

Collaborative Stewardship: Building a Shared, Central Collection of

Print Legal Materials

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Libraries are in an unprecedented period of change. The predominant publishing model is moving from print to digital. Libraries seek to strike the right balance between providing information that today’s researcher needs just in time and preserving materials in print for tomorrow’s researcher just in case. Legal resources present even greater challenges. This article will reflect how two organizations, the Legal Information Preservation Alliance (LIPA) and NELLCO, an international consortium of law libraries, are currently working together toward a collaborative solution.

KEYWORDS: print retention; preservation; collaboration; consortia; legal information; archive; law library; Legal Information Preservation Alliance; LIPA; NELLCO; New England Law Library Consortium; collaborative collection development

PROBLEM STATEMENT

Libraries spend increasingly greater percentages of their acquisitions budgets on digital materials each year. According to the annual statistics collected by the Association of Research

Libraries, in the five-year period between 2004 and 2009 library spending on e-content more than quintupled; from a median of 10% of materials budgets in 2004 to just over 57% in 2009 (Association of Research Libraries 2011). The current transition period, from a primarily print information environment to a heavily digital one, creates unique challenges for law libraries.

As libraries shift their materials spending from print to digital, the question of the preservation of and access to existing print materials comes to the fore. Many libraries will remain committed to the preservation of print format materials for a number of valid reasons, despite the duplication and ubiquity of those materials in digital formats.

First, we are still in a transition stage. Many resources are still available in print only, and some may never be available in e-format. In addition, one tenet of librarianship is the responsibility not only to provide access to the user today, but also to ensure the transfer of the cultural and historical record from one generation to the next. Through careful and thoughtful stewardship of both print and digital resources, today's libraries can fulfill that obligation to the future.

Many librarians are fairly confident in the stability of our present-day digital information infrastructures. However, there is too much uncertainty about the long-term stability for libraries to rely exclusively on digital content to meet our commitment to tomorrow's library users. With the unyielding pace of change in technology today, law librarians are not comfortable making assumptions about the information landscape in 2020, let alone in 2050 or 2100. We do not know with certainty that current digital preservation and migration strategies

will be sufficient to preserve the entire corpus of U.S. legal materials for future generations. We cannot be sure that access to the internet will remain unimpeded. And even if we had assurances about both robust digital preservation and unfettered internet access, there are still more than 25% of U.S. households without internet access (U.S. Census Bureau 2009). Access to the law must be made available to those on both sides of the digital divide. The importance of the law to the human endeavor, to a civil society and to democratic principles makes “legal texts . . . among the most important examples of what needs to be preserved. . . Nothing less than transmission of the permanent, accurate record of legal knowledge to future generations is at stake” (Legal Information Preservation Alliance 2011).

POISED FOR COLLABORATION

Any sustainable and reliable print preservation project for legal materials will require a cooperative approach. The New England Law Library Consortium (NELLCO), now an international consortium of law libraries, has a strong history of inter-institutional collaboration. Founded by 15 members in 1983 in response to the concerns of law school deans over the rising costs and perceived inefficiencies in their libraries, NELLCO’s *raison d’etre* is collaboration among law libraries.

Collaborative collection development has long been one goal of NELLCO, only minimally realized through various handshake agreements. For example, members agreed to consult the consortium’s union catalog before de-accessioning a given item in order to ascertain that at least one other member still held the item. If the library found that no one else in the group

owned the item in question, that library would assume 'last copy' responsibilities and retain the item. Other members participated in distributed collection responsibility agreements, assuming responsibility for the acquisition and retention of legal materials for a particular region or a list of countries. These efforts do enjoy a measure of success, and they serve a useful purpose. However, they lack the structure and permanence necessary for a long-term, successful approach to managing print retention collaboratively.

Interest in pursuing a more robust solution has fluctuated among NELLCO members in the past. At times, such as following the publication *Double Fold: Libraries and the Assault on Paper* (Baker 2001), the issue would emerge as an urgent concern. But a combination of factors, including American Bar Association (ABA) standards for law libraries (2011) and competition among consortium members to attract students to their law schools, thwarted further efforts. Today, those obstacles have been ameliorated.

The ABA, as an accrediting body for law schools, historically measured volume and title counts as key metrics for the quality of an academic law library, forcing libraries to keep those counts up. Several years ago the ABA revised the standards and volume/title counts no longer hold sway, freeing law libraries to discard print without fear of jeopardizing the law school's accreditation. Competition among NELLCO member libraries has also subsided. The economic realities of the day and a broad cultural shift toward a more collaborative society have resulted in an organization that is finally ready to take action. The time is right for collaboration around print retention.

LIPA AND NELLCO

Once the stage was set for NELLCO to act, we recognized the potential preservation aspect of the project. NELLCO's mission is access focused. But many NELLCO members are also members of the Legal Information Preservation Alliance (LIPA). LIPA is the product of a conference, *Preserving Legal Information for the 21st Century: Toward a National Agenda*, sponsored by the Georgetown University Law Library and the American Association of Law Libraries in 2003. Conference participants established LIPA as an organization to provide a framework for creating solutions to the problems of preserving print and digital legal information. Since its inception, LIPA has conducted an inventory of existing and completed preservation projects and published a white paper, *Preserving Legal Materials in Digital Formats* (2005). Its current digital preservation projects include a Legal Information Archive, a Law Review Preservation Program, and a web archiving service. LIPA is a member of the National Digital Stewardship Alliance, a collaborative effort to preserve a distributed national digital collection for the benefit of present and future generations. All of these important initiatives focus on digital preservation. Collaborating with NELLCO on a print project serves the other arm of LIPA's mission.

LIPA currently has 106 member libraries in the United States and Canada; NELLCO has 118 members in 4 countries. Fifty-six libraries are members of both, and both organizations are independent non-profits with 501(c)(3) status. It seemed obvious that the two organizations should marshal their resources to develop a viable model for print retention that would address both preservation and access concerns.

LIPA and NELLCO had previously established a solid working relationship upon which to build. From that foundation, in 2010 the executive directors of the two organizations set out to explore the possibilities for a collaborative solution.

CREATING A LAW-SPECIFIC COLLECTION

While some law libraries have made an institutional commitment to the digital format over print when available, with the expectation that someone else will preserve the print, most libraries feel that they are bound by their institutional missions and their professional duty to retain print (or access to print) until another stable, reliable format is widely accepted as equal to print in terms of archival quality. Law libraries seeking solutions have entered into a variety of arrangements to alleviate the problem, but these are often local, informal or distributed solutions and may not stand the test of time and the pressure for recapturing space.

Many law libraries, especially academic law libraries, have opportunities to put portions of their collections into campus storage facilities or regional repositories. But these opportunities often come with restrictions on available space and access to the collections, as well as fees for the storage and servicing of the collections. There are several reasons why a shared collection of legal materials might be more acceptable to law libraries faced with the decision to discard print.

One major reason for creating a law-specific collection is that the core collection of primary materials is identical from one law library to the next. Unlike university library collections, a core collection in law can be easily identified and held jointly. Interpretation 606-5

of ABA Standards for Law School Accreditation (2011) provides clear guidance on the composition of the core collection, which should include federal and state court decisions, statutes, regulations, administrative decisions and international agreements, as well as secondary sources appropriate to the school's programs.

A second justification for a discrete, subject-focused legal repository is that the complex nature of legal citations requires an advanced research skill set to locate and deliver items a user might need.

Finally, the importance of preserving and providing access to primary legal materials cannot be minimized. Democracy is established and maintained through the rule of law, and it is vital that our legal heritage be safeguarded for future generations. The establishment of a law-specific storage collection will ensure that protection.

LAYING THE GROUNDWORK

As noted above, the executive directors of LIPA and NELLCO have been exploring the concept of a shared storage collection of print legal materials for two years. Having determined that a core group of members was committed to a law-focused storage collection, we embarked on a process that included these steps:

- literature review
- scan of other print repository projects
- development of a statement of purpose for a proof-of-concept pilot project

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- discussions with boards and constituents
- visits to storage facilities
- grant proposals
- invitational summit
- joint working committee
- outline of issues for further exploration
- timeline

Our initial investigation began with an extensive review of the literature, which validated our assessment of the print retention landscape and confirmed that other libraries and consortia had begun discussing and planning print repository projects. In particular our thinking about shared storage collections was influenced by a Council on Library and Information Resources report (Bridgam 2001) and our thinking about the print/digital transformation of law collections was informed by an early draft of Building a Collaborative Digital Collection (Wu 2011). We also referred regularly to the body of work developed by Lizanne Payne, Constance Malpas, the Center for Research Libraries, Ithaka S+R and others, cited elsewhere in this special issue.

We then built on the knowledge base gained from the literature review by learning more about other print repository projects from the people involved in them. In particular we focused on the Western Regional Storage Trust (WEST) (California Digital Libraries 2011), the Florida statewide shared collection (Council of State University Libraries 2011), the Minnesota

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Library Access Center (Minitex 2012), the University of California (2011) shared print/JSTOR program and the Center for Research Libraries (2010) print archiving project. These projects represent a variety of models for shared print collections and storage facilities, and our goal was to learn about different approaches in order to refine our thinking about the design of our project.

We also visited a variety of storage facilities over the past two years, beginning with the purpose-built storage facility in Windsor, Connecticut operated by William B. Meyer, Inc. We toured the Five College Library Depository in South Amherst, Massachusetts and met with the Five Colleges library directors. We visited the Washington Research Library Consortium and its high density storage facility in Upper Marlboro, Maryland, and we had an opportunity to view the University of Chicago's Mansueto Library's automated storage and retrieval system just two weeks before it opened. We continue to identify repositories that might provide a different model for us to consider or that might have space available for contract when we are ready to assemble our collection.

During the time we were learning more about repository projects and facilities, we also began talking with our boards and our members about our interest in creating a pilot project for the purpose of testing the idea of a shared storage collection. We introduced the project idea at our respective membership meetings, posted on blogs, and included it in the *Slice*, NELLCO's e-newsletter (2010). We found broad-based support from our boards, and many of

our member libraries encouraged us to move forward at a faster pace so they could begin to make positive decisions about their print collections.

DESIGNING A PILOT PROJECT

Our next initiative, in the fall of 2010, was to draft a statement of purpose for a proof-of-concept pilot project and to turn that into a grant proposal that would allow us to fund the development of a centrally located shared print collection of journals. Our intent was to demonstrate the feasibility of shared print collections, rather than redundant print collections, as a sound strategy for print preservation and access in the transition to reliance on digital formats. The pilot project was designed to build a collection of complete bound runs of an extensive corpus of law journal titles contributed by participating member law libraries. Donors would provide the MARC records to accompany the print materials, and these would be loaded into the NELLCO Universal Search Solution (USS), an open source discovery tool developed with grant funding from IMLS, which would serve as the union catalog for the project.

While law journals are not primary source materials, which are the highest priority for permanent retention and preservation, we initially focused on the traditional journal format because it is an easy group of materials to identify and collect. Law journals also consume significant shelf space in libraries, and the ready availability of electronic journals means that the print versions receive very low use. The repository was not designed to be a dark archive, but the philosophy is that the project advances the goal of print preservation by providing a retention plan for print and limiting access to the physical copies.

As part of the proof-of-concept pilot we also planned to develop a business model for the repository that would enable us to provide a level of access to both contributing and non-contributing member libraries (as co-owners of the collection), and to non-member libraries on an occasional or as-needed basis through interlibrary loan. The model would be developed with fairness and sustainability as the primary goals. Finally, a successful pilot would allow us to replicate the program in other areas of the country with a system of regional repositories, while also creating a model for shared storage collections that can be extended beyond the journal format to include other types of legal materials.

We identified a potential foundation funding source, wrote a descriptive overview of the shared print collection and repository project, analyzed bound journal title and volume counts supplied by member libraries and drafted a budget that included expenses (based on a storage facility quote for 100,000 volumes) for processing contributed materials (picking, cleaning, packing and shipping), first year ingest and storage costs, second year storage and retrieval, marketing materials and travel. We submitted the project description and budget with the understanding that we would provide more detail if we were invited to submit a full proposal.

The foundation's response was that it was an interesting concept, but they were skeptical that we could develop a business plan during the implementation of such a large effort. They suggested instead that we consider developing our business plan as an initial step, and they offered the possibility that they might provide a small amount of support for such a

planning process. We quickly submitted another prospectus for a planning process that would engage our stakeholders, through a series of regional facilitated meetings, in the development of a clear, realistic and sustainable business plan for a shared print collection pilot project. Again we created a budget with the understanding that we would provide more detail if we were invited to submit a full proposal. Again we were unsuccessful in obtaining the foundation's support.

BACK TO THE DRAWING BOARD

While we continued to believe in the value of our shared storage collection concept, we took the foundation's message to heart and decided to test the validity of our concept by bringing together the experts in the field. We organized a dinner during the March 2011 International Coalition of Library Consortia meeting to talk with members of the WEST project, to brainstorm about issues related to print repositories and to build relationships with other consortium leaders. Simultaneously we began planning a 2-day invitational summit for a small group of key constituents from our organizations and other interested parties for further discussion and brainstorming. We hoped this would lead to a concrete plan of action for a coordinated print repository effort for law libraries, taking advantage of the experience of other participants.

The Center for Research Libraries agreed to provide space for the summit, and we invited members of the CRL staff in addition to prominent law librarians, consortium leaders and representatives from OCLC, Ithaka S+R, William B. Meyer, Inc., and William S. Hein & Co., Inc. The group convened in Chicago in May 2011.

The first day of the summit focused on print repositories generally, and it opened with a panel discussion to set the stage. It was a wide-ranging conversation about such issues as the role of libraries as stewards of information and scholarship, how we plan for print retention management as our total investment in print decreases and the economic feasibility of starting another print repository project when there are already several other efforts underway around the country. We followed that discussion with an opportunity for the law library directors in attendance to talk about the current methods of preserving their print collections and what they anticipate to be the future directions in their libraries with respect to print retention. Although the libraries represented had varying commitments to print retention and different budget and space issues, all indicated that a shared storage collection of legal materials would be a significant contribution to the field and would give law libraries the security to make local decisions about their print collections with reliance on a centralized, shared collection.

Our afternoon was structured around group discussions on four topics: ownership models for print repositories; copyright implications; access and delivery models; and fees, funding models and cost allocation. Each session had a discussion leader to summarize the topic and present some of the issues, but the discussion stimulated new ideas and questions for us to consider.

Day Two of the summit was a half-day that concentrated on the LIPA/NELLCO collaboration. With the help of discussion leaders we reviewed the feasibility, desirability and sustainability of a collaborative project to establish a shared storage collection of law materials,

as well as the major obstacles and political considerations. The participants agreed that the project had merit but suggested that we needed a clearer articulation of our stated goals of preservation and access, along with a reconsideration of our plan to start the repository with a journal collection.

JOINT ADVISORY COMMITTEE

Although the LIPA and NELLCO boards and memberships had approved of the exploration of the print repository concept, the executive directors had really done all the investigation and background work up to this point. We decided that it was time to involve some of our stakeholders in the process, not only to spread the work around but also to provide some different perspectives on our short-term and long-term goals. We asked four of our members (three academic law librarians and one state law librarian) to join us in forming a Print Repository Advisory Committee, responsible for determining the feasibility and desirability of a joint pilot project to establish a shared print collection of primary U.S. legal materials.

We defined the project scope as follows:

The primary goal of the Project is to create a proof-of-concept pilot that will serve as a model for expansion, or for replication by other groups, which will demonstrate the feasibility of a shared collection of accessible print materials as an alternative to individual, duplicative collections, or distributed models of

collaborative print retention. The Project will encompass only U.S. primary legal materials, in print format.

We had determined after the summit that planning a pilot project around journals was not going to capture the necessary interest of our members, so we shifted the focus to primary materials. We asked the committee to supply these project deliverables: list of titles categorized as U.S. primary legal materials (see Appendix); business model and implementation plan for start-up and sustainability; goals for the first year of operation; project timelines and benchmarks; and an evaluation process.

We created an outline of issues to be addressed by the committee in designing the pilot project. These included both process and policy considerations related to the collection, access, funding, participation, legal issues and identification and selection of a facility. Committee members are working in teams of two on each of these areas. We have held several conference calls to discuss our findings, and we met in person in January 2012 to review our progress and determine next steps. As of this writing we are concentrating on collecting statistics on volume count and linear foot requirements for the materials we identified, investigating various methods of providing bibliographic access to the collection and drafting an RFI/RFQ to send to potential storage facilities. We have many more issues to address in the near future, but we hope to have a comprehensive proposal ready to present to our memberships by July, 2012, and to begin ingesting materials by early 2013.

PROPOSAL COMPONENTS

The key components of the proposal have been established by the Advisory Committee. They are:

- collection
- access points
- funding model
- participation
- legal concerns
- facility selection

As previously stated, collection scope has been established. We hope to acquire the collection through donation by participating libraries. We can keep costs down by minimizing the number of donating libraries. If the entire collection can be acquired from a handful of libraries in a relatively small geographic area, the cost of picking, shipping and ingesting those materials can be held in check.

Another significant collection issue pertains to ownership of the materials in the repository collection. Our vision, which may be unique among the current print retention projects on the horizon, is a jointly owned collection. Property may legally be held under an ownership system called tenancy in common. Under this system all joint owners have an undivided interest in the property in its entirety. This is important for our members for two reasons. First, it allows participating libraries to claim ownership of the materials stored offsite. This can be helpful to libraries in alleviating any concerns that their deans, faculty, or students might have about

losing control over these materials. Second, for libraries connected to state institutions, de-accessioning and discarding materials can be an onerous task, involving convoluted and time-consuming bureaucratic maneuvers. If these libraries can still claim ownership of the materials, it may be an easier path to participation.

Access issues include how the material in the collection will be discovered by the end user and how the material will be made available to the end user. Discovery will be addressed in two ways. First, participating libraries will establish a location in their online catalogs so that users will know the material is available for retrieval from the offsite facility. Second, we will develop a freestanding union catalog of the materials, using NELLCO's Universal Search Solution (USS). The plan requires that libraries donating materials also provide the MARC records for those materials. Those records will be harvested by the USS to provide another point of discovery.

Users may access the collection in one of several ways. If the physical item is needed, it will be shipped to the requesting library with a fixed circulation period. If the item can be delivered digitally, it will be scanned at the storage facility and delivered either directly to the end-user or to the requesting library. Finally, if a researcher requires sustained access to a substantial number of volumes in the collection, we hope to be able to offer an onsite reading room at the storage facility.

Our original intent for funding the project was to attract grant funding. As stated earlier, we were not successful in our early attempts. However, we felt the project was valuable enough to the members that we should move forward with a vision of self-funding the pilot. The costs of

the project will be distributed among the participating libraries. We do not yet have a good estimate of the costs, and the ultimate distribution will depend on the number of participating libraries. The more members we can recruit, the smaller each library's share will be. Part of the task of the advisory committee and our respective boards will be to generate buy-in among the members after the proposal has been approved.

The committee is also charged with determining who will be eligible to participate in the pilot. Bearing in mind that our short-term goal is to prove the concept, we have decided to limit participation only to libraries who are members of either LIPA or NELLCO. The committee recognizes the potential for new revenue streams that could be opened up by this repository, but for the duration of this pilot project those ideas will be set aside.

There are a number of legal issues that we will need to address in the proposal. First is the nature of the collaboration between the two entities and how to structure the relationship. For the implementation of the pilot project the simplest approach is a joint venture governed by a written agreement or Memorandum of Understanding (MOU). If the pilot is successful we may revisit the relationship and decide on a different model. If the collection is sustained, and we begin to explore revenue generation and outside (non-member) participation, a separate governing board may need to be developed. This might best be accomplished through the creation of a separate legal entity.

Other legal concerns relate to copyright issues. The jointly-held collection would be managed in compliance with existing copyright laws, including the fair use and scholarly sharing

provisions. We do not anticipate any copyright concerns with digital delivery, as the content for the pilot is in the public domain. However, the committee is aware that we need to keep this in mind if we should expand beyond the pilot phase and move to journals or monographs at some time in the future.

The final decision the committee needs to make before we present our proposal to the members is what facility we will use to manage our collection. It is clear we are looking for the Harvard-style high density model. As noted earlier, we visited a number of these facilities. As we prepare our Request for Information/Quote to submit to possible partners, we are considering a number of issues. Some of them are the obvious, like cost, climate control and fire prevention. Others include service level, turnaround time for requests, expansion space and facility staff expertise. We are exploring both for-profit options and potential university facilities, each of which presents strengths and weaknesses.

CONCLUSION

It has never been clearer that this is the time to act on the issue of print retention of legal materials. Digital legal information is the format preferred by most researchers and practitioners. A protracted economic downturn is forcing libraries to make hard choices about duplicate formats. Collaboration among law libraries toward the goal of print retention for posterity seems the clearest and most cost effective approach. The law, the cornerstone of our society, should not be jeopardized by the vagaries of format or a premature reliance on indeterminable digital formats.

Through this collaborative effort, LIPA and NELLCO hope to establish a model that responds to the current needs of our members as fully as possible and anticipates the needs of future researchers as perceptively as possible.

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Appendix of Materials to be Included in Pilot Collection

- state session laws
- state codes
- administrative codes
- state registers
- official state reports
- lower court reports
- Attorneys General opinions
- National Reporter System (federal and regional)
- select specialty reporters
- Supreme Court reports (all 3 versions)
- United States Code (all 3 versions)
- Statutes at Large
- Code of Federal Regulations
- Federal Register
- Congressional Record
- U.S. Congressional Serial Set
- Federal Cases
- Federal Administrative Agency decisions and orders
- Presidential Papers and Executive Orders

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