

# Information in the Next Millennium:

## Today's Decisions May Limit Tomorrow's Access

by Betsy Sandison and Hazel Johnson

### What if the year 2000 brings the following?:

- The Securities and Exchange Commission decides the EDGAR database will no longer be accessible free of charge through the Internet, but will be "pay per view" with all requests supplied by a single vendor.
- The Patent & Trademark Office decides its database of patent and trademark images is no longer available free on the Internet, but only through LEXIS, the exclusive vendor.
- The *Federal Register* for the years 1996–1999 is withdrawn from the Internet, and the production of the current issues is outsourced to West and is only available for a fee through WESTLAW.

### Government Documents Only on the Internet

- FEC Reports on Financial Activity (i.e. campaign contributions)
- OSHA Administrative Law Judge decisions
- DOE Office of Inspector General Public Reports (including reports on disposal of various hazardous substances at a variety of DOE sites)
- State Department Travel Warnings and Consular Information Sheets
- OCCurrency Bulletins and Advisory Letters
- Transportation Department Aircraft Accident Reports

Think this can't happen? Wrong! Similar scenarios are taking place today with other government documents. The documents may not be high profile items like the ones above, but publications produced by taxpayer-funded government agencies are being outsourced, are available only on the Internet for a fee ("pay per view"), are not available in depository libraries, and are disappearing from the Web.

Law Libraries historically have been fairly self-sufficient. Generally, we can purchase most primary source materials required by our users. But if we needed to purchase all the government information that we get "free" now, could we meet our users' needs? We depend on federal depository libraries to maintain collections of government information. (Think you don't utilize a depository library? GPO Access is, in many ways, our national electronic depository library.) What happens when government publications are not available because an agency opts not to participate in the depository program, or makes its publications available only on the Internet, or chooses to maintain only current information?

### Fugitive Documents

"More than 50% of all tangible Government Information products are not being made available to the Federal Depository Library Program," according to "Fugitive Documents: Scope and Solutions" (*Administrative Notes* 6/15/97:14—see [http://www.access.gpo.gov/su\\_dpos/ad061597.html#8](http://www.access.gpo.gov/su_dpos/ad061597.html#8)). Many of those items go to NTIS, but an unknown number of fugitive documents are not available to depository libraries at all (or only from a commercial vendor), including the decisions of the Federal District Courts, the Federal Election Commission financial disclosure statements, and the Library of Congress *Congressional Research Service Research Reports*.

But the Internet will change this, right? While Internet access is an improvement over previous delivery methods and can, if implemented properly, offer better and more extensive access, many agencies are eliminating documents from their Web sites. For example, when a newer edition of a publication becomes available, the old edition is removed from the site. How many times in the last month have you sought information that is a year or more old? Law librarians know that older materials often provide critical data.

### Copyright

Another aspect of information policy that affects all of us is copyright. For example, as originally drafted, H.R. 2281 would implement new copyright language to make US law consistent with the World Intellectual Property Organization treaty. The bill would have eliminated fair use in the electronic environment. What does that mean? As Bob Oakley explained in his keynote address at the First Library Affairs Symposium of Information Issues, "Copyright owners ... want to use encryption technology to guarantee that they are in total control and do not even have to permit fair uses without payment...." (See <http://www.georgetown.edu/aallwash/copyedu.html>.) How does that affect law librarians? It means that the "pay per view" world that operates on some Web sites today will dominate the future. Take the *Washington Post* for example. To retrieve an article that is more than two weeks old from its archives requires a \$2.95 payment. For those publications that are becoming totally electronic, a library would not be able to purchase one subscription and allow the public to read whatever was included in that subscription—each person entering the library would be required to pay the fee for each article.

### Limits Imposed by Licenses, Fees, Filters

What other aspects of our professional (and personal) lives are affected by ("yawn") information policy? How about the proposed revisions to Article 2B of the Uniform Commercial Code? Under Article 2, an individual who buys an item receives an implied warrant of merchantability—a promise that the item is fit for use unless the store or company displays conspicuous signs indicating that sales are "as is." Software manufacturers have made extensive use of shrinkwrap and clickwrap licenses in which a buyer (usually without reading or negotiating the contract)

### Selected Programs on Information Policy Scheduled for the 1999 AALL Annual Meeting

- "It's All in the Books, Right? The Ethical Perils of Ignoring Electronic Resources in the Information Age"
- "Cyber Congress: Its Future and the Public Interest"
- "Legal Research at the Crossroads: What Will the Millennium Bring?"
- "Electronic Service Guidelines for Federal Depository Libraries"
- "Changing Lanes on the Legislative Information Superhighway"
- "Censorship@Your Library"
- "Privacy Law in the Internet Age"
- "The Paperless Court"

- **The Toxic Substance Act Chemical Substance Inventory**— available only from NTIS
- **Export Administration Regulations**—Agency has an exclusive distribution agreement with a commercial publisher for both print and electronic versions
- **Journal of the American Cancer Institute**—Only strong action by the Joint Committee on Printing brought an agreement that depository libraries should continue to receive the journal (at the time of printing, distribution had not begun)

often voids all claims to an implied warranty of merchantability. Additionally, in agreeing to many of these licenses by clicking or opening the package, the purchaser also agrees to some unrealistic limitations. According to Charles Mann (*Atlantic Monthly*, 9/98, see <http://www.theatlantic.com/issues/98sep/copy.htm>), the license for Microsoft Agent states that consumers "have no right to make the figures 'disparage' Microsoft." The license for PhoneDisc, produced by Digital Directory Assistance, states that "the software can't be used ... in any way or form without prior written consent of Digital Directory Assistance, Inc." Most often, in court challenges, these licenses have been held to be invalid. The proposed revisions to Article 2B would make them valid without any safeguards for the individual buying the software.

Are there other aspects of information policy that affect us? You bet.

- Virginia's recent debate over providing access to government information through the Internet by increasing the fees that are paid to the Department of Motor Vehicles for its records.
- Proposed medical ID numbers and decisions about who controls access to personal medical data that may be attached to those numbers.
- Pending legislation that will require filtering software on computers connected to the Internet in all public schools and libraries that receive federal funding for computers.

These are the reasons information policy is important to law librarians. These are the reasons we should become involved. Our voices are heard. During the hearings on the *Wendell H. Ford Government Publications Reform Act of 1998* (S. 2288), which will, among other things, require the judicial branch (including Federal District Courts) to make all its published opinions available to depository libraries, many Action Alerts were issued by the AALL Washington Office requesting that AALL members contact Senator Warner (R-VA) and make him aware that we felt strongly about this. We did and Senator Warner brokered a meeting during which AALL's representatives could present and negotiate our concerns to representatives of the Administrative Office of the U.S. Courts. Because our voices were raised in unison, we may someday see the decisions of the U.S. District Courts on the Web and in depository libraries — not as hostages of the Administrative Office's agreements with West and LEXIS.

### Make Supervisors Aware of the Impacts

The 1999 AALL Annual Meeting in Washington, D.C. (July 17–21, 1999) will provide unprecedented opportunities for AALL members to become informed about information policy issues and to interact with policy makers. How do you convince your employer or governing body that it's important for you to attend the Annual Meeting? Although some law librarians attend Annual Meetings because it is considered a professional and educational necessity, there are many who work for organizations that require them to justify attending the Annual Meeting. Even the most enlightened powers-that-be would rather hear practical justifications for attending the conference than theoretical reasons.

Information policy issues may seem inherently theoretical, but there are a number of practical ways to educate supervisors about the

importance and relevancy of information policy issues. You can clip and route articles to them and write brief articles or a column about information policy in your library newsletter. (Don't assume a high level of knowledge in this area.) Bulletin boards are another effective method to convey information. Add an

### Information Policy Resources

- **"Washington Brief,"** Mary Alice Baish's monthly column in *AALL Spectrum* provides detailed reports on the status of information policy legislation
- **Digital Future Coalition**—a group of 42 non-profit and for-profit entities that is committed to balanced copyright in the digital era. <http://www.dfc.org>
- **Inter-Association Working Group on Government Information Policy** — a team of representatives from seven national library associations working to develop legislation to enhance public access to government information. <http://www.lib.berkeley.edu/IAWG/>
- **Shared Legal Capability** — established by the five major library associations to ensure a unified voice and common strategy for the library community in the area of copyright law and policy for the digital environment. <http://www.arl.org/info/slcfact.html>

information policy section on your library's bulletin board. An attorney will read *anything* when taking a break from researching a brief. But keep the board up-to-date with legislative and legal happenings in the area of information policy.

After your supervisor or governing board has a general understanding of information policy issues, proceed by giving them specific, practical examples of how information policy issues can and will affect your library and the organization as a whole. Practical examples should emphasize the cost issues associated with information policy. Use examples from this article and personalize them. For example, "We get information X off the Internet for free now but it could end up being offered from a commercial site for a fee" or "If the law reviews we subscribe to are going to be electronically published, our organization will need to invest in software/hardware to manage archives." Stress that these issues will be addressed at the Annual Meeting.

When the Annual Meeting Preliminary Program arrives, circulate the program to your supervisor(s) and/or governing board. Circle programs and provide written justifications for the importance of attending those programs. Ask supervisors if there are additional programs you should attend. With a heightened understanding of information policy issues, supervisors may see additional relevant programs. Sharing the preliminary program with supervisors takes the mystery out of the Annual Meeting and shows the practical benefits your organization will gain by your attendance at the AALL 1999 Annual Meeting and your interest and involvement in information policy issues.

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