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**PUBLIC PRINTER
PREPARED STATEMENT BEFORE THE**

**COMMITTEE ON RULES AND ADMINISTRATION
ON
PUBLIC ACCESS TO GOVERNMENT INFORMATION
IN THE 21ST CENTURY**

WEDNESDAY, JULY 24, 1996

9:30 A.M.
RUSSELL SENATE OFFICE BUILDING
ROOM 301

Mr. Chairman and Members of the Committee, thank you for this opportunity to testify about an important, and endangered American Institution -- the Federal Depository Library Program.

The program was created by Congress to promote public knowledge of Government activities. It traces its roots back 183 years when congressional materials were first deposited at certain libraries for public inspection.

Today the program is a partnership between the Government and some 1,400 libraries in communities throughout the nation. Public libraries, academic libraries, law school libraries.

The U.S. Government Printing Office supplies copies of publications from all three branches of Government. Depositories house the documents and provide staff to give citizens free public access to the information.

There are 53 regional depositories, serving each state in the country. These regionals *permanently* retain all Government documents provided. I'd like to emphasize the word "permanently." That is our nation's only guarantee of continued, free public access to a vast storehouse of Government information. Nowhere else in law, or in practice, is there provision for permanent, no-fee, public access to Federal information.

The program is efficient. Last year some 20 million copies of publications were distributed at a cost of just over \$1 per copy. Libraries contribute resources valued at some 4 to 5 times the cost of the publications they receive.

It is effective. Dedicated professional librarians assist millions of Americans each year in locating print and electronic information for business, education, personal needs, and evaluating the performance of our Government.

It is not political or subject to censorship. For 101 years, since the landmark Printing Act of 1895, responsibility for the program has rested with the elected representatives of the people in

the Legislative Branch. There is a depository library in nearly every congressional district, to directly serve all types of users in local library settings. A conservative estimate is that 10-12 million citizens use them annually.

The Depository Library Program continues to change to take advantage of electronic technology. Under the **GPO Access** Law passed by Congress in 1993, the public is getting a rapidly expanding list of publications delivered free of charge over the Internet. Users are downloading electronic documents at the rate of more than two million per month. We are taking initiatives for a successful transition to a more electronic depository program. A congressionally mandated study of this transition was just completed and copies are available here this morning.

This program, serving the needs of a democratic society for an informed electorate, is more important today than ever before. But it is in real jeopardy. Because content is being bled from the program. First, a trickle. Then a steady stream. Until the fundamental, supporting principle of free, equitable access to Government information is itself in danger.

Until recently, Government agencies generally focused attention on carrying out their missions. Publications and collections of information were predominantly the by-products of their work. Few agency publishers sought to control access to, or reuse of their information. Copyright on Federal information, produced at taxpayer expense, was prohibited. Information was in the public domain, available to everyone.

But today, dangerous new precedents are being set. Government information, produced by government employees at taxpayer expense, is being turned over to certain groups who are given exclusive distribution rights. These groups are establishing copyright or copyright-like controls.

Here is an example. The Commerce Department recently published a 480-page, four-color, book titled "*The Big Emerging Markets*." The introduction says "the *Big Emerging Markets* are a key focus of our National Export Strategy," and success there will "largely determine the United States' position as the world's economic leader."

The book lists U.S. and foreign trade contacts for American businessmen. But you will not find it in the depository library program.

All the editorial and design work was done by employees of the U.S. International Trade Administration of the Commerce Department at government expense. The names of 135 Government workers are listed as contributors. But the Commerce Department asserts it is not a Federal government document. It was printed by a private sector publisher under an exclusive agreement with the National Technical Information Service, a Commerce Department agency.

An introductory page states that "*Big Emerging Markets*" contains copyrighted material. But there is no specific designation of what information is subject to copyright. The book contains four pages of advertisements for other books available from the publisher.

This book deal would seem to violate current Federal information policy. On June 25, 1993 the Office of Management and Budget issued a Revised Circular A-130 on the Management of

Federal Information Resources. OMB told agencies to "avoid establishing, or permitting others to establish on their behalf, exclusive, restricted, or other distribution arrangements that interfere with the availability of information dissemination products in a timely and equitable basis."

OMB also directed agencies to "insure that government publications are made available to depository libraries through the facilities of the Government Printing Office, as required by law." NTIS refused to supply depositories print copies, offering microfiche instead. Microfiche of a book containing four-color graphs is unuseable.

One would think that A-130 and Title 44 of the *U.S. Code* established the rules for agencies. But an increasing number of agencies seem to be operating by a new set of rules. And the first rule is this -- that there are no rules.

This book deal hits taxpayers three times. First, for the cost of the large number of government employees who worked on the book. Second, in the pocketbook for those who purchase a glossy copy at an inflated price. And third, when citizens walk into their local depository library, and find either no copy, or a copy a locally supported library had to purchase with local tax dollars.

There are many other examples of agency actions removing government information from both the public domain -- and the Depository Library Program.

Current Population Reports from the U.S. Bureau of the Census are vital, frequently used reference materials in all of the nation's libraries. Depository librarians recently asked GPO to help them obtain copies of a new book, *"The Hispanic Population of the United States: March 1994"* This is the most recent volume in a series of Census publications, the P-20 Series, which routinely have been available to the depository program.

Despite some verbal, pre-publication assurances, the book was not made available for depositories. We found that it had been published, under a different title, by a Washington-based trade association. The Census Bureau provided data, staff assistance, and research help. Publication of the book was funded by Phillip Morris Companies Inc. The Phillip Morris corporate logo and a list of its companies was on the second page next to the Bureau of Census logo.

Copyright is held by the trade association and no material in the book can be reproduced or distributed without permission. Cost of the book, including handling and postage, is \$15. Had it been printed by GPO, the book would have cost \$3.50 for anyone who wanted to buy a copy. And it would have been sent without charge to depository libraries for free access to the public.

Government agencies turning over their publications to trade associations or any other special interest groups would seem to create the potential for serious conflicts of interest. Especially if the agency provides the time and assistance of its employees and then permits the interest group to obtain copyright over the material.

Vital and valuable Federal information is being transferred from the public domain to organizations with exclusive distribution rights at an alarming rate. McGraw Hill, a large private-

sector publishing company, issued a press release on May 14, 1996, announcing that it had signed an agreement with NTIS to publish the popular *United States Industrial Outlook* and collaborate on "a multitude of information products and services."

For 35 consecutive previous editions, the *U.S. Industrial Outlook* has been published by the Commerce Department. The information was in the public domain and free for reuse by anyone, including private sector publishers. Its forecasts are widely used by American businessmen, scholars, researchers and the media. In a prospectus circulated late in 1995, NTIS said it would provide "appropriate copyrights" to any private sector partner selected. Government employees apparently will write forecasts for some industries and McGraw Hill will write forecasts for others. It is not possible to say for certain. When I asked NTIS for a copy of the NTIS-McGraw Hill agreement, I was told it was not available because it may be "confidential." Nor would it be possible to get information by attending the NTIS Advisory Board meeting held yesterday at the NTIS headquarters in Springfield, Virginia. According to the *Federal Register* notice of the June 17 meeting, it was closed to the public because, and I quote, "premature disclosure of the information to be discussed would be likely to significantly frustrate implementation of NTIS' business plans."

Is this the future? Government agencies entering into secret agreements and meeting behind closed doors to decide what information citizens will get, and the terms and conditions under which the public may have it?

Electronic information is just as likely to disappear from the Depository Program, and from the public domain, as print information. On April 1, 1996, staff of the Office of Export Services, a Commerce Department Agency, informed us they had awarded a \$100,000 contract to NTIS to make a database of the *United States Export Administration Regulations*. Despite repeated requests, that database will not be available free to the public through the Depository Library Program. NTIS is selling it to the taxpayers who paid for it in the first place -- at an annual fee of \$250.

Unless appropriate safeguards are established, the government's most valuable and marketable information may quickly disappear from the public domain. Special interest groups may control what citizens know about certain government activities. Federal workers may be used to subsidize private publishers.

Under long-standing regulations, government agencies must get "waivers" from the Joint Committee on Printing to publish glossy, four-color books. The idea is that when the government gathers useful information, it should publish it at low cost in no-frills documents. Agencies are finding ways to evade oversight policies and provisions of present laws. If any changes in law are contemplated, they should be strengthened. The public should be protected against any attempt to use loopholes and taxpayer dollars for the purpose of creating a vanity press of eye-catching publications for the purpose of promoting an agency or touting the accomplishments of high-level officials. Government information should have integrity.

Mr. Chairman, I sincerely hope the Members of this Committee will continue to support the Federal Depository Library Program, and the historic principles of Federal Information Policy which are its foundation:

- That the public has a right of free and equitable access to government information.
- That information created or compiled by government employees, or at government expense, should remain in the public domain.
- And that government has an obligation to guarantee the authenticity, integrity, and preservation of its information.

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Thank you for this opportunity to testify.