

**Statement of Barbara J. Ford
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**on behalf of the
American Library Association
American Association of Law Libraries
Association of Research Libraries
Chief Officers of State Library Agencies
Medical Library Association
Special Libraries Association
Urban Libraries Council**

**before the Senate Committee on Rules and Administration
On Proposed Revisions to Title 44 of the United States Code**

April 30, 1997

Good morning. I am Barbara Ford, Executive Director of University Library Services at Virginia Commonwealth University in Richmond, Virginia, and President-elect of the American Library Association. Today I am testifying on behalf of ALA, the American Association of Law Libraries, the Association of Research Libraries, the Chief Officers of State Library Agencies, the Medical Library Association, the Special Libraries Association, and the Urban Libraries Council. Together, we represent more than 80,000 librarians, information specialists, library trustees, friends of libraries, and their institutions--all dedicated to public access to information. Our members know first-hand, on a daily basis, the importance and impact that government information has on the health and lives of all Americans, on the economic well-being of our nation and on the preservation of our democracy.

Chairman Warner, Senator Ford, and members of the Committee, I am honored to appear before you today as you examine proposals to revise Title 44 of the United States Code to enhance public access to government information. We applaud your efforts to revise Title 44. I am grateful to have this opportunity to build upon the testimony of our associations and other witnesses who appeared before this Committee during last summer's important hearings on Public Access to Government Information in the 21st Century. Our associations have continued to work on these issues and have developed goals for revising Title 44 (Attachment 1).

The purpose of my testimony is to provide the Committee with the library community's comments on the draft "Government Printing Office Act of 1997." Today, I will comment directly on the key changes to Title 44 that we believe are necessary in order for the public to be ensured access to federal government information--information already paid for with tax dollars and to which citizens have a right as vested participants in our democratic society.

We share your deep concern, Mr. Chairman, as articulated in your recent statement in the Congressional Record, that there is a "growing crisis in public access to public information." Increasingly, federal agencies are circumventing their obligations under Title 44 to participate in a system that provides the public with convenient, usable and continuous permanent public access to government information. The trends toward decentralization, privatization and commercialization of government information and the increased use of electronic technologies to produce and disseminate information have greatly exacerbated the problems of public access to government information in recent years. In particular, these developments have exposed serious flaws in the current laws and policies of the federal government

since there is no comprehensive plan nor effective enforcement or compliance mechanism to deal with the life cycle of government information in an electronic environment. The library community is pleased that this Committee and the Joint Committee on Printing have undertaken the difficult task of addressing these important and very complex issues this year. We need a strong government information policy now, as we witness the loss of valuable electronic information from agency Web sites and the erosion of government information from the public domain. We are especially grateful for the open, cooperative and consensus-building approach that the Joint Committee on Printing has undertaken during review of the draft legislative proposal under discussion during these hearings. We thank this Committee for recognizing that the success of any legislative proposal to revise and strengthen Title 44 depends upon the opportunity for all partners to participate in the debate to craft a workable solution.

As Congress weighs various options to revise Title 44, it is important to reaffirm basic principles of public access to government information. These underlying principles, most recently expressed in the Government Printing Office's Study to Identify Measures Necessary for a Successful Transition to a More Electronic Federal Depository Library Program (June 1996), have guided the Federal Depository Library Program (FDLP) for more than one hundred years:

- The public has the right of access to government information.
- The government has an obligation to disseminate and provide broad public access to its information.
- The government has an obligation to guarantee the authenticity and integrity of its information.
- The government has an obligation to preserve its information.
- Government information created or compiled by government employees or at government expense should remain in the public domain.

We in the library community believe that any revision of Title 44 must incorporate these principles in order to enhance public access to government information in all formats, and to recognize both the benefits and the challenges of electronic information. We are very pleased, Mr. Chairman, with the objectives that you have articulated as the framework for the revision of Title 44:

- to strengthen the Federal Depository Library Program;
- to ensure that government information created at taxpayer expense remains in the public domain;
- to ensure that agencies comply with the provisions of Title 44; and
- to solve the constitutional separation of powers issue.

We strongly and enthusiastically support the first three objectives. Government information belongs to the public. It is essential for the public to have timely, no fee, convenient access to the information they need. The Federal Depository Library Program is the most efficient system for disseminating government information to the public. While the draft bill takes some key steps towards achieving your objectives, we believe that the legislation can and should be strengthened in three critical areas if these objectives are to be fully realized.

First, it must include specific language to ensure that its provisions strengthen the Federal Depository Library Program.

Second, it must ensure that there be continuous permanent public access to government information in all formats.

Third, provisions of the bill must ensure participation and compliance by agencies in all three branches of government.

As to the proposed resolution of the constitutional issues, we reserve judgment. At the end of this testimony, we will more fully explain our concerns.

GOAL I: To strengthen the Federal Depository Library Program.

Any revision to Title 44 must recognize the need to include information in all formats from all branches of government into the Federal Depository Library Program.

The Federal Depository Library Program has evolved over more than one hundred years to become one of the most effective and successful partnerships between the Federal government and the American people today. According to the Government Printing Office's most recent Biennial Survey, in 1995 an estimated 189,000 to 237,000 users every week were provided expert service in locating and using depository materials at the 1,370 partner libraries. Since that survey two years ago, Congress and agencies have increased exponentially their use of new technologies to create and disseminate information. The role of depository libraries and librarians is more important than ever before in helping users navigate through the complex layers of technology and the confusing maze of government agencies to find the information they require.

Recent usage statistics of the Government Printing Office's GPO Access system are impressive, as is its expansion to include more than 70 databases from all three branches of government. In March, over 4 million documents were downloaded from GPO Access. We commend GPO for additional enhancements including the online Monthly Catalog; the electronic Pathway Indexer that links users to information resources at over 1,274 other federal agency Web sites; the centralized database that allows users to search through the Government Information Locator Service (GILS) records of twenty-six federal agencies; and transparent access to materials that reside at its storage facility.

These developments underscore the important and pervasive impact electronic technologies have had and will continue to have on how the public accesses government information. It is imperative that the law reflect this present reality and provide for future developments by reaffirming that electronic government information falls within the scope of Title 44.

Revisions to Chapter 19 are of paramount importance at this time to provide the flexibility necessary within GPO and the FDLP to continue to expand electronic services and to ensure that the revised Title 44 fulfills the overall goal of improving public access.

As part of last year's congressionally-mandated study, the Government Printing Office drafted a proposal to revise Chapter 19 that would replace outdated language and unnecessary detail in the current law to reflect new technologies. The proposed language, which Public Printer Michael DiMario sent to this Committee last summer, was developed as part of a collaborative effort with input from the library community. The GPO proposal would:

- 1) bring all current and future formats into the FDLP and provide incentives for agencies to comply, a means of enforcement, and areas for regulations to be developed;
- 2) bring flexibility to the program, particularly in the changing role and responsibilities of Regional depository libraries; and
- 3) build upon the positive role of depository libraries in bringing government information to your constituents within their own community and the advantages of new technologies to reach out to other libraries and partners to increase and enhance public access.

We ask this Committee to consider incorporating the provisions of GPO's proposed Chapter 19 language into this draft legislation to ensure that the Federal Depository Library Program is strengthened to include information in all formats from all three branches of government and that it is given more flexibility in its operation under regulations to be issued by the Public Printer. Mr. Chairman, we would be very willing to assist the Committee by suggesting to you some specific recommendations.

Any revision to Title 44 must continue to provide for a central appropriation through the Superintendent of Documents for the Federal Depository Library Program.

There are many benefits to agencies, libraries and users alike in the utilization of new information technologies in support of data creation, maintenance, dissemination and preservation. Users can access agency databases in a more timely and effective manner. Yet the dissemination of government information in electronic formats increases the costs and the responsibilities for libraries as well as for government agencies. Libraries are investing substantial funds to provide highly trained staff, adequate space, costly equipment, and Internet connections so that the public has equitable, ready, efficient and no-fee access to government information in both print and electronic formats. The costs to agencies to build the technological infrastructure necessary for the creation and dissemination of online electronic information are also high. However, the dissemination of information to the public should be reflected in every agency's mission and accommodated in every agency's budget.

A central appropriation to the Superintendent of Documents for the Federal Depository Library Program is needed especially for the many new costs brought about by electronic technologies. For example, there must be adequate FDLP appropriations to guarantee that citizens have access to information for which some agencies now are required by law to recover their costs; for licensing fees for software without which electronic information may be useless; and for sufficient levels of access, i.e. adequate number of depository library passwords, to electronic products that may replace hundreds or even thousands of print titles. It is also critical that legislation provide appropriations to cover GPO's overhead expenses in order to bring down the costs of publications to the public.

One of our key concerns in the discussion of access to electronic government information products is that citizens, whose tax dollars support the creation of government information, have access to it in a form that is meaningful and usable. The notion of providing "plain vanilla" versions or only the raw data sets of public domain information to the American public is troubling as it may not meet their important information needs. The library community has long maintained the belief that electronic products must be usable to the public, and that the public must have access comparable to the usable products developed for the agency itself.

GOAL II: To ensure continuous permanent public access to government information in all formats.

It is critical that the law recognize the responsibility of the federal government to provide for permanent public access to government information in all formats through a comprehensively coordinated program that includes the Superintendent of Documents, federal agencies, the National Archives and Records Administration, the Library of Congress and other national libraries, depository libraries, and other library partners. This responsibility should be established within the Superintendent of Documents. This is a natural and important extension of the public dissemination role of the Superintendent of Documents as administrator of the Federal Depository Library Program.

In the print world, this responsibility is being met successfully by the Regional depository libraries of the Federal Depository Library Program. As cultural institutions dedicated to public access, libraries are proven and effective partners in providing broad public access to physical collections. Whether these materials are printed publications or tangible electronic products like CD-ROMs, there are tremendous advantages to having multiple, geographically dispersed collections of government information located around the country for the public to use.

In the electronic world as well, libraries again provide an invaluable service by supplying the local infrastructure-- including hardware, software, training, expertise, and other services--necessary to effectively connect users to electronic resources. But physical custody of the electronic databases remains with the government agencies, not libraries. In an electronic environment, the only partner in a position to effectively preserve and provide ongoing access to government information is the federal government itself.

The federal government should build upon the current Regional depository library program by transforming that program into a more flexible one that best uses the capabilities of the libraries and

publishing agencies. Relying on a single storage facility for electronic databases is a dangerous proposition. Note the extensive damage being done this week to North Dakota and Minnesota libraries due to the flooding of the Red River. A system for permanent public access must include adequate redundancy at multiple sites in order to ensure that information will not be lost.

There currently exists no comprehensive system for retention and continuous public access for electronic government information. As the Committee heard at last summer's hearings, it is not within the mission or resources of the National Archives and Records Administration (NARA) to fulfill this function; its responsibility focuses on archival preservation of materials, and NARA is not equipped to handle the daily needs of the public to gain ongoing access to older information. Providing permanent public access for electronic data is a new responsibility for government in the electronic environment--and one that will require considerable resources. But it is fundamental to the principles of public access and an informed citizenry, and a responsibility that must be addressed by all three branches of government.

Each day that this need goes unresolved, alarming amounts of government information continue to be lost as files come and go from agency Web sites. This denies taxpayers access to information they already have paid for, and undermines the long-term use by the public of government information already collected, compiled, and disseminated. It also makes hollow the promise of any new electronic technologies if the long-term effect is an ever-widening gap in our collected knowledge and information bank.

We strongly urge that legislation to revise Title 44 include provisions to establish the ongoing responsibilities of the federal government over the entire life cycle of government information, and specifically, to provide continuous permanent public access to electronic government information.

We believe that legislation should empower the Superintendent of Documents to coordinate this responsibility for all three branches of government.

GOAL III: To ensure participation and compliance by agencies in all three branches of government.

We in the library community share the Committee's deep concern over inadequate agency compliance with Title 44 and the negative impact this has on the public's ability to access government information. We strongly agree that any proposal to revise Title 44 must ensure that information created at taxpayer expense remains in the public domain and is publicly available at no fee through depository libraries.

We agree with the intent of the definitions in the draft legislation that attempt to resolve this issue. We believe that the definition of government information should be broad in scope. It should include all government information created at taxpayer expense, in all formats and from all branches of government. Exceptions should be limited to information classified for reasons of national security, or information for strictly administrative or operational purposes which has no public interest or educational value.

While the strongest incentive for an agency to disseminate information is to inform the taxpayer of the vital work which the agency performs, dissemination of information is rarely within an agency's mission. The legislation should provide a balance of incentives and enforcement to ensure agency participation and compliance so that information created at taxpayer expense remains in the public domain and permanently available to the public.

We are pleased to see that the draft bill vests the Public Printer with regulatory authority and strengthens the Superintendent of Documents' enforcement powers. We question whether the proposed enforcement mechanism of civil penalties will really work. For that reason, we would like to offer an enforcement provision (Attachment 2) that has the advantage of providing oversight within each branch of government.

This draft bill proposes establishing the Government Printing Office as an independent executive agency to address the constitutional separation of powers problem. We in the library community are not convinced that the Government Printing Office cannot constitutionally function as an agency located in the legislative branch. Should Congress determine that independent status for the Government Printing Office is desired, however, then the following provisions are necessary, at a minimum, to assure its permanent independence and to help ensure cooperation and compliance by agencies in all three branches of government.

- Independence of the director through a fixed term and removal only for cause.
- Concurrent submission of the agency budget to Congress and the Administration.
- Independence of the agency's regulatory authority from the Office of Management and Budget.
- Insulation of the agency from reorganization in ways inconsistent with Congressional directives.

All of these provisions would protect the independence of the Government Printing Office and recognize that it, like other "independent" agencies, can function more responsively to Congress while being formally in the executive branch. Regardless of the organizational placement of the Government Printing Office, the library community has always seen great value in having a committee of the Congress oversee and coordinate printing and information dissemination matters. Every American in every congressional district has an interest in the free flow of information from government to the public. The Framers of the Constitution even saw fit to inscribe in that basic charter the requirement that Congress keep a public journal of its proceedings.

If it is determined by constitutional experts that the current congressional oversight structure should not perform essentially regulatory functions pertaining to other branches of government, removing those functions still does not alleviate the need for central guidance and coordination of the information dissemination activities of the legislative branch itself. Nor does it alleviate the need for close and continuing oversight of the information production and dissemination activities of the executive and judicial branches.

To help address all three goals, we suggest that the Committee consider better equipping the Government Printing Office to deal with the rapid pace of technological change and the stresses that change puts on traditional arrangements and structures for producing and disseminating government information. Attachment 3 to this testimony provides some thoughts on "Implications of Technological Change; Consider a Chief Technology Officer."

CONCLUSION

We appreciate the Committee's resolve for completing this task and we share your sense of urgency in developing the necessary national information policies that will guarantee citizen access to government information in the changing electronic environment. The process that you have undertaken to develop legislation to amend Title 44 is an important culmination to last year's study by the Government Printing Office on the transition to a more electronic library program.

The seven library associations that I am representing consider the problems of access to government information so pressing that in January we formed an Inter-Association Working Group on Government Information Policy. This group has begun identifying key issues that need to be addressed by legislation.

These include the issues that I have highlighted today, in addition to others that must be considered as well. For example, what would be the impact of the draft bill on the relationship between the Government Printing Office and the Library of Congress regarding cooperative cataloging? Would this draft bill facilitate a better relationship between the Government Printing Office and those agencies engaged in conducting cost recovery services? And how would separate appropriations to the House and Senate for printing and binding needs affect congressional printing and dissemination?

We support this Committee's commitment to addressing the growing crisis in public access to government information through the revision of Title 44. We appreciate the opportunity provided by these hearings to comment on this draft bill, and we hope that the concerns raised in our testimony today will be incorporated into the legislative proposal to strengthen and improve citizen access to public information.

We are also pleased with the provision of this draft legislation that provides opportunity for wide participation through advisory councils to the Public Printer. The Depository Library Council has played a vital role in advising the Public Printer on matters relating to the Federal Depository Library Program. The Council recently concluded its 50th meeting here in Washington that was attended by over 500 librarians and government information specialists. We recommend a specific provision to establish an advisory council comparable to the current Depository Library Council since the library program is specified in law.

Finally, we would like to express our appreciation to Eric Peterson, Staff Director of the Joint Committee on Printing, for the cooperative approach that he has taken to this endeavor and for his willingness to engage the library community in this on-going dialogue.

Thank you, Mr. Chairman and members of the Committee, for the opportunity to provide comments to you today. We look forward to continuing to participate in this important discussion.

Attachments:

1. Goals for Revising U.S.C. Title 44 to Enhance Public Access to Federal Government Information, Draft Working Document prepared by the Inter-Association Working Group on Government Information Policy (April 1997).
2. Accountability Section (To be added to JCP Discussion Draft), Draft Working Document prepared by the Inter-Association Working Group on Government Information Policy (April 1997).
3. Implications of Technological Change; Consider a Chief Technical Officer, Draft Working Document prepared by the Inter-Association Working Group on Government Information Policy (April 1997).
4. Organizational Biographies.

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Last Modified: May 5, 1997