

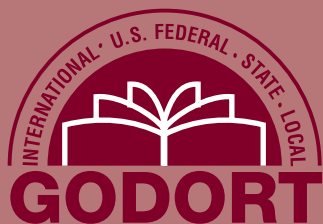
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DttP

Documents to the People

Winter 2010 | Volume 38, No. 4 | ISSN 0091-2085



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Editorial Staff

Please see the wiki for full contact information: wikis.ala.org/godort/index.php/DttP_Editorial_Staff_and_Column_Editors.

Co-Lead Editors:

Beth Clausen, Northwestern University; (847) 491-2891; DttP.editor@gmail.com

Valerie Glenn, University of Alabama; (205) 348-4971; DttP.editor@gmail.com

Editors:

Jennie Burroughs, University of Montana; (406) 243-4548; jennie.burroughs@umontana.edu

Becky Byrum, Muncie, IN; rhbyrum@gmail.com

Julie Linden, Yale University; (203) 432-3310; julie.linden@yale.edu

Catherine Morse, University of Michigan; (734) 936-2333; cmorse@umich.edu

Reviews Editor: Kevin McClure, Chicago-Kent School of Law 565 West Adams Street, Chicago, IL 60661; (312) 906-5620; kmcclure@kentlaw.edu

Advertising Editor: Kirsten Clark, University of Minnesota; (612) 626-7520; fax: (612) 626-9353; clark881@umn.edu

Advertising: Inquiries about advertising may be addressed to the Advertising Editor. Please see wikis.ala.org/godort/index.php/DttP_Advertising_Rates for rates and publication schedule. *DttP* accepts advertising to inform readers of products and services. *DttP* will adhere to all ethical and commonly accepted advertising practices and will make every effort to ensure that its practices in relation to advertising are consistent with those of other Association publications. *DttP* reserves the right to reject any advertisement deemed not relevant or consistent to the above or to the aims and policies of ALA.

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Columnists:

By the Numbers

Stephen Woods
Pennsylvania State Univ.
swoods@psu.edu

Documents Without Borders

Cyril Emery
United Nations Commission on
International Trade Law
cyril.emery@unctral.org

Federal Documents Focus

Rebecca Hyde
Univ. of California San Diego
rhyde@ucsd.edu
Lucia Orlando
Univ. of California Santa Cruz
luciao@ucsc.edu

Get to Know . . .

Julia Stewart
Southern Methodist Univ.
julia@smu.edu

Spread the Word

Melanie A. Blau
Wright Brothers Institute
melanie.blau@wbi-icc.com

State and Local Documents Spotlight

Barbara Miller
Oklahoma State Univ.
barbara.miller@okstate.edu

Tech Watch

Rebecca Blakeley
McNeese State Univ.
reblakeley@gmail.com

Sonnet Ireland
Univ. of New Orleans
sebrown3@uno.edu

Washington Report

Kay Ann Cassell
Rutgers Univ.
lkcassell@scils.rutgers.edu
Ellen Simmons
Hardin-Simmons Univ.
esimmons@hsutx.edu

DttP

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Editor's Corner

Beth's Trip Down Memory Lane

Beth Clausen and Valerie Glenn

Planning and working on the ever-popular student papers issue took me back to my experience of taking a government documents course in the early 1990s. I thought about what that course meant to me as I explored what I wanted to pursue in libraries, how the course dovetailed with my practicum in the University of Iowa Libraries' Government Publications Department, the long-term effect of the instructor's genuine enthusiasm for government information, and the discovery of the public services devotion of people who are committed to ensuring public access to government information.

While pursuing a master's in library and information science at the University of Iowa, I had different types of instructors (I believe this was and still is a fairly typical experience). I had a professor or two who had not been practicing librarians for decades. This was fine for some courses, but worked less well for others. I also took a course from a fellow who seemed to bounce between teaching and practicing, which was a good balance for that particular course. Some instructors, including many of those who had the greatest influence on me and from whom I learned the most, were adjunct professors who had day jobs as librarians.

This was the case for the government documents course taught by Marianne Ryan, who at the time was the librarian responsible for foreign, international, and state documents. What made the experience so rich was not that she held us to high standards or that she created devilish exercises to learn the resources, but that the content and context shared in the class were applicable to real-life service and information-seeking situations. The course lectures, discussions, and assignments were rooted in real life and what many of us could realistically expect to encounter at a service desk in any type of library—depository or not. Because I was being exposed to depository responsibilities and services as well as general reference work outside the classroom, I was able to call upon resources and strategies we were learning in the classroom and through assignments almost immediately. The experience has had long-term impact, and some of the strategies we discussed are still of great use to me although I am no longer a government documents librarian (I know, once a gov docs librarian, always a gov docs librarian).

The most important value I took from the course, and that I have carried through and have used as the primary underpinning of my professional behavior and career decisions, is the strong sense of commitment that government documents librarians have to patron services. Although government documents departments and positions fill non-public

services roles such as electronic resources access, cataloging and other forms of bibliographic control, and any other role you can name, the work of people in those roles always relates back to patron access and services. This made a great impression on me and I have carried that with me throughout my career and the varied roles in librarianship I have filled.

I am confident that the student authors published in this issue have had a valuable experience by taking a government documents course, and that the impact of the class will be felt in their careers for some time to come. By the way, because my government documents course instructor is now my boss all these years later (yes, in public services), I also learned indirectly through my class just how small library land is!

This issue

Yes, winter means it is time for the student papers issue—hurray! We are so pleased with the response by documents course instructors to our call for nominations. The editorial team reviewed nominations, voted, disagreed, haggled a little bit, and chose four superlative articles to appear in this issue.

What we stated last year bears paraphrasing—if the quality of the nominated papers is any indication, the future of our profession is bright and in good hands. We sincerely thank all of the instructors and students who provided us the privilege to read so many wonderful manuscripts.

But we had to choose four and we hope that you find them as interesting and informative as we do. Naomi Fogerty's article "Remembering the Forgotten Internment: Attempts at Redress for the Japanese Latin American Internees of World War II" reveals this hidden internment and what actions have been taken to fully disclose this part of U.S. history.

Molly Corman explores the varying sides and implications of intellectual property rights and protections related to plants in "Inventing Nature: The History and Impact of Plants as Intellectual Property." Jennifer Scott Wills provides information about the activities surrounding the Healthy Marriage Initiative and provides an overview of government's role in marriage in her article "By the Authority Vested in Me: The Healthy Marriage Initiative and the Federal Government's Historical Love Affair with Marriage." And Adrienne De Witt uses the debate over user fees, open access and transparency related to PACER to demonstrate "The Cost of Free Access to Information: The Controversy over PACER and Open Access to Court Documents."

In addition to the four articles written by students, we have included a bonus article written by Judith Russell, former Superintendent of Documents and current Dean of the University of Florida Libraries, on the ASERL (Association of Southeastern Research Libraries) project to explore a regional approach in managing FDLP collections.

This issue's columns cover a variety of topics. Julia Stewart introduces us to Chris Brown of the University of Denver in *Get to Know . . .*, while Rebecca Hyde and Lucia Orlando reveal rich federal government information resources about one of today's hottest topics—renewable energy—in the

Federal Documents Focus. In the *State and Local Documents Spotlight*, Barbara Miller highlights the e-government toolkit developed by the ALA Committee on Legislation, reminding all of us that its relevance goes well beyond the federal government. And Stephen Woods discusses the Canadian government's decision to discontinue as mandatory that country's long-form census questionnaire in *By the Numbers*.

We are always thinking ahead to future issues, so if you have suggestions for a topic, or want to submit an article, please feel free to contact us at dtp.editor@gmail.com.

Give to the Rozkuszka Scholarship

The W. David Rozkuszka Scholarship provides financial assistance to an individual who is currently working with government documents in a library and is trying to complete a master's degree in library science. This award, established in 1994, is named after W. David Rozkuszka, former documents librarian at Stanford University. The award winner receives \$3,000.

If you would like to assist in raising the amount of money in the endowment fund, please make your check out to ALA/GODORT. In the memo field please note: Rozkuszka Endowment.

Send your check to GODORT Treasurer: John Hernandez, Coordinator for Social Sciences, Northwestern University Library, 1970 Campus Drive, Evanston, IL 60208-2300.

More information about the scholarship and past recipients can be found on the GODORT Awards Committee wiki (wikis.ala.org/godort/index.php/awards).

From the Chair



Developments in Shaping the FDLP— GODORT's Role

Geoff Swindells

In my last column, I addressed some of the goals outlined in GODORT's new strategic plan, outlined some preliminary thoughts on my vision for the future, and promised a more detailed discussion on implementing the strategic plan in this issue of *DttP*. However, events have a way of interrupting plans, and instead I'd like to take this opportunity to talk about some recent developments related to the future shape of the Federal Depository Library Program (FDLP).

The developments that occasion these remarks are the announcement that the U.S. Government Printing Office (GPO) has awarded the FDLP consultant contract to Ithaka S+R and the discussion drafts of changes to Title 44 of the *U.S. Code* distributed by the regional depository librarians. Both Roger Schonfeld, manager of research at Ithaka S+R, and Barbie Selby, regional federal depository librarian at the University of Virginia, have reached out to me in my capacity as chair and asked for GODORT's active participation in these two initiatives.

While both of these efforts are important, the consultant contract is the most broad reaching and time-sensitive. GPO has contracted Ithaka to work with all relevant stakeholders, and to recommend a model (or models) for the future FDLP that are durable, sustainable, and ensure permanent public access to federal government information collections and services. These recommendations will be issued during the first quarter of 2011. The proposed revisions to Title 44, by contrast, are much more limited, and target regional operations under sections 1911 and 1912. The working group of regional librarians has produced three different discussion drafts for consideration.

In my brief conversations with Roger and Barbie, I've been careful not to represent any particular position related to the future of the FDLP, as that is not my role, but I have assured both of them that I will do whatever I can to foster dialogue on the program among our membership and have offered to assist them in whatever way that I can.

I think that this approach is consistent with the goal in our strategic plan that states, "GODORT members are the leading advocates for access, dissemination and awareness of government information and actively work with other ALA groups and organizations beyond the library community." Nevertheless, I must admit that I approach this

issue with some trepidation, because there have been times when GODORT has been so closely identified with the FDLP as to crowd out substantive discussion of other levels, types, and sources of government information. No one is more aware of this than I am. Despite my having worked in federal depository libraries for most of my career, and having served on the Depository Library Council to the Public Printer, I have often been frustrated with the widespread tendency within the profession to reduce "government information librarians" to "depository librarians," and to further contract the scope of our work to that of "federal depository librarians." I said as much in my last column.

This was never an adequate representation of our field, and given the rapid globalization of our political culture along with the advent of new forms of information dissemination, it is perhaps even less true today than in the past. I'll leave it to political science to chart the precise contours of our post-Westphalian world; however, I think that I can say with some confidence that sub-national, international and foreign government information play a more important role in domestic politics than ever before, and that to remain a relevant policy actor in this changing information environment, GODORT (and by extension, ALA) must embrace a more inclusive, less parochial, policy agenda. That said, as I also noted in my last column, this round table must continue to advocate for robust and responsive depository library programs, and the FDLP (or something very much like the FDLP) is an essential component of our democratic polity. The key here is to find a way to recognize GODORT's vital advocacy role while at the same time resisting the tendency to conflate GODORT with the FDLP (or with some particular version of the FDLP).

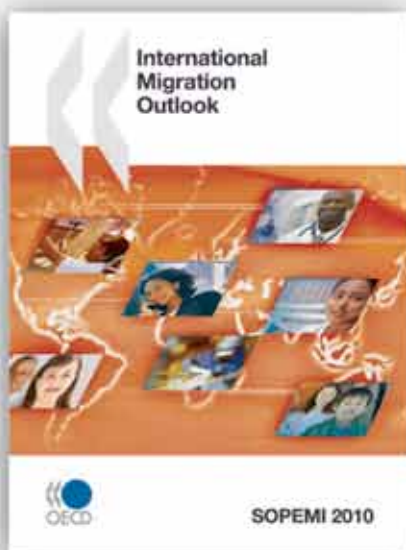
Given a target date of early 2011 for the Ithaka report, it is essential that GODORT members engage with these issues during the months leading up to the Midwinter Meeting, so by the time you read this column this conversation should be well underway. I have asked Stephanie Braunstein, our Federal Documents Task Force Coordinator, and the cochair of our Legislation Committee, Ellen Simmons and Kay Cassell, to work with me to create a forum on ALA Connect, and to help me determine the best way to foster an open and civil dialogue on the future of a program of vital interest to our membership.

I have also reached out to other leaders within ALA

continued on page 8



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International Migration Outlook 2010 SOPEMI

July 2010, 358pp, 978-92-64-08601-2

This annual publication analyses recent developments in migration movements and policies in OECD countries. It looks at the contribution of immigration to changes in the working-age population in the past decade, and the role of migration inflows at projected levels in driving growth of the working-age population in the next decade.

Perspectives on Global Development 2010: Shifting Wealth

August 2010, 124pp, 978-92-64-08465-0

"A landmark report about the biggest economic story of our era! It describes and analyses the new economic world we live in, where countries in Asia, Africa and Latin America provide the dynamism for future growth. It shows how this shift in the economic centre of gravity is cause for optimism, rather than consternation."

Alan Hirsch, Deputy Director General: Policy, South African Presidency

Shifting Wealth examines the changing dynamics of the global economy over the last 20 years, and in particular the impact of the economic rise of large developing countries, such as China and India, on the poor. It details new patterns in assets and flows within the global economy and highlights the strengthening of "south-south" links – the increasing interactions between developing countries through trade, aid and foreign direct investment.

OECD Territorial Reviews: Guangdong, China 2010

October 2010, 260pp, 978-92-64-09007-1

Guangdong is China's most populous (94.9 million inhabitants) and richest province (one eighth of the national GDP). A key development feature of Guangdong has been – "processing trade", which has allowed companies to benefit from paper-thin profit margins from importing, assembling, and exporting via Hong Kong. Increasing labour costs and strain on land availability have increasingly challenged this model of development, with new competitors in China and abroad.

The Territorial Review of Guangdong is integrated into a series of thematic reviews on metropolitan regions undertaken by the OECD Territorial Development Policy Committee. The overall aim of these case studies is to draw and disseminate horizontal policy recommendations for regional and national governments.



From the Chair continued from page 6

and to our sister organizations the Association of Research Libraries, the Special Libraries Association, and the American Association of Law Libraries, as well as to Suzanne Sears, the chair of Depository Library Council, and to Judy Russell, Dean of Libraries at the University of Florida and chair of the Association of Southeastern Research Libraries (ASERL) Deans' FDLP Task Force. A robust and

sustainable FDLP is in the interest of all stakeholders, and I hope to broaden the conversation to include as many interests and perspectives as possible in our discussions.

That's all for now. In my next column, I will return to a more detailed discussion of the strategic plan. In the meantime, I can always be reached at geoff.swindells@gmail.com.

GODORT Membership

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Basic personal membership in ALA begins at \$50 for first-year members, \$25 for student members, and \$35 for library support staff (for other categories see www.ala.org/Template.cfm?Section=Membership).

Personal and institutional members are invited to select membership in GODORT for additional fees of \$20 for regular members, \$10 for student members, and \$35 for corporate members.

For information about ALA membership contact ALA Membership Services, 50 E. Huron St., Chicago, IL 60611; 1-800-545-2433, ext. 5; email: membership@ala.org.

Get to Know . . .

Chris Brown

Julia Stewart



"My dean loves statistics."

And Chris Brown, depository coordinator and reference librarian at the University of Denver, loves discovering and creating new ways of tracking statistics for his dean, especially in the online access, GPO PURL world of government documents.

"I was frustrated about not being able to provide my dean with online-access statistics. With over 1,400 Internet domains hosting government documents, we can't expect government sites to provide us with statistics. My idea was that if every time a user clicked a URL in the OPAC, we could pass the information to a library server and capture the date and time as well as the URL, and then we would have something meaningful to show for it," said Brown.

To achieve this, Brown, who has been at the University of Denver since 1996, met with his library IT group almost eight years ago to discuss the idea of writing scripting code that could track patron "clickthroughs" in the OPAC to the government document PURLs. From that code and the patrons' clicks, Brown has been able to harvest electronic government documents data for his dean. "For nearly eight years now, I have been able to provide comparative URL clickthrough statistics together with physical circulation statistics for our documents."

Electronic access to government documents has opened the door to many users, and Brown's tracking of these usage statistics provides a window into what his patrons want. According to Brown's statistics from the last eight years, these are the findings on the University of Denver campus:

1. Congressional hearings are the most used documents.
2. Department of Energy and *U.S. Congressional Serial Set* URLs are second in popularity (thanks to Office of Scientific and Technical Information (OSTI) and Readex MARC records).

3. The more URLs are added for older documents, the more users will find and use them.
4. Obscure documents with seemingly "odd" content are found and used.
5. Users generally prefer the online format to the print collection.

In fiscal year 2004, users' preference for online documents was 65 percent over print documents. In fiscal year 2010, that had grown to 1,696 percent over print. In fiscal year 2010, 23 percent of electronic usage was through vendor-supplied records (such as the Readex *Serial Set*, LexisNexis digital hearings, OSTI records, etc.) and 77 percent was through GPO content.

Brown is also a member of the faculty of the University of Denver Library and Information Science Program and teaches the Government Information class.

"I have taught the class six times since 2003. I emphasize the principles of government information access and open government, the importance of the FDLR, legislative history research, and census/statistical research. I want my students to be unflinching and enthusiastic when they are asked questions about legislation, statistics, and government information in general. This makes them more desirable and hireable as librarians."

Teaching and working with the millennial generation has provided Brown with some insights into how this generation consumes information.

"I would never claim to be an authority on the millennials. I think they are very practically minded and that they don't tolerate our silo or portalized approach to government information. This is why FDsys is a great thing for them. It's a portal, but it is also exposed to search engines, making content discoverable to those not going through portals."

Brown enjoys assisting patrons and plans to stay in his current librarian position "staying in touch with the user."

"I want to find creative ways to provide greater access to government information, and I hope to keep developing technology solutions to make our work easier."

Federal Documents Focus

Renewable Energy: Keeping Up With a Hot Topic

Lucia Orlando and Rebecca Hyde

For roughly three months earlier this year, billions of gallons of oil streamed into the Gulf of Mexico from the broken Deepwater Horizon oil rig, threatening fish, wildlife, and the livelihoods of people who depend on them. This also served up the latest example of why alternative forms of energy are getting more attention from researchers, entrepreneurs, students, businesses, and consumers. The clamor to reduce U.S. reliance on foreign oil, decrease greenhouse gas emissions, and utilize energy sources that don't harm the environment is getting stronger. Agencies such as the Department of Energy (DOE) and the Environmental Protection Agency (EPA) are funding research and partnering with researchers and businesses to develop, market, and encourage broader adoption of renewable energy sources and technology. When starting an exploration of renewable energy, it's helpful to understand that terms such as green energy, clean energy, and sustainable energy all share a central tenet: they refer to energy produced by a source that can be continually replenished, as opposed to conventional, finite resources like coal, oil, and natural gas.

The DOE and EPA are well-known treasure troves of knowledge about green energy research and policy. It's less commonly known, however, that most of this information cannot be accessed through popular search engines. Unlocking this information requires using specialized search portals to open the door to free, high quality sources your users won't find with Google, Yahoo!, or Bing.

Perhaps the most well-known "secret" in library and information science circles is that much of the content on the Internet from both government and private sources is hidden from regular web search engines inside databases or passworded files. This "deep web" is home to many unique, disparate government databases that weren't originally structured in a way that allows easy access by standard search engines. The best way to tap into these sources is by way of information portals or gateway sites that search and pull together related content from diverse sources. For instance, the Office of Scientific and Technical Information (OSTI), the DOE office responsible for making research conducted or sponsored by the DOE widely available, elected to make their vast stores

of information resources available through a method called federated search (www.osti.gov/fedsearch). Federated search works by simultaneously transmitting a query to a collection of source databases, merging the results and then ranking the records by relevance before transmitting them back to the user.

OSTI has developed three major public federated search portals that anyone working with scientific and technical information should know. Science Accelerator (www.scienceaccelerator.gov) is composed of eight DOE databases and four federated search tools for a grand total of twelve DOE search tools. Five of the products that make up Science Accelerator are among the thirty-eight U.S. government databases covered by Science.gov. Science.gov, in turn, represents the American contribution of databases included in an international federated search engine called WorldWideScience.org, which surveys databases and portals from sixty countries. As with the citations in Science Accelerator and Science.gov, many of the records in WorldWideScience.org can't be found using standard science databases. The databases that compose these portals are searchable individually or all together from a simple Google-like interface. Member agencies of Science.gov include DOE, EPA, the Defense Technical Information Center, the National Science Foundation, the United States Geological Survey, National Aeronautics and Space Administration, the National Archives and Records Administration, the U.S. Forest Service, the National Library of Medicine, and the National Institutes of Health (www.science.gov/participatingagencies.html).

Using Science Accelerator or Science.gov broadens your search results by including records from multiple agencies. Special features included in both give additional advantages. First, the left sidebar highlights clusters of terms related to the original search query by topic and date with links that easily allow you to explore further. Second, the federated search engines go out to the web to find results from Wikipedia and EurekAlert! The Wikipedia entries provide context and background for the search (with the usual caveats applying). The results from EurekAlert!, a service from the American Association for the Advancement of Science, take you to relevant press releases and media resources from universities, research organizations, corporations, and government agencies.

DOE Green Energy (www.osti.gov/greenenergy) contains both current and historical research reports conducted by agency researchers, contractors, and sponsored projects in academia and industry. For instance, searching for "solar power" or "ocean power" turns up full-text reports with complete bibliographic citations and information on patents. Other topics covered range from green vehicle technology and wind power

to energy storage and conversion technology. The sources are not purely technical; users will also find links to reader-friendly factsheets about specific technologies and DOE programs, such as guides like “Solar Powering Your Community: A Guide for Local Governments” and policy studies like “Assessment of Offshore Wind Energy Resources for the United States.”

Users can search DOE Green Energy directly through its own interface or from Science Accelerator. Searching directly in DOE Green Energy lets you take advantage of helpful features available from the results list. For example, by mousing over the title of a record, you can view a pop-up window with an abstract, leading paragraph, or brief summary, without actually opening it. In addition to providing easily identifiable links to full text, the results page lets you toggle between the default results list and a list of any patents that met the search criteria.

Using a search portal or database is a quick and simple way to find research reports and other types of information on renewable energy. However, don't let your patrons overlook the value of visiting webpages from other agencies, such as the EPA's Clean Energy page (www.epa.gov/cleanenergy) and the National Renewable Energy Laboratory (NREL) (nrel.gov). Both supply educational resources for consumers or students, and NREL offers programs to help businesses and industry bring start-up clean technology to the marketplace. Likewise, anyone starting a green business can find practical advice and strategies from the Small Business Administration (www.business.gov/start/green-business). These sites include tips for increasing energy efficiency and making business practices more environmentally responsible. Meanwhile, the Energy Information Administration (eia.gov) has a plethora of data and statistics about biomass, solar, wind, and transportation that will surely satisfy your inner data lover.

When you encounter questions about U.S. policy on the environment and climate change, be sure to look at the White House page on energy and environment (www.whitehouse.gov/issues/energy-and-environment). While not exhaustive, this resource does provide a summary of the future plans and direction the president intends to pursue with Congress and federal agencies. It highlights the issues most important to the current administration and includes links to relevant laws, forums, and programs supported by the White House. Bear in mind the types of information produced and research done by various government agencies depend at least partially on the policies and practices of the current administration and of the legislature. Proposed and recently passed laws can also affect the direction of industry, as can research in the private sector that may be partially funded by the government.

For a more interactive and visually exciting whirlwind

tour of the current state of energy, global warming, and related environmental issues, a visit to the website of the House Select Committee on Energy Independence and Global Warming (globalwarming.house.gov) is a must. This site mixes current news, global warming projections, and an overview of the issues with the text of legislation and hearings and video of speeches by members of the committee in Congress and Second Life. Both of these sites are aimed at a non-scientific audience and can help bridge the gap between highly technical and very general policy information.

In short, a number of government agencies, and OSTI in particular, provide access to renewable energy information sources that offer relevant, targeted answers that are fast and free. The information ranges from highly technical reports to policy discussions. It is worth investing the time in getting to know these sites and their search portals in order to recommend them for patrons or non-government librarians or for listing in research guides. Doing so will help you keep your batteries charged as you handle requests about this popular topic.

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State and Local Documents Spotlight

The E-Government Toolkit—Not Just for Federal Information!

Barbara Miller

Just when you thought the state and local documents field was settling into a routine of collecting and processing ever-increasing numbers of digital documents, along came Hurricane Katrina and the economic recession to add to our list of “other duties as assigned.” The sudden disablement of local agencies, along with recession-generated unemployment, has turned our libraries into state and local “help stations.” Libraries often are the only local agency able to allow citizens to interact digitally with the various agencies of government. We have always provided computer services for those without computers as well as the expertise to guide citizens to correct information, paper or digital. However, at the same time libraries are facing an increase in business because we have free books and services

to help our recession-plagued public, we are also helping an increasing number of patrons find jobs or apply for unemployment, Medicare, food stamps, or crisis care through online government services. These services have arrived with their own set of problems.

To guide us through this digital warren of activities, the Subcommittee on Electronic Government Information of the ALA Committee on Legislation (COL) recently released the E-Government Toolkit (www.ala.org/ala/issuesadvocacy/egovtoolkit/index.cfm). Do not be misguided into thinking most of these activities relate to federal government information or that most of the activities deal exclusively with federal documents, as this is really a state and local issue. Librarians are performing services formerly provided by state or local agencies and now must not only find state or local documents but must also interact and sometimes contract with these agencies to get the job done.

The toolkit grew out of an ALA response to librarians in post-Katrina New Orleans who found themselves serving in lieu of state or local agencies to help citizens get government information and aid. These librarians worried about privacy issues, security issues, and liability in providing these new services. ALA quickly realized that although libraries have a long-standing commitment to promote public access to government information, these new services created a new list of problems. For example, there were no cooperative agreements set up between libraries and these various agencies of government. Librarians also worried about costs and about how to convince their administrations to fund these necessary activities. The E-Government Toolkit provides a guide to librarians planning, managing, funding, and promoting e-government services, while at the same time protecting citizens' privacy and librarians' liability.

Let's examine the toolkit in a bit more detail. It begins with background information on e-government and on legislative policy (or lack thereof) related to e-government information. There is also background information on citizen participation in interactive government sites that allow and encourage citizen interaction. An example is *Peer to Patent* (www.peertopatent.org), which allows citizens to provide input on the patent examination process. The obvious jump is to the transformation of libraries from mere access providers to hubs fostering citizen interaction with government. These sections are a good place to start if you are preparing a brief for your administrators or applying for grants to provide supplemental funding sources for these services. There is a section on grants with links to funding sources on the federal, state, and local levels, as well as private foundations.

A critically important area covered in the toolkit is service

policies. Topics range from computer access policies to policies dealing with legal services, tax services, medical or health services, and what considerations are needed regarding liability if these services are provided. A section on e-government services for state governments includes ideas for setting up referrals to other agencies and fostering closer relationships with these agencies by offering them services such as electronic reference. There are also sections on e-government services by type of library (academic, public, or school). Using this guide will allow librarians to meet the next emergency with policies in place and to be better prepared to provide these critical services to the communities we serve. At the same time, librarians will learn how to interact with various agencies online and become part of the mass of citizen participation in e-government.

Training staff is also important! The toolkit includes training resources that ensure staff are skilled enough to handle the new services provided. Computer literacy resources are included along with a link to computer skill guides for Spanish speakers. (How many of us are dealing with patrons who do not speak English?) There are also links to several public library computer literacy programs.¹

A critical way to stretch resources is to form partnerships, and ideas are included for partnering with state libraries, state library associations, other libraries, and other state agencies. Ideas for partnership activities include advocacy, training, and translations. The toolkit stresses forming partnerships in *advance* of crises. Finally, there is a section on advocacy for e-government services through libraries—something we all should read. It contains success stories, and if you have something to share, send it to the committee for inclusion—an ALA Connect site has been established at connect.ala.org/node/96296 to gather comments.

One of the benefits of attending the GODORT State and Local Documents Task Force meetings during ALA conferences is that librarians can learn what other states are doing to solve a certain problem and perhaps apply new ideas to their own states. At the same time, librarians become aware of the different issues facing the states and may discover a problem they had not been aware of in their state. Use this toolkit and you will be able to meet the next emergency with policies in place and be better prepared to provide these critical services to the communities we represent. At this writing GODORT is planning a preconference for the Annual Conference in New Orleans on librarians in crisis, which will address the issue of e-government services in libraries. Depository librarians should look at this toolkit as an opportunity to expand their services and make sure their administrators recognize their worth in the changing electronic environment. If you have a service or program in place, share it with the

Toolkit Committee! In the meantime, look at this toolbox for ideas and solutions to many e-government issues and be prepared to discuss them with fellow state and local documents librarians at the Midwinter Meeting in San Diego.

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1. This section also links to the GODORT State and Local Documents Task Force webpage (wikis.ala.org/godort/index.php/State_&_Local_Documents) and to the Education Committee's *Government Information Clearinghouse & Handout Exchange* (wikis.ala.org/godort/index.php/Exchange). All our work is not in vain!

By the Numbers

Canadian Census: Voluntary Manslaughter and Politics

Stephen Woods

The Canadian government announced on June 26, 2010, that mandatory information previously collected in the long-form census questionnaire would be replaced by a voluntary National Household Survey.¹ Following this announcement, questions were raised in the media about the advice that the government had received from Statistics Canada.² Munir Sheikh, chief statistician of Statistics Canada, announced his resignation on July 21, in response to doubts raised about the advice he had given the government.³

It is unclear what this advice was because it is protected under law and has not yet been released by the Canadian government. However, based on his testimony before the Standing Committee on Industry, Science, and Technology on July 27, it is clear that Dr. Sheikh was not personally in favor of the change.⁴ Another lengthy hearing was convened by the committee on August 27, providing a forum for an issue that on the surface seemed rudimentary.⁵ Witnesses were a veritable who's who of Canadian statisticians, researchers, organization leaders, and citizens expressing concerns from both sides of the issue.

The minority Liberal Caucus tabled a bill that amends two parts of the *Statistics Act*, to be considered when the Parliament of Canada reconvened on September 20.⁶ The bill stipulates that the long form of the census will remain mandatory for Canadian citizens while eliminating jail time as a consequence of not complying. The three

principle concerns raised by the Canadian government were which questions should be mandatory; individual privacy; and penalties for not responding. Each of these issues is worth exploring and their implications considered.

What is the big deal about responses being voluntary or mandatory?

Why do you need a mandatory census if your government already has voluntary surveys? The National Statistics Council, an external advisory group appointed by the Canadian government, identified two major problems that were echoed throughout the hearings: self-selection bias and the potential loss of benchmarking information.⁷

Self-selection bias is a term demographic statisticians use to describe a phenomenon where certain classes of individuals have very low and unpredictable response rates. Two former chief statisticians of Canada, Munir Sheikh and Ivan Fellegi, testified before the Standing Committee on Industry, Science, and Technology on this issue. Sheikh clarified this point in the July 27, 2010, hearing by pointing out that "there are certain geographical areas . . . classes of individuals who have very low response rates . . . this would include aboriginals, people with low incomes, people with less education, visible minorities, and immigrants." If the government wants to develop policies to deal with these issues, it needs to be able to acquire the information.

A mandatory government census often serves as a benchmark for voluntary surveys to help identify the demographics of populations who are hard to reach or would be less likely to fill out a survey. The census can also be used to help weight sample surveys to provide a more reliable interpretation of the results and eliminate selection bias. For example, the National Population Health Survey is a voluntary survey developed with Health Canada and distributed to nine hundred respondents. Where the survey was conducted was determined by using census enumeration districts and demographics. Ultimately, the results from this voluntary sample survey were weighted using census-based estimates in order for Health Canada to make better policy decisions.

The proposed change also has significant repercussions for the continuity of the Canadian census. Changing the methodology for the 2011 census means that it will be difficult for researchers to make comparisons with the earlier censuses or to measure change over time. One related point that was raised in the hearings was that the long form went through some methodological revisions in 1971. All Canadians were asked to answer all of the questions on the survey before 1971. In 1971, to reduce costs and maintain

quality, Statistics Canada started distributing the long form to a sample of one in five and added a short form.⁸

The National Statistics Council did offer recommendations to the committee for examining which questions should be included in a mandatory census. Does the question meet one of the following requirements: required by law, needed for small-area data use with no alternative data source, needed for benchmarks, issue of national importance, or needed as a basis for post-censal survey sampling?

Privacy and security

How governments handle sensitive personal information is an ongoing topic that encompasses a myriad of government activities such as taxes, public health care, drivers' licenses, land registration, and employment benefits. Statistics Canada functions much like the U.S. Census Bureau in that it collects information from citizens and is required by law not to share information that would enable a person, organization, or other government agency to identify individuals. This concept of anonymity is essential to collecting information without fear of reprisal. For example, if you are an illegal immigrant your information will not be shared with the corresponding government entity. Ernie Boyko, data librarian at Carleton University, and W. T. Stanbury, professor emeritus at the University of British Columbia, provide an excellent critical analysis of privacy and coercion issues addressed in the debate.⁹

Statistics Canada first allowed users to submit their responses through the mail to a central processing center in Ottawa or over the Internet in 2006. Prior to that, a local enumerator delivered the forms and collected and edited them before sending them on to Statistics Canada. The changes were made to alleviate the risk of having a person review the forms of individuals they knew. There were alternative procedures in place if a respondent had such concerns.

There was some discussion in the hearing about Statistics Canada maintaining an address database. As part of its methodology, Statistics Canada maintains a name-and-address database for each census that helps determine the completeness and accuracy of the data. This information is also used for processing activities and is not intended to be disseminated. Ivan Fellegi, head of Statistics Canada from 1985 to 2008, testified before the Standing Committee on Industry, Science, and Technology on July 27, 2010, that there was not a single case of this information being released. He also stated that a security audit was ordered in 2006 in which a firm that specialized in hacking computers failed to penetrate their security.

The Canadian government also challenged the idea that many questions were invasive and could be

ascertained from other agencies, such as the Canada Revenue Agency or Health Canada. There are actually many Scandinavian countries that have set up compulsory registries for citizens each time they move, change jobs, or enroll in educational institutions. This is a very costly alternative and certainly more invasive than a census.

Coercion and punishment

Coercion is a particularly difficult issue as it relates to following up with respondents who do not file their census form, or have filled it out incorrectly. Boyko and Stanbury estimate that 10 percent of the population requires a follow up beyond a single reminder. There are a variety of ways that follow up is done, including letters, phone calls, and face-to-face contact. Those who continue to refuse are documented and only the well-documented cases are sent to the courts. Boyko and Stanbury estimate that in 2006, there were under fifty prosecutions with a high conviction rate—all receiving a fine rather than jail.¹⁰

Canadian law, in Section 31 of the *Statistics Act*, states that individuals who are convicted of refusing to answer the questions in all censuses will be charged a “fine not exceeding five hundred dollars or to imprisonment for a term not exceeding three months or to both.” This language eventually became the central focus of the Canadian government’s challenge and actually was in dire need of amending. At this juncture there appears to be a consensus that the penalty of jail time should be removed from the law.

It was pointed out in the hearings that since its inception in 1871, not a single Canadian citizen had been put in jail for failing to answer the census. It is important to understand that the Canadian government was willing to keep this language for those answering the short form and for individuals filling out the agricultural census. This demonstrates that they recognize that punitive consequences were necessary for some questions, while others can be voluntary.

Conclusion

The decision to substitute the census long form with a voluntary National Household Survey is going to cost Canadians an additional \$30 million. It is their intent to send this survey out to one-third of the population to make up for the statistical error that comes from self-selection. This will be a grave mistake. If it ultimately happens, as information specialists, we will need to be cognizant of the fact that this decision will greatly reduce the quality of all Canadian data and not just the Canadian census. If you are interested in continuing to follow this story, datalibre.ca is a government information watchdog that maintains a blog on this issue.¹¹

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Remembering the Forgotten Internment

Attempts at Redress for the Japanese Latin American Internees of World War II

Naomi Fogerty

It has been called the “hidden internment,” with its internees described as “exiles,” “hostages,” and “pawns” of the U.S. government. While many Americans know the history of the Japanese American internment during World War II, few know that the U.S. government also interned thousands of non-American citizens living in Latin America at the time. Following Japan’s attack on Pearl Harbor, the U.S. government devised the Enemy Alien Control Program to protect American political and economic interests in Latin America.¹ In an effort to ensure “hemispheric security,” an estimated 2,300 civilians of Japanese descent were forcibly deported and interned in the United States between 1941 and 1948.² The U.S. government initially conceived of the program out of “military necessity,” but it quickly grew into a means of procuring prisoner of war exchanges.³ By war’s end, approximately eight hundred Japanese Latin Americans had been exchanged for American citizens held by Japan.⁴ The Enemy Alien Control Program constituted an extraordinary wartime effort requiring the cooperation of numerous government agencies across international borders. It required the consent of foreign leadership. Most important, it touched the lives of thousands of individuals, many of whom never saw their families or homes again. For this reason alone, it deserves our remembrance.

The first official details of the Enemy Alien Control Program did not surface until the 1980s. In 1980, President Jimmy Carter created the Commission on Wartime Relocation and Internment of Civilians to investigate Executive Order 9066 and the internment of Japanese Americans during World War II. While uncovering the details of the Japanese American internment, the commission also learned of the Enemy Alien Control Program. The commission published its findings in 1987, offering only a cursory overview of the program in the appendix.

Surviving Japanese Latin American internees and their families have been raising awareness in their communities

and seeking redress from the U.S. government since the 1970s.⁵ When President Ronald Reagan signed into law the *Civil Liberties Act of 1988*, granting compensation to Japanese Americans, the law failed to recognize Japanese Latin American internees, who were neither American citizens nor legal permanent residents at the time of internment. Because they had been classified as “illegal aliens” at the time of their arrival, they were ineligible for any kind of compensation granted to Japanese American internees.⁶ Surviving internees have subsequently filed class-action lawsuits and lobbied for new federal legislation, questioning the constitutionality of the United States’ ability to arrest, deport, and detain non-U.S. citizens and residents of foreign nations during wartime. Some have charged the U.S. government with historic civil rights violations. Despite their efforts at redress in federal and international courts, former internees face an uncertain outcome in their pursuit of justice. In wartime, they battled racial prejudice and political hostility. Today, they face perhaps an even tougher challenge posed by our laws and government.

The story of the Japanese Latin Americans is truly a history within a history. In order to fully grasp what happened, one must first briefly revisit the larger internment program of the Japanese Americans and Executive Order 9066.

Immediately following Japan’s attack on Pearl Harbor, President Franklin D. Roosevelt issued Presidential Proclamation 2525 on December 7, 1941, pursuant to the *Alien Enemies Act of 1798*.⁷ The *Alien Enemies Act* stated that “all natives, citizens, denizens, or subjects of the hostile nation or government . . . shall be liable to be apprehended, restrained, secured and removed, as alien enemies.”⁸ Presidential Proclamation 2525, therefore, formally identified the Japanese as alien enemies. The following year, President Roosevelt signed Executive Order 9066 on February 19, 1942, which provided the legal basis for

internment. It would have an unprecedented impact on the Japanese American community in the United States, even though the legislation itself never addressed or specified any particular ethnic group. Executive Order 9066 designated parts of the west coast of the United States and Hawaii as sensitive military zones, “from which any or all persons may be excluded.”⁹ This one sentence laid the foundation for the forced removal of anyone deemed a threat to these military zones. Mass racial profiling and discrimination under the pretense of national security ensued. When taken together, these three documents—the *Alien Enemies Act*, Presidential Proclamation 2525, and Executive Order 9066—led to the internment of more than 100,000 civilians from the Pacific Coast and Hawaii, in some cases, for a period of several years.¹⁰ Most of these alien enemies were in fact American-born citizens of the United States.¹¹

It is important to note here that the internment of the Japanese Latin Americans occurred beyond the scope of Executive Order 9066. The order only addressed people in the United States, and did not extend to those living in countries that had not threatened the security of the United States. The Enemy Alien Control Program therefore, had no legal basis whatsoever. It has received little attention today because it fell completely outside the bounds of our legislative history. The program proceeded because several Latin American nations consented to it, and because Japanese immigrant populations had suffered discrimination in the region long before the attack on Pearl Harbor.

Beginning in the early twentieth century, waves of immigrants from Japan entered the Latin American region seeking agricultural opportunity. By the 1930s, they represented a sizeable percentage of the region’s population. This influx of immigrants, combined with economic pressures and competition, led to a growing sentiment of racial prejudice.¹² The United States suspected that the Japanese might attack the strategically vital Panama Canal.¹³ Only in a politically sensitive environment such as this could the Enemy Alien Control Program have been achieved. For varying reasons, the Japanese were perceived as a threat to the United States and to the Latin American region. Over a period of seven years, the U.S. government would coordinate with the governments of Bolivia, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Nicaragua, Panama, and Peru to deport both immigrant residents and native citizens to the United States, numbering collectively in the thousands.¹⁴ Once in the United States, the deportees came under the jurisdiction of the State Department and the Department of Justice’s Immigration

and Naturalization Service.¹⁵ Most had their passports confiscated.¹⁶ After being reclassified as “illegal aliens,” the deportees were then subjected to internment under Executive Order 9066. The Enemy Alien Control Program provided a win-win situation for the United States and the consenting nations of Latin America. For the United States, it solved the problem of the Japanese in Latin America from a national security standpoint, while providing “suitable” prisoner of war exchanges (the government knew that using Japanese-American citizens for exchange would prove unpopular, even in wartime). From the perspective of the Latin American governments, their native populations could regain their land and businesses, and put pressure on competition from immigrant communities. The internees themselves lost homes and businesses, and often ended up separated from family members. Some were interned for several years before being deported to war-torn Japan, while others eventually returned to Latin America.¹⁷ Others fought to remain in the United States, where they eventually became permanent residents.¹⁸

In its 1987 report entitled *Personal Justice Denied*, the Commission on Wartime Relocation and Internment of Civilians stated conclusively that “The promulgation of Executive Order 9066 was not justified by military necessity . . . the broad historical causes which shaped these decisions were race prejudice, war hysteria and a failure of political leadership.”¹⁹ This finding of the Japanese American internment surely validates the claims of Japanese Latin Americans, who suffered violations of their international rights. Records concerning the separate internment program of the Japanese Latin Americans still remain unexplored in national archives, and the Supreme Court has never ruled directly on the constitutionality of the Enemy Alien Control Program.

The *Civil Liberties Act of 1988* granted Japanese American internees and their families an official apology and \$20,000 in compensation for each surviving internee.²⁰ The act, which defined a person eligible for restitution as any “United States citizen or permanent resident alien,” ultimately excluded most Japanese Latin American internees.²¹ In response to the passage of the *Civil Liberties Act of 1988*, the class-action lawsuit *Mochizuki vs. United States* was filed in 1996, on behalf of the Japanese Latin American internees denied redress.²² The suit demanded inclusion under the *Civil Liberties Act of 1988*. But in 1998, the case was settled, and the Japanese Latin American internees received an apology and a settlement of \$5,000 per internee.²³ Some internees rejected the settlement, and fought on. Art Shibayama, who would later file a suit of his own, writes “I

could not accept the settlement offer because it felt like a slap in the face. The letter of apology doesn't say anything about Japanese Latin Americans, or specify wrongs which were committed, like forced deportation. And we weren't being offered equal justice with Japanese Americans. We were being thrown a bone so that we would just go away."²⁴

Following the Mochizuki settlement, more lawsuits were filed, including *Shima v. Reno* in 1998, and *Shibayama v. United States* in 2002. Both suits rejected the settlement from *Mochizuki v. United States*, and pursued further redress. The Shibayama plaintiffs charged the U.S. government with crimes against humanity in violation of national and international law.²⁵ The Shibayama plaintiffs also filed a petition with the Inter-American Commission on Human Rights in 2003, alleging failure on the part of the U.S. government to provide redress for crimes against humanity.²⁶ On March 16, 2006, the Inter-American Commission on Human Rights declared the Shibayama case admissible, and a decision is still pending.²⁷

Today the fight for redress has entered Congress, where multiple bills have been introduced. The *Wartime Parity and Justice Act of 2000*, introduced by Representative Xavier Becerra (D-CA) picked up where *Mochizuki v. United States* left off, in an effort to include Japanese Latin Americans under the *Civil Liberties Act of 1988*.²⁸ The bill died without ever receiving a hearing or vote. Another bill introduced by Senator Daniel Inouye (D-HI), the *Commission on Wartime Relocation and Internment of Latin Americans of Japanese Descent Act of 2009*, achieved some success after being recommended by the Subcommittee on Senate Homeland Security and Governmental Affairs for consideration by the Senate.²⁹ Whether the complete history of the Japanese Latin American internment will ever be fully acknowledged or investigated remains to be seen, but the redress movement continues to receive widespread support among community activists and civil liberties groups.

In remarks to the House of Representatives on March 8, 2006, Representative Becerra argued that creating a commission to investigate the internment of Japanese Latin Americans was "the right thing to do to affirm our commitment to democracy and the rule of law."³⁰ The United States has a responsibility not only to its own citizens, but to citizens of other nations; to uphold democracy and abide by its freedoms. When we stumble upon the forgotten stories and hidden tragedies of the past, we must do our best to right the wrongs of historical injustice. At the very least, we owe it to the survivors and their families to remember and share this history.

Naomi Fogerty (nfogerty@uw.edu) is an MLIS Candidate at the University of Washington. This paper was written for LIS 526, Government Publications, taught by Amy Stewart-Mailhiot.

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Inventing Nature

The History and Impact of Plants as Intellectual Property

Molly Corman

Intellectual property protection for plants is a subject of much debate. One side sees it as fostering an economy of innovation and growth in the fields of agriculture and biotechnology. The other, by contrast, sees it as creating a system of dependence on a small group of multinational corporations, impeding growth and contributing to world hunger. The reality seems to lie somewhere in the middle.

Securing the right to intellectual property (IP) is an integral facet of the American legal framework and is reinforced in the Constitution itself.¹ Constitutional patent protection was limited to man-made creations. It would be another century and a half, with the *Townsend-Purnell Plant Patent Act of 1930*, before that protection extended to living things. The legislation was a response to discontent among plant breeders, who had no way of preventing others from reproducing their varieties and thus had little incentive to improve them. They demanded protections so others could not recreate their plants.²

Administered by the U.S. Patent and Trademark Office (USPTO), the *Plant Patent Act* (PPA) states “whoever invents or discovers and asexually reproduces any distinct and new variety of plant . . . may obtain a patent thereof.”³ There have been subsequent amendments, such as the addition of protection for “newly found seedlings,” meaning plants that were previously undiscovered, then propagated.⁴ Initially protected for a period of seventeen years, PPA coverage was extended to twenty years in 1995.⁵

The PPA marked the beginning of a new way of thinking about IP, expanding the concept of man-made creation to the natural world. Subsequent legislation encouraged innovation in agriculture and biotechnology. One such piece of legislation was the *Patent Act of 1952* (PA). This act modified patent law into more or less its current form. Codified in Title 35 of the *U.S. Code*, the PA extends utility patents to “any new and useful process, machine, manufacture, or *composition of matter* [emphasis added], or any new and useful improvement thereof.”⁶ This effectively expanded the terms of entitlement, clearing the way for broader interpretation of utility patent coverage.⁷

The PA and PPA helped cultivate a thriving agricultural industry in the United States, but not everyone was happy. Patent law protected only asexually reproduced plants, while the bulk of U.S. commercial crops resulted from sexual reproduction through seeds. This was of increasing concern to seed breeders as they continued to develop new and better varieties of crops. In 1968, Congress held hearings on patent law revision to determine whether to expand provisions for seeds. Proponents of expansion, such as the American Seed Trade Association, favored a broader application of patents “so that private industry [could] find it economically possible to carry on an expanded plant research effort.”⁸ The opposition’s argument focused on the difficulties of breeding stable varieties that were exactly like their parents.⁹ If the seeds of a variety patented for a certain trait produced offspring with slightly different traits, why should the new plant have the same protections?¹⁰ Finally, a resolution was reached in the form of the *Plant Variety Protection Act of 1970*.

The *Plant Variety Protection Act* (PVPA) was devised “to encourage the development of novel varieties of sexually reproduced plants . . . providing security to those who breed, develop, or discover them, and thereby promoting progress in agriculture in the public interest.”¹¹ Under the jurisdiction of the U.S. Department of Agriculture (USDA), the PVPA established the Plant Variety Protection Office (PVPO) to issue certificates of protection to new varieties of sexually reproduced plants. Though not patents, these certificates would provide protection for plants that are sexually derived, “distinct, uniform, and stable,” and have the same life span as a patent—twenty years.¹²

The shifting landscape of U.S. agriculture was further modified by a series of landmark court decisions, starting in 1980 with the Supreme Court case *Diamond v. Chakrabarty*. Ananda Chakrabarty, a scientist at General Electric, created bacteria thought to be capable of breaking down oil, which would be of use in the cleanup of oil spills. Up to this point, no “products of nature” could be given a utility patent. His argument was that, though a life

form, this microorganism was manufactured and thus not a true product of nature. The court ruled that the patent be granted.¹³ The implications of this ruling were instrumental in the advancement of a burgeoning biotech industry.

Once utility patents could be obtained for microbes, it was not long before researchers sought similar protections for more complex organisms. In *Ex parte Hibberd* (1985), the USPTO extended utility patent coverage to plants, whether asexually or sexually reproduced, and regardless of whether they already had a certificate of protection from the PVPO.¹⁴ This ruling was later upheld with the 2001 Supreme Court case *J.E.M. Supply v. Pioneer Hi-Bred International*.¹⁵ This was a boon for agricultural biotech companies, who could expect a sizeable increase in revenues. Plant patents cover the whole plant, while utility patents can be secured for different parts, which means there can be more than one per plant. It also meant that hybrids such as corn, one of the major crops in the United States, were now eligible.¹⁶ Owning a utility patent for plants and plant processes “significantly increase[d] a firm’s market value” and the more patents a company had, the higher the value.¹⁷

While much of the legislation applied to patents, there were significant rulings regarding the PVPA, the most important of which was *Asgrow Seed Co. v. Winterboer*. The PVPA provided for two exemptions: a research exemption and a farmer’s exemption. In both instances it was permitted to propagate and sell (in the case of farmers) certified seeds.¹⁸ In 1995, the Supreme Court overturned the farmer’s exemption. Winterboer, a farmer, saved soybean seeds certified by Asgrow, reselling 10,000 acres worth to other farmers. The court ruled on the side of Asgrow, declaring that the exemption allowed the farmer to resell only as much as he would have used himself.¹⁹ Thereafter, farmers had to obtain a license from the owner of the seed variety if they wanted to resell. This was a blow to farmers, who felt increasingly marginalized with each new piece of legislation that restricted the use of a product on which their livelihood depended.²⁰

While the United States was developing its IP policy, other countries were doing the same. Over the last several decades, various international treaties and trade agreements have created partnerships among countries, and the World Trade Organization (WTO) has emerged as the primary governing body to regulate international trade. Among the many agreements governing diverse facets of international trade is TRIPS—Trade-Related Aspects of Intellectual Property. Established in 1995, TRIPS is a set of rules issued by the WTO regulating international policy on intellectual property. In the case of biological patents, in order to export a plant to a country that holds a patent on that variety, one

must obtain permission from the patent owner.²¹ TRIPS established a full-scale system of trade and licensing from which patent holders could profit (the vast majority of agricultural biotech patents, though not patents overall, belong to the U.S. government and U.S. corporations).²² The timing of this treaty was impeccable, as genetically modified crops were being introduced in the U.S. market.

GMOs—genetically modified organisms—are organisms that have had their DNA altered by the introduction of another species’ DNA to give them a desirable trait. Genetically modified (GM) crops are generally engineered to be resistant to pests, disease, herbicide, and drought.²³ Since their introduction, the proliferation of GM crops has been swift; according to the USDA, corn containing a gene for insect resistance constitutes 63 percent of plantings.²⁴

GM crops are controversial on many levels. Besides reduced biodiversity and the public health implications (for example, the risk of creating super bugs resistant to pesticides), much of the concern is over ownership and control. Most independent seed companies have been acquired by corporations (many having little to do with food, like petroleum and chemical companies), resulting in a small group of corporations owning patents to most of the crops we eat.²⁵ Due to international agreements like TRIPS, this is not confined to the United States. Crops are exported—very often to developing countries. Those in favor of GMOs argue that they are producing better quality and greater amounts of food, which poorer countries desperately need. Critics of biotech argue that this cultivates dependence and leaves the developing countries beholden to the companies that are their main suppliers of food.²⁶

One such company is the Monsanto Company. In its current iteration, Monsanto owns a range of seed varieties, pesticides, and other products for the agricultural biotech industry. It has become a symbol of a company with too much power; over the years, few have done more than Monsanto to push the boundaries of IP protection further into the public domain. There have been antitrust lawsuits brought against it, like one in 2008 after it acquired cotton seed breeder Delta & Pine Land Co. (DPL). In the hearings, opponents of the merger warned of a decreased incentive for innovation when competition is eliminated, emphasized the unfairness of restrictions on seeds that contain both patented and unpatented components, and criticized the United States’ lax enforcement of antitrust law.²⁷ Furthermore, in 1998, DPL along with the USDA’s Agricultural Research Service secured U.S. Patent 5,723,765, or “Control of Plant Gene Expression.”²⁸ This is otherwise known as the “terminator gene,” which makes seeds sterile to ensure that farmers cannot replant them the following year.²⁹

Cautionary tales abound of farmers who incur the wrath of companies. One such tale is that of Percy Schmeiser, a Canadian farmer who was sued successfully by Monsanto for growing Monsanto seeds that he had not purchased. Schmeiser claimed he did not plant them and never marketed them as that brand. Conceding the possibility that he was not aware of the presence of the seeds, the Canadian Supreme Court ruled against him on the grounds that “intention is irrelevant to a finding of infringement.”³⁰ This case highlights not only the far reach of seed conglomerates but also the dangers of “genetic drift,” or GM seeds that, through natural occurrences, find their way to non-GM fields and reproduce.³¹

The history of IP legislation for plants is long, complicated, and politically charged. As Americans, the right to IP is part of the foundation of our country. It is a reason the United States has been at the forefront of innovation, research, and progress. But it is important to know when we have gone too far. A reverence for innovation can make us overprotective of our intellectual property, undermining the very thing we wish to defend. A key ingredient of innovation is competition, without which no protection will suffice to keep people creating and exploring. This is illustrated by the state of things today; a small group of corporations has a tight grip on the agriculture industry, having eliminated most of the competition. It is encouraging to see the organic movement picking up speed; it shows that consumers want transparency and choice in the foods and products they buy. We must find a way to strike a balance between nurturing invention and defending the rights of consumers.

Molly Corman (molly.corman@gmail.com) received her MLIS from the Pratt Institute in 2010. This paper was written for LIS 613: Government Information Resources, taught by Debbie Rabina.

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By the Authority Vested in Me

The Healthy Marriage Initiative and the Federal Government's Historical Love Affair with Marriage

Jennifer Scott Wills

In his 2004 State of the Union Address, President George W. Bush mentioned, “A strong America must value the institution of marriage. I believe we should respect individuals as we take a principled stand for one of the most fundamental, enduring institutions of our civilization.”¹

This was neither the first nor the last time the institution of marriage would be discussed by that president, but it was significant in its timing as it marked the beginning of his administration's push to have a “Healthy Marriage Initiative” included as a provision in what would become Public Law No. 109-171, or the *Deficit Reduction Act of 2005*.

The Healthy Marriage Initiative (HMI) provision earmarked \$1.5 billion in federal funds to be given as grants over a five-year period to secular and faith-based organizations offering programs that promoted and strengthened marriage. This is due in part to another provision of the *Deficit Reduction Act of 2005* which extended and expanded the “Charitable Choice” policy allowing faith-based groups that provide social services to receive federal funding.² These funds and programs were intended as an extension of the *Welfare and Medicaid Reform Act of 1996* and were aimed at the same individuals and families who were affected by programs requiring work and self-sufficiency in return for federal aid.³ Jurisdiction over the program would fall to the Department of Health and Human Services' Administration for Children and Families (ACF) and that agency was quick to define what would be considered allowable activities in order to receive HMI funds. The allowable activities were listed on its website:

- Public advertising campaigns on the value of healthy marriages and the skills needed to increase marital stability and the health of the marriage.
- Education in high schools on the value of healthy marriages, healthy relationship skills, and budgeting.
- Marriage education, marriage skills, and relationship

skills programs, that may include parenting skills, financial management, conflict resolution, and job and career advancement, for non-married pregnant women and non-married expectant fathers.

- Premarital education and marriage skills training for engaged couples and for couples or individuals interested in marriage.
- Marriage enhancement and marriage skills training programs for married couples.
- Divorce reduction programs that teach healthy relationship skills.
- Marriage mentoring programs that use married couples as role models and mentors in at-risk communities.
- Programs to reduce the disincentives to marriage in means-tested aid programs, if offered in conjunction with any activity described above.
- Conduct research on the benefits of healthy marriages and healthy marriage education.
- Provide technical assistance to grantees who are implementing any of the above activities to help them succeed.⁴

Defining “healthy” marriage

It might seem odd to some that the U.S. government, with a legislative pool that is no stranger to infidelity scandals and dissolved marriages, would set about the task of defining the distinction between “healthy” and “unhealthy” marriages. According to the ACF's brochure on the program, *Healthy Marriage Initiative: Building Real Solutions for Real People*, a healthy marriage “is easy to spot.” It continues, “It is a marriage that is built on a foundation where both spouses feel mutually enriched and have a deep respect for one another. A healthy marriage is defined also by the commitment from both spouses to ongoing growth and the ability to communicate and effectively resolve conflict. Managing conflict marks the difference

between couples who stay married and those who do not.”⁵ Other proponents claim that a healthy marriage is simply a heartfelt commitment to a spouse.⁶ Everyone seems to agree that a healthy marriage is set apart from an unhealthy marriage by the absence of domestic violence and emotional abuse.

What is more important to the supporters of the HMI are the ways in which marriage is beneficial to the conjugal couple and their family. ACF and other proponents of HMI cite research showing that married individuals live longer, happier, more financially secure lives; that their children are more likely to go to college and less likely to abuse drugs or alcohol or have their own broken marriages; and that their communities have healthier citizens, lower crime statistics, and less need for social services.

One does not have to dig deep to find a surplus of political motivation for a federal initiative of this kind. The *Deficit Reduction Act of 2005* was signed into being on the tenth anniversary of the *Defense of Marriage Act of 1996* (DOMA), which defined marriage for federal purposes as a union between one man and one woman and gave states the ability to ignore the legal status of same-sex marriages, even if the relationship was considered to be a marriage in another state.⁷ An interest in and emphasis on the state of marriage in the United States, which existed before DOMA, grew exponentially to become a cornerstone of the conservative political agenda, with demand for “healthy” marriage projects an inevitable outcome.

A history of federal involvement in marriage

Legal marriage requires sanction from the individual states, in license and ceremony, and has long been seen as solely within their purview. However, “a 1996 report from the U.S. General Accounting Office found more than one thousand places in the corpus of federal law where legal marriage conferred a distinctive status, right, or benefit.”⁸ These benefits and obligations cover immigration, citizenship, military service, tax policy, and property rules as well as Social Security and veterans’ survivors’ benefits, intestate succession rights, and jail visitation privileges.⁹

This is a far cry from the legislative landscape seen at the country’s origin where the founding fathers assumed that common sense would guide issues of marriage. This held true, for the most part, until the Civil War. Common sense in this case meant the Christian, monogamist morals brought to the new world by the European colonists.

Marriage, and the federal government’s part in it, became a hot topic in the period following the Civil War, when legislators chose the wording of the Thirteenth Amendment

very carefully in order to avoid usurping the head of household’s (the husband’s) role and jeopardizing the sanctity and security of the marital union.¹⁰ This period also saw the government begin to actively promote marriage as a citizenship-building force in the resettlement camps of former slaves, who were legally prohibited from marrying prior to the Emancipation Proclamation, resulting in the creation of the Freedman’s Bureau in 1865. This new federal agency was charged with both the economic and moral oversight of the freed slaves, much of which was concerned with their marital status—issuing multitudes of marriage licenses, performing wedding ceremonies officiated by army chaplains, and issuing tracts filled with messages about the proper roles of the new husband and wife to each other and society.¹¹

This citizenship-building function of marriage would continue to be used for the next century as a way of influencing groups—Native Americans, immigrants, and religious groups among them—as the country grew and its leaders established terms for the exclusion and inclusion of new citizens. And even though federal laws affecting marriage—prohibiting polygamy, prohibiting interracial marriage, offering tax incentives for married couples, affecting survivor benefits, and the rest of the bits and pieces leading up to the current number, mentioned earlier, of legislation on the books—continued to grow apace, they could not outrun the country’s divorce rate which reached the status of 50 percent of all marriages in 1981.¹²

Beginning in the 1960s the nation’s courts began repealing some of the more dubious laws, both state and federal, regarding marriage, such as the U.S. Supreme Court’s ruling in the case of *Loving v. Virginia* in 1967, which ended all race-based legal restriction on marriage in the United States by declaring such restrictions unconstitutional.¹³ Almost thirty years later, the 104th Congress, alarmed by the Hawaii State Supreme Court’s ruling in *Baehr v. Miik* that indicated the state must show a compelling interest in prohibiting same-sex marriage, would fast-track legislation through both of its conservative Republican-dominated houses that would become DOMA, making clear their purpose to standardize heterosexual marriage. Representative Bob Barr (R-GA), one of the bill’s primary sponsors, confirmed this by saying, “[T]he bill amends the *U.S. Code* to make explicit what has been understood under federal law for over 200 years; that a marriage is the legal union of a man and a woman as husband and wife, and a spouse is a husband or wife of the opposite sex.”¹⁴

In the fourteen years since President Bill Clinton signed DOMA into law, the popular and legislative debate over same-sex marriage has become the front line in the tumultuous domestic relationship between the federal government

and the institution of marriage. Four separate constitutional marriage amendments have been introduced since 2002, but all have failed to travel far along the path to ratification. And with the judicial fracas surrounding California's *Marriage Protection Act of 2008*—better known as Proposition 8—as it wends its way toward the U.S. Supreme Court, marriage remains on the forefront of federal consciousness.

It was in this state of affairs—record increases in divorce rates, a drop in initial marriage rates, and what the administration felt to be an assault on traditional marriage—that the HMI was conceived and nurtured. Wade Horn, assistant secretary for Children and Families, Department of Health and Human Services, summed up the Bush administration's feelings when he testified that “the good news is that in a remarkably short period of time we have moved past the question of whether government ought to be involved in supporting healthy marriages to the question of how. There are many problems worth attending to, but strong and healthy marriages are the bedrock of strong and healthy societies, without which we will forever be seeking new programs and services to cope with the ever-increasing social problems that result from their absence.”¹⁵

Criticism of HMI

From the beginning, HMI has met with criticism ranging from mild skepticism to abject disdain, with most of the detractors focusing on two areas of concern: the program's ties to welfare reform and its focus on lower-income families, and what they see as the intrusion of federally funded public policy into what is essentially a private institution.

New York Times columnist Laura Kipnis represented the opinions of some critics by asking, “And what of all the millionaires in failing marriages or fleeing commitment? Where are the initiatives devoted to rehabilitating this afflicted group? Sorry, they're on their own in the romance department. In this administration, the economic benefits filter upward, the marital meddling filters down.”¹⁶ Other critics point to the fact that there are equal amounts of social research to show that encouraging individuals to marry or stay married can cause anxiety and stress levels to rise and have negative effects on their children.¹⁷ There has even been criticism from within the legislative branch that created the initiative in the form of a Government Accountability Office (GAO) report to the House Ways and Means Committee. In it, the GAO suggested the Department of Health and Human Services needed to develop a risk-based monitoring approach in its program oversight in order to keep better tabs on the types of programs that received funding from

the program and to guard against duplicate funding.¹⁸

Still, other critics point to the government's own statistics that show the initiative has thus far been less than successful in increasing marriage rates or decreasing divorce rates. Though only indicative of the first two years of the five-year program, 2008's *National Vital Statistics Report* from the Centers for Disease Control and Prevention shows that marriage rates actually fell from 7.3 percent in 2006 to 7.1 percent in 2008.¹⁹

New administration's response

The year 2010 marks the end of the original five-year plan for the Healthy Marriage Initiative, and according to President Barack Obama's 2011 budget, released on February 1, 2010, the end of the program itself. In its place, the budget “establishes a Fatherhood, Marriage, and Families Innovation Fund to support States' development, implementation and evaluation of a) comprehensive responsible fatherhood programs that rely on strong partnerships with community-based organizations; and b) comprehensive family demonstrations geared towards improving child outcomes. The current Healthy Marriage and Responsible Fatherhood funds will be redirected to this more comprehensive effort.”²⁰ This indicates that while funds will still be directed to families, under the new administration, these funds will be directed more toward programs to help children rather than marriage as an institution.

And thus, the soap opera love affair between the federal government and marriage continues.

Jennifer Scott Wills (jwills@cityofboise.org) is a 2010 graduate of the University of Washington and is Teen Services Librarian at the Boise Public Library. This paper was written for LIS 526, Government Publications, taught by Amy Stewart-Mailhot.

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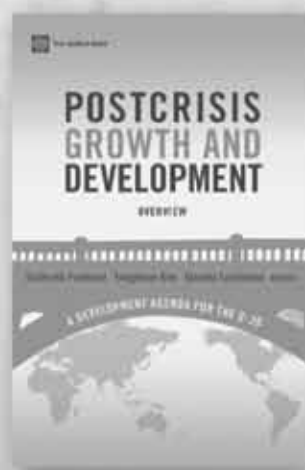
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The Cost of Free Access to Information

The Controversy over PACER and Open Access to Court Documents

Adrienne A. De Witt

In 2009, President Barack Obama issued a Memorandum on Transparency and Open Government, stating that “Information maintained by the federal government is a national asset . . . My administration will take appropriate action . . . to disclose information rapidly in forms that the public can readily find and use.”¹ Implementation of this memorandum requires “each agency [to] take prompt steps to expand access to information by making it available online in open formats.”² But “open access” does not necessarily translate to cost-free access. Whether the judiciary should provide electronic court documents via the Public Access to Court Electronic Records (PACER; www.pacer.gov) website free of charge is currently one of the most controversial issues in the government documents world. The following will introduce PACER and its access fees, give a brief explanation of why this controversy is relevant to government documents librarians, and consider the issue historically while articulating potential privacy issues.

PACER is “an electronic public access service that allows users to obtain case and docket information from federal, district, and bankruptcy courts, and PACER Case Locator via the Internet.”³ While there is no restriction on who can access PACER, there is a mandatory fee of eight cents per page.⁴ There are certain exemptions to the fee, such as for nonprofit organizations, educational institutions, pro se litigants, court appointed pro bono attorneys, and alternative dispute resolution pro bono neutrals.⁵ Users granted an exemption for public access are instructed to not sell for profit the information retrieved, and the information cannot be transferred without express agreement from the court.⁶ Exemptions may be revoked at any time, and may have a limited duration.⁷ A recent fee change allows free access for those who charge less than ten dollars a quarterly period.⁸

The PACER fee system has created vocal opposition. Helmed by Senator Joe Lieberman (I-CT) and open

government activist Carl Malamud, opponents of PACER focus primarily on the issue of transparency; that is, a truly democratic government requires free access to all public documents. Malamud is the force behind the highly critical RECAP (PACER spelled backwards) website (www.recapthelaw.org) that cites judicial opinions and legal precedent to bolster their position of cost-free public access.⁹ Those critical of PACER point to common law and First Amendment jurisprudence in order to bolster their position that fee-based access is tantamount to no access. “Equal access is . . . essential to equal representation in our adversarial system.”¹⁰ A fee-based system risks the possibility that only those who can afford the law will have access to it, and those who cannot will be denied equal justice.¹¹

Besides the policy arguments, there is also the contention that PACER’s fee system is unlawful. While most government documents fall under the authority of Title 44 of the *U.S. Code*, PACER’s critics argue that it is controlled by the *E-Government Act of 2002*. Critics argue that the mandatory fee contravenes both the intent and the language of the act.¹² While the focus of the *E-Government Act* is primarily on electronic access to government agencies, Congress took the opportunity to use the act to modify the formerly mandatory fee structure for online court documents. The language of the act, however, requires the fee to be used “only to the extent necessary.”¹³ PACER’s opponents argue that the language of the act proves the congressional intent to allow minimal, or possibly cost-free, public access to court documents.¹⁴

The ambiguous interpretation of the words “only to the extent necessary” has fueled the umbrage taken by PACER’s critics. Senator Lieberman, a member of the committee that drafted the *E-Government Act*, stated that “seven years after the passage of the *E-Government Act*, it appears that little has been done to make these records freely available—with PACER charging a higher rate than 2002.”¹⁵ Moreover, critics contend

that the amount of money PACER generates far exceeds the cost of website maintenance and upkeep.¹⁶ Finally, there is dispute over the definition of a “page.” While pages in PDF files are easily discernable, docket reports can lack pagination. Critics claim that the longer the docket, the more the expense, and that “there was no way to know before loading the page.”¹⁷

The Judicial Conference of the United States is the primary supporter of PACER user fees. In a response letter to Senator Lieberman’s query, it was noted that the fee system encourages public access “while recognizing that such access cannot be free of charge.”¹⁸ But besides the cost of upkeep, the conference argued that the legislative intent was to support PACER with user fees and not through general taxation.¹⁹ There was a concession to the change of the mandatory language; however, there was no intent to alter the congressional policy “that the EPA (electronic public access) program recoup its cost of services provided by a reasonable fee.”²⁰ Finally, the conference pointed out the many exemptions to the fee, including the \$2.40 maximum charge for any single document and the general availability of judicial opinions.²¹

Having outlined both sides of the issue, it becomes necessary to consider the relevance of the PACER controversy to a government documents librarian. In the government documents world, case law and documents are unique. Unlike other government documents, court documents are not authored by the government and then distributed to the people; rather, court documents begin with the people who turn to the government for redress of a case in controversy. But despite the personal nature of court documents, “it is clear that the courts of this country recognize a general right to inspect and copy public records and documents including judicial records and documents.”²² First Amendment jurisprudence states that there is a qualified right of access to court documents.²³

Yet, despite the acknowledgment of the fact that court documents are legally important public documents, government documents librarians often have little experience with the care and maintenance of court documents. While noting the exception of U.S. Supreme Court decisions, court documents are not distributed through the Federal Depository Library Program (FDLP). Rather, court documents are filed and kept by the clerk of the court. Prior to PACER and state electronic access mechanisms, a citizen had to physically go to the court and ask the clerk of the court for the case file. Today, within the federal system and selective state courts, a citizen seeking court documents can go online to find court information.

Now, because court cases are no longer kept hidden within courthouse walls, government documents librarians have the potential of including court documents within

the virtual federal depository library. Because it is the stated policy of the FDLP to require free and unrestricted public accessibility to federal documents “regardless of format,” it is reasonable to argue that, in the future, the FDLP will include access to PACER under its umbrella of required electronic government databases.²⁴ Instead of going to the courthouse, litigants may turn to their federal depository library to access court records, and it would be the responsibility of the government documents librarian to assist in that search. Thus, government documents librarians also have an interest in the issue of whether PACER should charge a user access fee.

And so, in order to help develop a potential solution to the dispute, it is necessary to consider how citizens accessed court documents prior to the Internet. Historically, court clerks were not authorized to charge lawyers, journalists, land title companies, creditors, credit agencies, or other interested parties who sought access to records.²⁵ But freedom of access does not mean freedom to copy. Court records could be copied, but at a charge, and these charges could be extremely expensive; in 1853, a court document copy was ten cents a page, with more recent copies costing as much as fifty cents per page.²⁶ Of course, users seeking access to the documents assumed the cost of the photocopies.

Historical antecedents notwithstanding, the PACER program was never designed as a cost-free database. PACER can trace its origins to a 1989 pilot program meant to provide Public Access to Court Electronic Records systems for individual bankruptcy and district courts.²⁷ The next year, Congress appropriated funds that “authorized the federal judiciary to build a system furnishing remote access to court records using funds generated by access fees.”²⁸ The funds were to be deposited into “a special fund for information technology projects.”²⁹ This first fee for public access to a dial-in bulletin board was one dollar a minute.³⁰ It should be noted that Congress allocated no money for start-up costs.³¹

The Public Access to Court Records project was so successful that by 1993 Congress asked the judiciary “to equip all courts, as rapidly as is feasible, with the capacity for making such records available electronically and for collecting fees for doing so.”³² This early system, however, was completely decentralized. In order to find and retrieve court documents, it was necessary to know the court and the jurisdiction.³³ The fee system also continued; however, by 1995, the rates decreased to seventy-five cents per minute, and in 1996, to sixty cents per minute.³⁴ As the system became more popular, the courts developed a national search engine, and in 1997, the U.S. Party/Case index was online.³⁵ The PACER web interface was created in 1998, and was combined with

the U.S. Party Index.³⁶ At that time, the Judicial Conference set a fee for Internet access at seven cents per page.³⁷

In 2002, Congress passed the *E-Government Act*. This act was primarily intended to impact government agencies other than the judiciary, but Section 205 prescribes the requirements for electronic information distribution of federal court records.³⁸ Courts were instructed to maintain individual court websites that include online rules, telephone information, docket information, and “access to the substance of all written opinions issued by the court, regardless of whether such opinions are to be published in the official court reporter, in a text searchable format.”³⁹ Congress expressly stated that “each court shall make any document that is filed electronically publicly available online,” but gave the courts the option to convert paper filings to electronic format (“A court *may* convert any document that is filed in paper form to electronic form.”—emphasis added).⁴⁰

The act, however, did not eliminate the fee system, but did change the mandatory language previously articulated in the 1992 *Judiciary Appropriations Act*. The new language indicates congressional deference to the judiciary in determining its own fee structure for electronic accessibility: “COST OF PROVIDING ELECTRONIC DOCKETING INFORMATION.—Section 303(a) of the Judiciary Appropriations Act, 1992 (28 U.S.C. 1913 note) is amended in the first sentence by striking ‘shall hereafter’ and inserting ‘may, only to the extent necessary.’”⁴¹ The *E-Government Act* did not negate the fee structure; rather, it gave deference to the judiciary to determine what fee, if any, should be applied.

Notably, the Judicial Conference has not allowed the fee structure to sit stagnant. Changes to the fee structure began even before the *E-Government Act*’s implementation. In 2001, the Judicial Conference gave approval to the provision that “attorneys of record and parties in the case shall receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer.”⁴² Further changes included a thirty-page cap on per-document charges, but this cap was broadened in 2003 to include all case documents, “including docket sheets, and case-specific reports, with the exception of transcripts of federal court proceedings.”⁴³ In 2003, the Judicial Conference articulated its list of exemptions, but directed the courts to “not exempt local, state or federal government agencies, members of the media, attorneys or others who are not members of the specified group(s).”⁴⁴ According to a 2005 PACER brochure, fees for electronic access were set at the current price of eight cents per page.⁴⁵

PACER may have always been a pay-to-play system, but this is not to say that the Judicial Conference has been

completely opposed to free public access. In 2008, the conference, along with the Government Printing Office (GPO), experimented with the possibility of free access by allowing seventeen libraries nationwide to grant to their patrons PACER documents without the requisite fee.⁴⁶ This experiment, however, came to an abrupt end when twenty-two-year-old computer programmer Aaron Swartz installed a small PERL script that “cycled sequentially through case numbers, requesting a new document from PACER every three seconds.”⁴⁷ Swartz was able to download 19,856,160 pages of government documents before the government pulled the plug on the project.⁴⁸ Swartz promptly donated these documents to public.resource.org, Carl Malamud’s open government initiative.⁴⁹

This incident has been dubbed “The Great Court Records Caper.”⁵⁰ After shutting down the experiment, the GPO immediately contacted the FBI, alleging that PACER had been “compromised.”⁵¹ The FBI’s decision to investigate was based on the assertion that “Aaron Swartz would have known his access was unauthorized because it was with a password that did not belong to him.”⁵² Swartz countered that his program ran on a library computer, stating that “it’s pretty silly to go after people who used the library to get access to public court documents.”⁵³ Swartz declined FBI requests for an interview on the issue, and eventually the investigation was dropped.⁵⁴ It is important to note that none of the nearly twenty million records that Swartz downloaded was neither sealed nor private.⁵⁵

The Great Court Records Caper did more than illustrate how possessive the Judicial Conference and the GPO are toward court documents. The event also brought the issue of privacy to the forefront of the free access debate. Online access to court documents has always had the issue of privacy attached to it, for the simple reason that court documents are full of sensitive personal information. In an effort to quell privacy concerns, the *E-Government Act* recognized the issue of privacy by vowing “to protect privacy and security concerns relating to electronic filing of documents and the public availability under this subsection of documents filed electronically.”⁵⁶ The Judicial Conference has both acknowledged the potential for conflict between personal information and electronic access and has enacted privacy policies intended to balance the need for accessibility and the personal right to privacy.⁵⁷

In September 2001, the conference adopted a privacy policy “that required court filings to be as available electronically to the same extent as they are in the courthouse, provided that certain personal identifiers are redacted from those filings by the attorney of the party making

the filing.”⁵⁸ These “personal identifiers” include the first five digits of a social security number, financial accountant numbers, the name of a minor, the date of a person’s birth, and in criminal complaints, the home address.⁵⁹ By the end of 2007, the redaction requirement was incorporated into the *Federal Rules of Civil Procedure*.⁶⁰

Drafting a rule requiring redaction did not result in the courts taking a positive role in the privacy policy. The gist of the federal privacy policy places the onus of responsibility “onto the litigants and the lawyers who generate and file the documents.”⁶¹ The Judicial Conference expressly stated that “the litigants and lawyers are in the best position to know if such information is in the filing, and if so, where.”⁶² The conference further argued that placing the responsibility on the litigants has the additional benefit of forcing restraint onto parties for including such information.⁶³ Finally, the conference found that placing the burden onto the courts is patently impractical and could potential compromise the court’s neutral role.⁶⁴ In the end, the conference refused to implement any filter or other uniform system of redaction.⁶⁵

The Judicial Conference’s decision to place the burden of redaction on litigants has been highly criticized. Malamud found “thousands of documents in which the lawyers and courts had not properly redacted personal information like Social Security numbers, a violation of the courts’ own rules. There was data on children in Washington, names of Secret Service agents, members of pension funds and more.”⁶⁶ Moreover, the Judicial Conference’s assertion that involved parties and attorneys are in the best position to know if personal information is involved fails to consider the possibility of nonparty case involvement. As an example, should the landlord of a large apartment complex declare bankruptcy, all of his leasehold records might need to be entered into evidence. Tenants’ personal information would then become part of the record and published electronically, all without the tenants’ knowledge or consent.⁶⁷

As the federal system wrestles with access, price, and privacy, state courts are also entering into the world of electronic court document access. Currently, many states have created a fee structure similar to, if more expensive than, the PACER system.⁶⁸ Some state courts have compromised by creating qualified cost-free access to court documents. The Maryland Court System, for example, has implemented a version of qualified access by allowing free searches, but reserving the right to charge a fee “if two or more hours of effort [are] required to provide the requested access.”⁶⁹ Maryland’s rules on redaction, however, are slightly broader than its federal counterpart. While it is the federal government’s

policy to redact the names of all minor children, Maryland will only do so if the child is involved in an adoption proceeding, a delinquency proceeding, underage pregnancy, or a victim of abuse or neglect.⁷⁰ Maryland’s privacy policy, however, echoes that of its federal counterpart by placing the burden of redaction onto the litigants and lawyers.⁷¹

In the end, the conflict between a completely cost-free PACER and those who support a fee-based system has thrown light onto documents that were once firmly held within the courthouse walls. Both sides have reasonable arguments, and historical analysis fails to provide a clear answer. Finally, there is a strong need to balance the right to full and open electronic access and the right to protect personal information. Until the Judicial Conference implements a filter or other uniform system of redaction, perhaps the paywall is most effective means of protecting private information. But fee-based or not, PACER will provide a link between court documents and government document librarians that did not previously exist.

Adrienne A. De Witt (aadewitty@aol.com) is a graduate of Valparaiso School of Law and a member of the Indiana Bar. Currently, she is an MLS candidate at Indiana University School of Library and Information Science, with an expected graduation date of June 2011. This paper was written for S525: Government Information, taught by Andrea Morrison.

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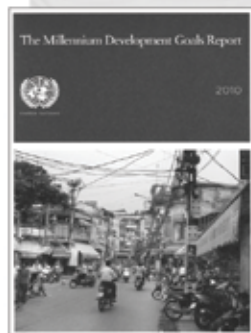


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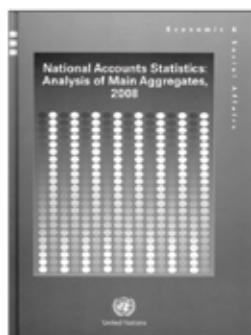
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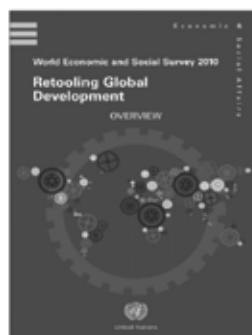
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ASERL Proposal for Regional Management of Federal Depository Library Collections

Judith C. Russell

This continues to be a time of significant change for libraries that participate in the Federal Depository Library Program (FDLP). Changing environments often create opportunities to act collaboratively to address common concerns. In this spirit, Association of Southeastern Research Libraries (ASERL) members representing both regional and selective federal depository libraries met in November 2009 and agreed to plan collectively for management of their federal document collections.¹

They affirmed that the federal documents collections in the southeast region are valuable assets for the holding library and the state where each collection is located. They also acknowledged that these collections are an asset to the region and agreed that regional collaboration could lead to more effective management and utilization of federal documents. To be effective, regional planning requires collaboration with all federal depository libraries in the ten state region represented by ASERL, as well as the Virgin Islands and Puerto Rico.² Approximately 20 percent of all federal depository libraries are in this region. This includes twelve regional depository libraries and 248 selective depository libraries.

The ASERL Deans' FDLP Task Force was established to prepare a discussion draft as a means of starting a dialogue between library deans and directors, documents librarians, and others about how to effectively manage the extant FDLP collections as a regional asset.³ The Task Force was instructed to make sure its proposals were in compliance with 44 U.S.C. because changes in the legislation governing the FDLP are unlikely to occur in the near future.⁴

A document proposing options for standardizing and simplifying the FDLP collection management processes within the region was approved unanimously at the April 2010 ASERL meeting and posted on the ASERL website.⁵ A survey was

developed, seeking comments on the proposal section by section.⁶ Presentations about the discussion draft were made at the American Library Association and American Association of Law Libraries annual meetings. Deans and documents coordinators at each of the twelve regional depository libraries were encouraged to notify the directors and documents coordinators in each of their selective depository libraries to inform them about the proposal and seek their comments. Notifications were posted to Regional-L and GOVDOC-L to advise the community of the proposal and seek their comments. In early August, ASERL hosted a one-day FDLP summit, followed by a working session to discuss specific aspects of the proposal and identify ways to improve it.

Highlights of the discussion draft include:

- A brief overview of the law governing various aspects of the FDLP program, specifically focusing on **requirements for managing FDLP collections**;
- A recommendation to expand ASERL's "center of excellence" model to **build two comprehensive-as-possible, cataloged FDLP print collections** held collaboratively across libraries in the southeast;⁷ and
- Proposals for **new, standardized processes for managing the disposition of FDLP documents within the region** to reduce workload, balanced against a more robust acquisitions process that emphasizes established local collection development needs.

The proposal also affirms that the best means of providing broad public access to these federal documents collections is through online access to digital and digitized copies. Therefore, the management of the tangible collections should

include efforts to support or participate in initiatives to create a comprehensive digital collection in the public domain.

Furthermore, it states that the superintendent of documents should support management of depository collections by identifying or creating cataloging records for the retrospective (pre-1976) publications that are included in the FDLP. Combined with the records already available in the Catalog of Government Publications, this would provide an official definition of the contents of a comprehensive FDLP collection, both for management of tangible collections and for digitization.

It must be emphasized that this proposal does not imply that there will be only two regional depository libraries in the southeast region. Rather, it means that among the twelve regional depository libraries in the southeast, with the voluntary assistance of some selective depository libraries, there will be collaboration to take responsibility for cataloging a portion of the collection and for retrospectively acquiring the items necessary to make that portion as complete as possible within the limitations of available content and resources. Regional depository libraries will continue to comply with the legal requirements to retain their print and microform collections.

Next steps

As a result of the survey, the FDLP summit, and the FDLP working session, changes in the discussion draft will take place. Some changes have already been identified and seem to reflect substantial consensus. Several issues remain open and are being addressed through dialogue with the regional documents coordinators and others. A revised proposal will be issued and circulated for additional review and comment before the proposal is approved.

Meanwhile, implementation plans are being formulated:

- state plans are being reviewed and common language is being prepared so that existing plans can be modified to support the regional planning effort and states, like Florida, that do not currently have plans will have recommended language to use as they develop a state plan;
- the University of Florida is developing a web-based tool to support the common regional disposition processes; and
- regional depository libraries and some selective depository libraries in the southeast region are assessing their collection strengths in preparation for identifying the areas in which they will establish new centers of excellence to support the development of two comprehensive-as-possible, cataloged FDLP print collections.

While there is still work to do to complete the proposal and have it accepted, and then much more work to implement

it, this proposal is an affirmative effort to work collaboratively to improve the management and utilization of federal documents collections in the southeast region, while remaining in compliance with 44 *U.S.C.* The ASERL members hope it will also stimulate discussion, and action, in other regions as well. Suggestions for ways to improve the proposal are welcome.

Judith C. Russell (jcrussell@ufl.edu), Dean of University Libraries, University of Florida.

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1. The Association of Southeastern Research Libraries (www.aserl.org), also known as ASERL, is the largest regional research library consortium in the United States. Its members are academic research libraries from ten states: Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia. Its mission is to foster a high standard of library excellence through inter-institutional resource sharing and other collaborative efforts.
2. For purposes of this initiative, the southeast region is defined as the ten states represented in ASERL, as well as Puerto Rico and the Virgin Islands because of their affiliation with the University of Florida, which serves as their regional federal depository library.
3. The members of the ASERL Dean's FDLP Task Force are: Judy Russell, University of Florida (Chair); Larry Boyer, East Carolina University; Bonnie MacEwan, Auburn University; Sarah Michalak, University of North Carolina, Chapel Hill; William Potter, University of Georgia; Lance Query, Tulane University; and Julia Rholes, University of Mississippi.
4. After it was approved by ASERL, the discussion draft was provided to the Government Printing Office (GPO) and reviewed by the GPO Office of the General Counsel, which determined that proposal was compliant with 44 *U.S.C.*
5. The complete discussion draft is available at tinyurl.com/ASERL-FDLP-Discussion-Draft and the executive summary is available at: tinyurl.com/ASERL-FDLP-Exec-Summary.
6. The survey results are available at tinyurl.com/ASERL-FDLP-Survey-Results.
7. Three regional depository libraries in the southeast have already agreed to become centers of excellence for specific federal agencies. As such, they are cataloging

and inventorying their holdings for those agencies and conducting research to identify other publications from those agencies that are missing from their collections. The centers have committed to obtaining the missing items, if possible, in order to establish a comprehensive collection of publications from these agencies as a resource for their own university, the state, and for the

southeast region. In addition, the University of Florida has committed to the digitization and provision of online public access to the documents in its center of excellence collection. Additional information about the centers of excellence is available in the discussion draft on pages 5 and 6.

STATEMENT OF OWNERSHIP, MANAGEMENT, AND CIRCULATION

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