of the license. However, some in the library and higher education communities have raised concerns about UCITA, including but not limited to the following:

- Fair use will be eliminated via the use of click-on or “shrink-wrap” licenses.
- The act’s scope is too broad and will allow mass-licensing of books.
- The act will create costly new procedures for libraries to negotiate licenses.
- UCITA will grant software vendors the power to “unilaterally disable campus software.”

UCITA raised a serious question for the higher education community: How can the community have an impact on state legislatures? Working with personnel from university government relations offices is one option. The library community has taken a more pro-active approach by creating 4CITE (For a Competitive Information and Technology Economy),³ a coalition of library and wide-ranging business interests that are staunchly opposed to UCITA. Although not all of higher education has joined 4CITE, the higher education community may increasingly have to rely on similar alliances in the future in order to win federal support for particular IT issues.

The issues cited above provide only a snapshot. Other issues identified as “critical” include increasing the availability of Instructional Television Fixed Service (ITFS) spectrum, monitoring Internet taxation, alleviating the digital divide, promoting broadband access, and encouraging the continued active support of federal funding of IT programs that benefit the higher education community and society. Ensuring that federal programs beneficial to the higher education community continue to receive adequate funding—including programs designated by the Networking and Information Technology Research and Development (NITRD) Act,⁴ the Department of Education’s “Learning Anytime Anywhere Partnership” (LAAP) program and its “Preparing Tomorrow’s Teachers to Use Technology” program, and the Department of Commerce’s “Technology Opportunities Program”—is also a priority for EDUCAUSE and its association partners.

Predicting the outcome of the EDUCAUSE policy team’s efforts in the middle of a hectic legislative session is perhaps unrealistic. Sometimes incremental successes are important, and even though some of the major policy issues might get caught up in election-year politics, the bipartisan support demonstrated in early February with the House passage of NITRD may well translate into a successful budget year. EDUCAUSE will continue to function as an information conduit between the higher education community and federal policy-makers, helping to identify and clarify emerging policy issues.

Notes

1. See Susan Fratkin, “The Increasingly Complex Telecommunications Policy,” *EDUCAUSE Review* 35, no. 3 (March/April 2000).
2. See the U.S. Copyright Office Web site: <http://lcweb.loc.gov/copyright/1201/comments/>.
3. See <http://www.4cite.org/members.html>.
4. NITRD was approved by the House of Representatives in February 2000.

Susan Fratkin serves as a public policy consultant to EDUCAUSE. With more than two decades of experience in the field of higher education, she has specialized in technology and telecommunications issues at the federal and state levels. Garret Sern is a policy analyst for EDUCAUSE.