

Permanent Public Access to Legal Information

by The Special Committee on Permanent Public Access to Legal Information

"... let us save what remains: not by vaults and locks which fence them from the public eye and use in consigning them to the waste of time, but by such a multiplication of copies, as shall place them beyond the reach of accident."

—Thomas Jefferson

The issue of access to born-digital legal information is one that many law librarians have been concerned with for nearly a decade. Of course, librarians have been concerned with print preservation much longer than that. A democracy that depends on open access to its government's information is in jeopardy if that information disappears, even if the loss was inadvertent.

In 1998, AALL President Judy Meadows appointed a task force, chaired by Claire Germain and Law Librarian of Congress Rubens Medina, and charged it with both identifying stakeholders of digital legal information and planning a National Summit to be held in 1999 (see Germain's article, "Digital Legal Information: Here Today, Gone Tomorrow," *AALL Spectrum*, May 1998). For various reasons the summit was not held, but AALL's interest in this rapidly growing concern has increased incrementally since then. Both AALL and other entities have addressed the concern in various ways.

The following article will inform our readers on the nature of the problem; the measures AALL has taken to study the issue; and the activities of the Legal Information Preservation Alliance (LIPA), the state and federal governments, and the publishers to preserve print and digital products. This *Briefing* was prepared by the Special Committee on Permanent Public Access to Legal Information: Carol Billings, Janice Henderson, Ken Hirsh, April Schwartz, Chris Simoni, Patricia Turpening, and Gail Warren; the chair is Judy Meadows.

Richard Matthews, chair of AALL's Access to Electronic Legal Information Committee, also contributed to the article.

Technological Obsolescence and Media Migration

Anyone with a collection of 5 1/4" and 3 1/2" floppy disks, ZIP disks, CDs, and DVDs recognizes the problem of changing media storage formats. And anyone who has data files using a proprietary file format knows the problems of accessing those files if the programs used to create them cease to be available or supported. The problem of obsolescence and media migration are among the major impediments to the long-term storage and access to digital information. The National Aeronautics and Space Administration (NASA) currently is in danger of losing a wealth of information gathered in the early days of the space program, not because the data has been lost, but because the agency no longer has the hardware and software to access the data. The data has been preserved, but it's not clear that it is accessible.

The September 15, 2005, online edition of *The Economist* described the situation aptly:

Keeping working examples of all computer hardware is impractical, so the most popular preservation strategy is to copy files from one generation of hardware to the next. The problem is that today's word processors and Web browsers, for example, do not always display files in the same way that older software did. An accumulation of subtle errors can eventually make the original item unreadable. An alternative approach, called emulation, uses software to simulate the old hardware on a modern computer, to allow old software to run. But today's emulators will need another emulator to run on the next generation of hardware, which will

Vulnerable Information

The preservation of and long-term access to official legal information has been a long-standing interest of mine, particularly born-digital legal information, which has no print equivalent and is therefore more vulnerable to alterations and disappearance. It has emerged as a key issue in the AALL Strategic Directions 2005-2010. Under good conditions, official court reports, session laws, and codes printed on acid-free paper will last for centuries. The same information published in digital form may become obsolete within five years. Beyond the technical problems related to the fragility of the digital medium, a number of financial, legal, and policy issues are at stake in a democracy where no one can ignore the law and citizens feel entitled to free access to government information.

Following in the footsteps of the Canadian Association of Law Libraries, which sponsored a summit meeting in Toronto in 1997, AALL held a planning meeting at Cornell in Ithaca, New York, in 1998. AALL co-sponsored the founding meeting of the Legal Information and Preservation Alliance in March 2003 at Georgetown and is now a contributing member.

Many thanks to the Special Committee on Permanent Access to Legal Information for producing a concise and insightful *Briefing* at the speed of light. AALL is currently discussing how it can best facilitate and support efforts to effectively preserve legal information in all formats. What is at stake is the transmission of official documents—the word of the law—to future generations. Law librarians have a role to play to foster equitable and permanent access to legal information.



Claire M. Germain
AALL President, 2005-2006

need another emulator for the next generation, and so on. This can also introduce errors.

Scrubbing and modifying data: The predictable and continued availability of Web-based resources can be unpredictable at best with documents and other materials disappearing as quickly as they appear. On January 20, 2001, the day of George W. Bush's inauguration, the content of the White House Web site was scrubbed and almost all content related to the Clinton Administration, including speeches, audio files, and documents, removed. Similarly, the Department of Education Web site stated that all information on its site dating from before 2001 would be deleted, "unless it is needed for legal reasons or it supports the 'No Child Left Behind Act of 2001' ... or other administration initiatives," according to Marylaine Block's article, "Beware the E-vanishing Act," *Library Journal*, December 15, 2003. Numerous other examples of information being removed from government Web sites through 2002 are available at <http://tiger.uic.edu/~aquinn/access/chr.html>.

Physical loss of data: The best data preservation plans depend upon organization, personnel, and good execution. The failure at any of those points can result in data loss. Earlier this year Time-Warner announced that a container of computer backup tapes being sent to a data storage facility operated by another company for safekeeping were lost in transit. Time-Warner's loss is not an isolated event; Bank of America and Ameritrade separately announced that they had lost data backup tapes that were shipped to an offsite data storage facility (Bank of America) or shipped back from such a facility (Ameritrade). In each instance it appears that the tapes were not stolen but lost in transit—a system breakdown that should give pause even to those relying on experienced third parties to provide secure data storage.

Authentication: One of the hallmarks of legal information is accuracy. Digital information is susceptible to modification in a way that print information is not. Although there do not seem to be any examples of hackers intentionally modifying the text of primary legal materials, it is almost certainly the case. As their exploits in hacking the Central Intelligence Agency (CIA) and Department of Justice Web sites demonstrate, they could if they chose to do so. It is unclear how serious of a problem this would be.

AALL's Permanent Public Access Report

In February 2002, the AALL Government Relations Committee and Washington Affairs Office received an AALL Aspen Research Grant to, as the report's title indicates, determine just how permanently accessible electronic government information was, at that point in time, in all the states. Specifically, the authors wanted to know the status of state government laws relating to preservation of electronic information; whether states were providing permanent public access to Web-based government information, even if there were no statutes in place; and which state entities were responsible for permanent public access.

A 24-page survey was distributed to delegated AALL members in all 50 states, the District of Columbia, and Puerto Rico. The survey was completed in December 2002. The results revealed that most states did not have effective preservation statutes or even an awareness of the seriousness of the problem of disappearing electronic information at a state agency level. Statutes were in place for preserving print information, but not for preserving electronic state government information published as Web sites or Web publications or records.

The conclusion of the writers of the report was that state governments must be convinced to enact legislation to ensure that comprehensive, coordinated systems for preservation of state electronic government information be explicitly mandated. The authors also identified existing model state programs to be used by those drafting legislation and regulations. Finally, the grant team distributed the results to state governors, legislators, policymakers, technology and information officers, archivists, state librarians, and national library associations, as well as AALL members.

AALL's Technical Services Special Interest Section

Perhaps surprising to some, since it is somewhat "hidden," an entity to address preservation concerns has been in existence within AALL for more than 20 years. That entity, the Preservation Committee in the Technical Services Special Interest Section (TS-SIS), has coordinated 15 programs and three workshops on topics from preservation surveys and library binding to disaster planning, mass deacidification, and the administration of preservation programs. Several of the speakers have

been well-known librarians from outside the realm of law librarianship who have provided us with the wealth of their knowledge and experience.

As a matter of fact, AALL is known as a library association well versed in preservation and receptive to educational offerings. Small group tours have been arranged for the Pierpont Morgan Library, the Newberry Library, the Conservation and Binding facilities at the Library of Congress, the Conservation Center for Art and Historic Artifacts, and the Harvard University Law Library's Preservation Department. Five committee members have written 51 (and counting) preservation columns in the *Technical Services Law Librarian* on a wide range of topics since 1988. Liaisons have been established with the SISs and standing committees with interests in preservation.

For 15 years, the Preservation and Binding Roundtable has provided a forum for members; nationally-known speakers have kept us informed of developments as well. While the focus of the new organization, LIPA, has turned to preserving born-digital titles, the TS-SIS committee remains committed to the preservation of print materials and to the education of AALL members about preservation.

Current Study on State Practices: Genuine, Reliable Information, Please!

Essential to AALL's new Strategic Directions is working "to protect continuous and permanent access to legal information." But government efforts to preserve and provide permanent public access don't make sense if Web resources are untrustworthy. For example, according to the preliminary results for a handful of states pre-tested as step one in a 50-state joint study by the Access to Electronic Legal Information Committee, the Government Relations Committee, and the Washington Affairs Office, most government Web sites publishing primary legal resources—statutes, session laws, and court opinions—unfortunately have a disclaimer directing users to official print resources to avoid possible errors in the online text.

AALL President Claire Germain requested the Authentication Survey to determine which states, if any, offer official and authentic versions of primary legal resources on their Web sites. It's an important and timely study. Witness the proposed authentication initiative by the Government Printing Office (GPO), which plans at some future point to certify

documents on GPO Access (www.gpo.access.gov) as official and authentic. GPO has identified encryption technologies and electronic records archival methods to ensure the integrity of federal government resources that increasingly have no incarnation in print.

AALL's Authentication Survey investigates the use and promise of similar technologies and methods at the state level. More than one state—Iowa, for example, through its State Library—appreciates the need for official government materials on the Web (not including law), but has not tackled fundamental issues in authenticating online resources. The Authentication Survey, with results to be published before the AALL Annual Meeting next July, will help raise awareness among the states and further AALL's advocacy efforts, as did its predecessor, the influential *State-by-State Report on Permanent Public Access to Electronic Government Information*.

Like the earlier study, the Authentication Survey assesses environmental factors in each state and the likelihood that existing laws or institutions support change. Watch for the announcement of the published report next spring.

Legal Information Preservation Alliance

The Legal Information Preservation Alliance (LIPA) is a membership organization (36 member libraries as of September 2005) devoted to providing leadership, direction, and support for preservation initiatives in law libraries.

LIPA's roots go back to a number of initiatives on the part of AALL in the late 1980s and in the 1990s. It came into being as a direct result of a conference, Preserving Legal Information for the 21st Century: Toward a National Agenda, sponsored by the Georgetown University Law Library and AALL and held at Georgetown in March 2003. Participants at the conference decided to establish LIPA as an organization that would provide a framework for creating solutions to the problems of preserving legal literature. Papers from this conference were published in the Fall 2004 issue of *Law Library Journal*.

LIPA has thus far commissioned two projects: a white paper and an inventory of existing and completed preservation projects. The white paper, "Preserving Legal Materials in Digital Formats," and a report on the inventory are both available on the LIPA Web site.

One LIPA committee has been working on the issue of developing a print repository for core legal materials that would be kept in a dark archive, a facility from which the materials would not circulate. Another committee is working on the development of a strategic plan for dealing with the issues covered in the white paper.

White Paper Commissioned for LIPA

All participants of the conference "Preserving Legal Information for the 21st Century: Toward a National Agenda" agreed that the preparation of a white paper would be a crucial step for determining the current state of digital legal information, identifying the issues and challenges associated with digital preservation, and serving as a tool for those advocating the preservation of legal information. A contract was awarded to Online Computer Library Center (OCLC) for the development of this white paper. By February 2005, "Preserving Legal Materials in Digital Formats" was completed and available for review at LIPA's Web site (www.aallnet.org/committee/lipa).

The purpose of the paper is quite clear. Digital materials created by publishers, government entities, and libraries and archives are all at risk due to a variety of factors, including storage media obsolescence, software obsolescence, organizational and cultural challenges, user considerations, and access. A survey of digitization trends raises questions for how we allocate funding and how we balance the need for access against the content selected for digitization. An overview of government, commercial, and non-profit projects provides some observations about the future of digital preservation:

- Digital preservation depends on collaboration and partnerships.
- There is no single solution.
- The solutions are not always clear, but we can collect and manage now.
- Digitization does not ensure digital preservation.

LIPA-Dark Archive Network

The LIPA-Dark Archive Network (LIPA-DAN) is a joint activity that has the goal of saving half a dozen copies of selected legal titles in order to preserve the core materials of United States law. This is intended to be an open-ended network

Preservation Resources

AALL Special Committee on Permanent Public Access to Legal Information

Committee charge and roster
www.aallnet.org/committee/public_access.asp

Government Printing Office (GPO)

Information on its digital projects
www.gpo.gov/projects/fdsys.htm
www.gpo.gov/projects/pdfs/FDsys_RD_v1.0.pdf

Legal Information Preservation Alliance (LIPA)

A chronology of events since its inception, as well as links to the white paper, inventory, and other related resources
www.aallnet.org/committee/lipa

Lots of Copies Keep Stuff Safe (LOCKSS) Program

Software designed to capture, preserve, and give access to a wide variety of Web-based content
<http://lockss.stanford.edu/related/related.htm>
www.arxiv.org/abs/cs.DL/0508130

State-By-State Report on Permanent Public Access To Electronic Government Information

By Richard J. Matthews, Anne E. Burnett, Charlene C. Cain, Susan L. Dow, David L. McFadden, and Mary Alice Baish
Government Relations Committee and Washington Affairs Office, American Association of Law Libraries, 2003
www.ll.georgetown.edu/aallwash/State_report.pdf

Technical Services Internet Resources for Preservation

Nearly 30 links for associations, companies, and granting agencies involved in library preservation
www.aallnet.org/sis/tssis/techlinks/preservation.htm

Technical Services Law Librarians

Preservation columns
www.aallnet.org/sis/tssis/tsll

for generating the required numbers of copies. It may be that eventually as many three or four dozen institutions will be involved in the effort. The dark archives are likely to be located at universities that already have offsite storage. However, there may be other programs that are appropriate, such as participants in storage consortia, similar to the statewide program in Missouri.

LIPA has established a preliminary informal agreement with Law Library Microform Consortium (LLMC) to set up a control Web site. This is a symbiotic relationship because it is in LLMC's best interests to keep track of materials it may want to call on in the future. Developing mirror sites for both print and born-digital information is proving to be an excellent first step in providing back-up protections.

The Government Printing Office

The Government Printing Office (GPO) has undertaken a major electronic records management project, Future Digital System, or FDSys for short. Planning began in July 2004, and the plans call for rolling out a beta version in the fall of 2007.

The goal of the system is to include "all known Federal Government documents within the scope of GPO's Federal Depository Library Program (FDLP), whether printed or born digital," according to www.gpo.gov/projects/fdsys.htm. "This content will be entered into the system and then authenticated and catalogued according to GPO metadata and document creation standards. Content may include text and associated graphics, video and sound, and other forms of content that emerge. Content will be available for Web searching and Internet viewing, downloading and printing, and as document masters for conventional and on-demand printing, or other dissemination methods."

FDSys is intended to provide version management; be content-neutral; and provide means for depositing, authenticating, and delivering documents. The final requirements document was published in May of this year and is available at www.gpo.gov/projects/pdfs/FDSys_RD_v1.0.pdf. That document sets out detailed requirements in more than 130 pages in areas including security, naming, workflow, preservation, access, authentication, and metadata.

Phase four of the project will include developing design specifications, validation, and testing criteria, as well as drafting the master implementation plan. Several documents, including versions of slide presentations, are available at the project Web site (www.gpo.gov/projects/fdsys.htm).

National Archives and Records Administration

The National Archives and Records Administration (NARA) recognizes the challenge of managing electronic records in its strategic plan, "Ready Access to Essential Evidence: The Strategic Plan of the National Archives and Records Administration" (www.archives.gov/about/plans-reports). A primary goal under the mission statement is that "Electronic records are controlled, preserved, and made accessible for as long as needed." The plan sets out specific strategies under that goal and performance indicators to determine whether the strategy has been successfully implemented.

Presently NARA is working with the National Nuclear Security Agency to develop a pilot Electronic Records Archives (ERA) system and is working with other agencies to ensure that the system meets the needs of archiving those agencies' records by NARA.

Efforts in the Private Sector

Several publishers of legal materials have for years relied upon microfilm as the medium for permanently preserving and distributing its products to libraries. Leading this effort has been a non-profit cooperative of member libraries, the Law Library Microform Consortium (LLMC), headed by former law librarian Jerry Dupont. For more than 25 years LLMC has been reformatting in microfiche format more than 7,000 titles—primary sources and classic treatises in areas such as U.S. federal and state law, civil law, canon law, common law abroad, and Native American law.

A few years ago the consortium gradually began scanning its entire holdings, licensing the resulting Web-based product to members as LLMC-Digital. All data is stored on silver halide film in two separate archival facilities.

Foremost among the commercial publishers cooperating with libraries to produce materials intended to remain permanently accessible to their users is

the William S. Hein Co. A long-time producer of microfiche collections of legal periodicals, superseded state statutes, and federal legislative histories, Hein in 2000 launched Hein Online, its image-based collection of hundreds of periodicals, welcomed by law libraries for its research, preservation, and space-saving advantages. The service now also offers the *Federal Register*, *U.S. Reports*, and classic legal treatises.

Now under the LexisNexis banner, University Publications of America (UPA) and Congressional Information Service (CIS) have traditionally offered major research collections in microformat. Both have now entered the digital market as well. UPA has specialized in American legal history, publishing landmark cases in various subject areas and the papers of famous jurists. CIS is known for its monumental collection of congressional documents. Recently it has introduced its Web-based *U.S. Serial Set Digital Collection*, which contains 325,000 documents issued from 1789 to 1969.

The Making of Modern Law comprises Thomson Gale's entire collection of 19th and 20th century Anglo-American legal treatises in digital format. Subscribing libraries are able to give their users access to 21,000 full-text works that were previously beyond the reach of most. The publisher's *Eighteenth Century Collections Online* includes every significant English and foreign language title published in Great Britain in the 18th century, along with many American works.

Several other publishers have also made major contributions to the effort to provide permanent access to legal materials.

In Conclusion

In the eight years since AALL initially expressed concern about the real and potential loss of born-digital legal information, many entities have addressed the situation. Although there is no clear "one size fits all" solution for every public and private agency, there certainly are many models available in the legal information environment for us to study, cooperate with, and perhaps endorse.

Members of the Special Committee on Permanent Public Access to Legal Information include Chair Judith Meadows, Janice Snyder Anderson, Carol D. Billings, Kenneth J. Hirsh, April L. Schwartz, Christopher Simoni, Patricia K. Turpening, and Gail Warren.