



Digital Legal Deposit

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1. INTRODUCTION

Legal deposit schemes require publishers to submit copies of books and journals to a national library. Most nations collect their published output as systematically and comprehensively as possible, making them available to current and future generations of researchers. Legal deposit is considered a vital part in preserving a country's cultural heritage.

While national approaches to legal deposit developed over centuries, the digital age has meant that countries suddenly need to adapt legal deposit schemes so that they work securely and effectively for electronic publications. Around the world, policies and processes are being developed and implemented which allow digital content, whether in the form of e-books, journals, blogs or website content, to be collected and archived.

Given the many initiatives in this area, this report is not intended to be comprehensive. Instead, we examine a range of current approaches to digital legal deposit. We focus on Germany, Netherlands, the UK, France and Italy, detailing the rationale behind their schemes and explaining how they work in practice for publishers.

2. LEGAL DEPOSIT: FROM ITS ORIGINS TO THE DIGITAL AGE



Francois I

The concept of legal deposit has existed since 1537, when King Francois I of France ruled that no book could be sold in the country unless a copy was given to the royal library at the Château de Blois. A similar scheme was adopted in the UK in 1610, when Sir Thomas Bodley, founder of the Bodleian Library in Oxford, signed a deal with the Stationer's Company, which held a monopoly over the publishing industry, in which "the Company agreed to send to the Library a copy of every book entered in their Register on condition that the books thus given might be borrowed if needed for reprinting, and that the books given to the Library by others might be examined, collated and copied by the Company."

In 1624, Emperor Ferdinand II introduced a law requiring the deposit of new books to the *Hof-Bibliothek* ("Imperial Library") in Vienna, and by 1702 similar schemes had been introduced in Poland,

Sweden, Denmark and Finland. While a core purpose was the collection and safe-keeping of a nation's cultural heritage, there were other motives at play: legal deposit fulfilled an important censorship function. With monarchs and governments worried about the seditious potential of literature, a law requiring all printed materials to be sent to a central registry was considered a useful way to curb subversive material. Immediately following the French Revolution, legal deposit was temporarily abolished in the name of freedom of expression.

Until the 19th century, the concept of legal deposit was closely connected to copyright. The UK Copyright Act of 1709 required nine copies of new works to be sent to specific libraries in order to obtain copyright, while the US Copyright Act of 1790 required all copyrighted materials to be deposited at the Department of State. It wasn't until the Berne Convention in 1886 that copyright protection was disassociated from legal deposit. By the 20th century, establishing a national bibliography and ensuring access to researchers had become central motivations for the concept of legal deposit.

In 1938, there were 52 national legal deposit schemes in existence around the world; by 1991 there were 139. The form of the schemes (whether a separate legal deposit Act, or part of a library Act, or copyright legislation, or voluntary arrangements) varies from country to country, as does the number of copies of a title which a publisher must deposit (one copy in China and Mexico, two in the United States, sixteen in Russia, nineteen in Austria).

In 2000, UNESCO published guidelines to help countries adapt their legal deposit legislation to include electronic formats, recognizing that "because of their complexity, the legal, technical and organizational problems related to electronic publications represent a formidable challenge for any legal deposit scheme." Since then, countries have been working to develop policies and processes which allow digital content, in a variety of forms, to be effectively archived.



Bodleian Library, Oxford

3. CASE-STUDY: GERMANY

Germany has a unique, fully-automated approach to digital legal deposit. It emerged from a 2006 law which made it mandatory for all electronic publications (e-books, e-journals, music files, website content etc) to be deposited with the Deutsche Nationalbibliothek (DNB), the country's national library.

For three years, the DNB worked with German publishers and content producers on pilot projects to establish the best method for collecting digital material: one which would be simple enough for publishers to submit files easily, yet which allowed DNB staff to process the vast amount of incoming material. At first, they tried to replicate the approach for print books, before deciding in 2009 that the only practical way to deal with large quantities of files would be to fully automate the process.

The system works as follows. Publishers can choose from three different submission interfaces: via a web form, via OAI PMH protocol or via ftp or WebDAV. Publishers submit metadata, including a link to the actual text to a secure online repository known as a “hot folder”. The publication is then recorded in the DNB bibliography.

Publishers define access criteria within the metadata. The default rule is that a maximum of two copies will be available for consultation at any time, the same rule that applies for printed books. Access is restricted to the DNB reading rooms in Frankfurt and Leipzig.

While publishers initially voiced concerns to DNB about using an OAI server, the technology has proven its effectiveness. The DNB is currently collecting between 1,000 and 1,500 new e-book titles a day.

As has already been noted, the 2006 law makes it mandatory for **all** electronic content to be deposited, including self-published material, blogs etc. The DNB is cooperating with self publishers and plans to scale up its collection of privately produced material.

Another short-term priority is to extend the legal deposit scheme to allow for the automated collection of digital journals which are currently still processed manually. A recent amendment to Germany’s Copyright Act means that authors can freely republish work 12 months after it originally appeared, and the DNB is studying ways to adapt the deposit system accordingly.

4. CASE-STUDY: NETHERLANDS

The Dutch were early adopters of digital legal deposit for e-books. The Dutch Publishers Association and the *Koninklijke Bibliotheek* (KB), the Dutch national library, began collaborating on the issue in 1999, with the scheme being approved in July 2005. Subsequent changes were added by mutual consent, most recently in May 2014.

The scheme covers both offline and online electronic publications. KB determines which types of publications are eligible for deposit, the criterion being that publications are “part of Dutch cultural heritage”. With the exception of application programs and games, essentially every electronic publication qualifies: electronic publications with full text (often supplemented with graphic presentations, images, etc., such as electronic journals), but also multimedia (integrated presentation of image, sound, voice, text), websites and databases.

The publisher determines which of their specific publications meet the criteria for deposit, and submits an electronic copy, along with metadata and any associated software. If more than one version exists (eg in different digital formats), the publisher need only submit one version.

NB: **Dynamic** publications, whose contents change frequently, in principle fall within the scheme. The KB is currently consulting with publishers about the possibility of saving these databases in one form or another and making them accessible for research.



Koninklijke Bibliotheek

All deposited electronic publications are listed in OutNow, the KB's online bibliographic information service, as well as in the KB's online catalogue. The KB commits to taking all measures necessary to preserve the publication under optimal material conditions, consulting with publishers about specific conservation measures.

Access to, and **use** of deposited electronic publications is subject to strict limitations. The guiding rationale is that publishers will want the same conditions to apply to electronic publications as they would for print. Digital publications can be accessed onsite by authorized users (either KB employees or pass holders) through isolated work stations. Downloading (making an electronic copy on another device or sending by e-mail) is only permitted for private study and use. The systematic copying and downloading of entire issues of journals, substantial parts of e-books, databases etc is prohibited. Deposited material cannot be borrowed.

The KB collects statistical data on the use publications stored in the Electronic Depot, sharing top-level data with the Dutch Publishers Association periodically (typically once per year). In addition, individual publishers have access to statistical reports regarding their own publications. These measures give reassurances to publishers that their legal deposit copies are not being abused and builds confidence in the ongoing development of the legal deposit operations.

5. CASE-STUDY: UNITED KINGDOM

The UK's Legal Deposit Act 2003 obliges publishers to deposit, at their own cost, one copy of every printed publication that is published or distributed in the UK with the British Library (BL) and upon request, with five other Libraries: Bodleian, Cambridge University, Trinity College Dublin, National Library of Wales and The National Library of Scotland. The 2003 update of the Act extended existing legal deposit provisions to cover non- print (i.e.: digital) works, and then allowed more detailed conditions to follow in Regulations (updated most recently in 2013).

An advisory panel was set up in 2004 to facilitate agreements between publishers, legal deposit libraries and government bodies and to advise on regulatory and non-regulatory options for the deposit of non-print material. Some ten years later, the Legal Deposit Libraries (Non-Print works) Regulations 2013 came into force. These permit each legal deposit library to claim and receive publications in an electronic format. For works published in both print and non-print media which are substantially the same, only

one medium is subject to deposit. Electronic deposit only takes place with the agreement of the publisher; ie the default deposit format remains print unless such an agreement is reached.

The British Library's guiding principles in engaging with publishers have been to minimise the impact of the regulations on their organisations and to adopt a flexible approach. The engagement model is determined by the nature of the publisher and the type of content they produce. For a limited number of large journal publishers, archive service Portico (www.portico.org) acts as an intermediary in the supply of content and metadata; for other journal publishers the British Library works directly to set up secure content feeds. The BL has also launched a portal which will enable smaller publishers to deposit content and metadata.

The deposit of books is at an earlier stage of development, but it is likely that the BL will adopt a similar blend of approaches around the use of third party aggregators, direct publisher engagement and the availability of the portal. Publishers welcome such voluntary collaboration, including pilot schemes where appropriate, since although e-legal deposit may prove easier and cheaper for many publishers much practical experience – and reassurance - is still needed, on both sides.

There is capacity in the regulations for the British Library and individual publishers to proceed at an agreed pace in the transition to digital deposit. The Joint Committee on Legal Deposit (JCLD) contains representatives from both the Publishing industry as well as the Legal Deposit Libraries and feedback from publishers relating to, for example, the security of their content is addressed through this forum.



British Library

Publisher concerns relating to e-legal deposit generally were largely met by the 2013 Regulations, particularly issues of access to commercial content on websites (requiring login codes) and embargoes in cases where public availability of commercial content would conflict with normal exploitation. JCLD functions as a forum for discussion between publishers and deposit librarians about issues including security of digital files generally (now subject of a Memorandum of Agreement) and monitored access for authorised users on library premises. JCLD has also put in place mediation and arbitration procedures in the event of any disputes.

The implementation of the regulations is very much an incremental process. Later this year the deposit portal will be rolled out more widely, which will enable wider engagement with the long tail of smaller publishers.

Close collaboration on technical aspects of digital legal deposit in the JLDC has proven to be an effective tool to not only balance interests of libraries and publishers, but to achieve win-win situations.

6. CASE-STUDY: FRANCE

Digital legal deposit was established in 2006 through a law on Authors' Rights and Related Rights in the Information Society which was transposed from the 2001 European Union Copyright Directive (Finland, Denmark and other European countries created national laws from the same sources). The law specifies that "subject to legal deposit are signs, signals, writings, images, sounds or messages of any kind communicated to the public by electronic means." If that definition appears vague, it is intentional, designed to avoid limiting the legislation to formats which might become obsolete.

The Code du Patrimoine distributes the responsibility for legal deposit between three cultural institutions: the Bibliothèque nationale de France (BnF), the Institut national de l'audiovisuel (the French national broadcasting archive) and the Centre national du cinéma et de l'image animée (in charge of preserving motion pictures). The Code du Patrimoine obliges publishers to cooperate with the BnF and to provide all necessary information for materials falling into the scope of legal deposit, whether they are free of charge or payment-based.

Since 2012, the BnF has been working with the Syndicat national de l'édition (French Publishers Association) to find a working model for digital legal deposit, studying issues of metadata, access and security. Pilot projects with Hachette and other publishers have served to test the robustness of the model, which allows three different mechanisms for collecting digital material:

- automatic collection of material via the Internet (by means of harvesting),
- deposit of digital files by the publisher (by means of "e-deposit")
- deposit of strictly identical digital files as a replacement for paper deposit

Once files have been collected, access and use follows the same principles as for printed material, ie in a secure, controlled environment. The BnF has the same conservation responsibilities for digital material as it does for printed books.

Digital legal deposit is a work in progress, and the BnF and SNE meet regularly to review and amend the approach. This close collaboration is the basis for a gradually developing legal deposit mechanism that has not yet resolved all issues but which is carefully adapting its range as it gains practical experience.

7. CASE-STUDY: ITALY

A May 2006 law reformed the entire system of legal deposit in the country, providing rules about deposit of online content. It promotes voluntary digital deposit and fixes certain priorities (scholarly publications, existing print titles that have been converted to e-books, publications of public institutions, popular websites).

A pilot scheme for voluntary deposit was designed to prepare the ground for the later introduction of legal deposit. A Committee was established, including representatives from publishing houses and the Associazione Italiana Editori (AIE - Italian publishers association) as well as from Italy's central national libraries in Rome and Florence, to discuss terms of collaboration. The committee first convened in 2010 and produced a flexible licensing model agreement.

The basis of the Italian model is that user access is allowed only on the library premises, with no possibility to copy, download or email content. However, publishers may also licence the library other rights, at their discretion:

- Delivery of printed copies on request by the user
- Printed document delivery to other libraries
- Digital document delivery to other libraries
- Online access from the premises of other libraries

Many of the licensing terms can be set according to the publisher's wishes, eg document delivery may be permitted to other libraries in the same state, or to all libraries in the country, or internationally.

The licensing model agreement formed part of a memorandum of understanding between AIE and libraries, under the auspices of the Ministry of Culture, which was signed in July 2011. A private foundation ("Rinascimento Digitale") contributed funding to set up the pilot infrastructure, including deposit facilities in the two national libraries and a dark archive based in Venice for disaster recovery.

Unfortunately, due to economic crisis Italy experienced severe budget cuts, and the pilot scheme has never been implemented. While the digital infrastructure exists, and although publishers are keen to deposit their titles, there is nobody on the other side to receive them.

While Italian legal deposit relies less on law than on voluntary licences, the practical processes and procedures, as well as obstacles and solutions are similar. An advantage is that access to legal deposit copies even beyond library premises is expanded, because publishers are given the option to allow it. Licensing therefore potentially creates greater access than statutory obligations in other countries.

8. DIGITAL LEGAL DEPOSIT AROUND THE WORLD

Australia

A consultation paper was issued in March 2012 by the Attorney-General's Department on the extension of the Copyright Act to cover electronic publications. If a publication is available in electronic format only, legal deposit does not apply, however the National Library does collect electronic publications on a voluntary deposit basis.

Brazil

According to Biblioteca Nacional do Brasil (Brazil's national library) no legislation is currently being proposed for the deposit of digital works. A working group is being created to study the matter.

Canada

Legal deposit was extended to online and digital publications in 2007. Submissions are made to Library and Archive Canada (LAC) via an Upload Platform, FTP, server, e-mail or post. Publishers need to select one of two access options: **Open access**: anyone can view and download the publication through the Web. **Restricted access**: publications are viewable by the public only at select terminals at LAC's main building in Ottawa. It is not possible to print, download or transfer files from these terminals.

China

A 1997 *Regulation on the Management of Electronic Publications* stipulates that "before publishing an e-publication, the publisher should submit its sample to Beijing Library and Archives Library of Chinese Publications". A 1996 government circular states that "the submitting of samples will be considered an important part of the performance and annual inspection of AV and electronic publishers." The National Library of China is responsible for collecting electronic publications and is putting pressure on publishing houses to increase deposits. Publisher reticence might be explained by the fact that according to its website, the National Library "offers all titles to readers for free reading".

Japan

Legal deposit of online publications came into effect on July 1st 2013, based on the National Diet Library (NDL) Law, which was revised in June 2012. This obliges publishers in Japan to deposit all electronic books, journals, magazines and other publications to the Kokuritsu Kokkai Toshokan (Japanese National Congress Library). Deposits are made either by internet harvesting, by transmission or by depositing a file in DVD-R format. All material will be stored at the National Diet Library's facilities in Tokyo and Kyoto.

For the time being, however, the National Diet Library excludes from legal deposit all electronic publications that are DRM protected or which are sold commercially. Publishers, therefore, are waived from the mandatory deposit of commercial e-books and e-journals and are currently not depositing any materials. The Japanese Publishers Association expects that NDL will not change this situation within the next several years, at least.

Norway

The Norwegian Act of Legal Deposit of Generally Available Documents came into effect in 1990, requiring publishers to submit all content (in whatever form) to the National Library of Norway. The Library works with publishers to ensure that as much content as possible is deposited in digital format, and is systematically digitizing its entire collection, a programme that started in 2006.

South Korea

Revisions to the Library Act in 2009 require publishers to make a legal deposit of all published materials, including e-books, to the Korean National Library within 30 days of publication. Anecdotal feedback suggests that in practice, few deposits of e-books are yet taking place.

United States

In the United States, digital deposit is not yet mandatory. Publishers have the option of uploading an electronic version when submitting print titles. In 2010, the Copyright Office adopted an interim

regulation governing mandatory deposit of electronic works published in the United States and available only online. The regulation established that online-only works are exempt from mandatory deposit.

9. CONCLUSIONS AND RECOMMENDATIONS

Even the most technically and financially best equipped legal deposit libraries are still just getting started with digital legal deposit. In this final section, we assess what these early experiences reveal about “best practice” in setting up a legal deposit system for digital material.

It is clear that the more **voluntary** a digital legal deposit scheme is at the outset, the better. Pilot schemes which publishers and librarians can both sign up to, which familiarize them with the process for depositing electronic publications, are very useful in identifying concerns and correcting flaws, and are often the only way in which the real issues come to light. Small gradual steps are helping these projects gradually expand as their experience, skills and familiarity expand.

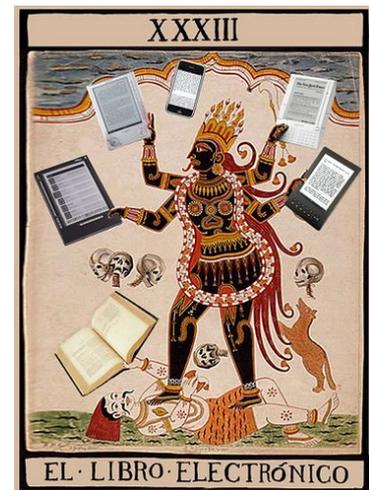
The best schemes are those where an emphasis has been put on publishers and librarians **collaborating** to address key concerns such as copyright protection, digital security and monitored access.

Digital legal deposit schemes need clear, mutually agreed and flexible rules on **access which protect publishers’ normal exploitation**: who is authorized to use deposited material, where they can access it and what they can lawfully do with it.

In even the best scheme, disputes will inevitably arise between publishers and librarians. There needs to be a clear structure for **mediation and arbitration**, and an ability to deal with different publishers, types of publications and business models differently.

Italy’s experience shows the importance of schemes being **properly funded**. Deposit libraries will face a challenge in securing the funds and qualified staff to operate secure digital infrastructure. Countries might usefully consider other models, such as larger publishers self-archiving material, agreeing to make it available on request to libraries.

NB: The Conference of European National Libraries (CENL) and the Federation of European Publishers (FEP) have jointly produced a [Statement](#) on the Implementation of (Statutory and Voluntary) Deposit Schemes for Non-Print Publications. It contains information on existing schemes and best practice developments, and is recommended reading for national libraries and publishers associations.



Avatar of the ebook, Javier Candeira

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