

Testimony of Beth Williams, Stanford Law School

Transforming GPO for the 21st Century and Beyond:
Part 3 – Federal Depository Library Program
Hearing before the House Committee on Administration, September 26, 2017

Three revisions to 44 U.S.C. § 1901 *et seq.* would position the Federal Depository Library Program (“FDLP”) and the Government Publishing Office to manage more efficiently, comprehensively, and successfully government information in the digital age. As it currently stands, the FDLP represents a strong and important partnership between the Federal government and a diverse network of dedicated libraries and librarians to meet the foundational need to keep America informed. The impetus to modernize Chapter 19 should focus on positioning the GPO to play a central role in managing the lifecycle of government information – the vast majority of which is now digital – and disseminating that digital information in partnership with the network of FDLP libraries. To this end, I recommend the following three amendments.

1) Definition: Amend 44 U.S.C. § 1901 to include non-print formats

The definition of a government publication in 44 U.S.C. § 1901 woefully fails to capture the universe of digital documents produced by the Federal government. This is hardly surprising given that the statute has not been amended to reflect major shifts in publishing since its passage in 1968. As early as 1990 my law librarian mentors were arguing for a format-neutral definition of government publication to include expressly “electronic information” rather than rely on a 19th century notion of printing processes.¹ The failure of those and other laudable efforts by the library community has produced significant negative consequences.

No format is specified in the statutory definition, i.e. the terms “print” or “paper” do not appear. Despite this, many government agencies have erroneously interpreted the term “document” to be synonymous with “paper,” leaving the bulk of our nation’s documentary heritage in the digital age fragile or forgotten. One might argue that the refusal of some government agencies to recognize their digital information as “documents” under 44 U.S.C. § 1901 is primarily one of interpretation that could be corrected without the necessity of statutory revision, but by interpretive guidance from the GPO. However, more than enough time and fugitive documents - publications that should have been within the scope of the FDLP, but were not distributed to libraries by the GPO - have slipped by. Clarity on this point is critical.

¹ Government Printing Office Improvement Act of 1990: Hearing on H.R. 3849 Before the H. Subcomm. on Procurement and Printing, Comm. on H. Admin., 103rd Cong. 60-61 (1990) (statement of Cheryl R. Nyberg, University of Illinois, representing the American Association of Law Libraries).

Tangible equivalents of e-born government documents will likely only continue to be published in the future where expressly required by law, representing the barest minimum of government information to inform the public. In turn, each government agency will be left with the responsibility to publish and manage its own individual corpus of digital information. Economies of scale dictate that the GPO, in partnership with the FDLP community, is in a much better position to manage existing and future government information, in all its forms.

§1901 should be amended to read “Government publication” as used in this chapter, means informational matter which is published in any form, medium or format by a Government entity, or as required by law.”

2) Legal deposit: Amend 44 U.S.C. §§ 1902/1904/1905 to include legal deposit

Legal deposit is a statutory obligation on publishers and distributors to deposit at least one copy of every publication, free of charge, in designated legal deposit libraries. This concept is in no way new: in the 16th century, King Francois I decreed that no book could be sold in France unless a copy was given to the royal library at the Château de Blois.²

As the landscape of publication has shifted dramatically from print to digital, the central tenant of legal deposit for access and preservation of the public good has continued to ground legislative and regulatory schemes throughout the world. Most nations collect their published output as systematically and comprehensively as possible, making this valuable content openly and freely available to current and future generations of citizens and researchers. Publishers and libraries work together to ensure the worldwide success of legal deposit of content, irrespective of format or technology. Ultimately, legal deposit is fundamental to freedom of information and to the perpetuation of an informed citizenry.

Many nations throughout the world have adopted some form of legal deposit legislation, including the following: United Kingdom, Spain, France, Germany, Austria, Denmark, Norway, Finland, Iceland, South Africa, Israel, Japan, South Korea, China, New Zealand, and Canada. Over the past thirty years, this legislation has developed to include express provisions for depositing websites and other electronic publications. Legal deposit schemes are most successful when there is close cooperation between the designated national custodian (GPO) and those responsible for the deposits (FDLP libraries). The existing relationship between the GPO and the web of FDLP libraries provides a sound infrastructure upon which to build a new system of access to and preservation of valuable e-born government information. GPO is uniquely well suited to take on this enhanced role in managing digital information through all stages of its lifecycle: from creation/discovery, identification/management, to dissemination, use and preservation.

² 9 Encyclopedia of Library and Information Science 36 (Allen Kent et al. eds. 1973).

As § 1901 is amended to include e-born and other digital government information, §§ 1902/1904/1905 should also be amended to require legislative, executive, and judicial branch agencies to deposit electronic publications with GPO for inclusion in the FDLP. The method of deposit – including, but not limited to, the number of copies deposited – under the statute should be neutral, to allow GPO maximum flexibility to passively receive or actively harvest content in a variety of ways over time.

Ideally, adoption of a such a legal deposit scheme would position GPO to receive and, in turn, to provide bulk access to digital information through the FDLP. As the availability of masses of government data has increased, academic communities have seen an explosion of innovative research and projects that rely on government data. Researchers are hungry for access to large datasets to explore new ideas through semantic and text analysis and other forms of big data analytics. With the last presidential administration’s early focus on providing greater access to bulk data to promote an open, efficient, and accountable government – first through its Memorandum on Transparency and Open Government³ and later through Data.gov – agencies started providing much greater access to their datasets. Open data accelerates research and discovery, supports economic growth, and promotes the growth of the scholarly record.

Adoption of a legal deposit scheme would not only broaden and meet immediate access goals, it also lays an important foundation for long-term preservation of government information.

3) Preservation: Further amend 44 U.S.C. §§ 1902/1904/1905 to include preservation

GPO’s mission is simple and powerful: to keep America informed. This mission clearly reflects the agency’s dedication to producing and providing access to government information. Yet GPO’s commitment to preserving government information is also integral to the agency’s mission, and has been since the agency was established in 1861.

Through the years, GPO has had agreements with the Library of Congress and National Archives and Records Administration to preserve certain government information.⁴ GPO’s digital content system for the 21st century, FDsys, was created to replace GPO Access in the early 2000s to provide, among other things, access to and preserve the content for future generations. Though the provisions in Chapter 19 of Title 44 do not expressly contain a charge for long-term preservation of FDLP materials, permanent public access cannot exist without meaningful engagement with the concept of preservation, particularly in the age of digital publication.

There is a symbiotic relationship between access to information and preservation of information regardless of format. Law libraries like my own illustrate this point well.

³ Available at <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2009/m09-12.pdf>.

⁴ See, e.g., <https://www.gpo.gov/help/naramemofinal.pdf>.

Law libraries and the FDLP have a shared history of more than 100 years. Highlights include the 1972 addition by Congress of the highest appellate courts of the states to the program and the 1978 enactment of Public Law 95-261, which made academic law libraries eligible for depository status. As selective depositories, law libraries generally choose the small percentage of legal materials – US Statutes at Large, the US Code, the CFR, the Congressional Record, the Federal Register, US Reports and select agency materials that compliment our collections – available through the FDLP. Our patrons – law students and faculty, lawyers and judges, members of the public – need access to these collections of historical legal materials not merely as a matter of curiosity, but as a matter of necessity. Hundred-year-old judicial decisions may continue to have the force and effect of law, and reference to decades old congressional reports may shed critically needed interpretive light on statutory meaning today. Law libraries have carefully curated our physical collections of primary legal materials as a matter of first priority. We could not provide access to these materials without embracing the concomitant need to preserve the physical collections.

But as more and more government information has become available – sometimes, exclusively available – online, law libraries no longer rely solely on a print collection to provide permanent public access to information. Why dedicate staff time and physical space to daily editions of the Federal Register when our users can access this content on FDsys or govinfo.gov from their courtroom seat, from comfort of their living rooms, or from the backseat of a car. However, the need for access to historical information remains, so careful preservation of digital information has become part of the fabric of both GPO and law library operations.

Law libraries are committed to sharing their expertise and knowledge with the public and with others in the depository community; participating in the development of government information policy, including policies relating to authentication and preservation of government information; and upholding the FDLP's role of promoting government transparency. A critical part of the future of that partnership involves collaborating with other libraries and with the GPO on preserving digital information. That work starts with expressly acknowledging within Chapter 19 the need for GPO to take on the role of digital preservation steward: receiving digital information from government agencies, and disseminating that digital content through the FDLP - perhaps to a new class of digital depositories – in a manner that responsibly contemplates the need for long-term digital preservation.

A note about digitization v. preservation

Digitization is frequently suggested by some as one way to relieve space pressures on libraries within the FDLP, particularly regional libraries. Digitization is often proposed with the option of destroying and/or discarding depository materials.

Digitization is a complex and technical process that can provide greater access, usability, and findability of materials. It is a valuable way of expanding access to information that might otherwise sit undiscovered on library shelves. However, while digitization is useful

for providing access to information in electronic format, digitization *does not* equal preservation.

In order for digitization to be done properly, technical standards and quality control methods must be employed. Even the best digitization projects only provide temporary access to information unless preservation is assured. GPO understands this distinction well, as evidenced by its leadership in creating the Federal Information Preservation Network (FIPNet). FIPNet is a network of partners working cooperatively to preserve Federal Government information to ensure that this information asset remains freely accessible to the American people both now and for future generations. It is precisely this kind of leadership – for access to digital content and long-term preservation of that content in partnership with FDLP libraries and others – that needs to be enshrined in forward-thinking revisions to Chapter 19 of Title 44.