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Standards Column — Mandatory E-Only Deposit Proposal by the U.S. Copyright Office: Standards Issues

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On July 15th, the **United States Copyright Office** at the **Library of Congress** released a “Notice of proposed rulemaking” (see <http://edocket.access.gpo.gov/2009/E9-16675.htm>) in the *Federal Register* (v. 74, no. 134, pp. 34286-34290) outlining a proposal to require that publishers deposit electronic works published in the United States and available only online. The proposal is to create amendments that “such works are exempt from mandatory deposit until a demand for deposit of copies ... of such works is issued by the **Copyright Office**,” along with establishing processes for such a demand, including the establishment of new best copy criteria for electronic serials available in online form only. The *Copyright Act of 1976*, which removed the mandatory deposit requirement with the **Copyright Office** in order to obtain a copyright, established the mandatory deposit rules to ensure that the **Library of Congress (LC)** would be able to retain a high-quality collection and preserve it for **Congress** and the public. The **Copyright Office** has issued and revised the rules governing this deposit a number of times since their first release in 1978. What is particularly interesting about the proposed new rules is that electronic versions are being acknowledged as an integral distribution method necessary for inclusion in **LC’s** permanent collections. Establishing rules for the mandatory deposit of electronic-only content makes sense and is long overdue.

One of the key elements of these rules is the “Best Edition Statement,” which is summarized in a circular produced by the **Copyright Office** (see <http://www.copyright.gov/circs/circ07b.pdf>). Among the interesting points about this circular is Section IX, which describes “Works Existing in More Than One Medium,” including “Printed matter,” “Microform,” and “Phonorecord.” Absent from these is any form of digital media. Even when these rules were last adopted in 2004, the **Library of Congress** was explicit in excluding digital media in the deposit requirement, because — for a variety of reasons — the digital version was deemed inferior to print or microform, which can be viewed visually or with magnification, in the case of microform. When the rules were first released in the late 1970s, the reasons for excluding digital media were obvious: few people or libraries had the technological resources to interact with digital content. In fact, the first regulation expressly exempted materials that “cannot ordinarily be visibly perceived except with the aid of a machine or device.” Slowly these rules have been adapting to the new technical realities. In 1989, digital copies in “automated databases available only online within the United States” were

exempted, although physical manifestations (such as CD-ROMs, disks, or magnetic copies of “statistical compendia, serial and reference works” were removed from the exemption.

However, as content — particularly scholarly content — is now often published only online, the **Library of Congress** has recognized the need to include digital formats in its mandatory deposit rules. **LC** has been collecting electronic editions for a number of years, and their latest collection development statement (see <http://www.loc.gov/acq/devpol/periodic.pdf>) for periodicals refers in several areas to **LC’s** acquisition of online content. In particular, however, the following two sentences encapsulate the problems impeding permanent digital collections into the future:

“In the future, the Library will have to choose the format or formats that will be most valuable to the **Congress** and the Library’s other user communities. This will involve developing the infrastructure and policies needed to select, describe, archive, manage, and provide public access to electronic subscription and open access periodicals.”

While libraries have already been collecting electronic content, the issues of long-term preservation and management of e-materials are far from resolved and pose the greatest problems. The proposed rulemaking includes a suggested new section of the “Best Edition Statement” in Appendix B to Part 202, which describes what a best edition for electronic works might include. The proposal states that these criteria focus on the “sustainability of the various digital formats currently in use.” It further describes a sustainable format as one that is “less difficult and more cost-effective to transform or migrate to future systems as technologies change.” These statements are rather vague — in all likelihood necessarily so. How can one know for certain which formats will most easily transform into the next generation systems? While XML should fit that description, it does not address the current costs to create well formed and thoroughly tagged XML. There will certainly need to be some balance between future preservation costs and current business processes and costs that the publishers will need to bear. The proposal does highlight this and asks respondents to the proposal to focus on the “imposition of a further requirement on copyright holders.”

The infrastructure needed to create even a single digital repository is tremendous, and the technical policies required to successfully ingest content from hundreds — much less tens of thousands of publishers — is daunting. Archival formats are expensive to produce, as is the quality

metadata needed to discover and retrieve that content. Finally, the legal and licensing questions about providing access to a repository’s content present another large challenge. The fact that the **Copyright Office’s** proposed rule change explicitly states that it will not go into effect until after **LC** has determined how best to implement deposit speaks volumes about these challenges.

Although the current rulemaking proposal only opens the door to the **Copyright Office** mandating deposit, the ramifications on how **LC** collects content, in what formats and frequency, and how and what rules and procedures will be put into place still need to be addressed. In addition to file formats, some areas that will need to be considered include frequency of publication notices and the clarification of terms that, though long established in the print world, are less meaningful online, such as “issue” or “unit of publication,” “publication date,” and “version of record.” Even the term “publisher” is one that poses challenges in the electronic environment.

It will be essential for publishers — however they are defined — to play a role in the development of these policies. I am hopeful that the **Library of Congress** will continue its history of working with publishers on important standards issues. There are potentially many standards-related projects that will be brought to the forefront as these policies are developed, ranging from identifying and defining preservation-friendly formats to standardizing availability notices, packaging, and file relationship structures to metadata. Considerable work has been undertaken in many of these areas, but as yet they lack the wide adoption and formalization that the standards process adds.

On a related note, **NISO** has received and the **NISO Membership** has approved a new work item proposal from the **National Library of Medicine (NLM)** to standardize Markup for Journal Articles based on the **NLM’s** Journal Archiving and Interchange Tag Suite. Commonly referred to as the **NLM DTD**, this family of XML formats for publications has become a common file structure for the creation of journal content. It is also very likely that a standard file format structure based on XML will be one of the key deposit mechanisms required by the **Library of Congress**, should this proposed rule come into effect. The **NLM DTD** was originally created by **National Center for Biotechnology Information (NCBI)** and **NLM** for the submission of citations and abstracts for *MEDLINE/PubMed*. Because of its robust but flexible structure, the DTD has gained popularity as a method for producing content not only within the scholarly realm, but also for publications such as comic books

continued on page 84



Acquisitions Archaeology — Back to the Beginning (Vol.1, No.1, March 1989)



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March 1989 was just over 20 years ago. I don't, off the top of my head, remember what exactly I was doing that month. I do know that the most common color in my wardrobe was fluorescent green, my favorite music was performed by **Def Leppard** and **M.C. Hammer**, and I had never heard of **Starbucks**. While I — along with the rest of the world — have changed a bit over the past two decades, somehow it still does not seem like that much time has passed. However, in early 1989 there was still a Soviet Union, consumers wondered if “compact discs” really were better than cassettes, and the potential of the Internet still seemed very much the realm of science fiction.

And as I was carefully lacing a pair of bright green **Nike** cross-trainers on the west coast, issue #1 of a “quarterly communication” called **Against the Grain** was launched out east. (Incidentally, at ten pages long, it would prove to be the shortest **ATG** issue ever.) The publication emerged at an interesting time. While 20 years may be an interval too short to be “history” in the proper sense, at least to some, in many ways it seems an eternity ago for libraries. For those people integral to the process of information production, dissemination, and consumption, everything was about to start changing. Or was it? Intuitively, we who are publishing, vending, selecting, and acquiring are doing basically the same thing, only differently. But are we...?

With the launch of this column, I am setting out to explore not so much the history of acquisitions, per se, but a look back at how “acquisitions discourse” has changed — not just what we've done, but how we're thought about, discussed, and organized what we've done. The two general questions, then, guiding this ongoing investigation will be:

1. In what ways has the environment in which we work changed?
2. Are we doing the same thing in different ways, or are we really doing something altogether different?

Take, for instance, this first issue of **ATG** from March 1989. Two things are happening at once. The first thing is what the issue *looks like* and the other thing is what it *says*. So what *does* the inaugural issue look like? Well, as I mentioned, it is short — the only **ATG** issue to come in under 20 pages. It's just two sheets of 11 x 17 ivory paper, folded and collated together with three holes drilled in the left side, reminiscent of a community newsletter or one of those radical 'zines that used to crowd the magazine rack at **Tower Records**. (Browsing **Tower** for a new tape is something I might have done in 1989, though I always found the rack of 'zines, with their radical-ness, a little intimidating.) Instead of the familiar motto “**Linking Publishers, Vendors and Librarians**” there is the tagline “**News for Participants in the Charleston Conference.**” The newsletter-like appearance is accentuated by the overtly “Mac-ish” look of the text and printing (including the wood-grain border framing the cover), while the

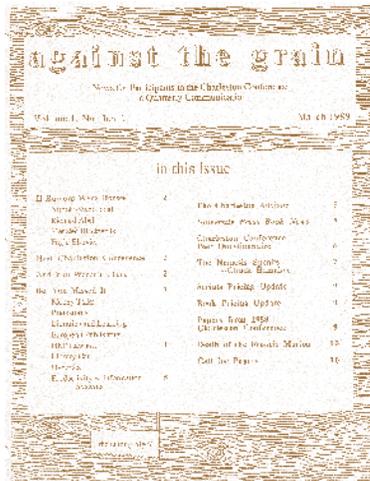
'zine-like quality is enhanced by the little image of the saw blade on the cover inscribed with the question “the cutting edge?” (see cover image, below). In all, the look is understated; a definite contrast to the extremely refined look and large size of its twenty-first century descendants.

But what does it say? Overall, it seems to say that the time has come: “*We need our own publication!*” Like all first-issues, this one declares that the discourse of acquisitions has advanced sufficiently to warrant a publication dedicated to the topic, and that it is a discourse of at least ten pages. Obviously, many discourses never make it past the first issue and like other first-issues, there is nothing that immediately indicates that subsequent **ATG** issues will be larger, publish more frequently, and continue for more than twenty years. We know with hindsight that it will, of course.

Complexities start to arise as soon as I attempt to situate myself within the discourse of the issue. Though some names — of both people and vendors — I do recognize, many I do not. The first rumor of the first “**Rumors**” deals with a failed merger of **Swets** and **Nijhoff**, two names that would also be at the epicenter of a tectonic shift in the vendor world when I started out in Acquisitions more than ten years later. I learned that **ReadMore Publications Inc.**, **John Menzies Library Services**, **John Coutts Library Services**, and **James Bennett, pty, Ltd.**, were once all a part of the Library Services Division of **John Menzies, plc**; though I've worked with **Coutts** and **Bennett**, I had no idea they were once part of the same company. Nor have I ever heard of **John Menzies**. Overall, though, the conversation and speculation about the marketplace is familiar even if some of the specifics are not.

Other things are familiar but also odd when considered as discourse. **Katina** apologizes, for instance, that the cost of registration for the **Charleston Conference** is going up — to \$100. In the “**Bet You Missed It!**” feature, **Barry Fast** describes the **Pubnet** product featured in a *New York Times* article.¹ **Pubnet** is a pre-Web Internet software product that allows for “instant ordering,” at a cost of up to \$20,000 for publishers and a steep cost to bookstores that would use the system — \$250 for the software and a \$50 monthly fee. (For reference, the \$20,000 would be over \$30,000 in 2008, according to **MeasuringWorth**.² According to the same site, the subscription fee would be more than \$75 a month in last year's dollars!)

In this initial look at the start of **ATG**, we can say that some things are the same, some things are not, and some of the problems (taking “problem” in a general sense) are still problems today. The real question that we are left with is how this history, our history, can inform the present, and whether it can provide solutions or perspectives that are meaningful (or perhaps just interesting) today. 🍷



Standards Column from page 83

and cookbooks. Standardization of journal article markup — which could be extended to other forms of publications — could go a long way to making one of the issues surrounding mandatory deposit somewhat less complex.

The deadline for submitting comments to the **U.S. Copyright Office** on their proposed rule is August 31, 2009 and responses are due from the **Library of Congress** by September 28, 2009. The status of the proposed rules will take some time to resolve, but, more importantly, the larger issues surrounding implementation will likely take considerably more time to work out. 🍷

Endnotes

1. **Barry Fast**. (1989). “And Then There Were Bookstores...” Bookstores Look to Instant Ordering, *New York Times*, January 12, 1989, 33.” *Against the Grain*, Vol.1, No. 1 (Mar. 1989), p.3.
2. **MeasuringWorth** — <http://www.measuringworth.com/uscompare>.