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# Federal Initiatives to Promote Access to Electronic Government Information: The Impact on the Federal Depository Library Program

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*The Federal Depository Library System is responsible for making government publications available for public use. As increases in technology continue, more government information is produced in electronic formats. Ms. Brown describes the federal initiatives encouraging agencies to publish information electronically, exploring the direct effect they have had, or will have, on the ability of depository libraries to disseminate government information to the public.*

The Federal Depository Library Program (FDLP) is the primary means by which the general public obtains access to government documents. This program has thrived for decades under a system in which the Government Printing Office (GPO) has produced and distributed print copies of government publications to depository libraries. The growth of computer use and technology has increased the production of information within the federal government in electronic or other nonprint formats. Today, with the combination of online technology, CD-ROM, and microfiche, only 35 percent of all copies sent to depository libraries are distributed in "traditional ink-on-paper format."<sup>1</sup> This article addresses the federal government's attempts to introduce the use of electronic formats. More specifically, it examines the impact of these attempts on the operation of the Federal Depository Library Program as the primary means of disseminating government information.

The first part of this article gives a brief history of the FDLP and shows the progressional trend from print to electronic media. This is followed by a discussion of legislation and regulations that have been implemented concerning electronic government information. The next section describes several federal initiatives to promote access to electronic government information as a way of meeting the increased demand for government data. Finally, the paper analyzes the impact of these federal initiatives on the ability of depository libraries to fulfill their mission of disseminating information to the public.

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\* © Wendy R. Brown, 1999. This is a revised version of a winning entry in the student division of the 1998 AALL/Matthew Bender Call for Papers competition.

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1. See JOE MOREHEAD, INTRODUCTION TO UNITED STATES GOVERNMENT INFORMATION SOURCES 50 (5th ed. 1996).

## A History of the Federal Depository Library Program

Originally, congressional information was distributed to libraries in accordance with the Act of 1813.<sup>2</sup> The act required that copies of the Senate and the House of Representatives' journals be provided for state legislatures and the federal executive branch. In addition, these journals and other pertinent government documents were to be sent to "each university and college in each state."<sup>3</sup>

In 1857 the framework for today's depository library system was established. Documents that had formerly been distributed directly to universities and libraries were henceforth to be "deposited with the Secretary of the Interior, for distribution to such colleges, public libraries, athenaeums, literary and scientific institutions, boards of trade, or public associations as may be designated by him."<sup>4</sup> In 1858 and 1859 senators and representatives were given the authority to designate depository libraries in their district or state.<sup>5</sup> The representatives would then direct the Secretary of the Interior to distribute copies of government documents to the depository libraries and institutions of their choosing. The 1859 act expanded the responsibilities of the Secretary related to public documents to include not only the journals of the houses of Congress but also "all other books and documents, of every nature whatever, already or hereafter directed by law to be printed or purchased for the use of the government. . . ."<sup>6</sup> Ten years later, in an appropriations act, Congress created the position of Superintendent of Documents within the Department of the Interior to manage the depository library system.<sup>7</sup>

The Printing Act of 1895<sup>8</sup> had the greatest impact on the depository library system. First, this act transferred the Superintendent of Documents position from the Department of the Interior to the Government Printing Office.<sup>9</sup> More

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2. Resolution for the Printing and Distribution of an Additional Number of the Journals of Congress, and of the Documents Published Under Their Order, J. Res. 1, 13th Cong., 3 Stat. 140 (1813).
  3. *Id.* at 141.
  4. Resolution Respecting the Distribution of Certain Public Documents, J. Res. 5, § 3, 34th Cong., 11 Stat. 253, 253 (1857).
  5. Joint Resolution Respecting the Distribution of Certain Public Documents, J. Res. 5, 35th Cong., 11 Stat. 368 (1858); An Act Providing for Keeping and Distributing All Public Documents, ch. 22, § 5, 11 Stat. 379, 380 (1859). *See also Reinventing Access to Federal Government Information: Report of the Conference on the Future of Federal Government Information, Chicago, Illinois, October 29-31, 1993*, 21 DOCUMENTS TO THE PEOPLE 235, 237 (1993) [hereinafter *Conference*] (providing a brief history of the Federal Depository Library Program).
  6. "The Secretary of the Interior shall appoint a superintendent of public documents, . . . who shall be charged with the duty of packing, distributing, collecting, arranging, classifying, and preserving such documents. . . ." An Act Providing for Keeping and Distributing All Public Documents, ch. 22, § 1, 11 Stat. 379, 379 (1859).
  7. An Act Making Appropriations for the Legislative, Executive, and Judicial Expenses of the Government for the Year Ending June 30, 1870, ch. 121, 15 Stat. 283, 292 (1869).
  8. An Act Providing for the Public Printing and Binding and the Distribution of Public Documents, ch. 23, 28 Stat. 601 (1895).
  9. Originally created in 1860, the "GPO is the agency responsible for procuring, producing and disseminating print and electronic documents of Congress, and the executive departments and agencies of the federal government." Germaine Leahy, *GPO Access: One of the Marvels of the World Wide Web*, 2 ENVTL. LAW. 855, 856 (1996).

important, the Printing Act of 1895 was the first piece of legislation to contain a free public access clause, stating that "all government publications delivered to designated depositories or other libraries shall be for public use without charge."<sup>10</sup> No-fee access to the public is still a fundamental principle of the FDLDP.<sup>11</sup> Finally, the act established the framework for a catalog of government information and for standardized description.<sup>12</sup>

From 1895 to 1962, minor adjustments were made to the Printing Act that expanded the materials sent to depository libraries, but the Depository Library Act of 1962<sup>13</sup> contained the most drastic revisions of the system since its major reworking in 1895.<sup>14</sup> The 1962 act authorized distribution to depositories of publications not printed by the GPO. It also established a structure of regional depository libraries,<sup>15</sup> whereby the regionals would hold each government publication permanently, allowing selective depository libraries the option of discarding materials after housing them for five years.<sup>16</sup> Today, there are fifty-three of these regional depository libraries—approximately one per state.<sup>17</sup>

The Depository Library Act has been amended since its adoption in 1962 to provide for additional categories of depositories. For example, amendments have allowed the highest appellate court of a state to become a depository library.<sup>18</sup> Another amendment provided that, on request from the library of any accredited law school, the Public Printer may designate that law library as a depository.<sup>19</sup> Despite these alternatives, the majority of depositories are still designated by Congress.<sup>20</sup> The procedure for designating a new depository library is outlined in 44 U.S.C. § 1905. These statutory procedures are reviewed in depth in the GPO's *Designation Handbook for Federal Depository Libraries*.<sup>21</sup> Any depository may have its status revoked by the Superintendent of Documents if the library fails to

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10. § 74, 28 Stat. at 620.

11. This principle applies to federal government information even during the current move to a more electronic-based system. See U.S. GOV'T PRINTING OFFICE, REPORT TO THE CONGRESS: STUDY TO IDENTIFY MEASURES NECESSARY FOR A SUCCESSFUL TRANSITION TO A MORE ELECTRONIC FEDERAL DEPOSITORY LIBRARY PROGRAM 4 (1996).

12. See *Conference*, *supra* note 5, at 237.

13. Depository Library Act of 1962, Pub. L. 87-579, 76 Stat. 352 (codified as amended at 44 U.S.C. §§ 1901-1914 (1994)).

14. See *Conference*, *supra* note 5, at 237.

15. 44 U.S.C. § 1912 (1994).

16. The regional depository serves all the selective depositories. Selective depositories may choose the government publications they wish to receive according to local needs of the community. See MOREHEAD, *supra* note 1, at 39.

17. See LIBRARY PROGRAMS SERV., SUPERINTENDENT OF DOCUMENTS, U.S. GOV'T PRINTING OFFICE, FEDERAL DEPOSITORY LIBRARY DIRECTORY 87-91 (1998) [hereinafter DEPOSITORY LIBRARY DIRECTORY].

18. Act of August 10, 1972, Pub. L. No. 92-368, 86 Stat. 507 (1972) (codified at 44 U.S.C. § 1915 (1994)).

19. Act of April 17, 1978, Pub. L. No. 95-261, 92 Stat. 199 (1978) (codified at 44 U.S.C. § 1916 (1994)).

20. See MOREHEAD, *supra* note 1, at 40.

21. LIBRARY PROGRAMS SERV., SUPERINTENDENT OF DOCUMENTS, U.S. GOV'T PRINTING OFFICE, DESIGNATION HANDBOOK FOR FEDERAL DEPOSITORY LIBRARIES (1995).

follow specified requirements, including keeping the library "accessible to the public" and properly maintaining the government publications furnished under the FDLP.<sup>22</sup>

Depositories are sent copies of all government publications processed through the GPO that are not purely administrative, cooperatively sponsored, or classified due to national security.<sup>23</sup> These copies are paid for through the budget of the Superintendent of Documents.<sup>24</sup> The public is offered free access to these materials through the Federal Depository Library System as mandated by 44 U.S.C. §1911. The policy behind this requirement is that the public's tax dollars have supported the creation of government publications, so taxpayers have already assumed the cost of providing the information.<sup>25</sup>

Although amendments to Chapter 19 of Title 44 have augmented the regulations of the Depository Library System, the basic principles have remained constant. These principles are:

1. Government publications shall be made available to depository libraries (with specified exemptions).
2. Depositories shall make these publications available for the free use of the general public.
3. Depositories shall be located in each state and congressional district to make government publications widely available.
4. The federal government and the depository libraries shall be partners in sharing the responsibilities of providing public access to government information.<sup>26</sup>

Today, approximately 1,400 depository libraries exist.<sup>27</sup> As the GPO now produces both printed and electronic information products, each federal depository is expected to provide computer workstations for public access.<sup>28</sup> The increasing information needs of society have necessitated the production of a core electronic information system. Congress has enacted and amended several pieces of legislation to deal with the issues of such an electronic system.

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22. See 44 U.S.C. § 1909 (1994).

23. See 44 U.S.C. § 1902 (1994).

24. See 44 U.S.C. § 1903 (1994).

25. See *Government Printing Office and Executive Branch Information Dissemination: Hearings Before the Subcomm. on Government Management, Information, and Technology of the House Comm. on Government Reform and Oversight*, 105th Cong. 107, 116 (1997) (statement of Prof. Robert L. Oakley, representing American Ass'n of Law Libraries and five other library organizations) [hereinafter *Oakley Statement*].

26. See *Conference*, *supra* note 5, at 238.

27. See *DEPOSITORY LIBRARY DIRECTORY*, *supra* note 17, at iv.

28. See *ADMINISTRATIVE NOTES, NEWSLETTER OF THE FDLP*, June 15, 1997, at 4-7 (offering recommendations for the public access workstations within depositories. No equipment requirement exists, only guidelines for useful hardware and software).

### Federal Legislation and Regulations Promoting Electronic Access to Government Information

The first legislative breakthrough for electronic access occurred on June 8, 1993, when Congress passed the Government Printing Office Electronic Information Access Enhancement Act.<sup>29</sup> This act required the Superintendent of Documents to provide depository libraries online access to the *Congressional Record* and *Federal Register* free of charge.<sup>30</sup> The Superintendent was also directed to maintain an electronic directory and electronic storage facility for federal electronic information to be made available via online access.<sup>31</sup> Other documents under the Superintendent's jurisdiction, as well as any information that agencies request to be included in the access system, may be included to the extent practicable.<sup>32</sup>

On February 8, 1996, the federal Office of Management and Budget issued a major source of guidance on federal automated information systems when it revised Appendix III ("Security of Federal Information Systems") of OMB Circular No. A-130, "Management of Federal Automated Information Resources."<sup>33</sup> The purpose of this circular was to establish policies for the management of federal information resources, applicable to all executive agencies.

Agencies must take the initiative in distributing information to the public.<sup>34</sup> However, agencies may balance the public's right of access to government information with concerns such as national security and an individual's right to privacy.<sup>35</sup> When possible within an agency's budget, electronic media and formats should be used to make government information more accessible to the public.<sup>36</sup> According to the OMB's own analysis, these formats include CD-ROM, electronic bulletin boards, and public networks.<sup>37</sup> Agencies must use electronic collection methods when such techniques "reduce burden on the public, increase efficiency of government programs . . . and provide better service to the public."<sup>38</sup>

Public electronic information networks allow agencies to increase the content

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29. Government Printing Office Electronic Information Access Enhancement Act of 1993, Pub. L. No. 103-40, 107 Stat. 112 (codified as amended at 44 U.S.C. §§ 4101-4104 (1994)).

30. § 4101(a)(2).

31. § 4101(a)(1), (3).

32. § 4101(b).

33. OMB Circ. No. A-130 (Rev.) (Feb. 8, 1996), 61 Fed. Reg. 6428 (1996). This document was prepared in compliance with the requirement of the Paperwork Reduction Act, 44 U.S.C. § 3504 (1995), calling for OMB to develop and implement uniform governmentwide information resources management policies.

34. See, e.g., 5 U.S.C. §§ 552b(a)(1), (e)(1) (1996); 5 CFR § 1320 (1995). Each of these sections requires that "the agency shall submit . . ." or that "the agency shall make available to the public. . . ."

35. See 5 U.S.C. §§ 552 (b)(1), (b)(6) (1996).

36. See OMB Circ. No. A-130 (Rev.) § 8(a)(8), 61 Fed. Reg. 6428, 6433 (1996) ("Agencies shall use electronic media and formats, including public networks, as appropriate and within budgetary constraints, in order to make government information more easily accessible and useful to the public.").

37. See OMB Circ. No. A-130 (Rev.) app. IV ("Analysis of Key Sections"), 61 Fed. Reg. at 6450.

38. OMB Circ. No. A-130 (Rev.) § 8(a)(3), 61 Fed. Reg. at 6432.

and quality of the information pool.<sup>39</sup> The World Wide Web (WWW) and Wide Area Information Servers (WAIS) are applications that agencies may use to increase dissemination in a networked environment.<sup>40</sup> Electronic media is used both to collect and to disseminate government information, thereby increasing the amount of value-added data that is available for the public while also helping agencies distribute the information promptly after it has been gathered. Electronically collected and disseminated information does not require data re-entry. In theory, eliminating the data re-entry step enhances the accuracy and timeliness of requests for information from the government and the public. Electronic records are also easily manipulated so that data may be customized to an individual's request.

The next significant federal legislation concerning electronic information was the Electronic Freedom of Information Act Amendments of 1996 (EFOIA).<sup>41</sup> As the EFOIA did not take effect until April 2, 1997, these amendments offer the most current additions to electronic dissemination legislation. Congress found that government agencies were increasing their use of computers to conduct business and store records that could be valuable to the public. The amendments sought to encourage agencies to continue using new technology to enhance public access to information.

The Electronic Freedom of Information Amendments address the issue of public requests for agency records in electronic form, requiring that agencies must provide records in any form or format requested if the record can be *readily* reproduced *by the agency* in that format.<sup>42</sup> Although reasonable efforts to search for the records in electronic form are mandatory, the EFOIA exempts agencies from performing such searches if the effort will significantly interfere with the administration of the agency's automated information system.<sup>43</sup>

Specifically, Section 552(f) of Title 5 of the United States Code was amended to expand the definition of a record to include electronic formats.<sup>44</sup> Agencies are now required to make records created on or after November 1, 1996, available by computer telecommunications within one year after the record is created.<sup>45</sup> If the agency has not yet established a computer telecommunications format, then the agency must make the records available by other electronic means.<sup>46</sup>

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39. See OMB Circ. No. A-130 (Rev.) app. IV ("Analysis of Key Sections"), 61 Fed. Reg. at 6450.

40. WAIS software permits the user to search more than one database simultaneously.

41. Electronic Freedom of Information Act Amendments of 1996, Pub. L. No. 104-231, 110 Stat. 3048 (codified as amended at 5 U.S.C. § 552 (1996)).

42. § 552(a)(3)(B) (1996).

43. § 552 (a)(3)(C).

44. § 552 (f)(2).

45. § 552 (a)(2)(E).

46. *Id.*

## Federal Initiatives to Access Electronic Information

### *GPO Access*

In response to the recent laws and amendments stressing the production and availability of electronic information, the federal government has created several program initiatives to enhance access to government electronic information. The first of these initiatives is "GPO Access."

GPO Access is an electronic collection of more than seventy databases offering the full and official text of many primary federal government documents. This service began in June 1994 to compile the increased number of electronic government documents that the Government Printing Office Electronic Information Enhancement Act of 1993 required to be made available online. GPO Access is accessible through the GPO Web site,<sup>47</sup> and many federal depository libraries are establishing their own gateways to GPO Access.<sup>48</sup>

The Government Printing Office provides an electronic Pathway Indexer that links researchers to well over a thousand federal agency Web sites.<sup>49</sup> GPO Access also maintains a centralized database so that users may search records of federal agencies through the Government Information Locator Service (GILS). GPO's link to the GILS database offers a single access point to these records. GPO Access is an example of an attempt to link government databases together in order to provide a "one-stop shopping" environment.

Once researchers have entered GPO Access, they can search for desired information within the GPO system. Most databases are available in both ASCII format and Portable Document Format (PDF). PDF is an extremely important feature, as it allows replication of documents in the exact format as the original printed product. This exact duplication is beneficial for users requiring authenticity of form of research documents.

A related federal initiative is GPO Access support services to federal depository libraries. These services include the GPO Access User Support Team (which answers questions about GPO Access over the phone), user guides and training books available in print and online formats, and hands-on GPO Access training classes for depository librarians and members of the public.

### *National Information Infrastructure*

A federal initiative that tries to compile electronic information on a larger scale is the National Information Infrastructure (NII). In September 1993, the Clinton

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47. U.S. Gov't Printing Office, *GPO Access* (visited Jan. 27, 1999) <[http://www.access.gpo.gov/su\\_docs/index.html](http://www.access.gpo.gov/su_docs/index.html)>.

48. See Leahy, *supra* note 9, at 856-60 (defining a gateway as a Web site offering a link to another system or Web page).

49. See Oakley Statement, *supra* note 25, at 113 (indicating that 1,275 federal agency Web sites were linked as of the time of his statement).



administration presented an *Agenda for Action* that outlined a policy framework for a National Information Infrastructure.<sup>50</sup> This report also established the Information Infrastructure Task Force (IITF) and the United States NII Advisory Council.<sup>51</sup> The IITF's main function is to work with the private sector to strengthen the NII.<sup>52</sup> To encourage private industry involvement, a coalition of private telecommunications and information technology companies has been created to test new network systems and increase the number of people who can be reached through the NII.<sup>53</sup>

The NII has been defined as a "seamless web of communication networks, computers, databases and consumer electronics that will put vast amounts of information at users' fingertips."<sup>54</sup> Once complete, the NII will involve networks that transmit data, graphics, voices, and multimedia through the media of wire, cable, fiber optics, and electromagnetic frequency.<sup>55</sup> Information resources will be stored in centralized databases shared by users and distributed throughout the infrastructure.<sup>56</sup>

The Clinton administration is working with the private sector and Congress to foster the NII initiative. New software tools for retrieving sought-after data need to be developed to maintain and distribute digital information.<sup>57</sup> The federal government's support of private sector initiatives to create these tools and maintain important digitized materials has helped to accelerate the deployment of applications within libraries.<sup>58</sup>

The *Agenda for Action* outlined nine goals for the government in working with the private sector to develop the NII.<sup>59</sup> Perhaps, the most important of these to the FDLP is goal nine: "Provide access to government information." Its scope includes upgrading infrastructure for delivery and increasing the electronic dissemination of government information.<sup>60</sup> Depositories should take steps to meet

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50. See The National Information Infrastructure: Agenda for Action, 58 Fed. Reg. 49,025 (1993) [hereinafter *Agenda*].

51. *Id.* at 49,025.

52. See Mark Gordon & Diana McKenzie, *The National Information Infrastructure*, 13 J. MARSHALL J. COMPUTER & INFO. L. 175, 181 (1995).

53. In addition to this "testbed" of companies, the IITF has implemented an active Applications and Technology Committee which coordinates the administration's efforts to promote applications of technological information within libraries. See *Agenda*, *supra* note 50, at 49,025.

54. *Id.*

55. See Vance K. Opperman, *Opening Comments on Electronic Commercial Filings and the National Information Infrastructure*, 79 MINN. L. REV. 771, 772 (1995).

56. See Ralph J. Andreotta, *The National Information Infrastructure: Its Implications, Opportunities and Challenges*, 30 WAKE FOREST L. REV. 221, 222 (1995).

57. See U.S., Nat'l Info. Infrastructure Virtual Libr., *Barriers to the Creation and Use of Library Applications* (visited Jan. 25, 1999) <<http://nii.nist.gov/nii/applic/lbr/lbrbar.html>>.

58. See *id.* (describing how the National Archives and Records Administration provides grants to the private sector for the development of new technology).

59. The principles and goals for government action are: 1) promote private sector investment, 2) extend universal service concept, 3) promote technological innovations and new applications, 4) promote seamless, interactive, user-driven operation, 5) ensure information security and network reliability 6) improve management of radio frequency spectrum, 7) protect intellectual property rights, 8) coordinate with other levels of government, and 9) provide access to government information. *Agenda*, *supra* note 50, at 49,027-31.

60. See Gordon & McKenzie, *supra* note 52, at 209.

the access goal of the NII to continue accommodating the public's need for information in a convenient, efficient format.

### *Digitization of Libraries*

One more federal initiative is the digitization of libraries. In 1990, Congress established a pilot program to begin digitizing the Library of Congress.<sup>61</sup> The American Memory pilot program, which ran from 1990 to 1995, was designed to create digital facsimile images of selected historical collections of the Library of Congress.<sup>62</sup> Primary-source historical materials were reproduced in CD-ROM format and some selections were placed on the World Wide Web.<sup>63</sup> The digitization of historical government documents provides a better means of accessing records of the first forty-two Congresses, many of which were previously inaccessible to the public because of the fragility of the original printed volumes.<sup>64</sup> Digitization also allows for a permanent means of maintaining the documents.

The American Memory program demonstrated the value of providing electronic access to key materials, and in 1995, Congress endorsed the creation of a National Digital Library Program (NDLP). As a means of beginning to implement NDLP, the Library of Congress created its own online legislative information service, THOMAS (named after Thomas Jefferson).<sup>65</sup> THOMAS offers text of the *Congressional Record*, full text of bills from the 101st Congress to the present, as well as the *Congressional Record Index* and *Bill Digest* to help researchers locate their documents. "Hot Legislation" files track the major bills receiving floor action; they can be searched by topic, popular title, or bill number.

### **Obstacles Encountered by Federal Initiatives**

THOMAS and the digitized Library of Congress, the NII, and GPO Access are all works in progress with frequent additions and revisions. Each is an attempt by the federal government to provide a better means for the public to access electronic government information. However, the government's efforts to enhance access through electronic means have encountered several obstacles. This final section addresses loopholes to access created by the very government initiatives intended to enhance access to information.

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61. See Library of Congress, *A Periodic Report from The National Digital Library Program* (visited Jan. 25, 1999) <<http://lcweb.loc.gov/ndl/nov-dec.html#table>>.

62. See *id.*

63. See *id.*

64. See Judith Davis, *Law Library of Congress Digitizes Historical Collections*, AALL SPECTRUM, Sept. 1997, at 12.

65. Library of Congress, *Thomas Legislative Information on the Internet* (visited Jan. 25, 1999) <<http://thomas.loc.gov>>.

### Preservation

While the new federal initiatives have made many current government documents available in electronic format, none of the initiatives address the issue of document preservation. The fifty-three regional depository libraries are required by federal statute to hold in perpetuity all government publications distributed to them through the FDLP.<sup>66</sup> Government information available only in electronic format (such as a Web site) is especially susceptible to the risk of being lost.<sup>67</sup>

Librarians have attested to the disappearance of valuable government resources made available solely through agency Web sites.<sup>68</sup> No national program currently exists to uniformly obtain, preserve, and maintain continued access to electronic government data. Materials that have become unavailable to the public through print and electronic systems of access are called "fugitive documents." Many documents are initially disseminated through an agency's Web site. If an agency fails to notify the FDLP of an electronic publication, the FDLP has no means of availing the public of the information.<sup>69</sup> Agencies need to identify electronic publications that are only available online so that they may be cataloged and made accessible to the public.<sup>70</sup> The lack of a system securing permanent public access to electronic information allows a de facto loss of valuable government documents.

### Privatization

Another cause of fugitive documents is the recent trend for agencies to use private companies to print their publications.<sup>71</sup> Title 44 of the United States Code places the GPO in charge of procuring government information products and distributing them through the FDLP, but this has been hampered by the increasing tendency of agencies to contract with private publishers for the production of their documents.<sup>72</sup>

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66. 44 U.S.C. § 1911 (1994).

67. See *Oakley Statement*, *supra* note 25, at 116.

68. See *id.*

69. See *Oversight of the Government Printing Office: Hearings Before the Senate Comm. on Rules and Administration*, 105th Cong., 1998 WL 187973, at \*37 (Feb. 26, 1998) (statement of Michael F. DiMario, Public Printer, Government Printing Office).

70. See S.2288, *The Wendell H. Ford Government Publications Reform Act of 1998: Hearings Before the Senate Committee on Rules and Administration*, 105th Cong., 1998 WL 444498, at \*4 (July 29, 1998) (statement of Daniel P. O'Mahony, Coordinator for Government Documents and Social Sciences Data Services, Brown University, and Chair, Inter-Association Working Group on Government Information Policy).

71. See 143 CONG. REC. S1730-31 (daily ed. Feb. 27, 1997) (statement of Senator John Warner on the "growing crisis in public access to public information").

72. "In recent years . . . various Federal agencies have taken to ignoring title 44. Some are procuring their information products directly from the private sector without going through the GPO's private sector procurement program. . . . [A] few agencies, in an effort to be entrepreneurial, have taken to making arrangements with organizations outside the Federal Government for the dissemination of taxpayerfunded information. In doing so, this information has become copyrighted, or had copyrightlike restrictions imposed upon it. The net result is that the public's access to taxpayerfunded information has been greatly restricted." *Id.* at S1730. See also *Oakley Statement*, *supra* note 25, at 117; *Government Printing Office and Executive Branch Information*

If an agency produces a publication outside the GPO, that agency is required by statute to supply copies to the GPO for dissemination to depositories.<sup>73</sup> Because agencies have increasingly used private sector publishers, certain government information has been copyrighted.<sup>74</sup> Thus, the information cannot be procured or produced through the GPO without violating the private publisher's copyright, and depository libraries do not receive the information to disseminate.<sup>75</sup>

Although this practice arguably violates Title 44 of the United States Code, to date no form of punishment exists for agencies that engage in it, nor does the GPO have an effective means of enforcing the FDL P provisions of Title 44. This lack of sanctions provides a loophole for agencies to avoid publishing through the GPO.

Several agencies have taken the position that Title 44 does not apply to government information in electronic formats.<sup>76</sup> These agencies cite OMB Circular No. A-130 (revised), which only "encourages" agency cooperation with the GPO for materials in electronic format. This language is used as a validation for excluding electronic information products from the FDL P, thus saving agencies the costs involved in gathering and disseminating the information to the GPO. The OMB Circular was created to increase electronic access. The irony that it is being used instead as a means to decrease access has not been lost on commentators.<sup>77</sup>

A related argument used to justify the exclusion of electronic information from the FDL P is based on costs to agencies and libraries. Although users can often access electronic databases in a more timely and effective manner than printed materials, the dissemination of electronic government information initially increases the responsibilities and costs for both agencies and libraries. Agencies must acquire the necessary technology to produce information electronically, while depositories must train librarians on the new technology and provide the

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*Dissemination: Hearings Before the Subcomm. on Government Management, Information, and Technology of the House Comm. on Government Reform and Oversight*, 105th Cong. 21 (1997) (statement of Michael F. DiMario, Public Printer, Government Printing Office) [hereinafter *DiMario 1997 Statement*].

73. See 44 U.S.C. § 1903 (1994).

74. See *DiMario 1997 Statement*, *supra* note 72, at 21. In a 1997 speech to the Federal Documents Task Force of the ALA Government Documents Roundtable, Superintendent of Documents Wayne Kelley cited the journal of the National Cancer Institute (NCI) as an example of the consequences this practice can have on public access to government information. 143 Cong. Rec. S1731 (daily ed. Feb. 27, 1997) (Exhibit 1, Remarks of Wayne Kelley, Superintendent of Documents). After years of having its journal published by GPO and distributed to federal depository libraries at GPO expense, NCI contracted with Oxford University Press for printing the journal. In a letter to GPO, NCI stated in part: "Oxford will assume all responsibility for printing the Journal and will hold copyright to the Journal's content. Because the Journal is no longer a publication of the U.S. Government, copies will not be provided to the Depository Library Program nor will sale copies be available at the GPO bookstore." *Id.*

75. See *DiMario 1997 Statement*, *supra* note 72, at 21.

76. *Id.*

77. See *id.* at 21-22.

necessary equipment to connect with electronic formats.<sup>78</sup> Building the technological infrastructure needed for agencies to create and disseminate electronic information is expensive. Agencies that have not budgeted monies for this purpose may have difficulty providing the FDLDP with government information in electronic format.<sup>79</sup> Also, the librarian training needed to offer the public help in locating electronic government information may require significant monetary investments. For example, additional staff may be needed to provide patrons with adequate support for new electronic services. In addition, the computer workstation's hardware must be upgraded to incorporate processing capacity for new electronic publications.<sup>80</sup>

These acquisition and training issues need to be addressed and resolved, but such transitional difficulties to a more electronic system of access have not overshadowed the benefits electronic information will and does provide. Congress continues to stress initiatives to increase electronic access. Depository libraries have responded positively to the initiatives, and finding ways to efficiently disseminate electronic information to the public remains a hot topic within the library community.<sup>81</sup>

### Conclusion

The FDLDP is directly influenced by the federal government's initiatives to make electronic information more accessible to the public. Librarians, as the information managers of today's society, must be aware of current changes in information policy and, in particular, continue to adhere to the requirements of the Federal Depository Library Program as outlined in Title 44 of the United States Code.

In order for depositories to follow the dictates of both electronic information policy and print material legislation, the definition of a government publication should be revised. The current definition found in 44 U.S.C. § 1901 should be broadened to expressly include electronically formatted information. This would support the current proposition that documents in all formats should be submitted to the GPO for distribution to depositories.

Also, a measure of enforcement is needed to ensure that agencies comply with statutory requirements. Currently, if an agency chooses to publish documents outside the GPO, it is likely that this information will not be distributed to the

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78. See *Proposed Revisions to Title 44 of the United States Code: Hearings Before the Senate Comm. on Rules and Administration*, 95th Cong. 68 (1997) (statement of Barbara J. Ford, President-elect of the American Library Association).

79. See *id.*

80. See *Oakley Statement*, *supra* note 25, at 113.

81. See generally, Ken Kozlowski, *Does CD-ROM Have a Future?* AALL SPECTRUM, July 1997, at 26; Mary Alice Baish, *AALL Endorses Goals for the Revision of Title 44*, AALL SPECTRUM, Sept. 1997, at 8; Wendy Nobunaga, *Exploring the National Digital Library: A Day at the Library of Congress*, AALL SPECTRUM, Oct. 1997, at 13.

depositories. No form of punishment exists to force agencies to follow the specifications of Title 44. One possible approach is placing a monetary sanction on those agencies that do not comply with Title 44 in printing and distributing government materials.

Finally, a system of preservation must be implemented to guarantee that electronic documents are available for *permanent* public access. The fluid state of electronic networks creates an arena in which data can be lost. A uniform system of preserving electronically formatted materials would better equip depository libraries to meet their duty of providing the public with government information.

