

Dear LLA members,

There has been a lot of talk lately about the renewal of the Patriot Act; here is a lengthy description of how the issue is being handled by ALA:

Part I: At ALA Annual in Chicago, the following Resolutions passed—**CD#19.9** and **CD#20.8**:

ADOPTED, ALA CD#19.9, Resolution on the Reauthorization of Section 215 of the USA PATRIOT ACT, which read: "That the American Library Association (ALA):

1. Urges Congress to allow section 215 of the USA PATRIOT ACT to sunset; and
2. Communicates this resolution to the U.S. Congress, the President of the United States and others as appropriate."

VOTED, To treat ALA **CD#20.8**, Resolution on the Reauthorization of Section 215 of the USA PATRIOT ACT, as an advisory resolution to the ALA Washington Office if Section 215 of the USA Patriot Act is to be reauthorized.

Text of **CD#20.8** follows:

2009 CD#20.8

RESOLUTION ON THE REAUTHORIZATION OF SECTION 215 OF THE USA PATRIOT ACT

WHEREAS, freedom of thought is the most basic of all freedoms and is inextricably linked to the free and open exchange of knowledge and information; and these freedoms can be preserved only in a society in which privacy rights are rigorously protected; and

WHEREAS, the American Library Association (ALA) is committed to preserving the free and open exchange of knowledge and information and the privacy rights of all--library users, library employees, and the general public; and

WHEREAS, ALA opposes any use of governmental power to suppress the free and open exchange of knowledge and information; and

WHEREAS, the USA PATRIOT ACT includes provisions such as Section 215 that threaten the free and open exchange of knowledge and information; and

WHEREAS, three sections of the USA PATRIOT Act, including Section 215, are scheduled to sunset on December 31, 2009; and

WHEREAS, Section 215 of the USA PATRIOT Act allows the government to request and obtain library records secretly for large numbers of individuals without any reason to believe they are involved in illegal activity; and

WHEREAS, orders issued under Section 215 automatically impose a nondisclosure or gag order on the recipients, thereby prohibiting the reporting of abuse of government authority and abrogating the recipients' First Amendment rights; and

WHEREAS, the Foreign Intelligence Surveillance Act (FISA) Court has issued more than 220 Section 215 orders between 2005 and 2007, some of which may have been issued to libraries; and

WHEREAS, the Department of Justice Office of the Inspector General reported that the "FISA Court twice refused Section 215 orders based on concerns that the investigation was premised on protected First Amendment activity"; now, therefore be it

RESOLVED, that the American Library Association (ALA) asks that Congress to include in the reauthorization of Section 215 of the USA PATRIOT Act the following provisions:

- Require law enforcement officials to show individualized suspicion that records or other items being sought pertain to a foreign power or agent, a person in contact with a suspected agent, or a suspected agent who is the subject of the investigation; and
- Require records or other items being sought to be described with sufficient particularity to allow them to be identified – reducing the danger that the FBI will engage in fishing expeditions into personally identifiable information in library or bookstore records; and
- Require the Foreign Intelligence Surveillance Act (FISA) Court to make a finding that these facts have been sufficiently demonstrated; and
- Show cause for a FISA court to approve a gag order; gag orders will expire at the end of six months unless cause is shown cause to reauthorize them; and
- Allow a recipient of a FISA Section 215 records-search order to consult with an attorney or others for help responding to the request; and
- Guarantee a recipient the right to challenge any gag order; and
- Ensure due process for any recipient challenging a search or gag order; and
- Set a sunset date for Section 215 of no more than four years, to insure ongoing oversight and assessment of the impact of this provision on civil liberties; and
- Intensify oversight of the Section 215 provisions of the USA PATRIOT Act that limit the privacy rights of library users, library employees, and the general public.

Part II: State Association Response: Recently, quite a few state associations have passed their own specific resolutions concerning this matter; and the numbers continue to grow. Here's an example from Oregon:

RESOLUTION ON 2009 REAUTHORIZATION OF THE USA PATRIOT ACT

Whereas, the Oregon Library Association is committed to encouraging free and open inquiry by preserving the privacy rights of library users, library employees, and persons living in the United States; and

Whereas, the Oregon Library Association opposes governmental actions that suppress or chill free and open inquiry and has called for the USA PATRIOT Act to be amended to restore fundamental constitutional rights and safeguards that protect the civil liberties of library users, library employees, and U.S. persons; and

Whereas, Section 215 of the USA PATRIOT Act allows the FBI to secretly request and obtain library records for large numbers of individuals without reason to believe they are involved in illegal activity; and

Whereas, Section 505 of the USA PATRIOT Act permits the FBI to obtain records from libraries by using National Security Letters (NSL) without prior judicial oversight; and

Whereas, Section 215 automatically requires and Section 505 permits the FBI to impose a nondisclosure or “gag” order on the recipients, thereby prohibiting the reporting of abuse of government authority and abrogating the recipients’ First Amendment rights; and

Whereas, FBI Director Robert S. Mueller III testified before the Senate Judiciary Committee on March 25, 2009, that the FBI had used Section 215 of the USA PATRIOT Act 223 times between 2004 and 2007¹, and the Office of the Inspector General (OIG) of the Department of Justice reported in March 2008 that the FBI had made 192,499 National Security Letter requests from 2003 through 2006²; and

Whereas, the OIG reported in March 2008 that “the FISA Court twice refused to authorize Section 215 orders based on concerns that the investigation was premised on protected First Amendment activity, and the FBI subsequently issued NSLs to obtain information” without reviewing the underlying investigation to be sure it did not violate the statute’s First Amendment caveat³; and

Whereas, members of Congress have introduced legislation to restore privacy rights and address the concerns of the Oregon Library Association such as: The Freedom to Read Protection Act (H.R. 1157 in the 108th Congress), the National Security Letters Reform Act (S. 2088 in the 110th Congress and H.R. 1800), The USA PATRIOT Act Sunset Extension Act (S. 1692) and the Judicious Use of Surveillance Tools in Counterterrorism Efforts (JUSTICE) Act (S.1686); now therefore be it

Resolved that the Oregon Library Association:

1. Opposes initiatives on the part of the United States government to constrain the free expression of ideas or to inhibit the use of libraries;
2. Urges Congress to repeal the USA PATRIOT Act’s expanded National Security Letter Section 505 and Section 215 authorities that allow the FBI to demand information about people who are not targets of an investigation and to reinstate standards limiting the use of these authorities to obtain information only about terrorism suspects and agents of foreign powers.
3. Urges Congress to allow nondisclosure or “gag” orders of limited scope and duration only when necessary to protect national security and only upon the authority of a court, and ensure that targets of such orders have a meaningful right to challenge them before a fair and neutral arbiter.

4. Urges Congress to intensify its oversight of the use of the USA PATRIOT Act as well as other government surveillance and investigations that limit the privacy rights of library users, library employees, and U.S. persons; and
5. Communicates this resolution to Oregon's Congressional Delegation, the Oregon Legislature; and
6. Urges its members, Oregon librarians, Oregon library trustees, and all library advocates to ask Congress to restore crucial safeguards protecting civil liberties.

Sources

1. Robert S. Mueller. (March 25, 2009). "Oversight of the Federal Bureau of Investigation," *Hearing of the Senate Judiciary Committee*. Accessed through LexisNexis Congressional database.
2. Office of the Inspector General, U.S. Department of Justice. (March 2008). *A Review of the FBI's Use of National Security Letters: Assessment of Corrective Actions and Examination of NSL Usage in 2006*, p. 110. Available at <http://www.usdoj.gov/oig/special/s0803b/final.pdf>
3. Office of the Inspector General, U.S. Department of Justice. (March 2008). *A Review of the FBI's Use of Section 215 Orders for Business Records in 2006*, p. 73. Available at <http://www.usdoj.gov/oig/special/s0803a/final.pdf>

Part III: The most recent information I have gotten from ALA as a state councilor:

Washington Office has done four recent District Dispatch blogs about the status of bills seeking to reauthorize and/or reform the three sun-setting provisions of the USA PATRIOT Act, including Section 215, the "library records" provision. Last week two different bills were introduced in the Senate with a number of good reform provisions. As the Senate Judiciary Committee markup session started this morning, a third bill was substituted that had been negotiated between Senators Leahy and Feinstein that weakens many of the reform proposals in S. 1686 and S. 1692. (This new version of the bill is still S. 1692.)

For the updates go to the District Dispatch reports at:
<http://www.wo.ala.org/districtdispatch/?cat=10>

This is a very fluid situation with another markup session scheduled for the Senate Judiciary Committee next week, most likely again on Thursday. We have asked ALA's grassroots library supporters to keep the pressure on. There remain many challenges on these critical issues to bring reforms to Section 215 as well as national security letters (NSLs) to protect library patron records and other civil liberties. Stay tuned for further updates in the coming days. If you have any questions, please feel free to contact us. And, comments are always welcomed on the District Dispatch blog.

For a good "blow by blow" report on the Senate Judiciary Committee October 1 markup and the S.1692 amendments discussed, see the Electronic Frontier Foundation report at:
<http://www.eff.org/deeplinks/2009/10/liveblogging-senate-judiciary-patriot-act-mark>

And another report at:

Lawmakers Cave to FBI in Patriot Act Debate

<http://www.wired.com/threatlevel/2009/10/patriot-act-debate>

NOTE: *If LLA is interested in creating its own resolution along the lines of the state associations as noted above, that option could be discussed. However, if LLA is satisfied with the ALA actions, no further action—as a state association—would be necessary. We are not required to create our own separate resolution.*

At Your Service,

Stephanie Braunstein, LLA Councilor to ALA, seated beginning January 2010.