



American Association of Law Libraries

MAXIMIZING THE POWER OF THE LAW LIBRARY COMMUNITY SINCE 1906

May 9, 2007

The Honorable Zach Wamp
Ranking Member, Subcommittee on Legislative Branch
House Committee on Appropriations
U.S. House of Representatives
Washington, DC 20515

Dear Ranking Member Mr. Wamp:

I very much appreciate the opportunity to respond to the follow-up questions you asked for the record of the May 1 “Legislative Branch Subcommittee Public Witness Hearing.” Your two concerns—about storing historical government documents in digital-only formats and whether the Digital Millennium Copyright Act may prevent libraries from making adequate backups of their content for fear of violating the Act—are well-founded.

1) What is to prevent "born digital" government information from disappearing?

The short answer to your question is “nothing” since there are no laws or regulations mandating that Federal agencies provide permanent public access to “born digital” information posted to their Web sites. While AALL and SLA are very supportive of the move to e-Government, at the same time we have long expressed concern about the Federal Government’s failure to develop adequate policies to ensure the permanent public access, authentication and preservation of “born digital” information. Unfortunately, most agencies believe that their responsibility for their “born digital” content ends when it’s posted to their Web site. A study done in 2004 found that the average lifespan of a “born digital” government publication on the Web was only *4 months*. We fear that thousands of such e-publications, most of which were historically significant, are gone forever.

We believe that the mission of the U.S. Government Printing Office (GPO)—to ensure perpetual, no-fee, ready public access to the printed and electronic information published by the Federal Government, in partnership with Federal Depository Libraries—is uniquely crucial in the e-Government environment. GPO’s centralized services, including *GPO Access*, the cataloging of agency “born digital” information and the Future Digital System (FDsys), are absolutely crucial to the future ability of members of the public to find today’s important “born digital” government information in two, ten or fifty years.

Very importantly, former Public Printer Bruce James and U.S. Archivist Allen Weinstein signed an MOU in 2003 stating that, to eliminate potential duplicative preservation efforts at GPO and the National Archives and Records Administration (NARA), GPO would retain physical custody of the complete set of records on *GPO Access* for *both* public access and preservation purposes. We applauded this important collaboration.

In order for GPO to meet this responsibility, we strongly believe that the Public Printer's FY 2008 funding requests for IT enhancements to replace obsolete technology and upgrade their electronic services, including *GPO Access*, must be funded. In addition, the \$10.5 million needed to complete the development of FDsys is essential to GPO's ability to capture and preserve "born digital" information from all three branches of Government.

As I mentioned briefly in my oral statement, GPO recently completed a pilot project that resulted in the harvesting of 200,000 online publications from the EPA Web site. Funding must now be provided to ensure that these valuable "born digital" publications are cataloged by GPO for easy retrieval and long-term storage. When you multiply that number by the thousands of Federal Web sites, you can see the magnitude of the challenges of providing permanent public access to and preserving historic "born digital" information. That is GPO's mission, in partnership with the Federal Depository Library Program (FDLP).

Many Federal Depository Libraries want GPO to "push" out electronic files of digital publications even though they are available permanently on *GPO Access*. Libraries have been asking for source files for many years, believing that they have a role to play in ensuring their preservation and accessibility, just as they have ensured permanent public access to print and microfiche resources through the FDLP. We are pleased that FDsys will allow digital distribution to depository libraries. Historically, libraries have borne great costs to participate in the FDLP in order to provide public access to government information. They are willing to continue although many feel some unease about the current number of electronic copies of crucial "born digital" documents that have historic significance.

I'd like to illustrate one outstanding example of a successful Federal Depository Library e-partnership with government agencies, the *CyberCemetery* at the University of North Texas (UNT). (<http://govinfo.library.unt.edu/default.htm>) UNT, NARA and GPO collaborate to ensure permanent public access to Web sites of government agencies and commissions that are defunded or have completed their work and shut down. UNT began capturing these Web sites in 1997 as part of their FDLP activities, and NARA recognized them as an "affiliated archive" in 2006. As a result, valuable government information published on defunct government Web sites continues to be available for use by the public and will be preserved.

2) How does current copyright law affect your ability to ensure documents are preserved, and are there any changes to current law that would enable you to ensure these documents will be available for as long as possible?

Sec. 105 of the U.S. Copyright Act explicitly states that there is no copyright protection for works of the U.S. Government. So, to follow up on my response to your first question, GPO and depository libraries are able to harvest "born digital" information from Federal

agency Web sites and provide access to them without restriction because the information is in the public domain.

The situation for copyrighted digital materials is very different. AALL and SLA believe that, in the context of the Digital Millennium Copyright Act (DMCA), the existing rights of a consumer or other lawful user, such as a librarian, a student, or a researcher, to make fair use of content in their possession have been thwarted. Since 2003, our associations have been collaborating with technology companies, trade, library and educational associations, and other interested organizations in working with Congress to adopt a more balanced approach to both the Copyright Act and the DMCA.

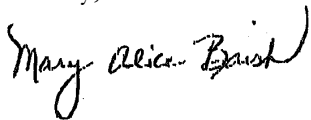
The recently introduced Freedom and Innovation Revitalizing U.S. Entrepreneurship (FAIR USE) Act of 2007 (H.R. 1201) is aimed at restoring this balance. It makes permanent six exemptions to the anti-circumvention provision of the DMCA granted by the Librarian of Congress. Two of these exemptions are particularly important to the library community: the exemptions for screen readers for the visually impaired and for film clip compilations for college media studies classes. By making these exemptions permanent, the FAIR USE Act will ensure that these important activities can continue in the future and that valuable resources will not be wasted in renewing the exemptions every three years.

Additionally, the FAIR USE Act would extend the determinations of the Librarian of Congress in six narrow circumstances. For example, the FAIR USE Act would extend the film clip exemption to all classrooms instead of just college media studies classes. It would allow access to public domain works, as well as works of substantial public interest.

Finally, the FAIR USE Act would permit a library to circumvent technological protections for the purpose of preservation of works in a library's collection. Preservation of our cultural and scientific heritage is one of a library's most critical functions. Unfortunately, the DMCA is interfering with libraries' ability to preserve such works. The FAIR USE Act will eliminate this obstacle, without causing any harm to copyright owners.

AALL and SLA urge you to fund fully GPO's FY 2008 appropriations request to enable GPO to print and distribute important materials, such as the 2006 *U.S. Code* and congressional publications, to depository libraries and to capture and preserve "born digital" government information. We also encourage you to co-sponsor the FAIR USE Act of 2007, introduced in February by Representatives Rick Boucher, John Doolittle and Zoe Lofgren.

Sincerely,



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