

LEGAL DEPOSIT

“Legal deposit” is a legal obligation that requires publishers to deposit a copy (or copies) of their publications within a specified period of time in a designated national institution. The institution is usually a library, and usually includes the National Library. According to the British Library, the principle that a national printed archive should be maintained by a legal requirement to deposit has been well established for almost four centuries. Legal deposit does not usually apply to unpublished works or original works of art, and increasingly includes published audiovisual and electronic materials and the harvesting of websites.

Legal deposit helps to ensure that the published record of human memory, creativity and discovery are acquired by the nation so that it can be preserved and made available to future generations. Authors and publishers benefit because deposited works become part of the national collection and are preserved at public expense, as far as possible, in perpetuity. Such collections are a valuable resource to publishers themselves for accessing their own historical output in later years, as current preservation techniques and finding aids are applied to the deposited materials under the professional care of the deposit library.

According to the IFLA Guidelines for Legal Deposit Legislation, most countries rely on a legal instrument of some sort in order to ensure the comprehensiveness of their national deposit collection. The statutory powers for legal deposit are typically the subject of a separate Act or they may be included in copyright or library legislation. The Netherlands has taken a different approach, where a national deposit collection has been built through voluntary deposit agreements between the Royal Library and publishers.

Practice

A “publisher” is someone who issues or distributes publications to the public. Thus, works published or distributed within a country or perhaps a region, are normally subject to deposit. Traditionally legal deposit was of printed materials including books, both hardback and paperback (including all editions and revisions but not usually straight re-prints), periodicals e.g. journals, magazines, newsletters, annual reports, all editions of daily and weekly newspapers, sheet music, maps, plans, charts, tables, catalogues, brochures and pamphlets. Usually best quality copies must be provided. Generally speaking, materials such as internal reports, local transport timetables, appointment diaries and calendars, posters and examination papers are excluded, but the deposit library may have the option to require deposit of specific items. Deposited materials are usually made available to library users on-site in library reading rooms.

Deposited materials may also be listed in the National Bibliography and the deposit library's online catalogue, the basic tools used by researchers to identify and locate works. The National Bibliography is also used by librarians and the book trade to select materials for purchase, not only in the country concerned but around the world.

Legal deposit of audiovisual and electronic works

Works of all kinds are fast migrating to electronic formats, both offline and online. Printed works as well as new sound recordings and film are becoming digital. Electronic materials are beginning to dominate the world's published output particularly in research publishing;

the British Library estimates that “by the year 2020, 40% of UK research monographs will be available in electronic format only, while a further 50% will be produced in both print and digital. A mere 10% of new titles will be available in print alone by 2020”. Therefore, if the world’s digital cultural heritage in the 21st century is to be preserved, countries must legislate to include electronic works in legal deposit collections.

In some countries, materials in offline electronic formats such as CD, DVD and computer disks (e.g. audiovisual materials such as audio-books, other sound recordings and film, and computer programs on CD) are included in legal deposit schemes, but this is by no means universal.

Detailed information about legal deposit of digital publications relating to 20 countries and the general worldwide progress on legal deposit of electronic works can be found on the Legal Deposit pages of **Australian National Library PADI (Preserving Access to Digital Information)** website (accessed October 2009):

- Countries with legislation for the deposit of offline but not online electronic works: Austria (drafting legislation for online works), Japan (voluntary deposit scheme for online works), and Singapore (voluntary deposit scheme for online works).
- Countries with legislation for the deposit of both offline and online electronic works, or with legislation in hand (in some countries legislation may be passed but not yet implemented, though voluntary schemes may be functioning): Canada, Denmark, Finland, France, Germany, Iceland, New Zealand, Norway, South Africa, Sweden (harvesting Swedish sector of the internet), United Kingdom.

Policy issues for libraries

The biggest challenge facing libraries concerns the **legal deposit of digital materials**. The 2001 UNESCO General Conference resolution on the preservation of digital heritage encouraged Member States to introduce statutory legal deposit of electronic materials. Almost a decade later, legal deposit is not keeping up with the transfer of information from print to digital formats. Some countries have not begun to address the issue, while in others, even those with well-developed information infrastructures, progress is slow. Meanwhile, valuable online materials are being lost to the national collections and future researchers. Following in its tradition of voluntary deposit for printed materials, the Royal Library of the Netherlands has negotiated voluntary deposit agreements for online publications with the major global scientific, technical and medical (STM) publishers.

Legal deposit for electronic materials is an important tool in the **preservation** of e-journals, e-books, sound recordings and film, echoing the philosophy that “Lots of Copies Keep Stuff Safe” (known as LOCKSS). It is important therefore that statutory exceptions for copying for preservation allow libraries to make as many copies in as many different formats as necessary, in order to migrate to current platforms and media to ensure continued access to the collections into the future.

Technological protection measures (TPMs) can prevent libraries from copying or undertaking other legitimate activities. “Clean” versions of electronic materials should therefore be deposited, or the library should be provided with the means to circumvent the TPM. In Germany, the National Library reached a voluntary agreement with publishers to allow it to circumvent TPMs. In Norway, the National Library obtained a statutory exception

with limited powers to enable the Library to circumvent for preservation purposes.

Another issue is the level of **public access to electronic works in copyright** before the works enter the public domain. Usually, the public can access the national internet archive only on-site at the deposit library, or on a secure network to other branches. If in-copyright deposited electronic works are to be made available to the public remotely over a network, permission is usually required from rightholders. Additionally, some deposit libraries may also allow researchers remote access to copyright materials in the archive that are not commercially available.

The development of national collections is traditionally governed by **geographic boundaries**. For websites and material on the internet, it can be more difficult to determine which materials are appropriate for legal deposit and in particular, which websites should be harvested. Both voluntary and statutory schemes are being developed to create national web archives of national domain, national language and other websites with content relevant to that country. **Data protection** obligations in national laws for the processing of personal data (data that relates to living identifiable persons such as health and other personal information) should be taken into account, since it cannot be assumed that harvested websites are necessarily compliant.

With national collection development policies adapted to the electronic era, libraries should work with policy-makers and rightholders to ensure that there are adequate legal provisions to develop a robust national deposit collection of electronic works, that can be made available to the public and future generations of researchers on reasonable terms.

Library position statements

British Library predicts 'switch to digital by 2020'. British Library Press Release, 29 June 2005. <http://www.bl.uk/news/2005/pressrelease20050629.html>

Guidelines for audiovisual and multimedia materials in libraries and other institutions. IFLA Audiovisual and Multimedia Section, 2004. <http://archive.ifla.org/VII/s35/pubs/avm-guidelines04.htm> Available in several languages. See section 5. Acquisition and legal deposit <http://archive.ifla.org/VII/s35/pubs/avm-guidelines04.htm#5>

Larivière, Jules. Guidelines for legal deposit legislation. IFLA and UNESCO, 2000. <http://archive.ifla.org/VII/s1/gnl/legaldep1.htm>

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Working Group of the Conference of Directors of National Libraries (CDNL). The legal deposit of electronic publications. UNESCO, 1996.

<http://www.unesco.org/webworld/memory/legaldep.htm>

See also CDNL Vision for the Global Digital Library, October 2008.

http://www.cdnl.info/2008/CDNL_Vision_for_the_Global_Digital_Library.pdf

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Draft Resolution on the preservation of digital heritage (31C/DR.79 (COM.V)). UNESCO General Conference 31st Session, Paris, 2001.

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National Library of Australia. PADI (Preserving Access to Digital Information). Legal Deposit pages covering 20 countries. <http://www.nla.gov.au/padi/topics/67.html>

Reports, Articles and Papers

Several relevant papers on legal deposit, too numerous to list here, were given at World Library and Information Congresses in Glasgow 2002 and Quebec 2008.

WLIC Glasgow 2002 <http://archive.ifla.org/IV/ifla68/prog02.htm>

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Tuesday 15.15-17.45 124. National Libraries: *Legal Deposit and Copyright Laws: How they meet the National Libraries Mission*

Wednesday 14.00-16.30 140. Bibliography and National Libraries: *Bridging the gap between the publishing industry and national bibliographies*

WLIC Quebec 2008 <http://archive.ifla.org/IV/ifla74/Programme2008.htm>

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Monday 13.45-18.00 95. Audiovisual and Multimedia, Copyright and other Legal Matters, National Libraries and Bibliography: *The legal deposit of audiovisual and multimedia materials: practice around the world*

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French <http://archive.ifla.org/IV/ifla74/papers/087-Hielmcrone-trans-fr.pdf>

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