

*Creating Our Shared Vision: Roles & Opportunities in the FDLP*  
**Overview of Past Efforts to Reform Title 44**

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Good morning. My name is Dan O'Mahony from Brown University in Providence, Rhode Island. I'm currently a member of the Depository Library Council, and I've been asked to provide a very brief overview and to offer some historical context around the bundle of legal, political, logistical, and emotional issues that goes by the name of "Title 44 Reform."

First, just a quick disclaimer: my remarks here today are solely my own, and I'm not speaking on behalf of the Depository Library Council, or the Government Printing Office, or Brown University, or the State of Rhode Island, or any library association, or any of my family and friends – nobody else, just me.

So in thinking about longer-term developments surrounding Title 44 reform, I went back to the passage of the Depository Library Act of 1962 (the most recent statute that dealt with the overall structure of the FDLP), and I examined the historical record going forward. As best as I can tell, since then...



...the only time that some kind of reform to Title 44 was NOT under serious consideration was a brief 15-minute period in the middle of the night on August 21, 1976. (And most historians attribute this aberration to the unusual alignment of the full moon that occurred that night, rather than any perceived lack of deficiency in the law.)

Now, I'm being a bit facetious here for effect, but the underlying message is still quite true: Rarely has the library community been satisfied with the legal framework of Title 44, and with good reason. First off, statutes generally by their nature often are unwieldy and usually are borne of some level of compromise. Those compromises sometimes either have unintended consequences or they leave significant needs and issues still unmet. Moreover, rarely are the wheels of the government's legislative process speedy and nimble enough to keep pace with developments in the "real world" around us, and this can be especially true in areas subject to rapid change like information technology.

So I guess my first point here is that dissatisfaction with Title 44 is the status quo.

Now, closely aligned to this sad fact is the day-to-day necessity we all face (depository librarians and GPO staff alike) in trying to make the best out of a legal structure that is less than adequate. Over the years, lots of creative efforts have been initiated to meet the dynamic government information needs of users. Sometimes these initiatives are officially aligned within the FDLP, other times they complement the official services offered by libraries in support of the FDLP. But going way back, long before even the 1962 statute, a continuing challenge in the world of government documents librarianship has been, on the one hand, to try to find practical ways to meet the ongoing needs of the program and our users despite the limitations of the existing law, and on the other hand, to work to identify those areas where legislative action might be required to improve the situation.

### **Statutory Changes to Title 44 since 1962**



- **1972** – Highest state appellate court libraries added as depository libraries  
Public Law 92–368 (44 USC 1915)
- **1978** - Designation of accredited law school libraries as depository libraries  
Public Law 95–261 (44 USC 1916)
- **1993** - Access to federal electronic information (GPO Access Act)  
Public Law 103–40 (44 USC, Chapter 41)

Since 1962, the list of successful “improvements” to the law has been short, but in each case the change did move the program forward by expanding the reach of the FDLP, usually in relation to the types of libraries participating in the program or the types of materials available through the program.

- So in 1972, we saw the inclusion of the highest state appellate court libraries in the depository program  
(August 10, 1972, Public Law 92–368, 86 Stat. 507)
- In 1978, the law provided for the designation of libraries of accredited law schools  
(April 17, 1978, Public Law 95–261, 92 Stat. 199; effective on October 1, 1978)
- And of course, in 1993, the GPO Access Act officially ushered in the electronic age at GPO; although it is worth noting here that while this law would have a profound impact on the FDLP, the statute technically did nothing to alter Chapter 19 of Title 44 (the part of the law that deals specifically with the FDLP); instead it created a new Chapter 41 on “Access to Electronic Federal Information.”  
(June 8, 1993, Public Law 103–40, 107 Stat. 112)

Aside from these few successful changes to Title 44, there were a number of other attempts over the years to revise the law that fell short.

### **Unsuccessful Attempts to Change Title 44 since 1962**



- (1) Public Printing Reorganization Act of 1979 (H.R. 4572 and S. 1436)
- (2) Wendell H. Ford Government Publications Reform Act of 1998 (S. 2288)

#### Common elements:

- Comprehensive Title 44 overhaul (not just Chapter 19, FDLP)
- Change the oversight structure of GPO
- Reduce the costs and improve the efficiencies of producing and distributing government publications
- Expand the scope of depository materials to include electronic (machine-readable) formats
- 1998 bill also introduced the explicit responsibility of providing permanent public access to government publications regardless of format
- Both bills resulted from an extended process led by Members of Congress and their staffs that included input from a broad array of constituencies

Two notable efforts (both in which the library community played a significant role) were:

- In 1979, the Public Printing Reorganization Act of 1979 (H.R. 4572 and S. 1436)
- In 1998, the Wendell H. Ford Government Publications Reform Act of 1998 (S. 2288)

Now right off the bat, both of these bills ultimately failed to be enacted, so by definition they're not necessarily models to emulate. However, they do represent the thinking behind the two major endeavors to reform Title 44 since 1962, and both attempted to address many of the concerns of the library community. So it's worth looking at them for what they might tell us.

Some common elements about these two bills and the approaches they took included:

- First, they both were comprehensive efforts to change all of Title 44; the changes to Chapter 19 dealing specifically with the FDLP were just part of a larger package that addressed the overall printing and dissemination apparatus of the federal government. One advantage to this type of approach is that it tries to get at the root problems – a lot of what is in one section of Title 44 relates to provisions in other sections of Title 44, so it can be difficult sometimes to isolate a specific change that by itself will solve a targeted deficiency. A disadvantage to this type of approach, of course, is that it is infinitely more complicated both in terms of the substance of the law itself and the politics of the numerous stakeholders with an interest in the outcome (stakeholders who often have competing interests).
- A second common element was, as part of these changes, the oversight and administrative structures of GPO were revised (although each bill attempted to do this differently).
- Third, in both cases Congress was interested in reducing the costs involved in producing and distributing government publications. While the library community was certainly amenable to this (we're all taxpayers), this was not the driving motivation of the library community. But with any piece of legislation it is imperative for Members of Congress to find a compelling motivation for them to invest their political capital in a cause.
- Fourth, both bills attempted to expand the scope of materials in the FDLP to include all branches of government and all formats (specifically, electronic or machine-readable formats); **this was** one of the paramount motivations from the library community's perspective.
- The 1998 bill built upon this point and introduced the explicit responsibility of the program to provide permanent public access to government publications regardless of format (with the emphasis here on born-digital information).
- Finally, in terms of process, both bills resulted from an extended undertaking led by Members of Congress and their staffs that included input from a broad array of constituencies (which included, but certainly was not limited to, the library community).

Now, while the library community has an obvious vested interest in Title 44, especially as it relates to the FDLP, we are not alone in our interest in government information generally. As a result, from time to time bills are introduced that would revise Title 44 or related laws, but they

do not originate from anything the library community might have been involved with, and they may or may not align with the interests or values held by the library community.

### Other Proposals to Change Title 44 (from outside the library community)



- **H.R.292 / S. 210** - Stop the Over Printing (STOP) Act  
Rep. Christopher J. Lee [NY-26] ; Sen. Tom Coburn [OK]
- **H.R.1626** - Prevent the Reckless, Irresponsible, Needless Typography (PRINT) Act  
Rep. Candice S. Miller [MI-10]
- **S.674** - Congressional Record Printing Savings Act of 2011  
Sen. Tom Coburn [OK]
- **H.R.1349 / S. 717** - Public Online Information Act of 2011  
Rep. Steve Israel [NY-2]; Sen. Jon Tester [MT]

Taking the current 112th Congress as an illustrative example, we see that a number of bills have been introduced aimed at cutting costs (primarily printing costs, or perceived printing costs). In addition, the last one here is an example of a law that, on its face, has nothing to do with Title 44 per se (nowhere in the text of this bill does it mention any part of Title 44), but it could potentially change the responsibilities of the federal government in how it disseminates and preserves government information.

So one take-away point here is that while the library community historically has been an active player in trying to effect legislative change in this area, we're not the only player; and to state the obvious, the outcomes and even very existence of legislative proposals do not always conform to our desires or our timetables.

I think it is also the case that while lots of folks, including some Members of Congress, are quick to use and support the rhetoric surrounding Title 44 issues, very few are interested enough to deal with the practical, day-to-day, nuts-and-bolts details of what it really means to provide "no-fee public access to government information in all forms from all three branches of government now and in the future." We often hear praise for free-flowing public information as the lifeblood of a healthy democracy, for "an informed and enlightened citizenry," for "holding government accountable to We the People," – all the things that warm our hearts as documents librarians. But while this general spirit is invoked by lots of different players, actually achieving this ideal at the ground level is not always their top priority. **It is our top priority.** It is

the single driving common motivation of this community. We each may bring additional interests to the table as well, but the uniting principle that rouses our passion, that incites our advocacy, and that invokes our professional obligation, is our collective cultural commitment to “no-fee public access to government information in all forms and from all three branches of government now and in the future.”

As I take a step back and reflect on some of the lessons learned in trying to effect legislative change in this area, three key factors for success jump out at me:

### Factors for Success for Effecting Legislative Change



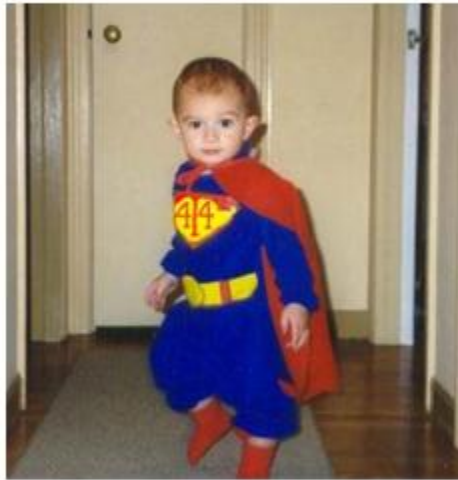
- **Clear sense of what needs to be changed**
- **Library community speaking with united voice**
- **Champion(s) in Congress**

- First, **a clear sense of what needs to be changed**. Whether this in the vein of a broad, comprehensive reform effort or a specifically targeted surgical strike, it is imperative to know what we want to change, what we’re trying to accomplish.
- Second, **the library community speaking with a united voice**. Sometimes this isn’t as easy as outsiders think it should be. The 1,208 federal depository libraries represent all different types of libraries, different geographic regions, different funding sources, and other differences as varied as the nation as a whole. Add to this the broader community of some 120,000 other “non-depository” libraries and the plot thickens. But as a community, we always have had more in common than whatever differences may have distinguished us. And when we can unite around a common purpose, we have been known to do great things.
- Third, **one or more champions in Congress** to lead and shepherd a proposal through the legislative process. We as librarians may have the best idea in the world, but unless there is at least one Member of Congress who agrees that this is important, and is willing to do the necessary work to sensitize his/her colleagues in Congress and convince

them that these changes have value for their constituents, then that good idea isn't going anywhere. As documents librarians, we all know how a bill becomes a law, and it all has to start with a Member of Congress introducing a bill. This may be the most obvious point on the planet, but it also can sometimes be the most difficult and time-consuming step in the process – to identify, cultivate, educate, and rally round Members of Congress that are willing to support this cause.

Having all three of these factors in place does not guarantee success, by any stretch of the imagination; but without any one of these, the chances of failure are infinitely greater.

In closing, I'll leave you with one final thought...



This is a picture of my son in his first Halloween costume (he's probably about 15 months old in this picture; that was over ten years ago). Now this is a government documents crowd, so I don't have to tell you what he's dressed as – if you can see the T44 on his little chest plate there, then of course you know that he's **Super Title 44 Man**, the superhero dedicated to truth, justice, and (say it with me) “no-fee public access to government information in all forms and from all three branches of government now and in the future!”

Now, it would be nice if such a superhero existed. Alas, such is not the case. (I'm not exactly sure what the process is in government to requisition a superhero, but I would strongly advise GPO to maybe look into that; it can never hurt.) In the meantime, however, the way the system is going to get changed is through much more conventional channels.

It will not be easy – but as we have seen, success in the past did not come easily. It will not happen overnight (as generations of documents librarians can attest to) – but success in the past took the necessary time to plan, gather support, and execute a legislative strategy. And it can't be done by just one or two individuals, or one or two libraries, or even one or two associations. The *superhuman* effort (if you will) that it will require **must** come from the community as a whole. **We are the community** charged with the professional responsibility of stewarding and providing access to government information: past, present, and future.

When I was about his age, Congress passed the Depository Library Act of 1962. Fifty years later and it's still the governing law on the books. That law doesn't work in today's environment; it hasn't worked for more than 30 years. It needs to change, and we **collectively as a community** have to be the agents of that change.

Thank you.

