

**Preserving Legal Information for the Twenty-first Century:
Toward a National Agenda
March 6–8, 2003
Conference Report
May 2003***

Preface

¶1 This document is a report of the discussions at the conference “Preserving Legal Information for the Twenty-first Century: Toward a National Agenda,” which was held at the Georgetown University Law Center on March 6–8, 2003. The conference brought together interested law librarians with preservation specialists and technology professionals¹ to discuss the preservation of both print and electronic legal information.

¶2 Speakers at the conference addressed the following issues:

- library preservation initiatives for print legal information
- born-digital legal information
- preservation initiatives in other disciplines
- foreign legal information
- international legal information
- state-based preservation initiatives
- preservation initiatives at the National Archives
- role of commercial publishers
- technology and standards
- next steps in moving forward on a national plan

¶3 Along with the formal presentations, participants discussed a series of issues related to the development of a national agenda for the preservation of legal information. The results of those discussions form the body of this report.

¶4 A number of recommendations—including the formation of the Legal Information Preservation Alliance (LIPA) and a steering committee to keep the project moving, and the solicitation of funds to hire a staff member—were generally accepted by the participants in the conference. Other recommendations developed by the discussion groups were held for future deliberations.

* This is an edited version of the report prepared after the conference “Preserving Legal Information for the 21st Century: Toward a National Agenda,” Georgetown University Law Center, March 6–8, 2003.

1. A list of the conference participants is provided in the appendix to this report.

¶5 The Conference Planning Committee consisted of Janice Anderson, Laura Bedard, Robert Oakley, and Hilary Seo, chair.

Recommendations Accepted by Conference Participants

¶6 Participants in the conference agreed to constitute a new group called the Legal Information Preservation Alliance (LIPA). The minimum requirements agreed upon to move forward included:

- Setting up an electronic discussion list, possibly with the American Association of Law Libraries (AALL).
- Identifying and publicizing Web sites with links to related resources.
- Setting up a Web page where the work of the group could be posted.
- Identifying a place where voice mail and mail services could be available.
- Hiring a quarter- to half-time staff member for a year to write a white paper, to compile an inventory of existing initiatives for comprehensive preservation of analog and digital legal materials, to approach funding sources and related organizations, and to advance the interests of law libraries in the more general national preservation agenda. Several participating libraries agreed to commit resources to such an initiative. If sufficient funds are not available to hire a coordinator, however, the group should seek to appoint working groups to take on these tasks.

¶7 Participants agreed to create a steering committee to keep the effort moving. The steering committee would be charged to:

- Develop an agenda of specific short- and long-term cooperative actions to ensure the preservation of the legal information and materials vital to the study, practice, and creation of American law.
- Move the entire agenda forward.
- Communicate with others and develop a marketing strategy.
- Develop the means to attract others to participate and contribute.
- Develop institutional commitments.
- Develop proposals for educational programs.
- Develop proposals for a permanent organizational framework to carry out the mission of LIPA. It was agreed that this is critical to the success of the effort. In this regard, there was general agreement that for this effort to be sustained, there must be a permanent organizational structure. Suggestions included exploring the possibility of a parallel organization with AALL as an initial host and coordinator. Another possibility was a membership organization that libraries would pay to join. Membership would be open to law libraries, law firms, state libraries, state archives, international libraries, court libraries, the American Bar Association, the American Bar Foundation, the Association of American Law Schools, and the American Society for Legal History.

- Determine an economic model for sustainability and accountability to the law library community and legal professions.

LIPA Mission and Purpose

¶8 The mission of LIPA is to provide the leadership, the necessary organizational framework, and the professional commitment required to preserve vital paper and electronic legal information by defining objectives, developing and/or adopting appropriate standards and models, creating networks, and fostering financial and political support for long-term stability.

¶9 Systems of government and justice throughout the world are dependent on the preservation of the written records of their activity and on the ability of citizens to access and use that information. Not only government officials, legislators, and judges, but also lawyers, legal scholars, historians, and individual citizens have the need and the right to their written legal heritage. In the broadest sense, these “records” comprise both the primary documents emanating from all branches of government as well as secondary legal compilations and writings that organize, explain, and evaluate them.

¶10 Collectively, the entire body of legal information constitutes an essential element in the foundation of human society. Throughout history mankind has created progressively more sophisticated methods and often fragile materials for keeping its records. Librarians, archivists, and scholars remain steadfast in their commitment to assure the survival of the written chronicle. Legal texts are among the most important examples of materials that need to be preserved.

¶11 The evolution of publishing into the electronic environment, while offering significant advantages for textual research, compact storage, and instant wide dissemination of information, has added complexity to age-old concerns with the preservation of information. At this relatively early stage in the electronic era, the digital medium is yet unproven as a long-term means of preserving the written record. Ironically, the relatively unrestricted freedom and technological capability to disseminate text electronically has resulted in unfathomable quantities of digital text issued not only by proven institutions and publishers, but also by anyone who chooses to distribute it via the Internet or maintain it in discrete databases. Both government and private businesses and institutions have eagerly adopted digital publishing and record keeping as ways to save money, time, and space and to promote efficiency and control. In their haste to abandon what they perceive to be cumbersome paper records and methods of dissemination, they have too often failed to take into account the long-term preservation of their electronic publications and archives. Neither administrative commitments nor technical solutions have been sufficiently important in their political and business agendas to result in widespread efforts to save what they have produced nor to assure its authenticity. Consequently, without a concerted effort to preserve it, important electronic information could be lost or rendered unreliable.

¶12 A number of respected universities and scholarly organizations have launched efforts to bring about national consistency in the preservation of print and electronic legal information. Their endeavors show the need for defining objectives, developing standards, exploring models, creating networks, and fostering financial and political support for long-term sustainability. Up to this point, none of the efforts has concentrated specifically on the preservation of legal information. The goal of LIPA is to provide the necessary organizational framework and professional commitment to ensure that the special concerns and requirements of legal information are accommodated in the community-wide solutions developed for information preservation. Nothing less than transmission of the permanent, accurate record of legal knowledge to future generations is at stake.

Content

What Needs to Be Preserved?

¶13 Preservation is needed for both analog and digital legal information. Within both categories, a high priority should be established for primary legal information, the core information with which lawyers and legal scholars must work.² Preservation of *born-digital* legal information is particularly important, both because it frequently disappears without warning and because a number of existing projects have already made a significant contribution to the preservation of analog information.

¶14 Proprietary digital information (as opposed to information in the public domain), however, is usually licensed rather than purchased and is difficult to preserve without violating licensing agreements or infringing copyrights. (The Digital Millennium Copyright Act has imposed even greater restrictions on library preservation efforts.) Nonetheless, with the cooperation of the publishers, it should be possible. Since digital information is disappearing from the Internet, the need to address preservation issues is increasingly urgent. These concerns apply regardless of date or jurisdiction. *We need it all.*

Priorities

¶15 The important task now is to identify what is and what is not already being preserved and then prioritize what is most at risk of disappearing. In many cases, this may be local or tribal information. Law libraries should develop a national inventory to identify what is at risk. This will require assembling and analyzing holdings information from major libraries, a substantial task for which the current cataloging utilities are not well suited. It will also involve a survey of the analog and digital preservation projects already underway, i.e., what is being preserved and by whom. This initiative should include what is being preserved locally by

2. See *infra* ¶ 18 for a detailed list.

microfilming/preservation photocopying. It should also take note of and even, where appropriate, leverage existing partnerships and projects, such as Cornell's partnerships with the Library of Congress and Elsevier for the preservation of Web sites and databases. Such projects can suggest potential partners for preservation of legal materials. Even as such partnerships evolve, commercially produced and maintained databases like WestLaw and LexisNexis cannot be depended upon for long-term persistence and as comprehensive solutions to preservation of even the most critical digital legal materials. Without decisive action from the library community much legal material is going to be lost.

¶16 In carrying out the work, there needs to be a balance between local and foreign jurisdictions. In the aggregate, we need to accept responsibility for preserving the totality of legal information. National priorities should be established for critical materials, and local institutional priorities should help set the agenda for smaller projects such as deacidification, or analog or digital reformatting. The effort will focus on legal material that the commercial sector is not yet preserving and is not likely to preserve.

¶17 Mindful of the forgoing discussion of priorities and principles, the following categories of materials are a high priority for preservation.

¶18 **Primary legal materials** must be preserved for all jurisdictions—material that is authoritative, precedential, and easily definable.

- statutes and codes
- session laws
- administrative decisions (e.g., attorney general opinions)
- administrative rules and regulations
- court reports
- court rules
- charters and constitutions

¶19 Not primary but also important (derivative) are:

- court records and briefs
- legislative history
- administrative materials, including reports and documents

¶20 Jurisdictions to be included:

- federal
- state
- county
- municipal
- tribal
- international—treaties and agreements
- foreign laws—codes, gazettes, court reports

¶21 **Secondary legal materials** (by type of creator or issuing entity):

- commercial sector—for digital publications, publisher should preserve or notify when taking down digital titles (superseded editions), so that another entity could be responsible for preservation.
- noncommercial/societies/institutes—ALI, American Society of Legal History, etc.
- law schools—journals
- bar associations
- government reports
- rare and unique special collections
- scholarly communications

Other Items for Later Discussion

¶22 A key issue that needs resolution is whether or not preservation, as we are defining it, carries with it an implication of free public access. If it does not imply that, but merely implies preservation of the information, then projects with private sector companies are more possible and likely. If it does carry with it the notion of free public access, then the projects would need to be freely available in a library or on the Web.

¶23 Another issue is whether or not each institution takes responsibility for its own publications. Such an initiative could include court and government libraries (or their parent institutions), as well as academic libraries.

¶24 Mirror sites provide a short-term opportunity to capture and preserve the information from certain organizations. Institutions providing mirror sites should take responsibility for maintaining the electronic archive of the content.

¶25 Libraries that have unique materials should make an effort to identify and preserve them, ask a commercial entity to reprint them, or both. But initiatives such as this would benefit from the national inventory mentioned above.

¶26 Law librarians also need to educate within their own institutions. For example, court librarians could raise the level of consciousness with court administrators and judges to be aware of the fragility of electronic information and to take responsibility for its preservation.

Infrastructure

¶27 For the national legal preservation agenda to move forward, it is important to establish an organization to take responsibility for writing proposals, developing programs, and coordinating projects. This will require a commitment of resources by the participating libraries.

¶28 A new organization offers the greatest likelihood of success. Organizations other than law libraries that might be interested in participating in such an effort (and contributing to it) include:

- American Association of Law Libraries (AALL)
- AALL Government Documents Special Interest Section
- Association of American Law Schools (AALS)
- American Library Association (ALA)
- ALA Government Documents Round Table (GODORT)
- American Society of Legal History (ASLH)
- Washington Research Library Consortium (WRLC)
- Library of Congress
- Cornell Legal Information Institute
- Law Library Microform Consortium (LLMC)
- William S. Hein & Co.
- Council on Library Resources (CLR)
- Committee on Inter-institutional Cooperation (CIC)

¶29 As such efforts are undertaken, it will be important to avoid duplication of effort. If at all possible, any planning group should investigate what other organizations are already doing. Possible organizations to investigate include:

- AALL
- International Association of Law Libraries (IALL)
- Canadian Association of Law Libraries (CALL)
- Society of American Archivists (SAA)
- New England Law Library Consortium (NELLCO)
- Commission on Libraries and Information Resources (CLIR)
- Digital Library Federation (DLF)
- American Bar Association (ABA)
- Online Computer Library Center (OCLC)

¶30 Law libraries should also form partnerships with other organizations engaged in similar work, such as JSTOR or the Center for Research Libraries (CRL). Organizational models for LIPA to emulate might include the Digital Library Federation.

¶31 Cooperative working groups in individual law libraries will undertake the actual preservation work, including:

- Coordination, selection, gathering, cataloging, access, storage, and preservation and/or conversion. This will include preservation of analog and digital sources, as well as the conversion of analog to digital formats.
- Creation of a central repository for primary print materials, e.g., CRL
- Inventory of existing efforts (perhaps as part of a white paper), e.g., California Digital Library's investigation on preserving Web-based state and federal government documents

¶32 Several action items were proposed by the infrastructure discussion group:

- Constitute a new group called the Legal Information Preservation Alliance (LIPA).

- Create a steering committee.
- Hire a coordinator or create a working group to prepare a white paper on the preservation of legal information to go to other groups and agencies, articulate the agenda of what needs to be done and why, and define constituents.
- Develop a proposal for a deposit print collection for U.S. primary law.

Standards and Best Practices for the Preservation of Legal Information

¶33 Print legal information is any legal information distributed in an analog print format such as books, journals, loose-leaves, newspapers, etc. Although most legal publications are now printed on either acid-free or permanent paper and a number of preservation reformatting projects have already been undertaken, a significant portion of historic legal materials still exist on acidic and brittle paper. The intellectual content contained in these volumes is at risk of being lost. Since no treatment is available to reverse paper deterioration, these titles must be reformatted to an acceptable preservation medium. Several standards and preservation guidelines are currently in place to guarantee the longevity of such surrogates.

¶34 **Recommended Future Action 1:** Accept the standards already in place for permanent paper, library binding, and preservation micrographics.

¶35 **Recommended Future Action 2:** Accept a hybrid approach for analog to digital conversion: create and maintain a digital copy for access *and* retain either the original paper if stable, or a microform or paper preservation copy. As part of this approach, the following should be done:

- Adopt best practices for conversion to digital.
- Differentiate digital formats captured images from born digital. Born-digital legal information is any legal information that is generated electronically and distributed only in electronic form. These digital objects may be distributed via the Internet, may reside on local servers, and/or be stored and distributed on portable media such as CDs or DVDs, etc. LIPA should work with organizations such as DLF and CLIR to shape standards or best practices for preserving digital legal information.
- Adopt best practices for maintaining the digital master, such as the lockbox approach used in microfilm practice. Separate access copies can be regenerated if corrupted. Storage of multiple digital masters allows for self-detection and self-correction.

¶36 **Recommended Future Action 3:** Identify current research on digital preservation.

- Using existing directories of other groups engaged in research on preserving digital information and other sources, identify those that are particularly interested in legal materials.

- Work with these groups and offer resources as a test case.
- Identify current best practices for, but not limited to, metadata, persistent identifier schemes, data formats, encoding schemes, digital repositories, and authentication, and practices that will ensure the sustainability of digital content.

¶37 **Recommended Future Action 4:** Influence and adopt standards and best practices identified in Action 3 that meet the special needs of legal materials, addressing the different categories of law and their use.

- Encourage creators of digital legal information to follow best practices identified in Action 3.
- Define and develop strategies for verifying authenticity, version control, and integrity of information with the understanding that there is a margin of tolerance for the various categories of law (primary, secondary, or other).
- Apply the strategy to the different categories of legal information accordingly.
- Continually review standards and best practices to keep abreast of rapid changes.

Partnerships and Collaboration

¶38 A national strategy for the preservation of legal information for current and future generations is most likely to succeed if partnerships are forged to secure funding and carry out specific projects to preserve collections and permit shared access.

¶39 In order to identify potential partners, it is useful to consider the types of groups that are already involved in preservation activities. These include:

- *Commercial operations.* These include such companies as LexisNexis and West, which already have large collections of digital legal materials, and the William S. Hein Company, whose HeinOnline product contains a large number of law reviews and is expanding into primary legal material such as the *Federal Register*. The obvious downside to reliance upon commercial operations is the necessity for profit and the lack of guarantees of permanence.
- *Government agencies and national libraries.* Federal government agencies have a legal mandate to maintain records. The National Archives and Records Administration is responsible for all three branches of the government. It is currently involved in a multiyear project to manage and preserve electronic records. Through the National Digital Information Infrastructure and Preservation Program, the Library of Congress received an appropriation of \$100 million to develop, design, and implement a preservation infrastructure that would help ensure the persistence of the digital heritage of America. The Government Printing Office (GPO), through the National Depository Library Program, is responsible for the availability of government legal documents. GPO is seeking to rationalize preservation of the retrospective printed documents and the prospective born-digital legal documents.

- *State libraries and other state agencies.* For example, the Maryland State Archives publication series, *Archives of Maryland Online*, currently provides access to more than 388,000 historical documents that form the constitutional, legal, legislative, judicial, and administrative basis of Maryland's government. Wisconsin has been working on ways to ensure the preservation of electronic documents. Chapter Adm 12 in the *Wisconsin Administrative Code* establishes "defined requirements, standards and guidelines for state and local government accessibility of electronic public records from creation through active use, long-term management, preservation and disposition." The Connecticut State Library has been collaborating with OCLC on the Web Document Digital Archive project to capture, preserve, provide access to, and manage the usage rights of electronic state documents. The *Oklahoma Public Legal Research System* is designed to provide the citizens of Oklahoma access to statutes, cases, and other law-related information. Documents are available through a Web site sponsored by the Oklahoma Attorney General's Office.
- *Academic research libraries.* Academic research libraries have always considered preserving and providing access to material as central to their mission. They also have the potential to provide stable environments to carry out the activities needed to ensure the persistence of legal information. In addition, they may be able to obtain funding from government agencies and from private foundations to support preservation activities. Cornell has been particularly active in this area.

¶40 Some examples of the kinds of collaboration that exist and that might serve as models include:

- Harvard's nineteenth- and twentieth-century legal treatises on microfiche (commercial—academic library)
- LEDA, the Legal Electronic Document Archive, a repository on the Web for law-related articles, working papers, theses, moot court briefs, and other legal academic documents. It is a loosely knit consortium centered around the Cornell Legal Information Institute and the Harvard Law School Library.
- OCLC Digital Archive, a service for libraries that provides long-term preservation of digital content
- PADI, the National Library of Australia's Preserving Access to Digital Information project
- The Curiae Project—Supreme Court records and briefs—a collaboration of Yale, the Library of Congress, the Supreme Court of the United States, and the Supreme Court Historical Society
- LLMC, a nonprofit library cooperative committed to a hybrid approach to preservation

¶41 Some organizational structures, such as the Federal Library and Information Center Committee (FLICC), the Chesapeake Information and

Research Library Alliance (CIRLA), and the National Center for State Courts, already exist and might be utilized for preservation projects. Relationships between federal agencies might be supplemented by academic law libraries agreeing to retain and preserve specific documents in designated areas. Libraries can also work with local governments, as Georgetown University Law Library collaborates with the District of Columbia to publish electronically and preserve the decisions of the Mayor's Agent for Historic Preservation.

¶42 **Recommended Future Action:** LIPA should encourage entities such as the ones in the categories above to collaborate, pooling knowledge and resources to identify and utilize solutions appropriate to preservation concerns.

¶43 Collaborating organizations can share the risks and ensure that models are followed that adhere to standards, address issues of access, and follow copyright rules. They can lobby for advantageous legislation and promote the ongoing efforts needed to sustain operations. Perhaps most importantly, they can accept stewardship responsibility for designated areas of legal information.

¶44 Some other issues related to collaboration:

- Commercial publishers' databases: If publishers wish to participate in LIPA, the information in their databases that is considered preserved would have to be made available to LIPA participants when the databases are no longer supported by the publishers. LIPA should work to set up publisher agreements and the technological mechanism to ensure that this goal is carried out.
- Is free public access a requirement of LIPA-supported projects?

Sustainability

¶45 For a national agenda to be successful, several mechanisms need to be created to ensure the long-term sustainability of the effort. These mechanisms include (1) establishing a steering committee to move the national agenda forward, (2) hiring a coordinator who is dedicated to this project, and (3) developing a consortium of libraries and institutions to establish priorities and fulfill the mission of the national agenda.

¶46 The steering committee should be charged with getting the consortium up and running, including:

- seeking partnerships;
- recruiting a coordinator;
- working with the consortium and the coordinator to develop further plans for the implementation of the national agenda;
- with the consortium and the coordinator, identifying priorities for specific initiatives; and
- exploring models for permanent organizational structure and considering the tax implications of the organization.

¶47 The coordinator should have specialized knowledge and skills (e.g., as an educator or librarian) and be able to:

- create and maintain an inventory of law and law-related preservation projects, national and international, that can be used to help prevent duplication of efforts in separate institutions and bring together all of the projects underway;
- educate the legal community on the need to preserve legal materials;
- build consensus among the institutions involved in a national agenda;
- act as an overall coordinator for all projects; and
- generate funds through grants, solicit money from participating organizations, and develop for-profit projects.

¶48 As far as the consortium:

- Membership should be on a “pay for play” basis.
- Membership fees should be set high enough to cover the operating budget of the consortium.
- Additional funds should be solicited from members if needed to fund pilot projects.
- It should work with the steering committee to identify priorities for specific initiatives.
- It should identify fee-based projects for continued sustainability.

¶49 Other questions and issues relating to sustainability include:

- If smaller organizations are included in LIPA, in what ways can they contribute since it is “pay for play”?
- Consider JSTOR as a model for the steering committee and the projects to emulate.
- Be risk accepting. Recognize that a project may not be a success and learn from the outcome. The Steering Committee should look at different projects to see what worked and what did not (GLIN, DIANA, Studies in Scarlet, ALI project at Penn, Chicago-Kent, etc.).
- Identify future leadership with preservation expertise.

Appendix Conference Participants

Janice Anderson
Associate Director for Collection Services
Georgetown University Law Library

Margaret Axtmann*
Associate Director for Information Resources
University of St. Thomas Law Library

Mary Alice Baish
Associate Washington Affairs
Representative
American Association of Law Libraries

Laura Bédard
Special Collections Librarian
Georgetown University Law Library

Carol Billings*
Director
Law Library of Louisiana

Robert L. Buckwalter
Associate Librarian for Collection Services
Harvard Law School Library

Mary Case
Director, Office of Scholarly
Communication
Association of Research Libraries

Thomas Clareson*
Manager, OCLC Digital & Preservation
Cooperative
OCLC Online Computer Library Center,
Inc.

Bonnie Collier
Associate Director for Administration
Yale Law School, Lillian Goldman
Library

Richard A. Danner
Senior Associate Dean for Information
Services
Duke University School of Law

Shelley Dowling
Librarian of the Court
Supreme Court of the United States

Jerry Dupont
Executive Director
Law Library Microform Consortium

Scott J. Fiddler
Vice President, Production
William S. Hein & Co., Inc.

Susan Fox
Executive Director
American Association of Law Libraries

Paul George
Director
University of Pennsylvania, Biddle Law
Library

Claire Germain*
Edward Cornell Law Librarian &
Professor of Law
Cornell Law School Library

Penny Hazelton
Associate Dean for Library & Computing
Systems
University of Washington, Gallagher Law
Library

Paul Healey
Editorial Director
AALL Spectrum

Marci Hoffman
International & Foreign Law Librarian
Georgetown University Law Library

Janice Hyde
Program Officer
Law Library of Congress

Janis L. Johnston
Director and Associate Professor of Law
University of Illinois at Urbana-
Champaign, Jenner Memorial Law
Library

Clifford Lynch
Executive Director
Coalition for Networked Information

Deanna Marcum
President
Council on Library and Information
Resources

Harry S. Martin
Librarian and Professor of Law
Harvard Law School Library

Anne C. Matthewman
Executive Director
Metropolitan Toronto Lawyers Association

Kent McKeever
Director of the Law Library
Columbia Law School, Diamond Law
Library

Dr. Rubens Medina
Law Librarian of Congress
Law Library of Congress

Will Meredith
Preservation Librarian
Harvard Law School Library

Carol Nicholson
President
American Association of Law Libraries

Robert Oakley*
Director and Professor of the Law Library
Georgetown University Law Center

Edward C. Papenfuse
Maryland State Archivist
Maryland State Archives

M. Kathleen Price
Director of the Law Library and Professor
of Law
New York University School of Law

Ann Rae
Chief Librarian
University of Toronto, Bora Laskin Law
Library

Bernard F. Reilly*
President
Center for Research Libraries

Hilary Seo
Preservation Librarian
Georgetown University Law Library

Christopher Simoni
Associate Dean of Library & Information
Services and Professor of Law
Northwestern University Law Library

Bobbie Snow
Head of Circulation
University of Michigan Law Library

George Soete
Library Consultant

Kenneth Thibodeau
Director of Electronic Records
Archives
National Archives and Records
Administration

Patricia Turpening
Head, Preservation & Archives
University of Cincinnati Law Library

Kathleen VandenHeuvel
Acting Director
University of California, Berkeley Law
Library

Gail Warren
State Law Librarian
Virginia State Law Library

Judith Wright*
Associate Dean for Library & Information
Services
University of Chicago Law Library

* Steering Committee members.