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## Copyright Office Presence in the Library of Congress Copyright deposit and library's collections

*(Partycypacja Biura Praw Autorskich w kształtowaniu egzemplarza obowiązkowego i zasobu Biblioteki Kongresu)*

**Słowa kluczowe:** Biblioteka Narodowa, Biblioteka Kongresu, egzemplarz obowiązkowy

**Abstrakt:** Egzemplarze obowiązkowe przesłane do biblioteki narodowej według wymogów prawa spełniły kluczową rolę w transformacji Biblioteki Kongresu w bibliotekę narodową. Historia Biblioteki Kongresu wskazuje na nierozzerwalną więź między Biurem Praw Autorskich i Biblioteką Kongresu.

**Keywords:** National Library, The Library of Congress, Copyright deposit

**Abstract:** Copyright deposits played an instrumental role in transformation of the Library of Congress into the American national library. The history of the Library of Congress shows the unbreakable link between these two institutions: the Copyright Office and the Library of Congress.

The Library of Congress (Library) in Washington, D.C. is the American National Library. When it was established in 1800, it was called the Library of Congress and its sole mission was to serve Congress. Throughout history, as the Library grew and expanded it became the National Library with dual mission: to serve Congress and the nation. Today, the Library encompasses six integral service units. They are: The Librarian's Office (administration and policy), Congressional Research Service (serving Congress exclusively), Law Library (the world's largest law library), Library Services (devoted to Library's universal collections), National and International Outreach (public facing program and activities) and the Copyright Office.

Copyright is a form of intellectual property and it applies to the most forms of creative works. It is a right that grants the author (creator) the exclusive rights for use and distribution of their work. That work has to be "fixed in a tangible medium," which means it cannot simply be an idea. This is the most significant limitation of the copyright: it protects the expression of ideas, but not the underlying ideas. The exclusive rights are also limited by fair use and other "limitations and exceptions". The United States is one of the countries where authors/creators may register their work and receive a certificate of registration

as a proof of their copyright ownership. The U.S. copyright law requires an author/publisher or anyone distributing their work in the U.S., to submit two best editions of their work to the Copyright Office. This is called a copyright deposit and it had a huge impact on growth of the Library of Congress collections.

The Copyright Office is one of the Library's units. Perhaps it is unusual that the copyright office is a part of the national library, although copyright deposits were always closely linked with growing collections of national libraries in Europe. In the United States the Copyright Office is closely linked to the national library which grew out of the Library of Congress.

The U.S. Copyright law, enacted in 1790, is based on the first British copyright law passed in 1710, called the Statute of Anne, which had a clause about copyright deposit which required that any book published in England had to be sent to several British libraries. When the deposit requirement was strictly enforced, the National Library's collections doubled in size within less than 20 years.

In the United States, the copyright law had its roots with the U.S. Constitution where the Founding Fathers recognized the significance of copyrights to authors and to the future economy. Article 1, Section 8 of the U.S. Constitution deals primarily with the issues of commerce, finance and the military establishment. Copyright is part of the clause that deals with commerce and provides exclusive rights to copyright owners thus creating an incentive to authors to make their work available to others. Specifically: the reproduction, distribution, control over derivative works, and today also public performance and moral rights, especially attribution (acknowledgement as credit to the author). The Constitution said:

*“The Congress shall have the power... To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries...”*

The Constitution was ratified by all 13 colonies in 1781 and in 1790 the 1<sup>st</sup> Congress passed the first Copyright Law which was signed by President George Washington. There was no copyright deposit requirement as a method of expanding any library's collection, only the stipulation that one copy of a submitted work (book, map or chart) should be sent to the Secretary of State in Washington within the first six months of its publication. The authors who wanted to obtain the copyright protection had to apply for a copyright registration in their respective district court.

Ten years later, in 1800 the Library of Congress was established by an Act of Congress. The new library's mission was to serve Congress, and the budget of \$5000 allowed for the purchase of about 750 books and a few maps. These came from England. It was supposed to be a small legislative library. The new law envisioned that only books that befitted the interest of the Members of Congress, mainly on legal, economic, constitutional topics, were to be purchased for the new library. The meager collections were housed in the Capitol.

The Copyright Law was modified in 1802 and copyright protection was extended to designs, engravings and etchings. This revision did not change the deposit requirements for

copyrighted material. The books, maps, charts, designs, engravings and etchings submitted for copyright were again to be sent to the Secretary of State in Washington.

British forces invaded Washington 14 years later and burnt the city including the Capitol building with the budding collection of the Library of Congress. Thomas Jefferson offered to sell his own collections to restart the Library. Since his books (about 6000) covered many subjects in many languages, Congress balked at the idea. They still only wanted books that, in their opinion, would be of interest to Members of Congress. Jefferson, whose collections spanned a period of over 50 years and were recognized as one of the best in the United States, wrote in reply: "I do not know that it contains any branch of science which Congress would wish to exclude from their collection; there is, in fact, no subject to which a member of Congress may not have occasion to refer". Congress finally agreed and the 6000 books were brought to Washington from Jefferson's home in Charlottesville, Monticello at a cost of about \$26,000.

It was in 1814 that the copyright deposits began to demonstrate their importance – but in Great Britain. That was when the British Museum Library received its first copyright deposits which clearly contributed to the expansion of the Library which in the XIX century became a national library.

By 1831, the U.S. Copyright law was modified again when it added protection for musical compositions, and it changed the rules of submitting a copyright deposit. From 1831 copyright deposits were to be sent to the Clerk of the appropriate U.S. District Court who in turn had a year to send the material to the Secretary of State. This deposit served as a legal record of the copyright. At that point there was no goal to grow any library's collections with the help of copyright deposit.

1838 turned out to be a crucial year in the creation of a national library. James Smithson, an Englishman, left half a million dollars in his will for "an establishment for the increase and diffusion of knowledge among men" in the United States. The money was paid to the U.S. Treasury Department. Congress at first found it difficult to accept the money (some Members of Congress felt it was demeaning to receive money from foreigners) and then to decide what kind of institution would satisfy Mr. Smithson's wish. It could be a national university or a museum or a library. Rufus Choate, a senator from Massachusetts was instrumental in convincing his colleagues that it should be a national library:

*"does not the whole history of civilization concur to declare that a various and ample library is one of the surest, most constant, most permanent, and most economical instrumentalities to increase and diffuse knowledge?"<sup>1</sup>*

Choate was the Chairman of the Joint Committee on the Library, the Committee overseeing the Library of Congress, the oldest Committee in the U.S. Congress, established after the creation of the Library of Congress in 1800. He had support of other colleagues from the Committee, especially George Marsh from Vermont who also argued for a comprehensive national library as the new institution inspired and paid for by Mr. Smithson.

<sup>1</sup> *Congressional Globe*, Jan 8, 1845, p. 105 quoted in COLE John Y. *The Quarterly Journal of the Library of Congress*, Vol. 28, April 1971. Of Copyright, Men & A National Library, p. 4.

Neither one of the congressmen felt that the copyright deposit could be meaningful in acquiring new materials for the national library. They did not see the Library of Congress in that role even though it contained Jefferson's collections. Jefferson had the idea that there was "no subject that a member of Congress may not have occasion to refer to, a sentiment repeated later by the Representative Marsh that the American national library must be all-embracing and far-reaching since it has to serve "a people descended from men of every clime, and blood, and language" [7, p. 381-382].

The Smithsonian Institution (Smithsonian) was founded in 1846 by the Act of Congress. The Smithsonian was to be a cultural institution serving scientists and researchers and was to have its own library. That Act also made another revision of the Copyright law changing again the copyright deposit requirement. From then on, the copyright deposit was to be used to expand the collections of two American libraries – the Library of Congress and the newly established Smithsonian Institution. Publishers and authors had three months from the time of publication to submit a copy of a copyrighted work to the two institutions. This new requirement was treated just as an addition to other means of acquisition for the two libraries and not viewed as a significant way to expand collections. Unfortunately, the law did not include any enforcement provisions and since the deposit did not affect the validity of the copyright – the law was simply ignored by authors and publishers alike. Nevertheless, this was the first time that the value of copyright deposit was acknowledged by legislators and it was a big step towards the development of the national library. It looked as though the establishment of the Smithsonian, the new cultural institution would signify a beginning of the new American national library.

The period up to 1846 marked a changed approach to the idea of a national library. American scholars and diplomats stationed in Europe were acutely aware of the superiority of European libraries. This was a period of new national awareness of the need for a strong national library. The Library of Congress was listed fifth in collection size among American libraries which did not help in building support to expand it. Many argued that among various causes and influences, a public library was a result of many forces that accumulated over a long period of time [8, p. 200-206]. Sherra specifically discussed the financial contributions and their impact on libraries' collections.

He claimed that it was "economic ability" that contributed to birth of the public libraries and that philanthropists with their "initial gift of expendable money" had the largest impact [8]. While no one thought of the copyright deposit as means to expand the library's collections, it was also obvious that the national library must have other ways to acquire books and other materials, ways connected with financial appropriations, grants and gifts.

In the meantime, in this atmosphere of eagerness to build a national library, Professor Charles Coffin Jewett, an outstanding librarian from Brown University, was appointed to be the Assistant Secretary in Charge of the Library in the Smithsonian Institution. Joseph Henry, a professor of physics at Princeton became the Secretary of the Smithsonian. The two did not see eye to eye on the transformation and expansion of the Smithsonian library into the national library. Jewett, who travelled extensively prior to his appointment to the Smithsonian, observed and admired many European libraries and befriended some

famous librarians, like Anthony Panizzi who eventually became Principal Librarian of the British Museum and Library. Jewett saw the difference between the European and U.S. approaches and when given a chance, he set out to rectify the U.S. system. His Smithsonian Library was to be a strong, national library, rich in books and knowledge. Joseph Henry, the Secretary of Smithsonian, on the other hand, wanted a small library with only one goal: scientific research and distribution of the newly acquired knowledge through publication.

The 1846 act which founded the Smithsonian and included the copyright deposit request, was ineffective as it did not have an enforcement provision and did not confirm the copyright ownership after a deposit was submitted. Jewett complained about this to Joseph Henry in 1847. In his 1849 Annual Report he explained why the Smithsonian needed to receive all copyright deposits. He wanted a national library collection to become a repository of American letters and other documents, of scientific records and works of art. He wanted everything including pamphlets, engravings and other seemingly insignificant printed records. Jewett believed that no one knew what would be significant in the future.

He also had the idea that the national library would be a part of centralized cataloguing system for all American libraries. To ensure no duplication, Jewett proposed the use of uniform cataloging rules as an imperative and integral element of his national bibliographic system. His 1850 report contained the exact list of received copyright deposits. The statistics looked quite bleak at a time: copyright deposits to the Smithsonian were made for only 15% of the copyrighted books and pamphlets. The State Department's copyright collections contained only the accumulation of the all-inclusive collections at the Smithsonian. He needed an enforcement provision in the copyright law.

Joseph Henry did not appreciate the popularity of Jewett's idea of a national library, all 10,000 books in total though they had been receiving them since 1790! In the following year's report Jewett estimated that Smithsonian received only half of the books copyrighted in the United States. Unfortunately, the success of the Jewett's national library concept depended on the press he was receiving, and excitement his plans created. Henry was quite insistent that the Smithsonian not aim higher than its annual budget while Jewett was determined to garner greater financial support for his plans. Joseph Henry did not oppose the idea of a national library, he just did not agree that the Smithsonian should become one. His opinion was that the Government should establish such an institution and considered the Library of Congress as an option. In his own 1851 report he stated that the idea of establishing a national library at the Smithsonian was impossible because the meager budget they had to purchase new books would never satisfy the demands of scholars.

Jewett ignored Henry's warnings and kept on with his agenda. He was famous and popular and presided over the first librarians' conference in the U.S. which took place in New York in 1853. He was elected conference president where he had the chance to present his concept of a national library and his dissatisfaction with the copyright law as related to the copyright deposits. He explained his centralized cataloging system and asserted that the national library will indeed be housed in the Smithsonian Institution. The conference was attended by more than 80 representatives from 47 libraries and was a resounding success.

Unfortunately, Jewett's campaign for the national library in the Smithsonian went too far. Upon return from the conference, he arranged for articles and reports adverse to Henry to appear frequently in local magazines and newspapers. Henry, on the other hand, built his case against Jewett and his plans very carefully and assured himself of majority support at the Smithsonian Board of Regents. He fired Jewett in 1854. There were strong protests and even a Congressional investigation, but Henry's case held. After some time has passed, many in Congress came to agree that perhaps Smithsonian was really not the right place for the national library after all.

Jewett's departure marked the end of his plans for a national library. Henry was free to argue for a repeal of the 1846 copyright deposit requirement which he strongly disliked since most of the copyright deposits lacked the scientific content he expected at his institution and he considered them useless. There was also the administrative burden. After receiving a copyright deposit, each institution had to send a receipt and a copyright certificate (of limited utility as it did not assure the validity of the copyright). Henry wanted to consolidate copyrights with patents at the Patents Office. He was successful. A few years later, in 1859, the Congress repealed the 1846 requirement for a copyright deposit at Smithsonian and Library of Congress; had then 12000 volume copyright library from the State Department transferred to the Patents Office and passed a new requirement for one copyright deposit to be sent to the Patents Office. It was just for a copy of record and not for public use. It was a major setback for the idea of a national library supported with copyright deposits.

The situation in the Library of Congress was similar. The Librarian, John Silva Meehan, also wanted to repeal the 1846 requirement for a deposit of copyrighted material. He also saw it as an administrative burden and since less than half of the copyrighted works ended up being sent to each institution, it was not helping to build the collections, either. The Library suffered another setback (the first one – the British attack in 1814). In 1851, on Christmas Eve, a faulty fireplace caused a fire in the Capitol building. Two thirds of the Library's collections were destroyed (35,000 out of 55,000 volumes), including two thirds of Jefferson's precious collection. Congress was generous and immediately appropriated almost a \$100,000 to rebuild the Library. Meehan was extremely busy preparing the lists of books to be purchased and reorganizing the Library. He viewed the arriving copyright deposits as an administrative nuisance. After the law was repealed in 1859, some publishers still kept sending their published and copyrighted works to the Library.

What the Library needed to create a national library was a visionary and a collector. Such a person just appeared in Washington in 1861. His name was Ainsworth Rand Spofford and he was a bookseller, editorial writer and a journalist from Cincinnati. In Washington, he was a correspondent for the Cincinnati's *Daily Commercial*, a leading newspaper and he already authored a few articles on the issue of copyright. Copyright deposits interested him greatly and one of his articles focused on a variety of deposits sent to the district courts.

In Washington, he visited John G. Stephenson, the Librarian of Congress appointed by President Lincoln. Mr. Stephenson was so taken with Spofford's knowledge, enthusiasm and ideas for expansion of the Library, that he offered him a position of the Assistant Librarian of Congress. His ideas for the development of a national library were like those

of Jewett, but Spofford never advocated that the Library of Congress should become a national library. He rather pushed for the expansion (with help of copyright deposit) and acted as if a national library was in fact the Library of Congress. He also had better access to Congress (since the Library served Congress and was in the Capitol) and became very effective in a very short time.

He became the Librarian of Congress on the last day of 1864, and only 2 months later he had the support of the Joint Committee on the Library for an amendment restoring the requirement of sending copyright deposits to the Library of Congress. The revision of the Copyright Law of 1865 included a few other changes. It extended copyright protection to photographs and it also added an enforcement provision: if the copyright deposit was not sent to the Library, then the copyright protection previously secured, would be taken away. As this new amendment was passed in March of 1865, the Library of Congress now "had a legal right to claim for its collections and use a single copy of every book, pamphlet, map, chart, musical composition, print, engraving, or photograph, for which copyright shall be secured" [2, p. 13].

In the same year, the Library of Congress obtained the collections from the Smithsonian Institution. A fire there resulted in Henry asking Spofford to accept the 40,000-volume Smithsonian Library into the Library of Congress's new, fire-proof rooms in the Capitol. The Smithsonian library transferred to the Library of Congress in 1866 contained its copyrights deposits received between 1846 and 1859. Even though Henry claimed that the collection he sent over to the Library is still Smithsonian's library and under their control, this really marked the end of the idea of a national library in the Smithsonian Institution, especially combined with the 1865 copyright amendment that copyright deposits were no longer made to the Smithsonian.

Spofford pressed for copyright deposits as a tool to expand the Library's collections, but the first year's results were quite slim. Only 2000 items arrived in the Library, but that number grew to 4,500 the following year, when the enforcement amendment was in full swing. The copyright deposits were of a great variety: there were works of music, engravings, photographs, maps, and of course, books, pamphlets and periodicals. Thanks to the acquisition of the Smithsonian library and the ever growing number of copyright deposits, the Library of Congress's collection grew to over 165,000 in 1867, the largest library in the United States (63,000 in 1859).

The desire to establish a national and the largest library in the U.S. was not yet completed. By 1867, the Library of Congress was receiving only about 75% of all copyrighted items. It was the responsibility of the Librarian of Congress to investigate those who did not comply with the law through the district courts in various states, where the copyrights were registered. Spofford proposed to centralize the copyright office in the Library of Congress, eliminating the district courts and ever-present Patent Office. He fought for this, securing the support of congressmen, the Patent Office and other important figures of the time. Representative Thomas Jenckes of Rhode Island authored a bill to revise the Patent Law to present it to his Committee on Patents. Spofford wrote a long letter to Jenckes outlining

all the reasons why all copyright matters should be centralized in the Library of Congress. They included:

*“The transfer of the Copyright business proposed would concentrate and simplify the business (...). Let the whole business be placed in the charge of one single responsible officer, and an infinitude of expense, trouble and insecurity would be saved to the proprietors of Copyrights and to the legal profession. (...) We should have one comprehensive Library in the country, and that belonging to the nation, whose aim it should be to preserve the books which other libraries have not the room nor the means to procure..”*<sup>2</sup>

Jenckes bill which included a major revision of the Copyright Law was passed by the Congress and signed by President Ulysses Grant in July of 1870. It made the Library of Congress the first central office overseeing copyright registration and custody of copyright deposits in the U.S. After its passage, the Library's collections grew at a rapidly increased rate: 11,500 items in 1870, compared to only 2,000 in 1865 and 4,500 in 1866. With the new law, the Patents Office also transferred their Copyright library of about 23,000 volumes to the Library of Congress. In this way, the Library of Congress collection grew to about 300,000, one of two largest in the United States (the other one was the Boston Library). Another revision of the copyright law in 1891 added copyright protection for foreign authors and brought foreign deposits into the Library of Congress.

In 1897, the Library acquired its own building (known today as the Jefferson building) and was established as the largest library in the United States. By then, 40% of its collections (840,000 volumes) came from the copyright deposits including the categories of maps, music and graphic arts which came at 90% [1].

Aside from expanding its collections, the Library gained prestige in the publishing and literary world. As the Library's reputation grew, it easily settled into the position of the national library, a dream of Charles Jewett, finally achieved by Ainsworth Spofford.

Today, in the XXI century, copyright deposits remain the Library's major acquisition source, but on the brink of XIX and XX centuries, they made the Library what it is today. Copyright deposits made the Library of Congress the national library of the United States.

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<sup>2</sup> Spofford to Jenckes, April 9, 1870, Jenckes Papers, Manuscript Division, Library of Congress.



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The United States Copyright Office, a part of the Library of Congress. It is the official U.S. government body that maintains records of copyright registration in the United States. It is used by copyright title searchers who are attempting to clear a chain of title for copyrighted works. Agency URL: <http://www.copyright.gov/>. Parent Agency. Library of Congress. The Copyright Office is amending its regulations to make electronic-only books published in the United States subject to the Copyright Act's mandatory deposit provisions if they are affirmatively demanded by the Office. The final rule largely adopts the language set forth in the Office's June 2020 notice of proposed rulemaking, with one Sovereign Immunity Study: Announcement of Public Roundtables. Add to clipboard. for the Library of Congress. All works under copyright protection that are published in the United States are subject to the "mandatory deposit" provision of the copyright law. It requires that two copies of the "best edition" of a copyrightable work published in the United States be sent to the Copyright Office within three months of publication. This circular covers "General requirements for." Although Library of Congress collections are comprehensive, the Library does not retain every serial title deposited in the Copyright Office. If the Copyright Acquisitions Division notifies a publisher in writing that a particular title has not been selected for the Library's collections, that title is considered exempt from the mandatory deposit requirements of section 407. The library's extensive collections include books, serials, and pamphlets on every subject, in a multitude of languages, and in various formats including map, photograph, manuscript, motion picture, and sound recording. Among them are the most comprehensive collections of Chinese, Japanese, and Russian language books outside Asia and the former Soviet Union; volumes relating to science and to U.S. and foreign law; the world's largest collection of published aeronautical literature; and the most extensive collection of incunabula in the Western Hemisphere. Since 1870 the Library of Congress has been responsible for copyrights registered by the U.S. Copyright Office, located in the Madison Building (Acts of July 8, 1870 [16 Stat. 212-217]; February 19, 1897 [29 Stat. AGENCY: Copyright Office, Library of Congress. ACTION: Final rule. SUMMARY: Having duly considered and accepted the Recommendation of the Register of Copyrights that the prohibition against circumvention of technological measures that effectively. This notice summarizes the Register's Recommendation, announces the Librarian's determination, and publishes the regulatory text codifying the exempted classes of works. I. Background. A. Statutory Requirements The Digital Millennium Copyright Act ("DMCA") was enacted to implement certain provisions of the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty.