

## CONFERENCE OF DIRECTORS OF NATIONAL LIBRARIES

### TOWARDS AN 'ADVOCACY PACK' FOR E-LEGAL DEPOSIT

#### Introduction

1. At last year's Annual Meeting of the Conference of Directors of National Libraries in San Juan, Puerto Rico, the results and conclusions of an international survey of CDNL members on e-Legal Deposit, undertaken by the British Library in early 2011<sup>1</sup>, were reported in the plenary session.
2. A subsequent break-out discussion at the CDNL meeting provided an opportunity for CDNL members:
  - to discuss and distil the principles relating to e-legal deposit;
  - to discuss and develop the key advocacy messages in support of securing e-legal deposit legislation and also drafting/revising legislation for e-legal deposit;
  - to consider the desirability and potential contents of a CDNL Advocacy Pack in support of securing e-legal deposit legislation; and
  - to consider other issues arising.
3. The break-out group generated a lively, informed and engaged discussion, reflecting no doubt the key interest that CDNL has in this issue.
4. In discussion, the break-out group identified the following high level principles:
  - Legal deposit underpins democracy and citizen participation

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<sup>1</sup> See:

[http://www.cdnl.info/2011/pdf/e\\_2Dlegaldeposit\\_20survey\\_20CDNL\\_20Slides\\_20Aug%20\[Compatibility%20Mode\].pdf](http://www.cdnl.info/2011/pdf/e_2Dlegaldeposit_20survey_20CDNL_20Slides_20Aug%20[Compatibility%20Mode].pdf). The results of a previous international survey undertaken by the British Library in 2009 were reported in Stephens, Andy and Gibby, Richard. 'National implementations of electronic legal deposit' *Alexandria*, 212(1) 2011, 53-67.

- It ensures the collection and preservation of, and access in perpetuity to, the cultural heritage
  - It is critical to concepts such as CDNL's Vision for the Global Digital Library and IFLA's Universal Bibliographic Control and Universal Availability of Publications that each country collects, preserves, and sustains access to its national publishing output in all formats.
  - Legal deposit legislation should be future-proofed to ensure it is format-independent and hospitable to all formats.
  - Permissible forms of access and use of electronic materials received under legal deposit should be no more restrictive than those that apply to analogue materials.
  - There is need to ensure that legal deposit legislation is harmonised with copyright legislation, i.e. permissible forms of access and use of materials received under legal deposit should be no more restrictive than those permitted under copyright legislation
  - The public benefit of legal deposit, in terms of permissible forms of access and use, should be consistent with the public cost, in terms of collection, storage, management and preservation.
5. The break-out group identified the following key advocacy messages in support of securing e-legal deposit legislation:
- Legal deposit has clear public interest benefits: it underpins competitiveness, creativity, research excellence and education and learning and, in so doing, it contributes to economic development and cultural well-being.
  - It prevents a 'digital black hole' developing in the research archive
  - There is need to obtain the trust of the publishers in relation to the cost and security of e-legal deposit. There is need to convince Government on the cost-benefits of e-legal deposit.
6. The break-out group agreed that it would be helpful if CDNL acted as a knowledge exchange on the drafting of legislation, policies, implementation and other guidance re e-legal deposit. To this end a case study on Web Archiving in Finland has been loaded onto the CDNL

website (at <http://www.cdnl.info/2010/Web%20Archiving%20in%20Finland,%20%20E-P%20Keskitalo%20-%20December%202010.pdf>).

7. The break –out group agreed that there would be value in developing an advocacy pack that CDNL members might draw from in making their case for e-legal deposit legislation - the British Library undertook to take forward this action. This paper presents an early first draft of such an advocacy pack for comment. The suggestion is that the advocacy pack should contain three elements:
  - Part I: Advocacy points and Principles
  - Part II: Exemplars, Case studies of successful strategies (and failed strategies too!)
  - Part III: Evidence base, including economic impact assessments, regulatory impact assessments, cost benefit analyses, examples of 'lost' material, international developments, etc.
  
8. This early draft has necessarily drawn largely on the UK experience. With a view to preparing a final version for circulation after the meeting, CDNL members are now requested to comment on the draft Advocacy Pack and specifically:
  - (i) To **consider** the draft advocacy points and principles and to **suggest** additional points for inclusion
  - (ii) To **suggest** additional exemplars and evidential material for inclusion in Parts II and III based on the experience in their countries; .
  - (iii) To **comment** generally on the usefulness and applicability of the advocacy pack.

The British Library, August 2012

**CONFERENCE OF DIRECTORS OF NATIONAL  
LIBRARIES**

**E-LEGAL DEPOSIT ADVOCACY PACK**

DRAFT – AUGUST 2012

## PART I: ADVOCACY POINTS AND PRINCIPLES

### Advocacy points

- Legal deposit ensures the collection and preservation of the cultural heritage and secures access to it in perpetuity. Legal deposit is a reliable and effective mechanism by which a national collection of both print and non-print material is accumulated in order to provide a national record of [state nation's] intellectual and creative endeavours and to secure the preservation of the national documented cultural heritage for posterity and for transmission of the national heritage by storing it and making it available now and for future generations.
- The importance of Legal Deposit as a means of preserving and transmitting culture has particularly strong resonance in many smaller countries, particularly those with endangered cultures and languages.
- Legal deposit also underpins democracy and citizen participation. By collecting, recording and preserving all published material of a country, legal deposit guarantees each citizen access to the nation's published heritage without making any judgement on the intrinsic value of the materials should it be a judgement of a moral, political, artistic, or literary nature.
- Legal deposit has clear public interest benefits: it underpins competitiveness, creativity, research excellence and education and learning and, in so doing, it contributes to economic development and cultural well-being<sup>2</sup>.
- It is critical to concepts such as CDNL's Vision for the Global Digital Library and IFLA's Universal Bibliographic Control and Universal Availability of Publications that each country collects, preserves, and sustains access to its national publishing output in all formats. Thus effective legal deposit

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<sup>2</sup>. An independent economic impact study commissioned by the British Library suggests that the total value added to the UK economy by the BL each year is £4.40 for every £1 of public funding invested in the national library. But please note this value derives from all BL collections (including purchased collections) and services.

legislation also guarantees to citizens and researchers all around the world access to a research collection of the country's published material.

- It is the national library which has over-riding responsibility for ensuring that the nation's published archive is properly organised and that publications will be available now and in the future.
- A statutory legal deposit system has existed in [state country] for more than [state number] years for printed works. And this has helped to preserve the nation's intellectual record and has been vital in building up the national library's collection which now contains some [state number] items.
- However, resources of intellectual output and creative expression are increasingly being produced, distributed, accessed and maintained in digital form. Without appropriate legal, technical and institutional frameworks to secure the protection of this digital heritage, it is at risk of being lost forever. With the average life expectancy of a webpage less than 75 days, vast amounts of our digital heritage have already disappeared.
- This risk is recognised by the research community and also by many publishers. It is also common to most nations and, in 2003, the UNESCO member states adopted a Charter on the Preservation of the Digital Heritage<sup>3</sup>. The Charter states *inter alia*:
  - "Member States need appropriate legal and institutional frameworks to secure the protection of their digital heritage. As a key element of national preservation policy, archive legislation and legal or voluntary deposit in libraries, archives, museums and other public repositories should embrace the digital heritage. Access to legally deposited digital heritage materials, within reasonable restrictions, should be assured without causing prejudice to their normal exploitation".

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<sup>3</sup> [http://portal.unesco.org/en/ev.php-URL\\_ID=17721&URL\\_DO=DO\\_PRINTPAGE&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=17721&URL_DO=DO_PRINTPAGE&URL_SECTION=201.html)

- “The digital heritage is inherently unlimited by time, geography, culture or format. It is culture-specific, but potentially accessible to every person in the world. Minorities may speak to majorities, the individual to a global audience. The digital heritage of all regions, countries and communities should be preserved and made accessible, so as to assure over time representation of all peoples, nations, cultures and languages”.
- A study commissioned by the British Library projects 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. For UK serials, 76% will be available in electronic format only, a further 20% will be produced in both print and digital, but a mere 4% of titles will be available in print alone by 2020.
- The need for a framework for the legal deposit of non-print material is urgent. Many countries have already taken steps to extend their legal deposit system, to include digital publications. But [state country] is falling behind. A survey undertaken by the British Library in 2011 found that 84% of those countries with legal deposit for printed publications also had e-legal deposit at least for publications on CD-Rom and more than half have legislation that permits web harvesting.
- Legal deposit for electronic publications prevents a ‘digital black hole’ in the research archive. It will ensure the preservation of the memory of the 21st century.
- We recognise the legitimate concerns and uncertainties felt by publishers about the dangers of digital piracy and also the security and the cost of e-legal deposit. We respect rightsholders and are working closely with the publishing industry to implement e-legal deposit.
- Economic/Regulatory impact studies in the UK have shown both that the administrative burden of legal deposit on publishers is reduced, and savings accrue, with the introduction of e-LD as the deposit obligation for works published in both print and digital media transfers from the deposit of the printed version to depositing electronically and also that other means of achieving the preservation of the national output either carry

higher costs or would fail to achieve the public benefit of archiving 100% of the nation's digital heritage.

### Principles

- Like copyright law, legal deposit should strike an appropriate balance between the rights of creators to be recognised, protected and rewarded for their work and the public interest in ensuring access to information and ideas. By 'standing on the shoulders of giants', new authors' creativity leads to new research, intellectual, and cultural outputs.
- Any type of library material, regardless of the format, as long as it is available to the public and produced in multiple copies, should be an object of legal deposit. Legal deposit therefore applies to all types of print material, to most audio-visual material, and to electronic material In general
- E-legal deposit legislation should be future-proofed to ensure it is format-independent and hospitable to all emerging formats given the rapidly-changing nature of digital publishing. And given the vastness of the digital publishing universe, legislation should be drafted in such a way as to permit selective archiving
- Permissible forms of access and use of electronic materials received under legal deposit should be no more restrictive than those that apply to analogue materials.
- There is need to ensure that legal deposit legislation is harmonised with copyright legislation, i.e. permissible forms of access and use of materials received under legal deposit should be no more restrictive than those permitted under copyright legislation. And copyright protection should last only as long as is necessary to achieve a reasonable compromise between protecting and rewarding rightsholders and safeguarding the public interest in the dissemination of culture and knowledge.
- Digital is not different – contracts and potentially-restricting technologies like DRMs should not over-ride statutory exceptions and rights under copyright.

- Permissible forms of access and use of electronic materials received under legal deposit should take into account the legitimate needs and interests of disabled people, should not discriminate against disabled people, and should not prevent legitimate access to content by disabled people using assistive technology.
- The public benefit of legal deposit, in terms of permissible forms of access and use, should be consistent with the public cost, in terms of collection, storage, management and preservation.

# The memory of a nation in a digital world

**Act quickly or our intellectual record will disappear down a black hole**

BY [LYNNE BRINDLEY](#) PUBLISHED 25 MAY 2012 13:12

It is an irony of the digital age that at a time when we are used to having easy access to seemingly endless information and knowledge, so much of it is disappearing into a digital black hole. For 450 years the concept of legal deposit has helped to preserve the nation's intellectual record. The requirement for publishers and distributors to send one copy of anything they publish in print to the British Library has been vital in building up a collection which now contains some 150 million items.

In 2003 the Legal Deposit Libraries Act extended the same principle to cover digital content. However, nine years later we are still waiting for the legislation to be implemented. We have just come to the end of the third consultation on new regulations in just two years. While all the talking and redrafting has continued, vast amounts of our digital heritage have disappeared for ever.

People's thoughts and experiences are increasingly recorded on websites, blogs, Tweets and other social media rather than in the diaries and letters which have survived from the past. Given the ease with which websites can be updated the lifespan of anything that is written online is considerably shorter than the printed word.

The oldest example of writing can be found on clay tablets that are over 5,000 years old. We recently acquired the oldest surviving European book, the St Cuthbert Gospel, which is over 1,300 years old. The average life expectancy of a webpage is less than 75 days.

The London 2012 Olympics is generating a great deal of comment and discussion. Much of the story is being told through the websites of sports associations, cultural organisations and online contributions from the general public. While we have been waiting for the new legislation to be implemented we have done what we can to save as much of our digital memory about big stories and events such as the Olympics. This has meant working with publishers to make voluntary agreements to preserve as much digital material as possible. However, until the legislation is implemented the majority of these websites cannot be legally captured and preserved.

It has been estimated that less than 1 per cent of all online activity related to the London Olympics will be saved. Future generations of researchers will also search in vain for much of the reaction to major events such as the 7/7 bombings, the 2009 Parliamentary expenses scandal and the London riots.

A lot of what appears online may appear very trivial and unimportant. However, we have learnt that it is not possible for any generation to accurately predict what those who come after us will deem to be important. Sometimes what seems insignificant or even goes unnoticed proves to be the gems unearthed by later researchers. Who would have thought that the diary of a young Dutch girl would have become so important? However, if Anne Frank's thoughts had been kept as a blog or Tweeted rather than written down in a journal, what are the chances that we would still be able to read them today?

It would also be ironic if the web pages and blogs of our media-savvy political leaders were washed away almost as quickly as the ink on Thomas Cromwell's letters took to dry. Despite the ease with which we can record and communicate our thoughts today, the historians and novelists of the future may struggle to find much of this material and therefore be unable to gain the same insight into today's Thomas Cromwells.

It is a matter of great regret that it will never be possible to plug the gap in our understanding of UK opinion about major social and cultural issues at the very beginning of the digital age. Will academics in the future feel the same sense of loss about some of this material that we feel today about the missing works of Ancient Greece's greatest writers and thinkers?

The UK has been in the slow lane when it comes to preserving digital material. Non-print legal deposit is now widespread internationally, including much of Europe, Canada and New Zealand. It is two years since the United States Library of Congress announced that it would be keeping copies of every Tweet. The latest version of the UK Government's proposed regulations is less than perfect. It would exempt start-ups and micro businesses from depositing offline publications or the need to provide passwords to enable us to harvest their websites.

Given that these businesses account for 80 per cent of publishers, a great deal of information would continue to be lost. The British Library would like to see this exclusion waived completely. However, the priority now is to implement the legislation without further delay. We must avoid any more of our heritage disappearing forever into the digital black hole and ensure the British Library continues to be this country's collective memory long into the future.

*Dame Lynne Brindley is CEO of the British Library*

<http://www.newstatesman.com/blogs/cultural-capital/2012/05/memory-nation-digital-world>

## PART III: EVIDENCE BASE

### IMPACT ASSESSMENTS

#### UK

Impact assessment – online content, as part of the 2012 Consultation on the Draft Legal Deposit Libraries (non-print works) Regulations 2013

[http://www.culture.gov.uk/images/consultations/Impact\\_Assessment\\_-\\_on\\_line.pdf](http://www.culture.gov.uk/images/consultations/Impact_Assessment_-_on_line.pdf)

Impact assessment – offline content, as part of the 2012 Consultation on the Draft Legal Deposit Libraries (non-print works) Regulations 2013

[http://www.culture.gov.uk/images/consultations/Impact\\_Assessment\\_-\\_off\\_line.pdf](http://www.culture.gov.uk/images/consultations/Impact_Assessment_-_off_line.pdf)

Impact assessment as part of the 2010 Consultation on the Draft Legal Deposit Libraries (Non-print Publications) Regulations 2011

[http://www.culture.gov.uk/images/publications/Impact\\_assessments-digitallegaldeposit2011.pdf](http://www.culture.gov.uk/images/publications/Impact_assessments-digitallegaldeposit2011.pdf)

Regulatory Impact Assessment for Legal Deposit Libraries Bill

<http://www.culture.gov.uk/images/publications/RIALegalDepositLibrariesFinalMArch2003.pdf>

Evidence base, including economic impact assessments, regulatory impact assessments, cost benefit analyses, examples of 'lost' material, international developments, etc.

### EXAMPLES OF LOST MATERIAL

A 2009 study of research papers published on the web over a 10-year period found that nearly one third of the citation-links in research documents no longer linked to the original sources, most of which simply registered as "page not found".

Mohammad Hanief Bhat. Missing Web References — A Case Study of Five Scholarly Journals. In Liber Quarterly, 19 (2), December 2009. pp131–139

#### UK

On its website (<http://www.nls.uk/news/archive/2012/05/digital-black-hole>) the National Library of Scotland reports that digital information that has already been lost includes:

- The first websites of the Scottish Parliament
- Material on last year's Scottish Parliament elections
- The anti-Trident protest movement in Scotland
- Internet and social media coverage of the 2011 London riots
- The 2009 Parliamentary expenses scandal
- The 2005 London bombings.

The British Library estimates that less than 1 per cent of all online activity related to the London 2012 Olympics will be saved. It also reports that future generations of researchers will also search in vain for much of the reaction to major UK events such as the 7/7/2005 London bombings, the 2009 Parliamentary expenses scandal, and the 2011 London riots.

#### INTERNATIONAL COMPARATORS

The British Library has undertaken two international surveys on e-legal deposit – in 2009 and again in 2011.

#### 2009 Survey – 35 respondents

- 76% reported e-legal deposit legislation passed and implemented at least for offline
- A further 6% (2 respondents) expected legislation to be in place by 2010
- 18% of respondents reported that e-legal deposit legislation had not been passed and was not in process
- 35% of respondents are able to collect free online material
- The same 35% are also entitled to collect e-books, e-journals, and other commercial online publications under the same legislation. (A further 2 respondents anticipated legislation to permit this in 2010).
- 18% of respondents reported that their existing legislation required deposit / collection of structured data behind query-driven services
- Access arrangements were generally more generous than those proposed for the UK

The full results were reported in Stephens, Andy and Gibby, Richard. 'National implementations of electronic legal deposit' Alexandria, 212(1) 2011, 53-67.

#### 2011 Survey – 55 respondents

- 94% reported legal deposit for printed publications
- 73% of national libraries – or 79% by 2012 – have legal deposit or other legislation for CD-ROMs
- 40% of national libraries – or 58% by 2012 - have legislation which enables web harvesting.
- One quarter of national libraries undertake domain-wide harvests and one third undertake selective harvests under the appropriate legislation
- There are 4 main web archive access models: generally speaking, permitted access is more restrictive than the original except where permissions have been granted
- 44% of national libraries - or 58% by 2012 - have legal deposit for e-books and e-journals
- Generally speaking, permitted access to e-books and e-journals is in line with library access to subscription models
- Survey revealed real traction towards securing legal deposit for web and electronic publications

See:

[http://www.cdnl.info/2011/pdf/e\\_2Dlegaldeposit\\_20survey\\_20CDNL\\_20Slides\\_20Aug%20\[Compatibility%20Mode\].pdf](http://www.cdnl.info/2011/pdf/e_2Dlegaldeposit_20survey_20CDNL_20Slides_20Aug%20[Compatibility%20Mode].pdf).