Going Viral: U.S. Government Information Online

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Abstract:

With the 20th anniversary of the Electronic Freedom of Information Act Amendments of 1996 approaching, this paper will examine how this law influenced the future of online government information, as well as how the Federal Depository Library Program (FDLP) is likely to change in the future. Depositories have already started to evolve by digitizing older content that is not available online. Many depositories scan and digitally store these documents in an effort to free up space within their libraries, but the implications go far beyond that. Now depositories are working with each other and with the U.S. Government Publishing Office (GPO) to ensure public access to these documents on a wider scale.

There is also a place for born-digital documents in depositories. During the U.S. federal government shutdown in October 2013, most of the government sites were down. Having depositories store born-digital documents on their own servers would ensure public access to information even when GPO cannot. There may be a new future on the horizon: one where each depository is responsible for collecting and maintaining the electronic documents of a certain agency. This is already occurring with physical documents with the Association of Southeastern Research Libraries' Collaborative Federal Depository Program, where depository libraries become Centers of Excellence (COE). Currently, COE choose a subject or agency and focus on collecting and maintaining physical documents that fit their goals. It is not hard to imagine that COE will be required to maintain a physical collection while also digitizing their documents in the future for more widespread access.

It is the goal of this paper to get others, particularly FDLP participants, to consider how to improve and implement these changes sooner rather than later.

Keywords: eFOIA, born-digital government information, future of FDLP, Federal Depository Library Program, Government Publishing Office

Introduction

This year marks the 50th anniversary of the Freedom of Information Act and the 20th anniversary of the Electronic Freedom of Information Act Amendments, making this the perfect time to look back at those laws, how they've evolved, and how they have shaped (and will continue to shape) access to government information. Twenty years later, how has the

latter of the two, in particular, changed the way we access U.S. federal government information? And what might it mean for the future of the U.S. Government Publishing Office and the Federal Depository Library Program?

The Freedom of Information Act

The Freedom of Information Act (5 U.S.C. §552), also known as FOIA, was enacted on July 4, 1966 but did not take effect until the following year. This law gives any person, whether he/she is a U.S. citizen or a foreign national, the right to access government information from any federal agency for any reason. The agency is required to disclose any information requested under this law as long as the information does not fall under any one of nine exemptions or three exclusions. These exceptions to FOIA are designed to protect personal privacy, national security, and law enforcement. The nine exemptions are applied at the discretion of the agency. In some cases, if there is no foreseeable harm in disclosing the information--and doing so is not otherwise prohibited legally--information that would be exempt can be released.[1] Exclusions, on the other hand, have less leeway than exemptions. Exclusions are the special provisions, provided by Congress, to protect three very narrow categories of law enforcement and national security records and are not subject to the requirements of FOIA. According to the FOIA.gov website, they are as follows:

> The first exclusion protects the existence of an ongoing criminal law enforcement investigation when the subject of the investigation is unaware that it is pending and disclosure could reasonably be expected to interfere with enforcement proceedings. The second exclusion is limited to criminal law enforcement agencies and protects the existence of informant records when the informant's status has not been officially confirmed. The third exclusion is limited to the Federal Bureau of Investigation and protects the existence of foreign intelligence or counterintelligence, or international terrorism records when the existence of such records is classified.[2]

Though FOIA was designed to ensure access to government records, issues arose almost immediately. In some cases, it was difficult to enforce FOIA and force agencies to comply. Many agencies hid behind the format of the information, quibbling over the definition of a record and claiming that electronic information was not covered under FOIA. As Halstuk (2000) explains:

> With the rise of computerized record-keeping, some federal agencies rejected FOIA requests for electronically stored government records, contending that such information was not a disclosable "record" under FOIA. Government officials argued that the FOIA--which was enacted in 1966 before the dawn of the information age--made no specific mention of electronically maintained government information, and, therefore, agencies were not required to disclose computerized records. In fact, the statute did not even provide a definition for the term, "record."[3]

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[1] "What are FOIA exemptions?" *Frequently Asked Questions - FOIA.gov.*
<http://www.foia.gov/faq.html#exemptions>
[2] "What are Exclusions?" *Frequently Asked Questions - FOIA.gov*.
<http://www.foia.gov/faq.html#exclusions>
[3] Martin E. Halstuk, *Speed Bumps on the Information Superhighway: a Study of Federal Agency Compliance with the Electronic Freedom of Information Act*, 5 Comm. L. & Pol'y 426-427 (2000)

There was also the issue of quantity; in some cases, agencies were inundated with requests without an infusion of additional staff. This prevented those agencies from filling requests in a reasonable and timely manner, as required by law. Staff members had to complete their regular duties, as well as tend to these requests. Many had good intentions, while other agencies used this problem as a way to ignore the requirements of FOIA. This worked to the advantage of those agencies, especially since different presidential administrations alternated between strengthening FOIA and limiting it.[4] As time went on, the backlogs grew, and it became clear that something had to be done.

The Electronic Freedom of Information Act Amendments of 1996

After thirty years, one attempt to solve this problem was the Electronic Freedom of Information Act Amendments of 1996 (eFOIA). This legislation required agencies to make certain types of records available electronically after November 1, 1996. eFOIA "clarified that information an agency creates and directly or indirectly disseminates in any of its forms or formats is subject to FOIA disclosure rules."[5] This was a watershed moment, as it also set agencies on the path of rethinking the purpose of their information. As Ratish states:

> In addition to achieving the practical goal of reducing the information
> backlog, these provisions were also an important next step in changing the
> philosophy toward public records. It encouraged agencies to think of
> information in terms of its utility to the public before the public requested
> it. By requiring agencies to make available information that was likely to be
> requested, Congress indicated that it was no longer sufficient to file
> data. Agencies would have to consider releasing it to the public as a regular
> practice.[6]

Though this was not the first time a law was passed regarding electronic government information, eFOIA had a major impact on the way we access government information. True, the U.S. Government Printing Office Electronic Information Access Enhancement Act of 1993 started to change the nature of the U.S. Government Printing Office and the Federal Depository Library Program with the creation of GPO Access, but eFOIA sparked that same change in other agencies. These two acts, together, changed the way the government handled its own information; furthermore, it changed how we, the people, expected to access that information:

> The EFOIA amendments were a first step toward recognizing the changing
> nature of government information, in effect, by keeping the focus on the
> purpose of the Freedom of Information Act. Where agencies might have
> previously attempted to block the release of information based on its format,
> the EFOIA amendments made it clear that the law applies to the information
> itself, rather than the form of the information. It is not intended to apply to
> the tangible documentation, but the information contained therein.[7]

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[4] "FOIA Legislative History." *The National Security Archive*.
<http://nsarchive.gwu.edu/nsa/foialeghistory/legistfoia.htm>
[5] Halstuk, p431
[6] Robert Ratish, *Democracy's Backlog: the Electronic Freedom of Information Act Ten Years Later*, 34 Rutgers Computer & Technology L.J. 220 (2007)
[7] Ratish, p221-222

In August 2007, the Openness Promotes Effectiveness in our National Government Act of 2007, also known as the OPEN Government Act of 2007, reformed FOIA. One of its reforms was expanding the definition of news media. It specifically defines "a representative of the news media" as "any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience."[8] Now, with this new definition, bloggers and internet journalists without any institutional affiliation are considered part of the news media.[9] Another major reform by the OPEN Government Act was allowing the person or entity seeking information through FOIA to recover attorney fees if an agency unilaterally decides to release requested information after previously denying the request, at least in cases where the requester's complaint isn't frivolous. These are not the only changes made by this act, but they are two very important ones in the case for virtual information. In a time when anyone can be considered a journalist in the eyes of the law, agencies have more incentive to make information freely available from the beginning, especially when they risk having to pay the other party's attorney fees.

The U.S. Government Publishing Office and the Federal Depository Library Program

The U.S. Government Publishing Office (GPO) has been around for over 150 years. Originally called the Government Printing Office, GPO was created on June 23, 1860 with Congressional Joint Resolution 25 and began operating the following year on March 4, 1861. The Printing Act of 1895 centralized U.S. government printing, binding, and distribution and established the roles of the Federal Depository Library Program (FDLP) and the GPO in distributing government information. This act was also the first explicit statutory prohibition of copyright in government publications, meaning that anyone can use information within those government publications without fear committing copyright infringement. Some of the biggest changes, however, have come in the last 25 years; a few of those changes have happened just in the last five years.

The U.S. Government Printing Office Electronic Information Access Enhancement Act of 1993, mentioned earlier, was responsible for the creation of GPO Access. The law required the Superintendent of Documents, under the direction of the Public Printer, to do three things:

1. Maintain an electronic directory of Federal electronic information
2. Provide a system of online access to the Congressional Record, the Federal Register, and, as determined by the Superintendent of Documents, other appropriate publications distributed by the Superintendent of Documents
3. Operate an electronic storage facility for Federal electronic information to which online access is made available[10]

Thus, in June 1994, GPO Access was born. GPO Access allowed the public to have regular, online access to two popular government documents, as well as to any other documents deemed appropriate. At the time, internet access was not as prevalent as it is today, so this was not necessarily meant to replace how GPO disseminated all information. At least, not

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[8] Openness Promotes Effectiveness in our National Government Act of 2007, 121 STAT. 2524 § 3. <https://www.gpo.gov/fdsys/pkg/STATUTE-121/pdf/STATUTE-121-Pg2524.pdf>

[9] Ratish, p224

[10] Government Printing Office Electronic Information Access Enhancement Act of 1993, 107 Stat. 112 § 4101(a). <https://www.gpo.gov/fdsys/pkg/BILLS-103s564enr/pdf/BILLS-103s564enr.pdf>

immediately. It was simply meant to enhance it and to provide the government with the opportunity to find more useful and cost-effective ways to disseminate its information. Of course, as access to the internet grew, so did GPO Access.

GPO Access lasted for 15 years before the unveiling of the next generation of online government information: the Federal Digital System, or FDsys. On December 20, 2010, GPO's FDsys became the official system to access government information. In November 2011, GPO Access entered its "archive only" state, leaving FDsys as the only option for access to current government information. The following year, on March 16, 2012, GPO Access was shut down, ending one era of digital information and leading the beginning of a new one.[11]

FDsys provides more options than GPO Access did, serving as a content management system, a preservation repository, and an advanced search engine. FDsys also offers digitally signed PDFs, so the public can trust the authenticity of the government documents available. The information is also permanently preserved for public access, and, like GPO Access and the Catalog for U.S. Government Publications (CGP), it utilizes Persistent Uniform Resources Locators (PURLs) to ensure that users have reliable and consistent access to government information. FDsys also has more advanced options for searching. Users can create complex searches, search multiple publications at once, and sort, narrow, and filter their results. For those who aren't sure how to start their search, or who just want to see what's available, FDsys offers the option to browse by collection, date, author, or Congressional committee.[12] There is also the option to access the information in multiple file formats. Users can access bulk data for select collections via the FDsys Bulk Data Repository.[13] Today, FDsys provides free online access to approximately 50 collections and over 1 million documents, with more being added almost every day.

But those weren't the only major changes at GPO. In August 2013, GPO made history again when Davita Vance-Cooks was appointed as Public Printer, making her the first female and the first African-American to hold that position.[14] And she has led even more changes at GPO. In December 2014, legislation was passed that changed the name of GPO from the Government Printing Office to the Government Publishing Office--a change supported and encouraged by Davita Vance-Cooks, whose title changed to Directory: "This is a historic day for GPO. Publishing defines a broad range of services that includes print, digital, and future technological advancements. The name Government Publishing Office better reflects the services that GPO currently provides and will provide in the future."[15]

Certainly, the U.S. Government Printing Office Electronic Information Access Enhancement Act of 1993 was instrumental in the making of the GPO that we see today. Without it, GPO Access might never have been created, and the FDLP might still be focusing solely on tangible documents. However, it was eFOIA that helped GPO gain the momentum necessary

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[11] "GPO Access to FDsys Transition." *Projects – About the FDLP*.
<http://www.fdlp.gov/23-about/projects/136-gpoaccess-to-fdsys-transition>
[12] "About FDsys." *US Government Publishing Office*. <https://www.gpo.gov/fdsysinfo/aboutfdsys.htm>
[13] "Bulk Data." *FDsys, US Government Publishing Office*. <https://www.gpo.gov/fdsys/bulkdata/>
[14] Hicks, Josh. "Davita Vance-Cooks confirmed as first female and African American public printer." *The Washington Post* (2013).
<https://www.washingtonpost.com/news/federal-eye/wp/2013/08/02/davita-vance-cooks-confirmed-as-first-female-and-african-american-public-printer/>
[15] "GPO is now the Government Publishing Office." *Press Release 2014, no. 14-27*.
<https://www.gpo.gov/newsroom-media/presspage/14presspage27>

to even need, let alone create, something like FDsys. By requiring government agencies to provide online access to the information it creates, eFOIA made it easier for GPO to start receiving and publishing born-digital documents. The importance of born-digital government information is simple--without it, GPO would be forced to digitize print documents in order to offer them online to the public. This would be an expensive endeavor, especially when taking into consideration the number of agencies GPO would provide this service for and the amount of information each agency releases. Thus, eFOIA had a direct and lasting impact on GPO and FDLP that we still see today and will likely continue to see for years to come.

The Future of GPO and the FDLP

Though greater changes are on the horizon for GPO and the FDLP, some depositories have taken it upon themselves to start the process. One such group is the Association of Southeastern Research Libraries. The Association of Southeastern Research Libraries, also known as ASERL, has worked hard to enhance the way depositories work together and collaborate. Its Collaborative Federal Depository Program (CFDP) is an example of their commitment to this endeavor. Within this program, ASERL libraries become Centers of Excellence (COE), devoting themselves to collecting and maintaining materials for a specific agency. These COE actively focus on completing their collections on the agency they have chosen. This includes replacing lost or damaged items, filling holes in the collection via Needs and Offers lists, preserving the materials they already have, and cataloging those items so that they can be easily discovered.[16]

One of the benefits of participating in the CFDP, either because your library or your Regional Depository is a COE, is the ASERL Documents Disposition Database.[17] This database allows depositories to upload spreadsheets of documents that they wish to weed from their collection. In the FDLP, depositories must allow different depository groups a certain period to respond to an offer before offering the item to the next group. First, the depository must offer the items to their Regional Depository (or Depositories). Then, after a set period of time, to the other depositories in their state. After another period of time, the depository must offer the items to the final group: other depositories around the country. This is usually done through listservs and requires the depository staff to manually keep track of the time periods and the requests. With the Disposition Database, on the other hand, depositories can upload the spreadsheet and practically forget about it. The database handles the different depository groups by restricting access until the appropriate time periods have elapsed. As depositories request items being offered, those items are automatically taken out of the system, preventing two libraries from requesting the same offered item. The only real drawback is when a depository is offering a series. In order for this process to work as efficiently and effectively as possible in those situations, the offering depository should list each item in the series separately. Otherwise, when another depository tries to request one year in that series, it will mark the entire series as having been claimed, requiring the original depository to upload the remaining years of that series again.

While that is a wonderful tool for offering items, it is even better for finding items a depository needs. The Disposition Database offers depositories the option to search for specific items or subjects that may be needed for a collection. There is even the option to

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[16] "Association of Southeastern Research Libraries." *Association of Southeastern Research Libraries*. <http://www.aserl.org/programs/gov-doc/program-overview/>

[17] "Disposition of Federal Documents Using the ASERL Disposition Database." *Government Documents Dept.* <http://www.uflib.ufl.edu/docs/Depo%20Guidelines.html>

create a search alert for particular titles or keywords. This allows depository staff to focus on other tasks besides hunting for missing volumes. Overall, the CFDP (along with its COE) is a wonderful program with useful tools that, with a few expansions, could very well be the future format of the FDLP.

In fact, it is extremely likely that the FDLP will come to resemble something similar to the CFDP over the next few decades. Having each depository claim at least one agency would make it easier to locate materials. This is especially true if each agency has two depository libraries responsible for collecting its documents. By having these redundancies, we prevent the loss of important government information in floods, fires, or other natural/man-made disasters. In turn, each depository would be responsible for coordinating with its partner depository to scan the older documents in the collection. By doing this, the depositories for each agency would be responsible for making this information available for everyone.

One way to accomplish this is to save the scanned files in multiple locations. The two depositories for an agency would each save all of the scanned files between them to an external hard drive (or other appropriate type of tangible device). They would then send a digital copy back to GPO to be included in FDsys. The files would also be uploaded to a server outside of GPO. This could be accomplished by using a system like LOCKSS (Lots of Copies Keep Stuff Safe) or HathiTrust that would host the files off site. In most cases, systems like these use their own system of redundancies to ensure that data is not lost in the event of a disaster in one location. This process could also be used for new born-digital documents as they come in.

With more and more born-digital government documents, depositories already have fewer and fewer physical items arriving on a regular basis. With this in mind, it is highly likely that there will be an end to tangible documents being physically sent to depositories in the next few decades. In this scenario, what would happen to that information? Currently, born-digital documents have a home with GPO. Depositories access this information through GPO and its PURLs and include these documents in their own catalogs. This is a great way to access information, unless the government shuts down.

In October 2013, the U.S. federal government shut down for 16 days, making it the third longest U.S. government shutdown. During that time, GPO's site was down, as were numerous other agency sites. Some sites were completely inaccessible, while others were up but not maintained nor updated. During this time, accessing federal government information became very difficult. Depository libraries around the country relied on each other for the government information that their users needed. In some cases, information was impossible to find, especially if it came from an agency that only produced born-digital documents. Luckily, the shutdown ended, but the scars remain.

That was not the first government shutdown; in fact, it was the 18th.[18] Therefore, it is highly unlikely that we will never face another shutdown in the future. In fact, as the political sphere becomes more and more contentious, the likelihood of a shutdown in the future increases. This raises the question: what can the FDLP do to help users when this happens? The simplest course of action would be to shift our focus from physical storage to digital storage.

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[18] Mataconis, Doug. "A Brief History of Federal Government Shutdowns." *Outside the Beltway* (2011). <http://www.outsidethebeltway.com/a-brief-history-of-federal-government-shutdowns/>

In the next few decades, depositories could be asked to provide virtual space instead of physical space as part of the FDLP. If this happens, depositories would receive batches of files instead of boxes of documents. Just as libraries may store files they have scanned, they could save the files of born-digital documents (provided by GPO) to external hard drives, backing them up in the same way, through a system like LOCKSS or HathiTrust. Though this sounds like a lot of work, it actually would not be. Files from GPO could be downloaded in the background while depository staff focused on their other duties. This would actually be less time-intensive that scanning older documents and would ensure access to this information in the event of another federal government shutdown.

There are many attractive aspects to this scenario. With budget cuts to libraries of all types, many depository libraries are relying on the depository staff to do more and more work outside of their original duties. Sometimes these duties are assigned after layoffs or retirements; occasionally, they are assigned as libraries try to expand services. If tangible documents gave way to digital file batches, there would be little time required to check in and process the documents. Time spent shelving, repairing and finding missing documents would all but disappear. In the end, libraries would gain more time and space for other collections and services.

I must stress that it would be important for depository libraries to be involved in both sides of the scenario detailed above. While scanning older documents takes time, staff, and effort, it is well worth it, especially if each library is only focusing on a portion of their collection. This work will require a larger staff commitment in the beginning, but it will require very little effort beyond simple maintenance after a few years. Why? Because there are a finite number of older documents to scan. Once those documents are scanned, that project will end. Meanwhile, born-digital documents from a particular agency require less work upfront but a longer commitment as more documents are created throughout the years. I also recommend that each depository keep a tangible copy of the documents related to their agency to ensure that those documents exist somewhere.

I should also point out the importance of depositories continuing to provide computers for public access to government information. This requirement would have to continue, especially if depositories decide to weed their collections based on electronic access to information. It is also imperative that library administrators don't assume that the depository will manage itself in the future. Depository librarians and staff must be allowed time to work on their own knowledge of government information. Though most documents should be searchable through Google in this future scenario, that does not mean that expertise will be rendered irrelevant.

What would GPO's role be in all this? GPO, first and foremost, would have to work with the Depository Library Council to set the standards each depository should use when scanning documents. Many librarians do not know much about digitizing documents and would be more likely to embrace this path if guides, procedures, policies, or even handbooks were in place. This would also ensure consistency across agencies and collections. GPO would also need to store all of those documents scanned by the depositories, ensuring that FDsys is still the one-stop shop for government information. GPO would also be responsible for sending the appropriate batch files to each depository. This may also require GPO to coordinate between libraries to ensure that all agencies, both past and present, are covered. Reaching this goal may require depositories to focus on more than one agency.

Finally, GPO would have to create (or simply adapt) and maintain something akin to the ASERL's Documents Disposition Database. A tool like this would make creating national Centers of Excellence much easier for depositories, while having the added benefit of streamlining the way depositories offer and request materials. It is impossible to surmise how many unrequested documents have been destroyed because of missed emails or deadlines. Having a system that searches the disposition list automatically could go a long way in completing various depository collections. While it may not solve all of our problems, it would solve a number of them.

Conclusion

No one can really say what the future of the FDLP and GPO really looks like. It is doubtful that many who pondered this question in 1996, with the enactment of eFOIA, could have foreseen the changes that have occurred in the last 20 years. That being said, this is but one of many possible scenarios for the program. Some librarians have said that there will not be an FDLP in the future because of born-digital documents. It is a mistake to assume that. The FDLP may be completely different from how it is today, but it will still exist because there will always be users who do not have access to technology; there will always be users who need our expertise. Finally, there will always be a need, on our part, to connect users with government information.

Acknowledgments

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