Digital Legal Deposit in Selected Jurisdictions

Australia • Canada • China • Estonia • France • Germany
Israel • Italy • Japan • Netherlands • New Zealand
Norway • South Korea • Spain • United Kingdom

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Comparative Summary

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This report, prepared by the staff of the Global Legal Research Directorate of the Law Library of Congress, surveys laws regulating the mandatory legal deposit of electronic materials. Fifteen countries representing different approaches to collecting, describing, preserving, and storing digital and non-print documents and providing access to them are included in the study. (See map, below.) These countries were selected because of their long-term experience with collecting online and offline electronic publications. Each country survey provides information on the history of e-deposit programs in the country, identifies the national institutions charged with collecting and preserving electronic materials, analyzes the legal framework for depositing digital materials, lists the requirements applicable to publishers of such material, and describes the measures taken to bring e-deposit programs in line with the restrictions established by national copyright laws. Where applicable, details of the web harvesting process are also described. Laws regulating the legal deposit of physical copies of print publications are outside the scope of this report, although in some cases such laws are mentioned where they address issues associated with e-deposit.

All countries included in this study have laws regulating mandatory, voluntary, and pilot programs aimed at collecting and preserving online and digital publications and born-digital materials. Legal deposit is mandatory in all of the surveyed countries, except for the Netherlands and Italy. While e-deposit programs can be traced to 1999 when Dutch publishers concluded their first agreement with the National Library of the Netherlands on depositing electronic publications with a Dutch imprint at the Library, and the National Library of New Zealand began selectively harvesting websites, most countries developed their e-deposit programs in the last ten to fifteen years. (See timeline, below.) Since then, the surveyed countries require that publishers and producers of digital and online publications provide a required number of copies to the National Library (Australia, Estonia, France, Germany, Israel, New Zealand, South Korea, Spain); to national archives and government agencies in charge of protecting the country's documents (Canada, China); the parliamentary library (Japan); or to a network of libraries, including academic institutions (United Kingdom).

Most of the surveyed countries place the responsibility for depositing e-materials on publishers or producers of electronic documents, establishing precise rules for delivering these materials to the designated repositories. Some countries establish a time frame for mandatory deposits. Canada and Germany require that materials subject to e-deposit be provided to the designated libraries within one week after publication. This period is extended to twenty days in New Zealand, and cannot exceed one month in Australia and the United Kingdom. In China, a sample copy of an electronic work must be sent to the National Library and is archived even prior to publishing. A violation of these rules is punishable by fines (see, e.g., Estonia, France, Spain).

While most of the countries require e-deposit to be conducted by publishers for free, regulations in Japan, Netherlands, and South Korea allow publishers to be reimbursed for the expenses associated with the deposit of electronic publications.

The majority of the surveyed countries extend the e-deposit requirement to websites, online publications (including born-digital works), and digitized copies of print materials. The United Kingdom allows a print version of a work otherwise subject to legal deposit to be substituted with a digital copy. Some countries specify that sound, visual, and audiovisual resources are recognized as digital materials, to be deposited together with other e-publications. Estonia and France define separate rules for depositing movies.

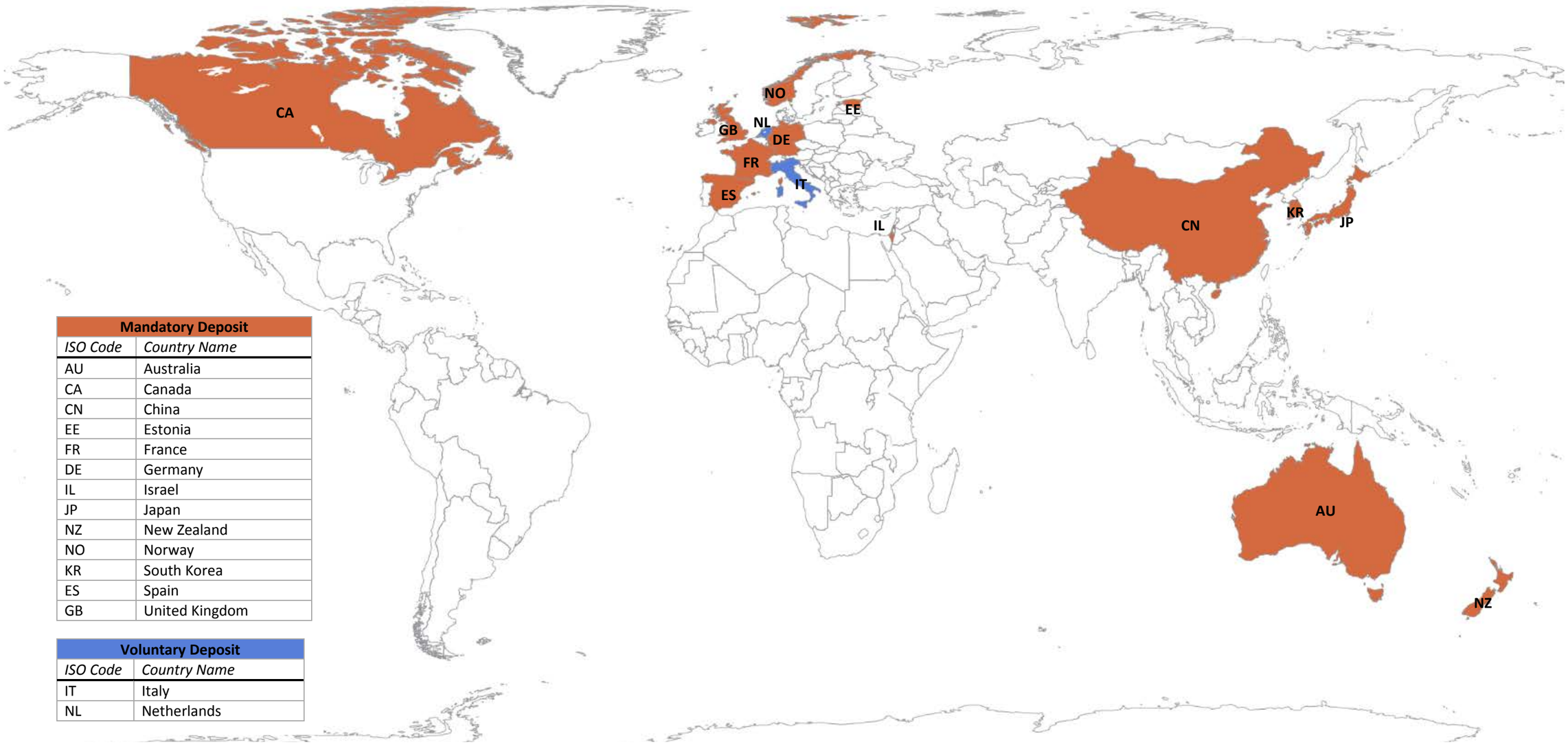
Software and databases constitute an interesting segment of digital materials when it comes to their preservation and deposit. France and Netherlands demonstrate two different approaches. While French law specifically identifies software and databases as subject to legal deposit, the Dutch National Library does not collect applications (apps), games, and databases, as they frequently change.

Most of the countries surveyed have established their electronic deposit programs for the purpose of preserving the national culture in digital format, and thus focus on collecting digital materials that pertain to the national culture. As a result, deposit requirements in these countries typically apply to materials published inside the country, or outside of the national borders if the publisher or domain owner is a permanent resident of the country (Australia, Spain), or materials that specifically target the country's population (Norway). The German National Library goes even further, collecting "all media works that are published abroad in the German language and translations of German works published abroad, as well as works about Germany published in other languages."

As a rule, private websites and online materials, information from listservs, and works for a limited audience are excluded from legal deposit requirements (Germany, Israel, Netherlands, Spain). The Estonian National Library refuses to collect live streaming and web publications with an unreasonably large amount of data. Data limits for deposited files have been introduced in many of the surveyed countries. Films and recorded sound materials are excluded from deposit requirements in the UK. Technology is a distinguishing factor in Japan when a decision is made as to whether a website should fall under e-deposit requirements. If a Japanese website has restricted access and special technology is needed for access, such website is exempt from mandatory deposit.

Regular web harvesting is also conducted in the majority of the countries researched. Websites that fall under the country's domain code or those sites whose hosts can be identified as physically located inside the country are typically collected for preservation. The Dutch National Library emphasizes that it "selects websites that are innovative, popular, or relevant to the Dutch society." The national Library of France does not collect electronic books individually but instead regularly harvests them from publishers' websites. Once collected, access to all deposited materials depends on the commercial and copyright status of a publication. The repository is typically responsible for ensuring access and implementing any necessary restrictions.

The laws and regulatory documents of all countries surveyed state, in one form or another, that the goal of maintaining an e-deposit system is to permanently preserve the national digital heritage.



Mandatory Deposit	
ISO Code	*Country Name*
AU	Australia
CA	Canada
CN	China
EE	Estonia
FR	France
DE	Germany
IL	Israel
JP	Japan
NZ	New Zealand
NO	Norway
KR	South Korea
ES	Spain
GB	United Kingdom

Voluntary Deposit	
ISO Code	*Country Name*
IT	Italy
NL	Netherlands

Mandatory vs. Voluntary Digital Legal Deposit in Selected Jurisdictions

Source & Note: Created by the Law Library of Congress based on information provided in this report. This map depicts the digital legal deposit status of the fifteen countries surveyed.

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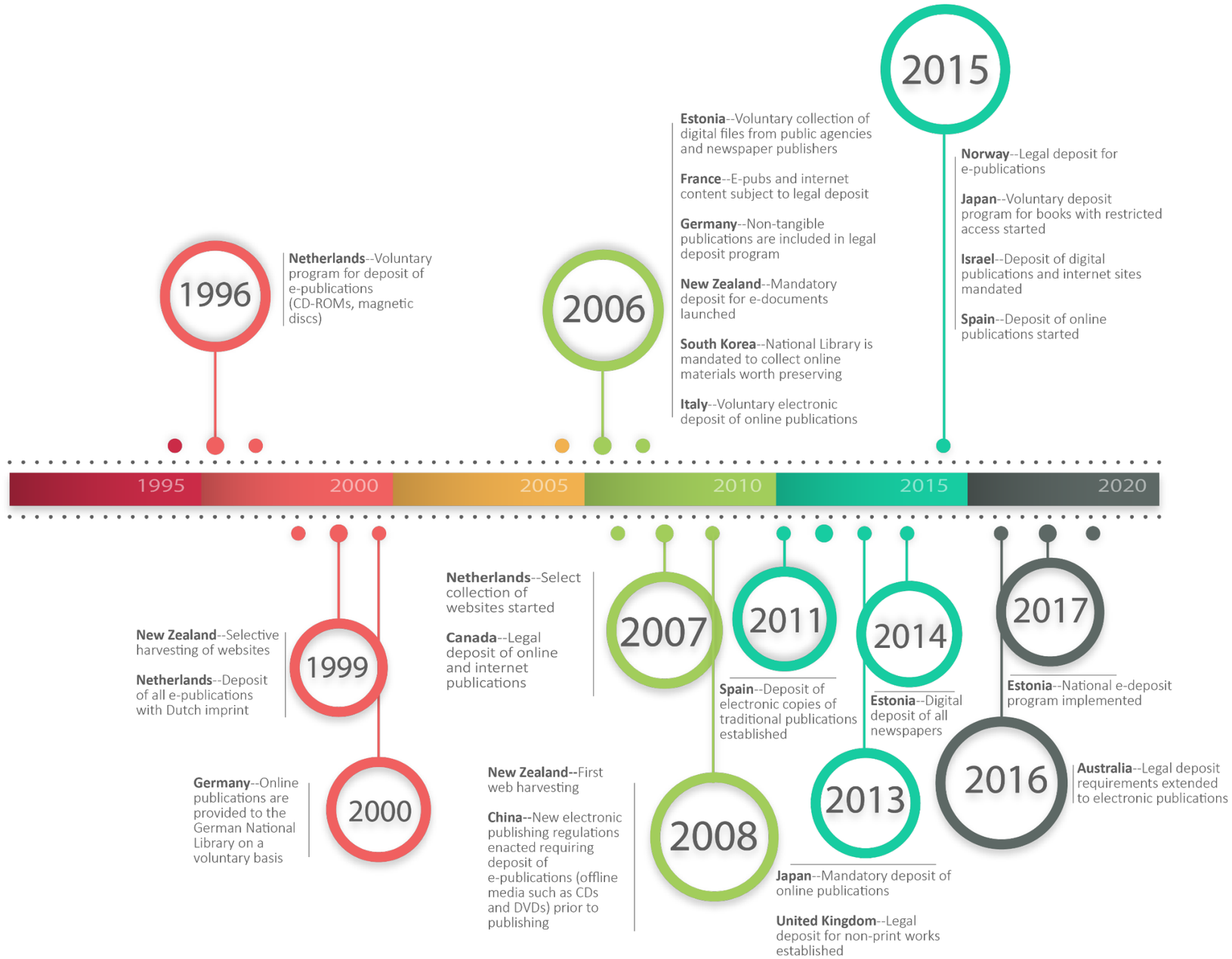
LIBRARY OF CONGRESS



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Australia

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SUMMARY Amendments to Australia's Copyright Act that came into force in early 2016 extended the national legal deposit requirements to electronic publications, including both offline and online materials. Material that is published offline must be delivered to the National Library of Australia on the physical medium on which it was originally published. Online material must be provided to the Library if requested, including requests made through web harvesting software. If the material is not available on a public website, publishers can use the Library's eDeposit service to deposit the material.

The National Library collaborates with state library and heritage organizations to select and harvest Australian websites for the PANDORA Archive. Publishers of websites receive a "request" as part of the web harvesting process and are provided with a link to a notice regarding the statutory authority for the request. The harvested websites are publicly available on the PANDORA platform. The National Library also harvests all Australian government websites for inclusion in the Australian Government Web Archive.

Other electronic publications deposited with the National Library are made available to the public depending on the commercial status of the publication. Access may be restricted to onsite users of the Library, who may only view but not download the publication, or a publication can be made available offsite but only in a read-only format, while noncommercial publications can be made freely available through the Library's catalog and on Trove, the national online database aggregator hosted by the National Library.

In addition to legal deposit at the national level, currently two Australian states and one territory apply their legal deposit requirements to born-digital publications. The National Library is also working with all state and territory libraries to develop a national eDeposit platform, which is expected to be launched in 2019. The system would enable publishers to deposit electronic publications once and fulfill both national and state or territory legal deposit requirements.

I. Introduction

The legal deposit system applicable to the National Library of Australia (NLA) is contained in the Copyright Act 1968 (Cth),[1] and has been a feature of Australia's copyright law since its colonial origins.[2] Prior to 2016, the legislation only covered print-based, Australian-published items in its

[1] Copyright Act 1968 (Cth), pt X div 3, https://www.legislation.gov.au/Details/C2017C00414, *archived at* https://perma.cc/L3X3-URQA.

[2] Civil Law and Justice Amendment Bill 2014: Explanatory Memorandum, Attachment A (Extending the Legal Deposit Scheme to Digital Material: Regulation Impact Statement (2014)), https://www.legislation.gov.au/Details/C2014B00229/Explanatory%20Memorandum/Text, *archived at* https://perma.cc/5WBT-EFNB.

definition of "library material" that needed to be deposited with the NLA.[3] Digital material was not covered. The NLA utilized voluntary methods for collecting some electronic material for a number of years, including permission-based web archiving procedures, but reported that it collected only a fraction of freely-available material published online.[4]

The Copyright Act was amended in 2015 to extend the legal deposit system to digital material.[5] The amendments came into effect in early 2016. The NLA website states that

> [o]n 17 February 2016, the legal deposit provisions were extended to cover the online publishing landscape. This includes all Australian print and electronic books, journals, magazines, newsletters, reports, sheet music, maps, websites and public social media. Legal deposit applies to any Australian person, group or organisation that makes this material available to the public for sale or for free.[6]

Each Australian state, plus the Northern Territory, also have legal deposit legislation applicable to materials published in those jurisdictions. The laws contain different definitions of the material that must be deposited in state or territory libraries. Three of the jurisdictions currently require the deposit of born-digital material.

Australia's nine national, state, and territory libraries are currently collaborating on a project to develop a national eDeposit platform, which is expected to be launched in 2019.

II. Digital Deposit at the Federal Level

A. Deposit of Digital Material

The Copyright Act 1968 (Cth) now contains the following definition of "National Library material":

> A literary, dramatic, musical or artistic work, or an edition of such a work, (whether in an electronic form or otherwise) is ***National Library material*** if:
>
> (a) the work or edition is:
>
> (i) a website, web page, web file, book, periodical, newspaper, pamphlet, sheet of music, map, plan, chart or table; or

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[3] *Id.*

[4] *Id.*

[5] *Civil Law and Justice Amendment Bill 2014*, PARLIAMENT OF AUSTRALIA, https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=s980 (last visited Apr. 18, 2018), *archived at* https://perma.cc/TV3Q-8PCF; Civil Law and Justice Amendment Act 2015 (Cth) sch 7, https://www.legislation.gov.au/Details/C2015A00113, *archived at* https://perma.cc/3FJK-Y29W. *See* Kelly Buchanan, *Australia: National Library to Implement Digital Legal Deposit from January 2016*, GLOBAL LEGAL MONITOR (July 13, 2015), http://www.loc.gov/law/foreign-news/article/australia-national-library-to-implement-digital-legal-deposit-from-january-2016/.

[6] *What Is Legal Deposit?*, NLA, https://www.nla.gov.au/legal-deposit/what-is-legal-deposit (last visited Apr. 18, 2018), *archived at* https://perma.cc/ERT7-62MU.

(ii) prescribed by the National Library Minister for the purposes of this subparagraph; and

(b) copyright subsists in the work or edition under this Act; and

(c) the work or edition is not primarily audio−visual; and

(d) in the case of an edition:

(i) the edition contains additions or alterations in the text or other reading matter, illustrations, drawings, engravings, photographs or audio−visual elements; and

(ii) the content of at least one of those additions or alterations was not contained in any earlier edition; and

(e) the work or edition is not prescribed by the National Library Minister for the purposes of this paragraph.[7]

The NLA has produced a guide for publishers on the deposit of electronic publications.[8] It states that, "[f]or the purposes of the Act, electronic library material is either 'available online' or 'not available online'. Material 'available online' is communicated on (or via) the internet. This material has different deposit requirements to material not available online. The National Library will refer to 'not online' materials as 'offline' material."[9] The guidance document then further explains these terms:

> a) Electronic material 'available offline' is distributed on a physical format carrier and supplied to the public (i.e. in a published form), whether for sale or free, by a person in Australia who is the publisher.
>
> b) Electronic material 'available online' is material made available to the public in Australia whether for sale or free, via the internet or some other platform. This includes:
>
> i. Material published on a website within the '.au' top level domain name; or
>
> ii. Material published on a website where the domain name is owned or licensed by an Australian resident;
>
> iii. Material accessible online on a website within Australia, where the Director-General of the Library or delegate considers the material should be included in the national collection; or,
>
> iv. Material published on the internet, other than websites, in Australia or by an Australian resident.[10]

1. Offline Electronic Material

Offline material, which includes printed items and "electronic publications published on a hard-drive, USB flash-drive, CD, DVD, or any other physical electronic media," must be delivered to

[7] Copyright Act 1968 (Cth), s 195CE.

[8] NLA, DEPOSIT OF ELECTRONIC PUBLICATIONS WITH THE NATIONAL LIBRARY OF AUSTRALIA (June 2016), https://www.nla.gov.au/sites/default/files/deposit-of-electronic-publications.pdf, *archived at* https://perma.cc/7FVP-6RNK.

[9] *Id.* at 5–6.

[10] *Id.* at 6.

the NLA within one month of publication.[11] Such media is only accepted "if that is how the item was originally published and made publicly available."[12]

The NLA guidance also states that,

> [i]f a work is published so that it is available both offline and online, the offline version should be deposited within the mandated time (one month from publication) unless the Director-General or delegate has requested the online version be deposited within the required delivery period for the offline version.[13]

2. Online Electronic Material

The Act authorizes the Director-General of the NLA to request, in writing, a publisher to deliver material that he or she has made available online, where the Director-General "considers that a copy of the material should be included in the national collection of library material."[14] Online publications for which a request has been made must be deposited with the NLA within one month of the publisher receiving the request.[15] Publishers who do not receive a request may still deposit their works voluntarily.[16]

The legislation enables the NLA to request the deposit of a publication through the use of a web harvesting robot.[17] The guidance material explains that,

> a) If the material is freely available on a website, the publisher must not do anything which would prevent the National Library from automatically collecting (with a robot harvester) the material from that website.
> b) If the material is available on a website but is not freely accessible, the publisher must deliver the material through the edeposit service or other means as agreed with the Library, within one month of being requested.
> c) If the material is not available on a website but is online material, the publisher must deliver the material through the edeposit service or other means as agreed with the Library, within one month of being requested.[18]

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[11] *Id.*

[12] *Id.*

[13] DEPOSIT OF ELECTRONIC PUBLICATIONS WITH THE NATIONAL LIBRARY OF AUSTRALIA, *supra* note 8, at 8.

[14] Copyright Act 1968 (Cth), s 195CC.

[15] *Legal Deposit Frequently Asked Questions*, NLA, https://www.nla.gov.au/legal-deposit-faq (last visited Apr. 23, 2018), *archived at* https://perma.cc/SE6Q-UE2M.

[16] *Id.*

[17] DEPOSIT OF ELECTRONIC PUBLICATIONS WITH THE NATIONAL LIBRARY OF AUSTRALIA, *supra* note 8, at 7.

[18] *Id.* at 8.

The eDeposit service on the NLA website enables the deposit of online materials, such as "ebooks, electronic journals, magazines and newsletters."[19] In terms of technical formats, the NLA website states that

> [t]he edeposit service accepts epub, PDF or mobi files for books, journals, magazines, newsletters and music scores. Files must be under 500MB. If you publish in more than one of these, our preference is epub.
>
> The service accepts PDF, GeoPDF, TIFF, or GeoTIFF files for maps.
>
> We do not accept Word documents. If you publish in a different format, please contact us and we will be happy to discuss options with you.[20]

B. Web Archiving

The NLA operates two platforms for archived Australian websites: the PANDORA Archive (an acronym of "Preserving and Accessing Networked Documentary Resources of Australia") and the Australian Government Web Archive.

With regard to the PANDORA Archive, the NLA states that,

> [s]ince 1996, the Library in collaboration with state libraries and other heritage organisations has been selecting, collecting and archiving copies of Australian web sites and online publications through a program know [sic] as the PANDORA Archive. The objective of this program is to ensure long-term access to this important form of Australia's documentary heritage. In recognition of its significance the PANDORA Archive was placed on the UNESCO Memory of the World Australian Register in August 2004.[21]

There are currently nine partner agencies, in addition to the NLA, with each writing their own selection guidelines and "establishing the portion of the national collection for which it will take responsibility."[22] Publishers of Australian websites or online documents, or members of the public, can notify the NLA of a website in order for it be considered for preservation in the PANDORA Archive.[23]

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[19] *How To Deposit*, NLA, https://www.nla.gov.au/legal-deposit/how-to-deposit (last visited Apr. 23, 2018*), archived at* https://perma.cc/5ZGJ-2EB9; *Legal Deposit*, NLA, https://www.nla.gov.au/legal-deposit (last visited Apr. 18, 2018), *archived at* https://perma.cc/82YL-ZWC8; *Edeposit*, NLA, https://www.nla.gov.au/edeposit/ (last visited Apr. 18, 2018), *archived at* https://perma.cc/329E-54KQ.

[20] *Legal Deposit Frequently Asked Questions*, *supra* note 15.

[21] *Archived Websites*, NLA, https://www.nla.gov.au/what-we-collect/archived-websites (last visited Apr. 24, 2018), *archived at* https://perma.cc/B43A-2RNE.

[22] *PANDORA Partners*, PANDORA: AUSTRALIA'S WEB ARCHIVE, http://pandora.nla.gov.au/partners.html (last updated Nov. 23, 2017), *archived at* https://perma.cc/FYT7-GUM8.

[23] *Notification Form for Suggesting Websites and Online Documents for Inclusion in the PANDORA Archive*, PANDORA: AUSTRALIA'S WEB ARCHIVE, http://pandora.nla.gov.au/registration_form.html (last updated July 25, 2017), *archived at* https://perma.cc/MB3S-SSVR.

The NLA has published a notice, issued by the Director-General, regarding the legal deposit of online materials, which supports the automated request for materials made by web harvesting software. The user-agent authorized by the NLA for the harvest (currently software operated by the Internet Archive) provides a link to the page containing the notice.[24]

Users can search and access content in the PANDORA Archive as follows:

> The full text of archived content in indexed and selected titles are catalogued and included in the National Bibliographic Database. Both the full-text index and catalogue records are searchable through the Library's national single search discover service (Trove[25]).
>
> The PANDORA collection can be browsed through subject and alphabetical listings on the PANDORA Home Page.[26]

The Australian Government Web Archive (AGWA) is a newer public interface, released in 2014, that complements the PANDORA Archive. It provides access to a collection of archived Commonwealth (i.e., federal) government websites, which were specifically added starting from June 2011, although earlier content from previous harvesting activities is "progressively being added" to the site.[27] Harvests are conducted at least once annually and are undertaken in accordance with whole-of-government arrangements that permit the NLA to "collect, preserve and make accessible web materials published by non-corporate Commonwealth entities subject to the Public Governance, Performance and Accountability Act 2013."[28] Limited content is also collected from websites of Commonwealth corporate entities pursuant to specific agreements.[29]

The NLA notes that "[t]he AGWA is also the first publicly released service arising from the Library's objectives to work with the tools and infrastructure required for the large scale—as distinct from selective—collection of websites and to deliver a modern web archive discovery portal."[30]

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[24] *Notice to Publishers of Online Materials*, PANDORA: AUSTRALIA'S WEB ARCHIVE, http://pandora.nla.gov.au/crawl.html (last updated Feb. 16, 2018), *archived at* https://perma.cc/A95U-UQDM. *See also Notice to Publisher of Online Materials*, NLA, https://www.nla.gov.au/legal-deposit/request (last visited Apr. 24, 2018), *archived at* https://perma.cc/5TN9-P3SB.

[25] *See Archived Websites (1996 – Now)*, TROVE, https://trove.nla.gov.au/website?q (last visited Apr. 24, 2018), *archived at* https://perma.cc/E2WR-WCTW.

[26] *PANDORA Overview*, PANDORA: AUSTRALIA'S WEB ARCHIVE, http://pandora.nla.gov.au/overview.html (last updated Mar. 10, 2016), *archived at* https://perma.cc/3GWB-H4KT.

[27] *Australian Government Web Archive*, AUSTRALIAN GOVERNMENT WEB ARCHIVE, http://webarchive.nla.gov.au/gov/ (last visited Apr. 24, 2018), *archived at* https://perma.cc/6SQV-T55G.

[28] *About the Australian Government Web Archive (AGWA)*, AUSTRALIAN GOVERNMENT WEB ARCHIVE, http://webarchive.nla.gov.au/gov/about (last visited Apr. 24, 2018), *archived at* https://perma.cc/8BLC-NCJ2.

[29] *Id.*

[30] *Archived Websites*, *supra* note 21.

The NLA has also partnered with the Internet Archive since 2007 to select, collect, and archive copies of certain Asia-Pacific websites through the Archive-It service.[31]

C. Preservation and Access

1. Preservation and Security

The NLA has preservation responsibilities for several digital collections, including websites gathered as part of its web harvesting programs and Australian digital publications either deposited directly or on physical carriers.[32] It states that the NLA "has a mandate and commitment to preservation and has been active in developing infrastructure to collect, manage, preserve and keep our digital collections available into the future. This is recognised as core business for the Library and is critical to its future relevance."[33]

The NLA released the fourth edition of its Digital Preservation Policy in 2013, which sets out the purpose, objectives, challenges, directions, and implementation principles for preserving its digital collections.[34] It has also published statements of preservation intent for different aspects of the digital collections.[35] Furthermore, it "[h]as a long-standing program of projects to develop tools, procedures and infrastructure to manage the preservation of its digital collections. Currently this development has focused on the DLIR (Digital Library Infrastructure Replacement) Project," and also states that it "[h]as a long-standing commitment to working with others in developing ways to address its own digital preservation responsibilities and to share information about digital preservation."[36]

In terms of security, the NLA states that

> [t]he National Library of Australia stores its digital collections securely and preserves them forever. Our IT security standards are based on those specified in the Attorney-General's Protective Security Policy Framework, the Australian Government Information Security Manual, the ISO 27000 Standards and recommendations of the Australian National Audit Office.[37]

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[31] *Id.*

[32] *Our Digital Collections*, NLA, https://www.nla.gov.au/content/the-nature-of-the-library-s-digital-collections (last visited Apr. 24, 2018), *archived at* https://perma.cc/Z7GB-FQKQ.

[33] *Digital Preservation*, NLA, https://www.nla.gov.au/content/digital-preservation (last visited Apr. 24, 2018), *archived at* https://perma.cc/3AVZ-CDGY.

[34] *Digital Preservation Policy 4th Edition (2013)*, NLA, https://www.nla.gov.au/policy-and-planning/digital-preservation-policy (last visited Apr. 24, 2018), *archived at* https://perma.cc/CM3M-N32P.

[35] *Statements of Preservation Intent*, NLA, https://www.nla.gov.au/content/statements-of-preservation-intent (last visited Apr. 24, 2018), *archived at* https://perma.cc/HW7U-4YB6.

[36] *Digital Preservation*, *supra* note 33.

[37] *Access to Electronic Publications*, NLA, https://www.nla.gov.au/legal-deposit/access-to-electronic-publications (last visited Apr. 24, 2018), *archived at* https://perma.cc/6XY8-V4SK.

2. Access to Electronic Publications

The commercial status of electronic publications is identified by publishers at the time they deposit the publication. A publisher can allow basic access as permitted by the Copyright Act, meaning that NLA users will only be able to view, and not download or copy, a commercial publication in the NLA reading rooms.[38] Noncommercial publications with basic access as permitted under the Copyright Act will be available as read-only in Trove.[39]

If a publisher allows a publication to be made freely available, then "[a]nyone will be able to download and save deposited electronic publications to their computer or mobile device via a link in the National Library's online catalogue and Trove."[40]

Publishers can also apply an embargo period of twelve months for books, music scores, and maps, or a period of six months for journals, magazines, and newsletters. During this period only basic access as permitted under the Copyright Act will apply, and after the embargo period ends the publication will be made freely available.[41]

When depositing an electronic publication, publishers can also specify that the publication has a Creative Commons license, and select the one that applies.[42]

III. Digital Deposit at the State and Territory Level

The association of National and State Libraries Australasia (NSLA), which is made up of the NLA, National Library of New Zealand, and Australia's eight state and territory libraries, states that "[s]everal NSLA libraries have legislation in place to cover this born-digital legal deposit material, and most are reviewing or amending existing legislation to extend to digital publications."[43] The three subnational jurisdictions identified as currently having legal deposit requirements for born-digital publications are Northern Territory, Queensland, and Tasmania.[44]

A. Northern Territory

The Publications (Legal Deposit) Act 2004 (NT) requires the publisher of an "internet publication" for which no printed version is published to "advise the CEO [of the Northern Territory Library] of the Uniform Resource Identifier (URI) of the publication on the publisher's website" within two

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[38] *Id.*

[39] *Id.*

[40] *Id.*

[41] *Id.*

[42] *Creative Commons and Electronic Communications*, NLA, https://www.nla.gov.au/legal-deposit/creative-commons-and-electronic-publications (last visited Apr. 24, 2018), *archived at* https://perma.cc/95TD-3DMV.

[43] *Legal Deposit in Australasia*, NATIONAL AND STATE LIBRARIES AUSTRALASIA, https://www.nsla.org.au/legal-deposit-australasia (last visited Apr. 24, 2018), *archived at* https://perma.cc/CNQ3-36CF.

[44] *Id.*

months after it is first published.[45] The CEO is authorized to copy an internet publication and, "if it changes, may take further copies of the publication from time to time as the CEO considers appropriate."[46] If the publication is protected from being copied by technical means, the publisher must either provide an electronic copy of the publication on request, or provide the means to capture an identical copy from the internet.[47]

B. Queensland

Although the Libraries Act 1988 (Qld) does not explicitly refer to electronic publications in requiring publishers in Queensland to give a copy of published material to the State Library and Parliamentary Library, the language appears to be broad enough to encompass such publications.[48] The State Library of Queensland states that electronic publications must be deposited, and that if a publication "is produced in both electronic and print formats the electronic version should be deposited, providing it is in either a PDF or Word (.doc) format. Otherwise the print copy is acceptable for deposit purposes."[49]

The State Library further explains that it "is able to save and preserve electronic publications in the Library's digital repository. One of the options available to people depositing e-publications is a deposit wizard."[50] Other options for depositing such material are forwarding it by mail on a disc or USB, sharing a Dropbox folder, or using other file-sharing services.[51]

C. Tasmania

The Libraries Act 1984 (NT) also does not explicitly refer to electronic publications in its legal deposit provisions or the definition of a "book" to which those provisions apply.[52] The website of LINC Tasmania, the state library service, lists eBooks among the publications that must be deposited, and states that "[i]f a work is published in both digital and hard copy format only a

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[45] Publications (Legal Deposit) Act 2004 (NT), s 13(1), https://legislation.nt.gov.au/Legislation/PUBLICATIONS-LEGAL-DEPOSIT-ACT-2004, *archived at* https://perma.cc/MR6F-RFJX. "Internet publication" is defined in section 5, *id. See also Legal Deposit*, NORTHERN TERRITORY DEPARTMENT OF TOURISM AND CULTURE, https://dtc.nt.gov.au/arts-and-museums/northern-territory-library/library-collections/legal-deposit (last updated Nov. 28, 2017), *archived at* https://perma.cc/NYB6-6AHV.

[46] Publications (Legal Deposit) Act 2004 (NT), s 13(2).

[47] *Id.* s 13(3).

[48] Libraries Act 1988 (Qld), pt 8, https://www.legislation.qld.gov.au/view/whole/html/inforce/current/act-1988-029, *archived at* https://perma.cc/BFF5-YT33.

[49] *Legal Deposit*, STATE LIBRARY OF QUEENSLAND, http://www.slq.qld.gov.au/resources/publishers/legal-deposit (last visited Apr. 24, 2018), *archived at* https://perma.cc/U8NM-Z6DN.

[50] *Id.*

[51] *Legal Deposit – Deposit Wizard*, STATE LIBRARY OF QUEENSLAND, http://www.slq.qld.gov.au/resources/publishers/legal-deposit/wizard (last visited Apr. 24, 2018), *archived at* https://perma.cc/WWP7-CSDG.

[52] Libraries Act 1984 (NT), ss 3 & 22, https://www.legislation.tas.gov.au/view/whole/html/inforce/current/act-1984-109, *archived at* https://perma.cc/9GRA-43MU

digital copy is required to be deposited unless the hard copy is different in layout or content."[53] Electronic publications can be submitted using LINC Tasmania's "web-based document archive" called STORS (Stable Tasmanian Online Repository System).[54]

IV. National eDeposit Network

The Ned.gov.au website has been established to host the National eDeposit system, which is expected to be launched in 2019. The site currently states that "National edeposit is an innovative online service for the deposit, archiving, management, discovery and delivery of published electronic material across Australia" and is an exciting collaboration between Australia's nine National, State and Territory libraries, responding to the major challenge of providing the digital documentary history of Australia for the future."[55] It further states that publishers will be able to deposit their publications once, using the system, and fulfill both their state/territory library and NLA legal deposit responsibilities. It appears that, once deposited, materials will be included in discovery services, including Trove and the catalogs of state/territory libraries and the NLA.[56]

A poster session at the Asia-Pacific Library and Information Conference 2018, to be held in August 2018, will provide information about the "evolving journey and collaboration of Australia's nine national, state and territory libraries" in addressing the challenge of collecting, describing, preserving, storing, and making available digital publications through the National eDeposit network (NED).[57] The session description further states that "NED comprises people, governance and policies and technological infrastructure to collect, preserve and provide access to Australia's digital publications. It is a joint digital platform that streamlines deposit for Australia's publishing industry and improves access for Australian people."

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[53] *Legal Deposit*, LINC TASMANIA, https://www.linc.tas.gov.au/how-to/Pages/legal-deposit.aspx (last visited Apr. 24, 2018), *archived at* https://perma.cc/7BJL-9CDF.

[54] *Id. See also Stable Tasmanian Online Repository System (STORS)*, LINC TASMANIA, https://digital.linc.tas.gov.au/deposit/action/start.do (last visited Apr. 24, 2018), *archived at* https://perma.cc/P52H-9L77.

[55] *National eDeposit*, NED, https://ned.gov.au/ (last visited Apr. 24, 2018), *archived at* https://perma.cc/888D-EKRF.

[56] *Id.*

[57] *Collaborative Innovation: Australia's National eDeposit Network (NED)*, ASIA-PACIFIC LIBRARY AND INFORMATION CONFERENCE 2018, https://aplic.alia.org.au/content/collaborative-innovation-australia%E2%80%99s-national-edeposit-network-ned (last visited Apr. 24, 2018), *archived at* https://perma.cc/9FUW-J4N6.

Canada

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SUMMARY Library and Archives Canada (LAC) is the federal institution with the mandate to acquire and preserve the documentary heritage of Canada, which it does pursuant to the Library and Archives of Canada Act and the Legal Deposit of Publications Regulations. Pursuant to the Regulations, which came into force on January 1, 2007, legal deposit applies to publications produced in Canada regardless of the medium or format, and includes online and digital publications.

I. Introduction

Library and Archives Canada (LAC) is the federal institution with the mandate to acquire and preserve "the documentary heritage of Canada."[1] The Library and Archives of Canada Act[2] is the federal statute in Canada "that legally empowers LAC to collect and preserve the nation's published heritage."[3] Under the Act, the Legal Deposit of Publications Regulations[4] "define the classes of publications which publishers are required to send to LAC for deposit and those which are not required unless requested in writing by the Librarian and Archivist of Canada."[5]

On January 1, 2007, the date when the Regulations came into force, "legal deposit was extended to online or Internet publications. All Canadian publishers are required to deposit copies of their online publications with Library and Archives Canada."[6]

II. Digital Legal Deposit Requirements

According to the LAC website, legal deposit applies to publications produced in Canada "regardless of medium or format" and includes "online or digital publications."[7] Under the Act a "publication" is defined as

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[1] *Library and Archives Canada*, GOVERNMENT OF CANADA, https://www.canada.ca/en/library-archives.html (last updated Dec. 21, 2017), *archived at* https://perma.cc/3N2P-9LTL.

[2] Library and Archives of Canada Act, S.C. 2004, c. 11, http://laws-lois.justice.gc.ca/eng/acts/L-7.7/FullText.html, *archived at* https://perma.cc/NV6V-YWJ9.

[3] *Legal Deposit*, LIBRARY AND ARCHIVES CANADA, http://www.bac-lac.gc.ca/eng/services/legal-deposit/Pages/legal-deposit.aspx (last updated Feb. 22, 2018), *archived at* https://perma.cc/P3LN-ZAWK.

[4] Legal Deposit of Publications Regulations (SOR/2006-337), http://laws-lois.justice.gc.ca/eng/regulations/SOR-2006-337/FullText.html, *archived at* https://perma.cc/26T3-L8ZQ.

[5] *Legal Deposit*, *supra* note 3.

[6] *Frequently Asked Questions: Legal Deposit of Online Publications (Archived Content)*, LIBRARY AND ARCHIVES CANADA, https://www.collectionscanada.gc.ca/electroniccollection/003008-1002-e.html (last updated June 11, 2009), *archived at* https://perma.cc/X7X8-2YSW.

[7] *Legal Deposit*, *supra* note 3.

> any library matter that is made available in multiple copies or at multiple locations, whether without charge or otherwise, to the public generally or to qualifying members of the public by subscription or otherwise. *Publications may be made available through any medium and may be in any form*, including printed material, *on-line items* or recordings.[8]

"Publisher" under the Regulations "means a person who makes a publication available in Canada that the person is authorized to reproduce or over which the person controls the content. It does not include a person who only distributes a publication."[9]

A. Two-Copy Requirement

Section 10(1) of the Act establishes a statutory obligation to provide two copies of a publication for legal deposit:

> **10 (1)** Subject to the regulations, the publisher who makes a publication available in Canada shall, at the publisher's own expense, provide two copies of the publication to the Librarian and Archivist—who shall acknowledge their receipt—within
>
> (a) in any case other than one referred to in paragraph (b) [referring to a special class of publications only subject to deposit on request from the Librarian and Archivist], seven days after the day it is made available;[10]

Section 10(4) stipulates that, "[f]or the purposes of this section, every version, edition or form of a publication shall be considered a distinct publication."[11] Therefore, digital versions of print publications must be deposited and every format of that digital publication would be considered a distinct publication.

B. One-Copy

Only one copy is required to be provided if only between four and ninety-nine copies of a publication are produced or if it is an online publication.[12] In this situation as well, "[w]here publications exist in both physical and digital formats, both mediums should be deposited."[13]

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[8] Library and Archives of Canada Act § 2 (emphasis added).

[9] Legal Deposit of Publications Regulations, *supra* note 4, § 1.

[10] Library and Archives of Canada Act §10(1)(a).

[11] *Id.* § 10(4).

[12] Legal Deposit of Publications Regulations, *supra* note 4, § 3.

[13] *Deposit of Physical or Analogue Publications*, LIBRARY AND ARCHIVES CANADA, http://www.bac-lac.gc.ca/eng/services/legal-deposit/Pages/physical-analogue.aspx (last updated Nov. 9, 2017), *archived at* https://perma.cc/KWY3-GCPJ.

C. Two Copies on Request

Two copies may also be required on request from the Librarian and Archivist when fewer than four copies of a publication have been produced, or if the material falls within the following categories of online or digital material:

> **(x)** deliberations of electronic discussion groups, listservs, bulletin boards and e-mails;
>
> **(y)** websites, including portals, personal websites, service sites, intranets and websites consisting primarily of links to other sites; and
>
> **(z)** dynamic databases and raw data.[14]

In the case of a publication that is in this class, copies must be provided within "seven days after receiving a written request from the Librarian and Archivist or any longer period specified in the request."[15]

III. Process for Deposit of Online or Digital Publications

According to section 2 of the Regulations, "[i]n order to make a publication and its contents that uses a medium other than paper accessible to the Librarian and Archivist,"[16] the publisher is required to,

> **(a)** before providing a copy of the publication to the Librarian and Archivist,
>
> > **(i)** decrypt encrypted data contained in the publication, and
> >
> > **(ii)** remove or disable security systems or devices that are designed to restrict or limit access to the publication; and
>
> **(b)** when providing a copy of the publication to the Librarian and Archivist,
>
> > **(i)** provide a copy of software specifically created by the publisher that is necessary to access the publication,
> >
> > **(ii)** provide a copy of technical or other information necessary to access the publication, including a copy of manuals that accompany the publication, and
> >
> > **(iii)** provide any available descriptive data about the publication including its title, creator, language, date of publication, format, subject and copyright information.[17]

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[14] Legal Deposit of Publications Regulations, *supra* note 4, § 4(x)–(z).

[15] Library and Archives of Canada Act § 10(1)(b).

[16] Legal Deposit of Publications Regulations, *supra* note 4, § 2(a)–(b).

[17] *Deposit of Online or Digital Publications*, LIBRARY AND ARCHIVES CANADA, http://www.bac-lac.gc.ca/eng/services/legal-deposit/Pages/online-digital-publications.aspx (last updated Nov. 9, 2017), *archived at* https://perma.cc/7HNL-EA8R.

The LAC website provides the following instructions for the deposit of online or digital publications:

- Digital publications should not be printed and sent. Instead, the digital format in which the publication was published should be deposited.
- LAC currently prefers Adobe PDF and EPUB formats for digital publications. Publications are archived in the portable format in which they are received.
- Where publications exist in both digital and physical formats, both mediums should be deposited.
- Publications in formats for the Web (*HTML, XML, PHP, ASP, etc.) should not be deposited:
    - Where portable formats exist of the same publication (Adobe PDF or EPUB), these should be deposited instead.
    - Where the publication only exists in formats for the Web, please contact the Digital Legal Deposit section to discuss harvesting arrangements.[18]

The website also provides the following options for the submission of digital publications to LAC:

- Online via the Digital Collection's Upload platform (files 200 MB or less at a time) (archived site):
  . . .
- FTP for large quantities of files
  . . .
- Email (mostly for subscriptions)
- CD-ROM or other storage devices, via regular mail (these are not returned to the publisher)[19]

IV. Accessibility of Digital Legal Deposit Materials

LAC offers publishers a choice of two types of access levels for their digital publications, which publishers need to specify:

- **Open access:** anyone can view and download the publication through the Web. Whenever possible, we ask publishers to select this option.
- **Restricted access** (usually for retail titles): 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.[20]

[18] *Id.*

[19] *Id.*

[20] *Id.*

China

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SUMMARY Currently, publishers in China are required by regulation to submit free sample copies of electronic works to the National Library of China, the Archives Library of Chinese Publications, and the central government agency in charge of publication. The deposit requirement does not appear to have been extended to online publications or electronic copies of traditional publications.

China's newly enacted Public Library Law contains a provision on legal deposit, which requires publishers to deposit official publications not only with the national library, but also with local public libraries at the provincial level.

I. Current Regulations

China's Regulations on Publication Administration, which were issued by the State Council in 2001 and revised in 2011, require publishers to submit free sample copies of publications to the National Library of China, the Archives Library of Chinese Publications, and the government agency in charge of publication under the State Council.[1] The National Library of China asks for three copies of first-edition books and one copy of reprinted books to be submitted to the Library, which does not appear to include electronic copies of traditional publications.[2]

Based on the Regulations on Publication Administration, the General Administration of Press and Publication (GAPP) issued the Provisions on the Administration of Electronic Publishing (Electronic Publishing Provisions) in 2008.[3] Effective April 15, 2008, the Provisions repealed the Provisions on the Administration of Electronic Publications that were issued by the GAPP in 1997.[4] The 2008 Provisions provide that "prior to publishing electronic works, a publishing unit shall send free sample copies to the National Library of China, Archives Library of Chinese Publications, and the GAPP."[5]

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[1] 出版管理条例 [Regulations on Publication Administration] (issued by the State Council on Dec. 25, 2001, revised Mar. 19, 2011) art. 22, http://www.gov.cn/zwgk/2011-03/19/content_1827821.htm, *archived at* https://perma.cc/5UZ9-PDZ6.

[2] *Briefing of Legal Deposit*, NATIONAL LIBRARY OF CHINA, http://www.nlc.cn/newen/su/ldop/bold/ (last visited Apr. 26, 2018), *archived at* https://perma.cc/RX7J-T6LE.

[3] 电子出版物出版管理规定 [Provisions on the Administration of Electronic Publishing] (issued by the GAPP on Feb. 21, 2008, effective Apr. 15, 2008), http://www.gapp.gov.cn/kejishuzi/Technology_old/contents/3738/143297.html, *archived at* https://perma.cc/VZP2-2A3H, English translation provided by Westlaw China (by subscription).

[4] *Id.* art. 63.

[5] *Id.* art. 35.

The deposit requirement does not appear to have been extended to online publications. Electronic publications regulated by the Electronic Publishing Provisions are mainly those stored on offline media such as CDs and DVDs. According to the Provisions, "electronic publications" are

> media of mass communication that, by means of numeric codes, store informative and thoughtful contents upon editing and processing, on magnetic, optical, electronic and other media that have a fixed physical form, with access via electronic reading, display and play devices, including Compact Disk-Read Only Memory (CD-ROM, DVD-ROM, etc), Compact Disk Recordable (CD-R, DVD-R, etc), Compact Disk Rewritable (CD-RW, DVD-RW, etc.), diskette, hard disk, integrated circuit card and other forms of media recognized by the General Administration of Press and Publication (GAPP).[6]

Online publications are separately regulated by the Provisions on Administration of Online Publishing Services (Online Publishing Provisions), which were jointly issued by the State Administration of Press and Publication, Radio, Film and Television (SAPPRFT) and the Ministry of Industry and Information Technology (MIIT) in 2016.[7] The Online Publishing Provisions do not contain deposit requirements for online publications. The Provisions do require online publishing service providers to keep records of the content of online publications, as well as the time of publication and the URLs or domain names, for sixty days, but this is mainly for the purpose of government inspections.[8]

II. New Public Library Law on Legal Deposit

The Public Library Law was passed in November 2017 and took effect on January 1, 2018.[9] The Law contains a general provision on the legal deposit of official publications, which requires publishers to deposit official publications not only with the National Library of China, but also with local public libraries at the provincial level.[10] Relevant government authorities are expected to formulate detailed rules or revise the current rules on legal deposit in accordance with the Law, but have not yet done so.

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[6] *Id.* art. 2.

[7] 网络出版服务管理规定 [Provisions on Administration of Online Publishing Services] (issued by the SAPPRFT and MIIT on Feb. 4, 2016, effective Mar. 10, 2016), http://www.miit.gov.cn/n1146290/n4388791/c4638978/content.html, *archived at* https://perma.cc/58TN-YF6T.

[8] *Id.* art. 34.

[9] 中华人民共和国公共图书馆法 [PRC Law on Public Library] (adopted by the Standing Committee of the National People's Congress on Nov. 4, 2017, effective Jan. 1, 2018) art. 26, http://www.npc.gov.cn/npc/xinwen/2017-11/04/content_2031427.htm, *archived at* https://perma.cc/NA72-6BG6.

[10] *Id.* art. 26.

Estonia

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SUMMARY Estonia's Legal Deposit Copy Act, effective from January 1, 2017, requires publishers to submit to the National Library digital files used for the production of publications and films made accessible to the public in Estonia. Moreover, the National Library uses a web harvester to download and archive websites on the national domain and other websites essential to Estonian culture.

I. Legal Deposit Copy Act

The National Library of Estonia started collecting digital files from public agencies and newspaper publishers on a voluntary basis in 2006.[1] By 2014, all newspapers published in the country were being deposited digitally with the National Library.[2] In 2016 the Estonian legislature passed a new Legal Deposit Copy Act, which came into effect on January 1, 2017.[3] The Act covers all publications regardless of their form and means of distribution.[4]

The National Library has also developed and launched the Publishers Portal, an electronic deposit system for handling all communications with publishers who can use it to notify the National Library of newly published books and upload e-books and output-ready files of other publications. The Legal Deposit Copy Act makes it unnecessary to separately digitize publications and films because digital source materials are handed over together with the completed publications.[5] Following the launch of the Publishers Portal the volume of deposited files reportedly grew by around 70% and the average size of a deposited file increased by some 30%.[6] The owner or publisher decides on access rights. Access can be provided via a computer terminal with no copying or saving capabilities, or the publication can be made accessible on the web without restrictions.[7]

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[1] RAIVO RUUSALEPP, PRESERVING DIGITAL LEGAL DEPOSIT – NEW CHALLENGES AND OPPORTUNITIES 2 (June 26, 2017), *available at* http://library.ifla.org/1677/1/210-ruusalepp-en.pdf, *archived at* https://perma.cc/2Q3Z-CBFC.

[2] *Id.*

[3] Säilituseksemplari Seadus [Legal Deposit Copy Act], RIIGI TEATAJA [OFFICIAL GAZETTE] RT I, July 7, 2016, No. 1, https://www.riigiteataja.ee/akt/107072016001 (in Estonian), *archived at* https://perma.cc/VNX7-8S9T, English translation available *at* https://www.riigiteataja.ee/en/eli/514092016001/consolide, *archived at* https://perma.cc/3BLE-XZJU.

[4] *The Storage Copy Act Improves the Availability of Publications*, MINISTRY OF CULTURE OF THE REPUBLIC OF ESTONIA (Sept. 15, 2016), http://www.kul.ee/en/storage-copy-act-improves-availability-publications, *archived at* https://perma.cc/P867-6XBB.

[5] *Id.*

[6] RUUSALEPP, *supra* note 1.

[7] *Publishers Portal – a New Communication Channel between Publishers and the National Library*, NATIONAL LIBRARY OF ESTONIA (Feb. 8, 2017), https://www.nlib.ee/en/publishers-portal-a-new-communication-channel-between-publishers-and-the-national-library/, *archived at* https://perma.cc/7KE7-C3VL.

II. Web Publications

The Act requires archiving at the National Library of any web publication that has been made publicly accessible

- in the ".ee" domain or another top-level domain geographically linked to Estonia;
- in another top-level domain where the publication is essential to Estonian culture; or
- by a citizen or a resident of Estonia, or a legal person registered in Estonia, where the publication is essential to Estonian culture.[8]

The Act does not apply to real-time streaming of web publications or to web publications requiring an unreasonably large amount of data for preservation.[9]

The National Library archives freely accessible web publications with a web harvester by downloading the website together with the elements required for display and recording it in the Library's archives.[10] If web archiving is not possible, the National Library asks the depositor to submit a copy through the electronic deposit system.[11] Such a copy must be submitted within twenty days after the relevant request has been filed.[12]

Access to personal data contained in a legal deposit copy of a web publication must be terminated upon a justified request.[13] If the National Library is not able to verify upon web archiving whether the web publication contains personal data, such publication must be made accessible to the public with the application of technical restrictions that do not allow the search and retrieval of archived web publications by using a person's name or surname.[14]

III. Output-Ready Files of Print Publications

The Act also applies to output-ready files, which are defined as digital datasets used for the production of publications published, distributed, or made accessible to the public in Estonia.[15] The depositor of an output-ready file of a printed publication is the producer or the issuing body if the latter has reached an agreement with the producer.[16]

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[8] Legal Deposit Copy Act § 2.

[9] *Id*. § 3.

[10] *Id*. § 7.

[11] *Id*.

[12] *Id*. § 9.

[13] *Id*. § 15.

[14] *Id*.

[15] *Id*. § 1.

[16] *Id*. § 5.

The output-ready file of a printed publication published for the first time in Estonia must be submitted to the National Library through the electronic deposit system as a file of the output-ready file of the printed publication or a copy of an equivalent file.[17] If the printed publication has been published as a translation of a publication first published in a foreign state and it is not possible for the issuing body to submit the output-ready file of the printed publication due to its contractual obligations, then four additional copies of the printed publication must be submitted, one of which will be used by the National Library of Estonia to prepare a digital legal deposit copy.[18]

IV. Output-Ready Material of a Film

The Act also applies to the output-ready material used for preparing a presentation copy of a film (output-ready material of a film) that is produced or co-produced and distributed or co-distributed by a citizen of Estonia or a legal person registered in Estonia and is essential to the Estonian culture. The depositor of the output-ready material of a film is the producer or co-producer of the material.[19]

The output-ready material of a film must be submitted to the National Archives through a storage medium containing the output-ready file or by transmission of a copy through the electronic deposit system.[20] The output-ready material of a film must be submitted within one year after the film was initially publicized in Estonia.[21]

V. Preservation and Use

The National Library is responsible for preserving legal deposit copies of web publications and output-ready files of printed publications. The National Archives is responsible for preserving the legal deposit copies of output-ready materials of films.[22] The depositor is required to provide information on the name or title of the issuing body, producer or co-producer, descriptive metadata, right of use, structure, and technical metadata.[23]

If the copyright holder of a web publication or output-ready file decides to make the legal deposit copy accessible to the public, an authorization must be issued.[24] The legal deposit copy of a web publication or an output-ready file of a printed publication may be used at an authorized workplace,[25] i.e., at a computer terminal designed for the in-house use of a digital legal deposit

[17] *Id*. § 7.

[18] *Id*. § 8.

[19] *Id*. § 5.

[20] *Id*. § 7.

[21] *Id*. § 9.

[22] *Id*. § 12.

[23] *Id*. § 11.

[24] *Id*. § 14.

[25] *Id*.

copy that makes recording to external data carriers impossible by technical or physical means.[26] Computer terminals dedicated to the use of mandatory legal deposit copies have been established in five major libraries throughout the country.

During the first five years after submitting a web publication through the electronic deposit system or an output-ready file of a printed publication, the issuer of the submitted material has the right to receive a free deposited copy in preservation format from the National Library, or from the National Archive in the case of a film. After five years, a fee may be charged for this service.[27]

A legal deposit copy is not subject to destruction or deletion in the event of a court decision ordering the deletion of the web publication or the destruction of a publication or output-ready file. However, access to such a copy must be restricted by the preserving institution.[28]

Failure to comply with the requirements of the Act may result in a monetary penalty in the amount of up to €1,500 (approximately US$1,800).[29]

[26] *Id*. § 16.

[27] *Id*. § 14.

[28] *Id*.

[29] *Id*. § 21.

France

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SUMMARY Legal deposit refers to the legal obligation of any editor, printer, producer, or importer of certain material to provide copies of that material to the National Library of France (referred to as BnF) or one of several other authorized organizations. Anyone who knowingly fails to comply with his/her legal deposit obligation may be prosecuted and could face a fine. For works that are normally published in a physical format, the BnF may require the deposit of an electronic file as a substitute for the physical copy of the document. This seems to be uncommon, however, and the standard procedure is that a physical copy of the work be deposited. Sound recordings and videos may be deposited in digital format at the BnF, and publicly-released movies must be deposited with the National Center for Cinematography and Motion Picture in two copies, including one in digital format. As for electronic publications and internet content, they have been subject to legal deposit in France since 2006. The BnF principally relies on automatic archiving of Internet websites and electronic books via a "crawler-bot" software.

I. Introduction: General Principles of Mandatory Deposit in France

Legal deposit (*dépôt legal*) refers to the legal obligation of any editor, printer, producer, or importer of certain material to provide copies of that material to the Bibliothèque Nationale de France (National Library of France, referred to as BnF) or any other authorized organization.[1] France's first legal deposit law was a 1537 ordinance by King Francis I, which required printers and booksellers to provide the Royal Library with a copy of every printed book published or made available in France.[2]

The types of material that are subject to legal deposit are listed in the Code du patrimoine (Cultural Heritage Code) as "printed documents, graphic works, photographs, recordings, audiovisual works, and multimedia works, regardless of their method of production, edition or dissemination," if they are made available to the public.[3] Software and databases are also subject to legal deposit if they are made publicly available, as are "signs, signals, writings, images, sounds, or messages of any kind communicated to the public by electronic means."[4] Depending on the nature of the

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[1] *Dépôt légal* [*Legal Deposit*], BIBLIOTHÈQUE NATIONALE DE FRANCE [BNF] [NATIONAL LIBRARY OF FRANCE] (Aug. 10, 2016), http://www.bnf.fr/fr/professionnels/depot_legal.html, *archived at* https://perma.cc/7UAG-8W4W.

[2] Peter Stirling et al., *The State of e-Legal Deposit in France: Looking Back at Five Years of Putting New Legislation into Practice and Envisioning the Future*, 38(1) IFLA JOURNAL 5 (Mar. 1, 2012), http://journals.sagepub.com/doi/pdf/10.1177/0340035211435323, *archived at* https://perma.cc/3SAR-CU4X; ROBERT ESTIVALS, LE DÉPOT LÉGAL SOUS L'ANCIEN RÉGIME DE 1537 A 1791 [LEGAL DEPOSIT UNDER THE ANCIEN REGIME, FROM 1537 TO 1791] at 1 (1961).

[3] CODE DU PATRIMOINE [CULTURAL HERITAGE CODE] art. L131-2, https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006074236, *archived at* https://perma.cc/NFP7-ZBPS.

[4] *Id*.

work, material subject to legal deposit must be provided to one of the following institutions: the BnF, the Centre national de la cinématographie et de l'image animée (National Center for Cinematography and Motion Picture, or CNC), and the Institut national de l'audiovisuel (National Audiovisual Institute).[5]

Anyone who knowingly fails to comply with his/her legal deposit obligation may be prosecuted and could face a fine of up to €75,000 (approximately US$88,890).[6] It is important to note that copyright protection is not linked to legal deposit.[7] Indeed, copyright protection in France stems directly and solely from the creation of the work, with no procedural requirement necessary.[8] However, the fact that an item was deposited, and/or the date of the deposit, may be used as evidence in copyright litigation.[9]

II. Digital Deposit of Non-Digital Works

Normally, material subject to mandatory deposit at the BnF must be "of perfect quality and identical to the copies in circulation."[10] However, the BnF may instead require the deposit of an electronic file as a substitute for the physical copy of the document.[11] The manner in which an electronic file may be deposited in lieu of a physical copy of the document is subject to the depositor's agreement.[12]

It appears that the default medium for deposit to the BnF is still the work's physical copy. The BnF's online instructions on the deposit of books does not mention an option other than the delivery of a physical copy.[13] The same instructions even specify that books published in both electronic and paper formats must be deposited in both media, as "one type of deposit is not a substitute for the other."[14] Similarly, the BnF's instructions for the deposit of periodicals,[15]

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[5] *Id.* art. L132-3.

[6] *Id.* art. L133-1.

[7] MICHEL VIVANT & JEAN-MICHEL BRUGUIERE, DROIT D'AUTEUR ET DROITS VOISINS [COPYRIGHT AND SIMILAR RIGHTS] 258 (2016).

[8] CODE DE LA PROPRIÉTÉ INTELLECTUELLE [CODE OF INTELLECTUAL PROPERTY] art. L111-1, https://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=3E54245E490E8BC5823BF217B7A24C44.tplgfr23s_2?idArticle=LEGIARTI000006278868&cidTexte=LEGITEXT000006069414&dateTexte=20180509, *archived at* https://perma.cc/72FP-YUCZ; LAURE MARINO, DROIT DE LA PROPRIÉTÉ INTELLECTUELLE [INTELLECTUAL PROPERTY LAW] 184 (2013).

[9] VIVANT & BRUGUIERE, *supra* note 7, at 258.

[10] C. PATRIMOINE art. R132-8.

[11] *Id*.

[12] *Id*.

[13] *Dépôt légal des livres* [*Legal Deposit of Books*], BNF (July 6, 2017), http://www.bnf.fr/fr/professionnels/depot_legal/a.dl_livres_mod.html, *archived at* https://perma.cc/AN9U-6WNK.

[14] *Id*.

[15] *Dépôt légal des périodiques* [*Legal Deposit of Periodicals*], BNF (Mar. 29, 2017), http://www.bnf.fr/fr/professionnels/depot_legal/a.dl_periodiques_mod.html, *archived at* https://perma.cc/UF99-5FBJ.

cartographical documents,[16] sheet music,[17] and graphic works (prints, photographs, posters, postcards and greeting cards, calendars and almanacs, stickers, playing cards, and "any other production related to the graphic arts")[18] do not mention any option to deposit these material in digital form.

III. Digital Deposit of Videos, Sound Recordings, Multimedia Works, and Movies

Sound recordings and videos may be deposited in digital format.[19] However, they must always be submitted in a medium that allows the public to see them, and with any password or other information necessary to access them.[20] Similarly, software and databases must be submitted in a medium that allows their use, and with any password or other information necessary for use or access.[21]

Cinematographic works that are meant to be shown in movie theaters must be deposited with the CNC.[22] Other movies on a photochemical medium (i.e., film), particularly movies made for purposes of information, training, or promotion, are also to be deposited with the CNC if at least six copies have been produced for viewing by an audience.[23] For most movies subject to deposit with the CNC, two copies must be provided: one in a photochemical medium, and another in digital format.[24] The digital copy must be provided on an unencrypted hard disk or USB key.[25]

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[16] *Dépôt légal des documents cartographiques* [*Legal Deposit of Cartographical Documents*], BNF (May 23, 2016), http://www.bnf.fr/fr/professionnels/depot_legal/a.dl_doc_carto_mod.html, *archived at* https://perma.cc/8AQU-WU5X.

[17] *Dépôt légal de la musique imprimée* [*Legal Deposit of Sheet Music*], BNF (May 31, 2016), http://www.bnf.fr/fr/professionnels/depot_legal/a.dl_musique_mod.html, *archived at* https://perma.cc/VFB6-UB82.

[18] *Dépôt légal des documents iconographiques* [*Legal Deposit of Iconographic Documents*], BNF (Feb. 16, 2016), http://www.bnf.fr/fr/professionnels/depot_legal/a.dl_estampes_mod.html, *archived at* https://perma.cc/BH4T-HJ84.

[19] *Dépôt légal documents sonores* [*Legal Deposit of Sound Documents*], BNF (Apr. 10, 2017), http://www.bnf.fr/fr/professionnels/depot_legal/a.dl_doc_son_mod.html, *archived at* https://perma.cc/DXM4-TSBA; *Dépôt légal des vidéogrammes* [*Legal Deposit of Videograms*], BNF (Apr. 12, 2017), http://www.bnf.fr/fr/professionnels/depot_legal/a.dl_videos_mod.html, *archived at* https://perma.cc/4WB9-EEUT.

[20] C. PATRIMOINE arts. R132-21, R132-22.

[21] *Id*. arts. R132-13, R132-14; *Dépôt légal des documents multimédias, logiciels et bases de données* [*Legal Deposit of Multimedia Documents, Software, and Databases*], BNF (June 29, 2017), http://www.bnf.fr/fr/professionnels/depot_legal/a.dl_doc_multimedia_mod.html, *archived at* https://perma.cc/8ANS-DQCZ.

[22] C. PATRIMOINE art. R132-26.

[23] *Id*. art. R132-30.

[24] *Id*. art. R132-28-1; *Démarches: dépôt légal* [*Procedures: Legal Deposit*], CNC (website of the French National Center for Cinematography and Motion Picture), http://www.cnc.fr/web/fr/demarches/-/editoriaux/61564 (accessed on May 10, 2018), *archived at* https://perma.cc/YUB6-AL6F.

[25] *Démarches: dépôt légal*, CNC, *supra* note 24.

IV. Digital Deposit of Internet Websites and E-Books

Electronic publications and internet content have been subject to legal deposit in France since 2006.[26]

A. Internet Archiving

Internet legal deposit applies to "all types of publications disseminated on the internet: institutional or personal websites, free or paid-access periodicals, blogs, commercial websites, video platforms or digital books."[27] In principle, everything that is published on the internet in France is subject to legal deposit.[28] In practice, this means that the legal deposit obligation applies to websites registered under a ".fr" top-level domain, and to any website edited by persons or organizations domiciled in France.[29]

Contrary to legal deposit of traditional printed works and other non-internet-based material, legal deposit of websites does not require any action on the part of their editors.[30] Instead, the BnF principally relies on automatic archiving via an open-source "crawler-bot" software called Heritrix.[31] This automatic archiving proceeds through a sampling method based on "criteria aimed at ensuring the best possible representation" of content.[32] It appears that the BnF conducts two types of website collecting. The first consists of bulk automatic harvesting to collect "snapshots" of websites belonging to the French domain.[33] The second type consists of focused crawls based on a selection of sites and centered on a particular event (such as a particular election), or a given theme (such as "blogs, sustainable development, Web activism").[34] If content is found to be inaccessible at the moment of capture—whether for technical reasons (such as password-protected contents) or commercial reasons (such as paid-access or subscription-based content)—the BnF may contact the website editor to find technical solutions on a case-by-case basis.[35]

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[26] Stirling et al., *supra* note 2, at 6; Loi n° 2006-961 du 1er août 2006 relative au droit d'auteur et aux droits voisins dans la société de l'information [Law No. 2006-961 of 1 August 2006 Regarding Copyright and Related Rights in an Information Society] art. 39, https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000266350&dateTexte=&categorieLien=id#JORFSCTA000000900122, *archived at* https://perma.cc/4V8E-TSFK.

[27] *Dépôt légal des sites web* [*Legal Deposit of Websites*], BNF (Feb. 13, 2018), http://www.bnf.fr/fr/professionnels/depot_legal/a.dl_sites_web_mod.html, *archived at* https://perma.cc/G38E-QV5C.

[28] Stirling et al., *supra* note 2, at 8.

[29] *Dépôt légal des sites web*, BNF, *supra* note 27.

[30] *Id*.

[31] *Id*.

[32] *Id*.

[33] *Digital Legal Deposit: Four Questions about Web Archiving at the BnF*, BNF (Mar. 23, 2017), http://www.bnf.fr/en/professionals/digital_legal_deposit/a.digital_legal_deposit_web_archiving.html, *archived at* https://perma.cc/E7P2-55W6.

[34] *Id*.

[35] *Dépôt légal des sites web*, BNF, *supra* note 27.

The Heritage Code requires that internet content be collected "at least once a year."[36] The BnF's website states that "several collection sessions occur throughout the year," and that "each year, several million sites are thus captured, to a depth determined in advance (of the order of a few thousand files per website)."[37]

B. Electronic Books

The BnF does not collect electronic books (e-books) individually, but rather collects them through their publishing websites during its regular website harvests.[38] An e-book's publisher therefore does not have to take any specific action for the legal deposit to take place.[39] Since the BnF cannot guarantee that its collecting efforts will be exhaustive, however, publishers may proactively communicate the URLs of their e-books to the BnF.[40]

As mentioned above, books published in both electronic and paper formats must be deposited in both media.[41] In other words, when a book is published both in electronic and physical formats, the fact that it was published as an e-book (and therefore would presumably be collected by the BnF during a website harvest) does not relieve the editor or publisher from the duty to deposit a physical copy with the BnF.

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[36] C. PATRIMOINE art. R132-23-1.

[37] *Dépôt légal des sites web*, BNF, *supra* note 27.

[38] *Id*.

[39] *Id*.

[40] *Id*.

[41] *Dépôt légal des livres*, BNF, *supra* note 13.

Germany

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SUMMARY A legal deposit requirement at the federal level was codified for the first time in West Germany in 1969. In 2006, the collection mandate of the German National Library was amended to include online publications. Since then, publishers have been required to submit one copy of their online publications to the German National Library free of charge, complete, in perfect condition, without time restrictions on their use, and in a suitable condition for permanent archiving by the Library. Online publications may also be made available for retrieval by the German National Library. Certain online publications that are of no public interest are excluded from the legal e-deposit regime. In 2012, the German National Library started archiving websites via web crawling.

I. Introduction

A legal deposit requirement has been known in Germany since the seventeenth century.[1] The requirement now exists at both the federal and state levels. For West Germany, it was first codified at the federal level in the Act on the German Library of 1969.[2] The Act originally obligated publishers in Germany to provide one copy of each "printed work" (*Druckwerk*) to the German Library.[3] Nonphysical publications were not yet covered by the law. Starting in the early 2000s, online publications were provided to the Library on a strictly voluntary basis by larger publishers and universities.[4] In 2006, the German National Library Act came into force, which included nonphysical publications in the legal deposit program.[5]

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[1] Cornelia Diebel, *Netzpublikationen – Sammlung, Archivierung und Bereitstellung in der Deutschen Nationalbibliothek* [*Electronic Publications – Collection, Archiving, and Accessibility in the German National Library*], 27 DIALOG MIT BIBLIOTHEKEN 24, 24 (2015), https://d-nb.info/1118655729/34, *archived at* http://perma.cc/C38G-D7V8.

[2] Gesetz über die Deutsche Bibliothek [Act on the German Library] [German Library Act 1969], Mar. 31, 1969, BUNDESGESETZBLATT [BGBL.] [FEDERAL LAW GAZETTE] I at 265, http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl169s0265.pdf (no longer in force), *archived at* http://perma.cc/9FFG-G983. A similar regime existed under the Laws of East Germany (German Democratic Republic, GDR)) from 1960 until 1990. *See* Anordnung über die Ablieferung von Pflichtexemplaren, July 4, 1960, GESETZBLATT DER DEUTSCHEN DEMOKRATISCHEN REPUBLIK [GBL. D. DDR] [LEGAL GAZETTE OF THE GDR] I at 423.

[3] German Library Act 1969, § 18, para. 1, § 19.

[4] Diebel, *supra* note 1, at 24.

[5] Gesetz über die Deutsche Nationalbibliothek [DNBG] [Act on the German National Library] [German National Library Act], June 22, 2006, BGBL. I at 1338, as amended, http://www.gesetze-im-internet.de/dnbg/DNBG.pdf, *archived at* http://perma.cc/SP4M-T5GR, unofficial English translation available *at* http://www.dnb.de/SharedDocs/Downloads/EN/DNB/wir/dnbg.pdf?__blob=publicationFile, *archived at* http://perma.cc/EDG6-LFXH.

II. Current Legal Deposit Regime

The German National Library Act requires the German National Library to collect, archive, and catalog all "media works" (*Medienwerke*) published in Germany, all media works that are published abroad in the German language, all translations of German works published abroad, media works about Germany published abroad in other languages (Germanica), and printed works written or published between 1933 and 1945 by German-speaking emigrants.[6] "Media works" are defined as "all representations in text, image, and sound that are distributed in material form or made accessible to the public in immaterial form."[7] This includes noncommercial publications.[8] "Printed publications" (media works in material form) are defined as "all representations on paper, electronic data storage media, and other media." "Online publications" (media works in immaterial form) are defined as "all representations in public networks."[9] The collection mandate of the Library is further defined in the Legal Deposit Regulation (Pflichtablieferungsverordnung) and the Collection Guidelines (Sammelrichtlinien).[10] Publications that are of no public interest may be exempted from the legal deposit program.[11] The legal deposit requirements support the mission of the German National Library to collect, archive, and catalog all such media works.

Depositors are generally required to deposit two copies of printed media works with the German National Library, with the exception of music scores that are only made available on loan, for which only one copy must be submitted.[12] One copy also suffices for foreign printed works, translations of foreign-language works, and foreign-language printed works about Germany.[13] For online publications, one copy must to be submitted.[14] If media works are published both in print and online, two copies of the printed work and one copy of the digital work must be deposited.[15] Deposits have to be made within one week from the date of distribution or from the day that the media work was made accessible to the public.[16] If a publisher does not comply with

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[6] German National Library Act, § 2, paras. 1, 2; *Collection Mandate of the German National Library*, GERMAN NATIONAL LIBRARY, http://www.dnb.de/EN/Wir/Sammelauftrag/sammelauftrag_node.html (last updated Nov. 15, 2017), *archived at* http://perma.cc/SQD7-NT4K.

[7] *Id.* § 3, para. 1.

[8] DEUTSCHER BUNDESTAG: DRUCKSACHEN UND PROTOKOLLE [BT-DRS.] 16/322, at 13, http://dipbt.bundestag.de/doc/btd/16/003/1600322.pdf, *archived at* http://perma.cc/A85K-UEMZ.

[9] *Id.* § 3, para. 3.

[10] Verordnung über die Pflichtablieferung von Medienwerken an die Deutsche Nationalbibliothek [Pflichtablieferungsverordnung] [PflAV] [Legal Deposit Regulation], Oct. 17, 2008, BGBL. I at 2013, *as amended*, http://www.gesetze-im-internet.de/pflav/PflAV.pdf, *archived at* http://perma.cc/HQL2-22GB; Deutsche Nationalbibliothek [DNB] [German National Library], Sammelrichtlinien [Collection Guidelines], May 1, 2014, https://d-nb.info/1051940788/34, *archived at* http://perma.cc/ZNK3-XKNU.

[11] Legal Deposit Regulation, § 1, para. 1, sentence 2.

[12] German National Library Act, § 14, para. 1, § 15.

[13] *Id.* § 14, para. 2, § 15.

[14] *Id.* § 14, para. 3, § 15.

[15] *Id.* § 14, para. 3; Collection Guidelines, *supra* note 10, para. 2.2.1.9.

[16] German National Library Act, § 14, para. 4.

this requirement, the German National Library is authorized to purchase a copy at the expense of the publisher.[17]

III. Legal E-Deposits Procedures

A. General Description

As mentioned, depositors must provide one copy of online publications to the German National Library. "Online publications" include born-digital works and digitized copies of previously existing print publications (*Digitalisate*).[18] Born-digital works are completely digitally designed and created, whereas digitized works are digitally reformatted versions of previously existing analog objects.[19] When a digitized work is distributed through a network, it becomes an online publication subject to the legal e-deposit program. Only digitized versions not made available to the public are not covered by the legal e-deposit regime.[20]

Submitted media works must be "complete and in perfect condition, without time restrictions on their use, . . . in a suitable condition for permanent archiving by the Library, . . . free of charge, and at the depositors' expense."[21] Online publications may also be made available for retrieval by the German National Library.[22] Sections 7 through 9 of the Legal Deposit Regulation explain the collection of online publications in more detail. They state that online publications are to be delivered in accordance with recognized technical designs and by standard market means. The depositor must provide any additional necessary elements, software, and tools to give the Library unrestricted use of the media work.[23] The German National Library may limit the extent and frequency of the legal deposit requirement for online periodicals or may waive its right to collect certain online publications if the technical means for collection and archiving are not available, or if deposit requires considerable effort.[24]

Certain online publications that are of no public interest are excluded from the legal deposit regime.[25] These include, among others, private websites or online publications that only serve commercial purposes—for example, websites containing vacation photos, instant messaging services, social media services like Twitter, or a description of a company's goods and

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[17] *Id*.

[18] German National Library, *Definition des Begriffs „Digitale Publikation" und aktuelle Verwendung der Terminologie in der Deutschen Nationalbibliothek* [*Definition of the Legal Term "Digital Publication" and Current Use of the Terminology in the German National Library*] 4 (2017), http://www.dnb.de/SharedDocs/Downloads/DE/DNB/wir/definitionDigitalePublikation.pdf?__blob=publicationFile, *archived at* http://perma.cc/RQ7Z-LAW6.

[19] *Id*.

[20] Collection Guidelines, *supra* note 10, para. 2.2.1.8.

[21] German National Library Act § 16.

[22] *Id*.

[23] Legal Deposit Regulation § 7.

[24] *Id.* § 8, paras. 2, 3.

[25] *Id*. § 9.

services.[26] Pre-publications, pure software or application tools, and radio and TV programs are also excluded.[27]

B. Submitting and Accessing Online Publications

The German National Library offers two options for depositing online publications.[28] Depositors can either send their online publications directly to the German National Library or make them available for retrieval by the Library in accordance with the instructions issued by the Library.[29] In the first case, depositors deliver their publications via a web form made available on the website of the German National Library. In the latter case, the Library uses an automated delivery method (OAI PMH protocol, SFTP, or WebDAV).[30] Certain publications—for example, audiobooks—may not be submitted via the web form.[31]

The supported data formats are MARC21 and XMetaDissPlus, which are suitable for all kinds of online publications. ONIX 2.1 is used for e-books, sheet music, and audiobooks. JATS and CrossRef are the most suitable for e-journal contents.[32]

The German National Library ensures that online publications are available on a long-term basis. Access to the archived copies is granted in accordance with the requirements of the depositor or the rights holder. At a minimum, however, simultaneous access in the German National Library's reading rooms in Leipzig and Frankfurt is provided. The Library has installed computer terminals without internet connections to avoid possible abuses. In addition, there is no possibility to save the online publications on a storage medium or to process them further in any other way.[33] Only printing is possible. No more than 10% of any media work may be reproduced, and then for noncommercial purposes only.[34]

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[26] *Id*.; Collection Guidelines, *supra* note 10, para. 2.2.0.5.; *Online Publications*, GERMAN NATIONAL LIBRARY, http://www.dnb.de/EN/Netzpublikationen/netzpublikationen_node.html (last updated Oct. 9, 2017), *archived at* http://perma.cc/BWV7-ESW8.

[27] Legal Deposit Regulation, § 9, nos. 2–9.

[28] *Submitting Online Publications*, GERMAN NATIONAL LIBRARY, http://www.dnb.de/EN/Netzpublikationen/Ablieferung/ablieferung_node.html (last visited Apr. 3, 2018).

[29] German National Library Act § 16, in conjunction with Legal Deposit Regulation § 7.

[30] *Submission Procedures*, GERMAN NATIONAL LIBRARY, http://www.dnb.de/EN/Netzpublikationen/Ablieferung/Ablieferungsverfahren/ablieferungsverfahren_node.html (last updated Nov. 23, 2016), *archived at* http://perma.cc/2EKE-XXNF.

[31] *Submission Procedures*, *supra* note 30.

[32] Diebel, *supra* note 1, at 26–28.

[33] Urheberrechtsgesetz [UrhG] [Copyright Act], Sept. 9, 1965, BGBL. I at 1273, as amended, § 60e, para. 4, http://www.gesetze-im-internet.de/urhg/UrhG.pdf, *archived at* http://perma.cc/CZ4F-SM8G, unofficial English translation available *at* http://www.gesetze-im-internet.de/englisch_urhg/englisch_urhg.pdf (English version updated through Sept. 9, 2017), *archived at* http://perma.cc/2ZJ9-VGQN.

[34] *Id*.

C. Web Harvesting

Although not explicitly stated in the Act, the German National Library's collection mandate also covers collecting websites.[35] Unlike other national libraries in Europe,[36] the German National Library did not begin collecting online publications by web harvesting, but initially only focused on digital versions of existing physical publications. It started with monographs (e-books) and university publications (such as online doctoral dissertations), and then eventually expanded to other online publications such as e-papers and e-serials.[37]

In 2010, the German National Library started making preparations for web harvesting with the first web crawl taking place in 2012.[38] It only collects selected websites whose preservation is in the public interest in selective harvesting runs. Online publications in the public interest may include news websites, but also forums and blogs. However, as such websites are subject to constant change, the harvesting is repeated on a regular basis. The harvesting itself is automated, whereas the address of the website, collection depth, and frequency are determined on a case-by-case basis and entered manually. The German National Library uses a "web crawler" that searches and stores predefined addresses for that purpose.[39]

Web crawling is assumed to fall under the Library's collection mandate. However, until an amendment of copyright law entered into force on March 1, 2018, the periodic harvesting of all German internet domains, meaning all ".de" domains, was prohibited. The German Copyright Act originally only allowed the German National Library to save online publications on a first and one-time basis. Repeated retrieval of an online publication was an extension of existing archival contents and therefore a violation of German copyright law.[40] In 2017, the legislature therefore proposed an amendment to the Copyright Act and the German National Library Act to grant the German National Library the right to automatically and repeatedly harvest works that

[35] Collection Guidelines, *supra* note 10, para. 2.2.0.3.2; BT-Drs. 16/322, *supra* note 8, at 12–13.

[36] GERMAN NATIONAL LIBRARY, COLLECTION MANDATE OF THE GERMAN NATIONAL LIBRARY 3 (2017), http://www.dnb.de/SharedDocs/Downloads/EN/DNB/wir/zumsSammelauftrag.pdf?__blob=publicationFile, *archived at* http://perma.cc/MUC9-DB54.

[37] *Id*. at 1–3.

[38] *Id*. at 3.

[39] Collection Guidelines, *supra* note 10, para. 2.2.0.3.2.

[40] Copyright Act as in force until Feb. 28, 2018, § 53. For an overview of the problems under German copyright law see Eric W. Steinhauer, *10 Jahre Pflichtablieferung von Netzpublikationen – Eine Baustelle wird besichtigt* [*10 Years of Legal E-Deposit – A Construction Site Visited*], 28 DIALOG MIT BIBLIOTHEKEN 31, 32 et seq. (2016), https://d-nb.info/1115818023/34, *archived at* http://perma.cc/846Q-3QUC.

fall under its collection mandate.[41] The Library is now entitled to archive websites even without requesting permission from the respective rights holders.[42]

IV. Statistics

By the end of 2016, the digital media holdings of the German National Library amounted to 3.45 million units.[43] The holdings included

- 1,305,261 monographic online publications of which 649,954 were e-books (mainly commercial publications), 450,221 self-published titles (books on demand), 188,695 online dissertations and other university publications, 11,569 audio files (audiobooks), and 4,822 digital notated music works;
- 3,931 e-journals (current and completed titles) with 603,013 issues or articles;
- 1,304 e-papers (titles) including 1,280,758 individual issues; and
- 1,920 harvested websites.[44]

In 2017, the Library imported 2,691 online publications per day, which includes e-books and e-journals as well as other e-journal contents like individual articles or issues.[45] As of 2018, the German National Library's storage capacity for online publications totals 12.4 terabytes (TB), excluding storage for harvested websites.[46]

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[41] BT-DRS.18/12329, p. 50, http://dipbt.bundestag.de/dip21/btd/18/123/1812329.pdf, *archived at* http://perma.cc/Q387-DVNS; Gesetz zur Angleichung des Urheberrechts an die aktuellen Erfordernisse der Wissensgesellschaft [Urheberrechts-Wissensgesellschafts-Gesetz] [UrhWissG] [Act to Align Copyright Law with Current Requirements of the Knowledge Society] [Copyright-Knowledge Society Act], Sept. 1, 2017, BGBL. I at 3346, http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl117s3346.pdf, *archived at* http://perma.cc/44EU-SQAM.

[42] German National Library Act, § 16a, para. 1 ("automatically and systematically"); Copyright Act, § 60e, para. 1. Please note that the English translation of the German Library Act does not contain the new section 16a.

[43] GERMAN NATIONAL LIBRARY, JAHRESBERICHT 2016 [ANNUAL REPORT 2016] 15, https://d-nb.info/1135316724/34, *archived at* http://perma.cc/NF4N-PC6P.

[44] DNB, COLLECTION MANDATE OF THE GERMAN NATIONAL LIBRARY 2–3 (2017), http://www.dnb.de/SharedDocs/Downloads/EN/DNB/wir/zumsSammelauftrag.pdf?__blob=publicationFile, *archived at* http://perma.cc/4WYR-VD6S.

[45] Email from Cornelia Diebel, German National Library, to Johannes Jaeger, Foreign Law Intern, Law Library of Congress (Mar. 28, 2018) (on file with author).

[46] *Id*.

Israel

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SUMMARY Israeli law imposes a duty of deposit on all works published in electronic format, including internet sites, with the National Library of Israel (NLI). This duty is implemented in accordance with regulations that specify methods of compliance depending on the format of the publication. The NLI implements information security measures to protect electronic publications it receives under the deposit requirements.

I. General Deposit Requirements

The Books (Duty of Deposit and Specification of Details) Law, 5761-2000 imposes a mandatory duty to deposit two copies of books and newspapers published in Israel with the National Library of Israel (NLI).[1] The Law "set the National Library of Israel as the primary deposit organization in Israel, minimizing [previously existing] deposit requirements for the State Archive and Knesset Library."[2]

The Law further requires that information regarding the year of publication and printing, as well as the name and address of a work's printer and publisher, must be visibly noted in the work or on its packaging, as appropriate.[3]

In accordance with amendments to the Law's implementing regulations, adopted in December 2015, the duty of deposit and specification of identifying details extends to any book or newspaper published in a digital edition, including internet editions and internet sites.[4]

II. Internet Editions of Books and Newspapers

For "electronic editions of books and newspapers the use of which requires internet connection" (electronic edition) that are distributed in formats that do not enable preservation, publishers must deliver an additional copy to the NLI in one of the following preservation formats:

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[1] Books (Duty of Deposit and Specification of Details) Law, 5761-2000, § 2, SEFER HAHUKIM [SH] [BOOK OF LAWS, official gazette] 5761 No. 1767 p. 80, *as amended*.

[2] See *History of The Books Law*, THE NATIONAL LIBRARY OF ISRAEL (last visited 6/25/18) http://web.nli.org.il/sites/NLI/English/library/depositing/Pages/lgd_history.aspx, *archived at* https://perma.cc/7578-MBMR.

[3] Books (Duty of Deposit and Specification of Details) Law, 5761-2000, § 3.

[4] Books (Duty of Deposit and Specification of Details) Regulations, KOVETZ HATAKANOT [KT] [Subsidiary Legislation] 5764 No. 6337 p. 958, *as amended by* the Books (Duty of Deposit and Specification of Details) (Amendment) 5776-2015, KT 5776 p. 351 (Dec. 24, 2015). The text of the Amendment is available on the website of the National Library of Israel, *at* http://web.nli.org.il/sites/NLI/Hebrew/library/depositing/Documents/tak-7587-book-law.pdf, *archived at* https://perma.cc/GB44-E8TQ.

- AVI
- TIFF
- EPUB
- PDF
- WAVE
- MPEG-4
- JPEG
- MP3[5]

When delivery of a copy in accordance with the above requirements is not possible, "delivery shall be exercised by grant of access without technical protective measures and in a way that enables creation of a copy and its preservation, in all its parts, by the National Library."[6]

III. Non-Internet Electronic Format Editions

As a rule, a book or a newspaper in an electronic format that is not an internet edition should be delivered to the NLI in the electronic format in which it is distributed.[7] Copies delivered must be full text and accessible. Thus, any limitations or restrictions on use, including a password requirement, must be removed, and any necessary software or technical or other information, including use instructions, must be provided.

When the book or newspaper is distributed in formats that do not enable preservation, an additional copy in any one of the above-listed preservation formats must be provided.[8]

Directions for the delivery of copies are available on the NLI website (http://nli.org.il/LegalDeposit).[9]

IV. Internet Sites

The mandatory deposit duty generally also extends to internet sites or to works available on internet sites, excluding works for a limited audience, such as family members, participants at private events, or employees or students at an educational institution, unless their deposit was requested by the NLI.[10] Accordingly the operator or a person under whose name the site operates should provide the NLI access to the work or site within thirty days of the request for access and remove any technical protections to enable the NLI to create and preserve a copy of the site.[11]

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[5] *Id*. § 2A(b)(1) & (c)(2)(c).

[6] *Id*. § 2A(b)(2).

[7] *Id*. § 2A(c)(1).

[8] *Id*. § 2A(c)(2).

[9] *Id*. § 2A(c)(3).

[10] *Id*. §§ 1 & 4A(a).

[11] *Id*. § 4A(b)–(c).

The NLI operates an archival project, the Archinet, for the archiving and preservation of works published in electronic formats.[12] The project began in 2013 and focuses on websites with the top-level domain name ".il" and "some additional websites that are under Israeli geolocation or relevant to the Israeli public."[13]

V. Security and Access

The NLI implements information security measures to protect electronic publications it receives under the deposit requirements. According to its website,

> • The electronic publications are saved in the secure Library servers.
>
> • The ability to view and access the electronic publications are possible only with the National Library building. Access is limited to two users at any given time.
>
> • Readers are forewarned that under the copyright law terms of use of 2007 it is prohibited to use the collections of the library whether for commercial or non-commercial use. The reader is obliged not to copy, photocopy, photograph, publish, distribute, hand over to a third party, or make any use of the publications as described under the law, except for "Fair Use" of the publication for study, research, or critique as defined under the terms of use of the copyright law and/or they received permission from the copyright holders.
>
> • The National Library does not enable digital copying of its publications: It is prohibited to save them on a flash drive, send then via email or any other method.
>
> • Catalog information regarding the publications is available to all users via the digital catalog of the library, as any other item in the Library.
>
> Further to the stated above are per the general terms of use on the National Library website.[14]

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[12] *Electronic Publications*, THE NATIONAL LIBRARY OF ISRAEL, http://web.nli.org.il/sites/NLI/Hebrew/library/depositing/Pages/Electronic_publications.aspx (last visited June 15, 2018), *archived at* https://perma.cc/Q3YY-QNZ8.

[13] *ARCHINET: Israeli Internet Archive*, THE NATIONAL LIBRARY OF ISRAEL, http://web.nli.org.il/sites/NLI/English/collections/israel-collection/internet_archive/Pages/default.aspx (last visited June 15, 2018), *archived at* https://perma.cc/A3FM-7EKC.

[14] *Electronic Publications*, *supra note* 12. *See also FAQ*, THE NATIONAL LIBRARY OF ISRAEL, http://web.nli.org.il/sites/NLI/English/collections/israel-collection/internet_archive/Pages/faq.aspx , *archived at* https://perma.cc/H8HV-TZVJ.

Italy

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SUMMARY Italy passed its sole legislation on the legal deposit of online materials in 2006. That legislation calls for the voluntary electronic deposit of materials by online publishers as part of an initial pilot program. This voluntary deposit system is set to operate according to specific agreements between publishers and depository libraries. To facilitate the implementation of this experimental stage of the e-deposit program, a flexible licensing model agreement was developed in 2010. Due to financial constraints affecting the Italian government, the voluntary program remains barely operational, however, and as of 2017 only a handful of online journals had joined.

I. Basic Legislation on Digital Legal Deposit

Presidential Decree No. 252 of 2006[1] overhauled the legal deposit system in Italy, and among other things included rules on the deposit of online content. A report issued by the International Publishers Association (IPA) in 2014 described the essentials of the 2006 Italian legislation concerning the deposit of electronic materials.[2] According to the IPA report, the Italian electronic deposit system seeks to promote "voluntary digital deposit and fixes certain priorities (scholarly publications, existing print titles that have been converted to e-books, publications of public institutions, [and] popular websites)."[3] The report reaffirms that Presidential Decree No. 252 of 2006 creates a "pilot scheme for voluntary deposit . . . to prepare the ground for the later introduction of legal deposit."[4]

Accordingly, existing legislation provides for voluntary experimentation with the legal deposit of online documents in accordance with rules and procedures established by the Ministry for Cultural Assets and Activities with previous input from the Committee for Legal Deposit.[5] This Committee is composed of "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."[6]

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[1] Decreto del Presidente della Repubblica 3 maggio 2006, n. 252, Regolamento recante Norme in Materia di Deposito Legale dei Documenti di Interesse Culturale Destinati all'Uso Pubblico [Decree of the President of the Republic No. 252 of May 3, 2006, Regulations on the Legal Deposit of Documents of a Cultural Interest Destined to Public Use] (D.P.R. No. 252), GAZZETTA UFFICIALE [G.U.] No. 191 (Aug. 18, 2006), http://www.gazzettaufficiale.it/eli/id/2006/08/18/006G0272/sg, *archived at* https://perma.cc/QWN8-YFZH.

[2] IPA, DIGITAL LEGAL DEPOSIT (IPA Special Report, July 24, 2014) (IPA Report), https://www.internationalpublishers.org/images/news/2014/digital-legal-deposit-2014.pdf, *archived at* https://perma.cc/S65F-CMJH.

[3] *Id.*

[4] *Id.*

[5] D.P.R. No. 252, art. 37.

[6] IPA Report, *supra* note 2.

II. Work of the Legal Deposit Committee

The experimental phase established in Presidential Decree No. 252 of 2006 provides for the voluntary adherence by electronic publishers to the terms sets forth in specific agreements between the publishers and the depositing libraries.[7] The Committee met for the first time in 2010 and approved a "flexible licensing model agreement,"[8] which allows user access "only on the library premises, with no possibility to copy, download or email content."[9] The flexible licensing model agreement also allows publishers to license other rights to participating libraries, including (a) delivery of printed copies on request by the user, (b) printed document delivery to other libraries, (c) digital document delivery to other libraries, and (d) online access from the premises of other libraries.[10]

In 2011, the General Directorate of the Book Heritage at the Ministry for Cultural Assets and Activities and the main Italian associations representing publishers signed an agreement to promote voluntary experimentation with the legal deposit of online documents.[11] The agreement also sought to promote the creation of a dark archive at the Biblioteca Nazionale Marciana in Venice.[12] To that effect, a "National Coordinating System for the Preservation of Long-Term Access to Digital Resources" was created, with the Magazzini Digitali (Digital Journals) project as one of its first undertakings.[13]

As of 2014, about twenty-five entities had adhered to the e-deposit program;[14] by 2015 about forty-five scientific journals with a total of 6,458 articles archived through harvesting had joined the voluntary e-deposit system.[15] Participation remains low, however; as of February 2017, only 113 journals had joined the program.[16]

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[7] Giovanni Bergamin & Giovanna Cordani, *Magazzini Digitali* [*Digital Journals*] (Feb. 23, 2015), http://www.iccu.sbn.it/opencms/export/sites/iccu/documenti/2015/Magazzini_digitali_Scheda_per_assemblea_dei_poli.pdf, *archived at* https://perma.cc/C6VK-SBQP.

[8] *Id.*

[9] *Id.*

[10] IPA Report, *supra* note 2.

[11] Bergamin & Cordani, *supra* note 7.

[12] *Id.*

[13] *Id.*

[14] *Editori Aderenti* [*Adhering Publishers*], DEPOSITOLEGALE.IT, http://www.depositolegale.it/editori-aderenti/ (last modified Jan. 30, 2017), *archived at* https://perma.cc/V28K-M85J.

[15] Bergamin & Cordani, *supra* note 7.

[16] *Journals*, DEPOSITOLEGALE.IT, http://www.depositolegale.it/journals/ (last updated Feb. 8, 2017), *archived at* https://perma.cc/89RP-6ASS.

III. Penalties for Failure to Comply with Print Legal Deposit Obligations

A May 2015 Decree[17] charges the national central libraries with the obligation to detect and warn noncomplying subjects obliged to effectuate legal deposit under the 2006 Presidential Decree, and to include a calculation of the fine to which they are subject.[18] If the subject complies with the obligation within sixty days, the fine is reduced by one-third.[19] In cases of nonpayment, the Ministry of the Treasury undertakes collection procedures.[20] At any rate, the subject must pay the fine and make the legal deposit of the works as prescribed by the law.[21] The subject may challenge the measures before a justice of the peace.[22]

However, due to the voluntary nature of the e-deposit system established in the legislation,[23] these penalties do not apply to the rules on the deposit of online content.

IV. Current Status of the Pilot Program

According to the IPA, the Italian government has been unable to finance the pilot e-deposit program due to financial constraints, and the program therefore remains stalled.[24]

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[17] Decreto 13 maggio 2015 Sanzioni sul Materiale Soggetto a Deposito Legale [Decree of May 13, 2015, Penalties on Materials Subject to Legal Deposit] (Decree of 2015), G.U. No. 122 (May 28, 2015), http://www.gazzettaufficiale.it/eli/id/2015/05/28/15A03992/sg, *archived at* https://perma.cc/3UBM-64E8.

[18] Decree of 2015, art. 1 (citing D.P.R. No. 252, art. 44, ¶ 1).

[19] *Id*. art. 3, ¶ 2.

[20] *Id*. art. 4.

[21] *Id*. arts. 7 & 9.

[22] *Id*. art. 8.

[23] *Id*. art. 37.

[24] IPA Report, *supra* note 2.

Japan

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Foreign Law Specialist

Japan's National Diet Library (NDL) Law describes the country's online publication deposit system.[1] "Online publications" are defined as

> texts, images, sounds, or programs recorded by electronic, magnetic, or any other means not directly open to human perception, made available to the public or transmitted through the Internet and other advanced information and telecommunications networks, and specified by the Chief Librarian as corresponding to books or serials (except confidential matters, blank forms, specimen pages and other simple publications).[2]

Since July 1, 2013, any person who has made online publications available to the public or transmitted them through the internet or other information and telecommunications networks has been required to provide copies to the NDL.[3] The NDL records this material on its media.[4] A person who has provided online publications may be reimbursed in an amount equivalent to the expenses usually required for the provision of such a publication.[5]

However, for the time being, online publications that are made available to the public or transmitted for value, or those to which access is restricted or for which copying is restricted by technological measures, are exempt from the deposit obligation,[6] due to the fact that there are issues concerning the method of compensation for, and the collection and preservation of, such publications.[7]

The NDL began the experimental collection of these excluded online publications through the Electronic Book Publishers Association of Japan on December 1, 2015. Publishers and authors voluntarily provide content to the Electronic Book Publishers Association for the NDL collection. NDL visitors can browse such online publications.[8] The experimental collection of these materials is to conclude in January 2030.[9]

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[1] 国立国会図書館法 [National Diet Library Act], Act No. 5 of 1948, *amended by* Act No. 40 of 2014, art. 25-4, http://www.ndl.go.jp/en/aboutus/laws.html, *archived at* https://perma.cc/L8ZK-7Y5W.

[2] *Id*. art. 25-4, para. 1.

[3] *Id*. & Supp. Provisions, arts. 1 & 3.

[4] *Id*. art. 25-4, para. 3.

[5] *Id*. 25-4, para. 4.

[6] *Id*. Supp. Provision art. 2.

[7] Press Release, NDL, 電子書籍・電子雑誌収集実証実験事業の開始について [Regarding Starting of Experiment of Collection of Electronic Books and Electronic Magazines] at 2 (Nov. 30, 2015), http://www.ndl.go.jp/jp/news/fy2015/__icsFiles/afieldfile/2015/11/24/pr151130.pdf, *archived at* https://perma.cc/G9DT-3F76.

[8] *Id*. at 1.

[9] *Id*. at 2.

Netherlands

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SUMMARY The Netherlands does not have a mandatory legal deposit requirement. Both printed and electronic publications are submitted on a voluntary basis and the conditions are laid down in several agreements with the Netherlands Publishers Association and individual publishers. The mandate of the National Library (Koninklijke Bibliotheek, KB) includes establishing and maintaining a national digital library. Electronic publications are submitted via an e-book platform, manually uploaded by the publisher on the KB's website, or submitted via File Transfer Protocol (FTP) transfers. In 2007, the KB started archiving selected Dutch websites. It adopted an opt-out approach for web harvesting, meaning that implicit or tacit permission is assumed if a website owner does not respond to the harvest request within a specific time frame.[*]

I. Introduction

The origins of the National Library of the Netherlands (Koninklijke Bibliotheek, KB) date back to 1798.[1] The KB's legal status and functions are determined by the Higher Education and Research Act[2] and the Public Library Provisions Systems Act.[3] Moreover, the Non-Departmental Public Bodies Framework Act also applies to the Library.[4] The Public Library Provisions Systems Act, which entered into force on January 1, 2015, merged the Sector Institute Public Libraries (Sectorinstituut Openbare Bibliotheken), the Library Foundation (Stichting Bibliotheek.nl), the Digital Library for Dutch Literature (Digitale Bibliotheek voor de Nederlandse Letteren), and the National Library of the Netherlands (Koninklijke Bibliotheek) under the umbrella of the National Library of the Netherlands.[5]

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[*] At present there are no Law Library of Congress research staff members versed in Dutch. This report has been prepared by the author's reliance on practiced legal research methods and on the basis of relevant legal resources, chiefly in English, currently available in the Law Library and online.

[1] *KB in a Nutshell*, KONINKLIJKE BIBLIOTHEEK [KB] [NATIONAL LIBRARY OF THE NETHERLANDS], https://www.kb.nl/en/organisation/organization-and-policy/kb-in-a-nutshell (last visited Apr. 10, 2018), *archived at* http://perma.cc/3GZ7-746J; *History of the KB*, KB, https://www.kb.nl/en/organisation/organization-and-policy/history-of-the-kb (last visited Apr. 10, 2018), *archived at* http://perma.cc/5DA6-6VCJ.

[2] Wet op het hoger onderwijs en wetenschappelijk onderzoek [WHW] [Higher Education and Research Act], STAATSBLAD VAN HET KONINKRIJK DER NEDERLANDEN [GOVERNMENT GAZETTE OF THE KINGDOM OF THE NETHERLANDS] [STB.], 1992, No. 593, Oct. 8, 1992, http://wetten.overheid.nl/BWBR0005682/2018-02-01, *archived at* http://perma.cc/5847-SWF5.

[3] Wet stelsel openbare bibliotheekvoorzieningen [Wsob] [Public Library Provisions Systems Act], STB. 2014, No. 471, Dec. 5, 2014, http://wetten.overheid.nl/BWBR0035878/2015-01-01, *archived at* http://perma.cc/5UUA-UL5B.

[4] Kaderwet zelfstandige bestuursorganen [Non-Departmental Public Bodies Framework Act], Nov. 30, 2006, STB. 2006, No. 587, http://wetten.overheid.nl/BWBR0020495/2015-01-01, *archived at* http://perma.cc/FGC5-UEQT.

[5] Jos Debeij, *New Legislation for Public Libraries in the Netherlands & the New Role for the Koninklijke Bibliotheek* (Aug. 14, 2015), http://library.ifla.org/1277/1/200-debeij-en.pdf, *archived at* http://perma.cc/8TWU-SX33.

The KB's objectives are defined in the Higher Education and Scientific Research Act and in the Public Library Provisions Systems Act. These Acts obligate the KB to provide access to Dutch knowledge and culture of the past and present to the general public and task the KB with creating and maintaining a national collection and coordinating with other academic libraries in the country.[6] The Public Library Provisions Systems Act extended the KB's mandate, *inter alia*, to the management of digitalization. This includes the duty to establish and maintain a national digital library (*landelijke digitale bibliotheek*).[7]

II. Current Legal Deposit Regime and Collection Mandate

Unlike other European jurisdictions, the Netherlands has no legislation on mandatory legal deposits.[8] Since 1974, a voluntary deposit system has developed, which is laid down in an agreement with the Netherlands Publishers Association (Nederlandse Uitgeversverbond).[9] In general, publishers may decide for themselves whether they provide publications originating in the Netherlands to the KB. The KB, however, encourages all publishers to provide a single copy for deposit free of charge. Under certain circumstances the Library will pay for deposit copies, in particular when production costs are high.[10] In order to establish the national digital library, the KB is entitled to purchase works on behalf of the Netherlands and receives an annual amount earmarked for that purpose.[11] According to the KB's website, 90% of all Dutch publications can be found in the Deposit Collection.[12]

Certain publications are not collected by the KB. These include

- certain physical works, namely provincial, regional, or local government reports, advisory letters, university term papers, publicity material, internal business information, and free local papers;[13]
- electronic application programs and games;[14] and

[6] Higher Education and Research Act, art. 1.5, para. 2; Public Library Services Act, arts. 4, 5, 9.

[7] Public Library Provisions Systems Act, art. 9, let. b.

[8] INGEBORG VERHEUL, NETWORKING FOR DIGITAL PRESERVATION: CURRENT PRACTICE IN 15 NATIONAL LIBRARIES 145 (2006), https://www.ifla.org/files/assets/hq/publications/ifla-publications-series-119.pdf, *archived at* http://perma.cc/GGC4-B9KN; *Deposit Library for Dutch Publications*, KB, https://www.kb.nl/en/organisation/for-publishers/deposit-library-for-dutch-publications (last visited Apr. 10, 2018), *archived at* http://perma.cc/LL3Y-6HHQ.

[9] VERHEUL, *supra* note 8, at 145; *Deposit Library for Dutch Publications*, KB, *supra* note 8.

[10] *Depositing Publications*, KB, https://www.kb.nl/en/organisation/for-publishers/depositing-publications (last visited Apr. 10, 2018), *archived at* http://perma.cc/7DPN-JRRA.

[11] Public Library Provisions Systems Act, art. 18.

[12] *Deposit Library for Dutch Publications*, KB, *supra* note 8.

[13] *Selection Criteria National Deposit Collection*, KB, https://www.kb.nl/en/organisation/for-publishers/depositing-publications/selection-criteria-national-deposit-collection (last visited Apr. 10, 2018), *archived at* http://perma.cc/T3M2-HD93.

- dynamic databases, due to practical reasons, as they are frequently changing.[15] The KB and publishers, however, are looking into ways to store and make them accessible in the future.[16]

III. Collecting and Accessing Digital Publications

In 1996, a voluntary program for e-publications such as CD-ROMs and magnetic disks was launched. In 1999, the KB and the Netherlands Publisher's Association concluded an agreement on depositing all electronic publications with a Dutch imprint at the KB.[17] The agreement provided that the publishers would generally provide electronic publications free of charge.[18] Deposited material may only be accessed on-site by authorized users, meaning staff members of the KB and library pass holders.[19] The KB abides by the terms of delivery of the respective publisher.[20] Remote access to deposited publications is only provided if expressly authorized by the publishers.[21] Printing a small part of the work or some articles for one's own use is permitted in accordance with copyright legislation, meaning a maximum of 10,000 words from each publication.[22] Since the library monitors the visitors' fee-based printing, abuses can be prevented.[23]

In 2002/2003, bilateral agreements were concluded with Elsevier and Kluwer Academic—international publishers with a head office in the Netherlands—to submit all journals electronically.[24] The Library is still continuing this arrangement and has enlisted the support of preservation services provider Portico to preserve e-journals from these publisher and several

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[14] Arrangement for Depositing Electronic Publications at the Deposit of Netherlands Publications in the Koninklijke Bibliotheek 3 (June 10, 1999), https://www.kb.nl/sites/default/files/docs/overeenkomst-nuv-kb-en.pdf, *archived at* http://perma.cc/6WE8-9QA4.

[15] *Id*. at 3.

[16] Email from Gert-Jan van Velzen, Account Manager, Collection Department, National Library of the Netherlands, to Johannes Jaeger, Foreign Law Intern, Law Library of Congress (Mar. 26, 2018) (on file with author).

[17] Arrangement for Depositing Electronic Publications at the Deposit of Netherlands Publications in the Koninklijke Bibliotheek, *supra* note 16.

[18] *Id*. at 2 ("The government's financing of the KB assumes that the publishers will, in principle, hand over their publications 'gratis'.").

[19] *Id*. at 2, 4.

[20] *Id*.

[21] *Id*.

[22] *Id*.; Auteurswet [Copyright Act], Sept. 23, 1912, STB. 1912, no. 308, art. 16b, http://wetten.overheid.nl/BWBR0001886/2017-09-01, *archived at* http://perma.cc/8VCE-2Z6U, unofficial English translation *at* https://www.ivir.nl/syscontent/pdfs/119.pdf, *archived at* http://perma.cc/6WY4-FZS8.

[23] Arrangement for Depositing Electronic Publications at the Deposit of Netherlands Publications in the Koninklijke Bibliotheek, *supra* note 14, at 4.

[24] Email from Gert-Jan van Velzen, *supra* note 16.

other major international publishers.[25] In 2006, the KB supposedly had the world's largest digital archive for scientific, technical, and medical publishing, which is called the e-Depot.[26]

According to the KB's strategic plan for 2015–2018, one of its priorities is "to realize the national digital library."[27] This involves combining the digital collections in the Dutch public libraries with the one in the national library.[28] In addition to that, the KB aims to digitally preserve all publications from or about the Netherlands already held and store all magazines from the Directory of Open Access Journals by 2018. The KB's digital repository will then comprise 95% of the articles of the large publishers. They will be made available for on-site use at the KB.[29]

IV. Submitting Electronic Publications

Currently, there are three ways in which publishers can deposit digital publications in the KB's e-Depot system:

- Firstly, e-books are being stored in the KB's e-Depot via an e-book platform. The KB's partner for this purpose is the company Central Bookhouse, which is the largest distribution center of books and e-books in the Netherlands. Central Bookhouse includes the ISBN and separately delivers all metadata of e-books with ISBNs. Publishers are asked for permission before the KB stores these e-books.[30]
- Secondly, the KB offers a web-based application form. Publishers can upload their digital e-books and digital magazines together with the metadata. This platform is intended for smaller publishers who are not connected with Central Bookhouse and for foundations, associations, and individual authors.[31]
- Thirdly, for larger (international) publishers the KB offers the possibility of File Transfer Protocol (FTP)-transfer where the KB automatically receives the scientific journal articles from the publishers' databases together with the necessary metadata.[32]

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[25] Press Release, KB, National Library of the Netherlands – Portico Partnership (May 28, 2015), https://www.kb.nl/en/news/2015/national-library-of-the-netherlands-portico-partnership, *archived at* http://perma.cc/643P-RF3F; Email from Gert-Jan van Velzen, *supra* note 16.

[26] VERHEUL, *supra* note 8, at 145–48.

[27] KB, THE POWER OF OUR NETWORK. STRATEGIC PLAN 2015–2018 at 2, https://www.kb.nl/sites/default/files/docs/strategicplan-2015-2018.pdf, *archived at* http://perma.cc/U9J8-F5H5.

[28] *Id*. at 14.

[29] *Id*. at 17–18.

[30] Email from Gert-Jan van Velzen, *supra* note 16. For the e-book platform provided by Central Bookhouse, see https://www.cb.nl/en/, *archived at* http://perma.cc/8LYK-DJ8R.

[31] *Id*.; *Depositing Individual Digital Publications*, KB, https://www.kb.nl/en/organisation/for-publishers/depositing-publications/depositing-individual-digital-publications (last visited Apr. 9, 2018), *archived at* http://perma.cc/2WVK-A9L4.

[32] Email from Gert-Jan van Velzen, *supra* note 16.

Scientific electronic publications from Dutch universities and other scientific research institutions do not need to be deposited as they are automatically retrieved (harvested) by the KB from the repository of the institution concerned on the basis of the above-mentioned mutual agreements.[33]

V. Web Crawling

In 2007, the KB started archiving selected Dutch websites. As of January 2018, the Library had harvested 13,200 websites totaling 32 terabytes (TB) of data, preserved them, and made them accessible to readers on the KB's premises.[34] The Library mostly selects websites with cultural and academic content, but also includes ones that are innovative, popular, or relevant for Dutch society, like sports pages.[35]

The KB points out that as there is no mandatory legal deposit requirement in the Netherlands, copyright owners may not always agree to have their websites harvested and made available on a permanent basis by the KB.[36] To cope with these issues, the KB enlisted the Center for Law in the Information Society (Centrum voor Recht in de Informatiemaatschappij) at Leiden University to study the legal issues involved under Dutch law.[37] The study concludes that from the point of copyright law, the KB is not entitled to harvest a website without the prior permission of the respective right holder. The authors of the study state that the opt-out practice envisaged by the KB might violate Dutch copyright law, but that Dutch courts could possibly deviate from this view because of the new developments of a modern, digitalized society.[38]

The KB has adopted the following approach to archiving websites:

- Website owners are notified before the Library harvests the respective site and are granted the opportunity to make objections (opt-out approach).
- If such objections are not made within a specified time frame, the KB assumes implicit or tacit permission for harvesting.[39]

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[33] *Id*; *Depositing Individual Digital Publications*, KB, *supra* note 31.

[34] *Web Archiving*, KB, https://www.kb.nl/en/organisation/research-expertise/long-term-usability-of-digital-resources/web-archiving (last visited Apr. 10, 2018), *archived at* http://perma.cc/Q5KA-EPVD.

[35] *Selection*, KB, https://www.kb.nl/en/organisation/research-expertise/long-term-usability-of-digital-resources/web-archiving/selection (last visited Apr. 10, 2018), *archived at* http://perma.cc/5GKL-BZ6J.

[36] *Legal Issues*, KB, https://www.kb.nl/en/organisation/research-expertise/long-term-usability-of-digital-resources/web-archiving/legal-issues (last visited Apr. 10, 2018), *archived at* http://perma.cc/AK2J-FSXM.

[37] Annemarie Beunen & Tjeerd Schiphof, Legal Aspects of Web Archiving from a Dutch Perspective. Report Commissioned by the National Library in The Hague (Oct. 4, 2006), https://www.kb.nl/sites/default/files/docs/KB_Legal_Aspects_WebArchiving_EN.pdf, *archived at* http://perma.cc/Y53U-NSGS.

[38] *Id*. at 17.

[39] *Legal Issues*, KB, *supra* note 36.

By asking permission, the KB hopes to prevent legal action.[40] The KB is aware that this pragmatic approach might be problematic and is therefore looking into the idea of introducing mandatory legal deposit that is primarily focused on web archiving.[41]

VI. Statistics

As of 2016, the physical collection comprised over 7 million printed items. In addition, 2.6 million digital articles and 2,500 e-books were loaded, and 1,800 new websites were stored.[42] As of March 2018, the KB manages approximately 431,509,000 files. The number of files is not equivalent to the number of electronic publications.[43] The current total storage volume of electronic publications is approximately 34.68 TB.[44] In the fourth quarter of 2017, a total of 3,008 requests were made from the e-Depot system.[45]

[40] Email from Gert-Jan van Velzen, *supra* note 16.

[41] *Id*.

[42] *KB in a Nutshell*, KB, *supra* note 1.

[43] Email from Gert-Jan van Velzen, Account Manager, Collection Department, National Library of the Netherlands, to Johannes Jaeger, Foreign Law Intern, Law Library of Congress (Mar. 29, 2018) (on file with author).

[44] *Id*.

[45] *Id*.

New Zealand

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SUMMARY The National Library of New Zealand (NLNZ) has been implementing a legal requirement for publishers to deposit digital materials that meet the definition of a "public document" since 2006. Publishers must generally provide two copies of the medium or device containing the document within twenty days of publication, with the NLNZ providing a legal deposit form and dedicated email address for the submission of documents, as well as several alternative submission options.

The NLNZ is also authorized to copy any internet document and can therefore harvest any website produced in New Zealand without seeking permission from the publisher or website owner. The NLNZ has been selectively harvesting websites since 1999, and allows people to nominate websites for harvesting. In addition, it has adopted "whole of domain harvesting" for the .NZ domain, and has been running such a harvest annually since 2015.

Where a digital document is commercially available or otherwise restricted, the NLNZ only enables three people at a time to access it in its reading room. Open-access documents and websites harvested on a selective basis are made available on the NLNZ website.

Electronic publications collected by the NLNZ are held in the National Digital Heritage Archive for long-term digital preservation. The NLNZ website provides technical information regarding the preservation and security of such publications.

I. Introduction

A requirement to deposit digital materials with the National Library of New Zealand (NLNZ) came into effect in August 2006 through the issuance of the National Library Requirement Electronic Documents) Notice 2006 (2006 Notice).[1] The Notice was authorized by part 4 of the National Library of New Zealand (Te Puna Mātauranga o Aotearoa) Act 2003 (NLNZ Act), which states that the relevant government minister may, by a notice in the Gazette, require a publisher of a "public document" to provide copies to the National Librarian, either in printed form or, if the document is an "electronic document," by providing the medium that contains the document.[2]

A "public document" means a document of which one or more copies are issued to the public, available to the public on request, or available to the public on the internet, and that is printed or produced in New Zealand, or commissioned to be published in another country by a New Zealand

[1] National Library Requirement (Electronic Documents) Notice 2006 (SR 2006/118), http://legislation.govt.nz/regulation/public/2006/0118/latest/whole.html, *archived at* https://perma.cc/92A6-NN4E.

[2] National Library of New Zealand (Te Puna Mātauranga o Aotearoa) Act 2003 (NLNZ Act), s 29(1), http://legislation.govt.nz/act/public/2003/0019/latest/whole.html, *archived at* https://perma.cc/64SZ-3QZ8.

resident or business, and in which copyright exists under the Copyright Act 1994.[3] An "electronic document" is a "public document in which information is stored or displayed by means of an electronic recording device, computer, or other electronic medium, and includes an Internet document."[4]

In addition, the NLNZ Act states that the minister may authorize the National Librarian "to make a copy, at any time or times and at his or her discretion, of public documents that are Internet documents in accordance with any terms and conditions as to format, public access, or other matters that are specified in the notice."[5] An "Internet document" is "a public document that is published on the Internet, whether or not there is any restriction on access to the document; and includes the whole or part of a website."[6] The 2006 Notice subsequently authorized the National Librarian to "copy any Internet document."[7]

The NLNZ's strategic directions to 2030 include the collection of and access to digital materials within the different focus areas, as follows:

- "Born digital content reflecting contemporary New Zealand life and knowledge will be readily available for access and research."[8]
- "New Zealand's collecting institutions will have access to expertise to use new technologies and tools that preserve digital heritage. Organisations will integrate digital preservation into their collecting policies and professional capabilities to maintain access to collections in the future."[9]
- "New Zealand knowledge resources available from libraries, educational, cultural and research institutions will be digitally accessible to all New Zealanders."[10]

The NLNZ's 2016–2018 collection plan for New Zealand and Pacific published materials states that, with respect to electronic publications, "[t]he sheer volume of online content in scope for legal deposit makes it impossible for the Library to be comprehensive in its collecting of such material, but it does aim to build a significant collection which is representative of New Zealand's

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[3] *Id.*; Copyright Act 1994, http://www.legislation.govt.nz/act/public/1994/0143/latest/whole.html, *archived at* https://perma.cc/D24F-YN4B. *See also Publications Covered by Legal Deposit*, NLNZ, https://natlib.govt.nz/publishers-and-authors/legal-deposit/publications-covered-by-legal-deposit (last visited Mar. 16, 2018), *archived at* https://perma.cc/R6Q3-XK2P.

[4] NLNZ Act, s 29(1).

[5] *Id.* s 31(3).

[6] *Id.* s 29(1).

[7] National Library Requirement (Electronic Documents) Notice 2006, cl 8.

[8] *Strategic Directions to 2030: Taonga*, NLNZ, https://natlib.govt.nz/about-us/strategy-and-policy/strategic-directions/taonga (last visited Apr. 17, 2018), *archived at* https://perma.cc/8XR5-RBFT.

[9] *Id.*

[10] *Strategic Directions to 2030: Knowledge*, NLNZ, https://natlib.govt.nz/about-us/strategy-and-policy/strategic-directions/knowledge (last visited Apr. 17, 2018), *archived at* https://perma.cc/C4RV-9EDY.

published documentary heritage."[11] It further states that not all websites can be collected and therefore the NLNZ "chooses to prioritise websites to collect around certain subjects or themes."[12]

II. Digital Legal Deposit Requirements and Processes

The legal deposit requirements, including those relating to digital items, apply to all New Zealand publishers.[13] "Publisher" is broadly defined in the legislation to mean,

> (a) in relation to a printed public document, the publisher of that document; and
> (b) in relation to any other public document other than an Internet document, the person who produced in New Zealand, or commissioned the production outside New Zealand of, the copies of the document issued to, or available on request by, the public; and
> (c) in relation to an Internet document, the person who has control over the content of the website, or part of the website, on which the document is located[14]

A. Deposit of Electronic Documents

The 2006 Notice contains the following requirement for publishers to provide copies of "off-line documents" to the National Librarian:

> Every publisher of an off-line document must, at the publisher's own expense, give to the National Librarian, within 20 working days after the date when the document is first published, 1 or more copies of the document as follows:
> (a) 2 copies of the medium or device that contains the document; or
> (b) 1 copy of the medium or device that contains the document, if—
> (i) the document is a single discrete item the price of which exceeds $1,000; or
> (ii) the document is available for an annual subscription that exceeds $3,000.[15]

"Off-line documents" are electronic documents that are not internet documents and include documents that are stored or used by means such as magnetic media, optical media, or an electronic storage device.[16]

Both this requirement and the ability for the National Librarian to copy internet documents (see Part II(B), below) apply to previously published documents, with the Notice stating that it "applies

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[11] *Collecting Plan – New Zealand and Pacific Published Collections: 2016-2018*, NLNZ, https://natlib.govt.nz/about-us/strategy-and-policy/collections-policy/newzealand-pacific (last visited Apr. 16, 2018), *archived at* https://perma.cc/SV3C-EDV2.

[12] *Id.*

[13] *Legal Deposit*, NLNZ, https://natlib.govt.nz/publishers-and-authors/legal-deposit (last visited Mar. 16, 2018), *archived at* https://perma.cc/3A7E-35UG.

[14] NLNZ Act, s 29(1).

[15] National Library Requirement (Electronic Documents) Notice 2006, cl 5.

[16] *Id.* cl 3.

to all classes of electronic documents in existence on, or coming into existence after, the date on which this notice comes into force and all publishers of those electronic documents."[17]

The NLNZ website advises publishers to complete the legal deposit form and email this, together with their digital publication, to a designated email address.[18] In addition, publishers have the following alternative options for depositing their online documents:

> We can either download your publication from the Internet, if we know it is available, or you can send it to us directly. You can:
> - Email us at eld@dia.govt.nz to notify us where we can download it. You may need to provide us with membership or other means of access if it is restricted.
> - Email it as an attachment to eld@dia.govt.nz – maximum file size 20MB.
> - Transfer it to us via Dropbox or another cloud service. You can:
> - upload your files to a service of your choice and provide eld@dia.govt.nz with access, or
> - deposit directly to our Dropbox using our Dropbox File Request portal, which lets you upload multiple files straight from your computer without requiring your own Dropbox account.
> - Deposit very large files or a large number of files using our FTP server. Email legaldeposit@dia.govt.nz to request access.
> - Post your electronic publications to us, or drop them in on a physical carrier such as CD-ROM or USB drive. See the instructions for physical publications above, and please let us know whether you want the carrier returned to you.
> - If you were previously a user of our Web Deposit Tool,[19] please note that this has been discontinued. Please use one of the above options or email legaldeposit@dia.govt.nz for advice.
> - If your digital publication is paywalled, restricted to membership, or not freely available for any other reason, please make sure you let us know so that we can archive it under Restricted Access conditions.[20]

Publishers are also advised to provide their documents without any Digital Rights Management or other technical usage restrictions and certain file formats are also suggested. If a publisher is unable to deposit a digital document in any of the above ways they can contact the NLNZ, which states that "[o]ur research and development staff love the challenge of new formats."[21]

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[17] *Id.* cl 4.

[18] *Legal Deposit*, *supra* note 13.

[19] *See* NLNZ, HOW TO DEPOSIT DIGITAL CONTENT TO THE NATIONAL LIBRARY VIA THE WEB DEPOSIT TOOL (2008), https://natlib.govt.nz/system/resources/BAhbBlsHOgZmSSI8MjAxMi8xMC8xOC8xM18xMF8yMV8xNDBfd2ViX2RlcG9zaXRfdG9vbF91c2VyX2d1aWRlLnBkZgY6BkVU/web-deposit-tool-user-guide.pdf, *archived at* https://perma.cc/NZ74-42QQ.

[20] *Submitting Your Publication: Online Digital Publications*, NLNZ, https://natlib.govt.nz/publishers-and-authors/legal-deposit/submitting-your-publication#online (last visited Mar. 16, 2018), *archived at* https://perma.cc/4TX9-3CA7.

[21] *Id.*

B. Web Archiving

As noted above, the 2006 Notice states simply that "[t]he National Librarian is authorised to copy any Internet document."[22] The definition of "Internet document" in the NLNZ Act, together with the definition of "public document," essentially means that the NLNZ can harvest any website produced or hosted in New Zealand.

Previously, the NLNZ started selectively harvesting websites for archiving in 1999.[23] The information regarding its current approach to web archiving includes the following:

> Most web harvesting is undertaken on a selective basis by the Alexander Turnbull Library. These websites form the New Zealand Web Archive, which is part of the Alexander Turnbull Library's published collections.
>
> Special harvests of the .NZ domain have been undertaken by the National Library every couple of years since 2008. These provide snapshots of the New Zealand Internet. The domain harvests are not currently available to the public.[24]

People are invited to nominate websites to be added to the collection using an online form.[25] This includes Pacific Island websites or websites of New Zealanders that are published overseas, outside of the .NZ domain. A permissions process is followed for overseas websites that are not covered by the legal deposit legislation.

In addition to selective harvesting, the NLNZ's "whole of domain harvest," referred to above, "recognises the importance of the internet in all areas of New Zealand society and culture by taking a 'snapshot' of the whole .nz domain as it exists on the web during the time of harvesting. The Library's first domain harvest took place in 2008. Further harvests were run in 2010 and 2013. They have been run annually since 2015."[26] With regard to the technical parameters for the harvest, the NLNZ states that these were developed after consultation with the public and internet stakeholder groups, and include the following:

- Websites that fall under the .nz country code
- Websites that fall under .com, .net and .org that can be programmatically determined to be hosted on machines that are physically located in New Zealand

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[22] National Library Requirement (Electronic Documents) Notice 2006, cl 8.

[23] *New Zealand Web Archive*, NLNZ, https://natlib.govt.nz/collections/a-z/new-zealand-web-archive (last visited Mar. 16, 2018), *archived at* https://perma.cc/K5E8-8M56.

[24] *Web Harvesting*, NLNZ, https://natlib.govt.nz/publishers-and-authors/web-harvesting (last visited Mar. 16, 2018), *archived at* https://perma.cc/FCK5-9FDA.

[25] *Web Archive Nomination Form*, NLNZ, https://natlib.govt.nz/forms/web-archive-nomination (last visited Mar. 16, 2018), *archived at* https://perma.cc/M4XT-T73Z.

[26] *Whole of Domain Web Harvest*, NLNZ, https://natlib.govt.nz/publishers-and-authors/web-harvesting/domain-harvest (last visited Mar. 16, 2018), *archived at* https://perma.cc/F3RR-2TNC.

- Selected websites based overseas that are covered by the provisions of the National Library of New Zealand Act (2003)[27]

The Internet Archive, a US-based not-for-profit entity, is commissioned to perform the harvest. The data acquired during harvests is stored at the NLNZ and can be viewed in its reading rooms.[28]

The NLNZ website also provides general technical information for webmasters, including design tips for making websites preservable.[29]

III. Access and Preservation

The NLNZ Act requires that publishers provide assistance in relation to the storage and use of electronic documents, stating,

> (1) If, at any time, the National Librarian makes a written request for assistance, a publisher of an electronic document to which a requirement relates must, at the publisher's own expense, provide reasonable assistance within 20 working days of receiving the request to enable the National Librarian to store and use an identical copy of the document.
> (2) A written request under subsection (1) may relate to—
> (a) 1 or more electronic documents; or
> (b) 1 or more classes of electronic documents.[30]

A. Access to Electronic Documents

In terms of access, the NLNZ Act provides that, with respect to the use of public documents deposited with the NLNZ,

> (2) For the purposes of carrying out his or her duties, the National Librarian and any employee, contractor, or agent of the chief executive may possess, copy, store in electronic form (whether offline or online), and use any copy of a deposited document.
>
> (3) The National Librarian may provide not more than 3 copies of a deposited document for use by members of the public (whether at the premises of the National Library or elsewhere) but, except as provided in subsection (4) or with the publishers agreement, must not make the document available on the Internet.
>
> (4) If a deposited document is made publicly available on the Internet by the publisher without restriction on its access or use by members of the public, the National Librarian may make the document available for access and use by members of the public on the Internet (as well as in the manner permitted by subsection (3)).

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[27] *Id.*

[28] *Id.*

[29] *Web Harvesting*, *supra* note 24.

[30] NLNZ Act, s 33.

> (5) Except as provided in subsections (2) to (4), the law relating to copyright applies to every deposited document.[31]

The legal deposit information on the NLNZ website states that,

> [i]f access to your publication is restricted, for example because it's commercially available, it can only be accessed in the Katherine Mansfield Reading Room at the National Library in Wellington, by up to 3 people at once.
>
> If it is open access because it is openly available online or you've given permission, anyone can access the Legal Deposit copy via a link in our online catalogue. We can also link to your website.[32]

B. Security and Preservation

The NLNZ website provides detailed information about how it manages the security of electronic publications collected under legal deposit.[33] The introductory statement on this topic includes the following:

> Electronic publications collected by the Library are held in the National Digital Heritage Archive, for long-term digital preservation. It uses the ExLibris Rosetta application. The system backend, including servers and physical storage is managed by an external supplier of Infrastructure as a Service to Government.
>
> The Archive has been developed in accordance with best practice standards and guidelines for a trusted digital repository, and the Department is currently instituting an ongoing security roadmap for the Archive.[34]

The NLNZ website also provides technical information regarding the preservation of born-digital and digitized items that it collects or creates.[35] Furthermore, a dedicated website regarding the digital preservation program at the NLNZ[36] provides information about the tools and manuals used in the program,[37] current projects,[38] and the NLNZ's involvement and contribution to international

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[31] *Id.* s 34.

[32] *Legal Deposit*, *supra* note 13.

[33] *Electronic Publication Security*, NLNZ (June 2016), https://natlib.govt.nz/publishers-and-authors/legal-deposit/electronic-publication-security, *archived at* https://perma.cc/V98C-YSEM.

[34] *Id.*

[35] *Preserving Digital Objects*, NLNZ, https://natlib.govt.nz/publishers-and-authors/legal-deposit/preserving-digital-objects (last visited Mar. 16, 2018), *archived at* https://perma.cc/6F6B-GD4Q.

[36] *Home*, DIGITAL PRESERVATION PROGRAMME, NLNZ, https://digitalpreservation.natlib.govt.nz/ (last modified Mar. 5, 2018), *archived at* https://perma.cc/N8WW-9NSC.

[37] *Preservation Tools and Manuals*, DIGITAL PRESERVATION PROGRAMME, NLNZ, https://digitalpreservation.natlib.govt.nz/tools-and-manuals/ (last modified Dec. 12, 2017), *archived at* https://perma.cc/P8TY-X29P.

[38] *Current Projects*, DIGITAL PRESERVATION PROGRAMME, NLNZ, https://digitalpreservation.natlib.govt.nz/current-projects/ (last modified Dec. 1, 2017), *archived at* https://perma.cc/3F8V-KFAA.

developments in this area.[39] It also provides access to the guiding documents for the program,[40] including a 2011 Digital Preservation Strategy[41] and Digital Preservation Policy Manual (both produced jointly by the NLNZ and Archives New Zealand).[42]

[39] *Community Participation*, DIGITAL PRESERVATION PROGRAMME, NLNZ, https://digitalpreservation.natlib.govt.nz/community-participation/ (last modified Dec. 12, 2017), *archived at* https://perma.cc/G9XS-RX2Y.

[40] *Strategic Documents*, DIGITAL PRESERVATION PROGRAMME, NLNZ, https://digitalpreservation.natlib.govt.nz/about-2/strategic-documents/ (last modified Jan. 11, 2017), *archived at* https://perma.cc/X2EY-ZL26.

[41] ARCHIVES NEW ZEALAND & NLNZ, DIGITAL PRESERVATION STRATEGY (June 2011), https://digitalpreservation.natlib.govt.nz/assets/NDHA/DigitalPreservationAtTheNationalLibrary/Digital_Preservation_Strategy.pdf, *archived at* https://perma.cc/KN8V-7NZN.

[42] ARCHIVES NEW ZEALAND & NLNZ, DIGITAL PRESERVATION POLICY MANUAL (rev. Nov. 7, 2012), https://digitalpreservation.natlib.govt.nz/assets/NDHA/About-Us/Strategic-Partnerships/Digital-Preservation-Policy-Manual.pdf, *archived at* https://perma.cc/DR4F-6727.

Norway

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I. Mandatory Deposit Laws

Norway has a mandatory deposit law that has as its purpose "secur[ing] the accumulation and storage of publicly available information for national collections, in order that [the information] that bears witness to Norwegian culture and society may be preserved and accessed as source material for research and documentation."[1] Current legislation requires that seven copies of both physical and *digital* materials that have been made available for the public be deposited with institutions in Norway.[2] When a physical copy is deposited the National Library of Norway may also require that the underlying digital copy of the media be deposited (for instance, the digital version of a book).[3]

Most published material is subject to the deposit mandate, but publications of, for example, membership lists are not intended to be covered by the requirement.[4] Media that is published abroad need only be deposited if either the publisher is Norwegian or the material specifically targets Norwegians.[5] The National Library oversees the enforcement of depository laws.[6]

The depository requirement must be fulfilled by the publisher, producer, or importer of the document.[7] Upon the death of the depositor, his or her estate must fulfill the deposit requirement. Similarly, bankruptcy estates must fulfill the deposit requirement.[8]

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[1] § 1 LOV OM AVLEVERINGSPLIKT FOR ALLMENT TILGJENGELEGE DOKUMENT (PLIKTAVLEVERINGSLOVA) (LOV 1989-06-09-32) [ACT ON MANDATORY DEPOSITS FOR PUBLISHED MATERIAL (Act No. 32 of June 9, 1989)] § 1, https://lovdata.no/dokument/NL/lov/1989-06-09-32, *archived at* https://perma.cc/6MHY-5APD (translation by author).

[2] § 4 PLIKTAVLEVERINGSLOVA (emphasis by author).

[3] DET KONGELEGE KULTURDEPARTEMENTET [ROYAL DANISH MINISTRY OF CULTURE], PROPOSJON [PROP.] 106 L (2014–2015): ENDRINGAR I LOV OM AVLEVERINGSPLIKT FOR ALLMENT TILGJENGELEGE DOKUMENT (INNSAMLING AV DIGITALE DOKUMENT M.M.) [GOVERNMENT BILL 106 L (2014–2015): CHANGES IN THE MANDATARY DEPOSIT ACT (COLLECTION OF DIGITAL MATERIAL ETC.)] at 47, https://www.regjeringen.no/contentassets/a660c098687e4e7f84fbd5908d122412/nn-no/pdfs/prp201420150106000dddpdfs.pdf, *archived at* https://perma.cc/ZP5E-2FBH.

[4] *Id*.

[5] § 4 mom. 2 PLIKTAVLEVERINGSLOVA.

[6] Art. I Instruks for institusjonar som forvaltar dokument innkomne etter lov om avleveringsplikt for allment tilgjengelege document (FOR-1990-05-25-4696) [Regulation for Institutions that Maintain Documents Received in Accordance with the Act on Mandatory Deposits (Regulation No. 4696 of May 25, 1990)], https://lovdata.no/dokument/INS/forskrift/1990-05-25-4696, *archived at* https://perma.cc/XM52-Q35V.

[7] § 5 PLIKTAVLEVERINGSLOVA.

[8] § 6 PLIKTAVLEVERINGSLOVA.

Deposits are made to the National Library of Norway, which retains two copies for its collection and distributes the remaining deposits to the following institutions:

- University of Oslo Library
- University of Bergen Library
- Norwegian University of Science and Technology Library
- University of Tromsø Library
- Sami Library (if the title includes content in the Sami language)[9]

II. Online Access

The National Library of Norway has been prioritizing digital content. For instance, it hosts an e-library of digitized books at Bokhylla.no (*bokhylla* is Norwegian for "bookshelf"), which provides access to digital copies of Norwegian library holdings to persons using Norwegian IP-addresses.[10] The National Library has made it a priority is digitize all books published prior to 2000 and make them available online.[11] The National Library's ultimate goal is reportedly to digitize its entire collection.[12]

[9] § 4 mom. 1 PLIKTAVLEVERINGSLOVA; Art. IV Instruks for institusjonar som forvaltar dokument innkomne etter lov om avleveringsplikt for allment tilgjengelege document.

[10] *See* BOKHYLLA.NO, https://www.nb.no/search?mediatype=bøker.

[11] *Mandat og strategi*, NASJONALBIBLIOTEKET, https://www.nb.no/om-nb/hva-og-hvem-er-vi/mandat-og-strategi (last visited Apr. 11, 2018).

[12] *Digitizing Policy*, NASJONALBIBLIOTEKET, https://www.nb.no/English/The-Digital-Library/Digitizing-policy (last visited Apr. 11, 2018). For more on the Norwegian National Library's work with digitization see https://www.nb.no/om-nb/digitalisering-2 (in Norwegian).

South Korea

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The National Library of Korea collects and preserves online materials highly worth preserving, from among those published in the Republic of Korea.[1] When the collection of online materials is restricted by a technical protective measure, the National Library may request the cooperation of the relevant online materials provider. An online materials provider who receives the request must comply with the request unless there is a compelling reason not to do so.[2] If all or some of online materials are for sale, the National Library must make due compensation for such online materials.[3]

The Library Material Deliberative Committee deliberates on those matters necessary for a determination of the selection, types, and forms of online library materials subject to legal deposit, and their collection procedures.[4] The online materials collected by the National Library include websites or web resources created in electronic forms, including text, audio, video, or images.[5]

The National Library issues a library material collection certificate to online materials providers when the materials they offer for sale have been collected.[6] Those providers may then submit a claim for compensation with the National Library.[7] Upon receipt of a claim for compensation, the Chief Executive of the Library provides compensation for the collected materials at market value.[8] If there is a considerable difference between the market value of the material and the actual transaction (sale) price of similar materials, or it is agreed that compensation at market value is not reasonable, the Library Material Deliberative Committee will determine the amount of compensation.[9]

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[*] At present there are no Law Library of Congress research staff members versed in Korean. This report has been prepared by the author's reliance on practiced legal research methods and on the basis of relevant legal resources, chiefly in English, currently available in the Law Library and online.

[1] 도서관법 [Library Act], Act No. 8029, Oct. 4, 2006, *amended by* Act No. 15167, Dec. 12, 2017, art. 20-2, para. 1.

[2] *Id*. art. 20-2, para. 2.

[3] *Id*. art. 20-2, para. 5.

[4] 도서관법 시행령 [Enforcement Decree of the Library Act], Presidential Decree No. 19963, Mar. 27, 2007, *amended by* Presidential Decree No. 28211, Jul. 26, 2017, art. 13-3, para. 1.

[5] *Id*. art. 13-2, para. 1; Notification by the National Library of Korea, No. 2011-1, Attachment, Jan. 3, 2011.

[6] Enforcement Decree of the Library Act art. 13-2, para. 2.

[7] *Id*. art. 13-4, para. 1.

[8] *Id*. art. 13-4, para. 2.

[9] *Id*. art. 13-4, para. 3.

In 2015, 68,408 e-books, 602 audio books (2,251 items), and 296 videos (1,047 items) were collected, and a total of 1,000,000,000 won (about US$939,000) was spent for their purchase or for compensation.[10]

[10] 2015 ANNUAL REPORT OF THE NATIONAL LIBRARY OF KOREA § 4.1.2 (May 31, 2016), http://www.nl.go.kr/upload/nl/pds/research_data/year_2015/seji_report.html (in Korean), *archived at* https://perma.cc/7BGQ-TXHM.

Spain

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SUMMARY The National Library of Spain and those appointed by the autonomous communities are responsible for the deposit of online publications and determine the priorities for preservation. Ley 23/2011 on Legal Deposit includes electronic publications among the publications subject to legal deposit. Real Decreto 635/2015 regulating legal deposit of online publications identifies the entities required to make such deposits, the materials subject to and excluded from legal deposit, and the rules applicable to the management of the legal deposit of online publications.

I. Online Deposit Rules

Real Decreto (Royal Decree) 635/2015 regulates the legal deposit of online publications in Spain.[1] The Decree implements Ley (Law) 23/2011 on Legal Deposit providing that websites and online publications are subject to legal deposit in furtherance of the obligation to preserve bibliographic, sound, visual, audiovisual, or digital heritage pertaining to the cultures of Spain.[2]

The deposit of online publications is not entrusted to publishers, but to the National Library of Spain and those appointed by the autonomous communities within the scope of their competencies, who determine the priorities for preservation.[3]

Information or content of any nature circulated via a nontangible electronic medium, archived in a particular format that may be managed and differentiated, and that is subject to circulation is considered an online publication.[4] Websites are also considered to be online publications.[5]

Real Decreto 635/2015 regulates the deposit of online publications, while deposit of electronic publications of tangible media publications like books, magazines, CDs, or DVDs are governed by provisions in Law 23/2011.[6] Under Law 23/2011, publishers domiciled or with their permanent business in Spain are responsible for the legal deposit of electronic copies of traditional

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[1] Real Decreto 635/2015 por el que se Regula el Depósito Legal de las Publicaciones en Línea [Royal Decree 635/2015 Regulating the Legal Deposit of Online Publications], BOLETIN OFICIAL DEL ESTADO [B.O.E.], July 27, 2015, https://www.boe.es/buscar/act.php?id=BOE-A-2015-8338, *archived at* https://perma.cc/Y76X-2WJE.

[2] *Id.* art. 1; Ley 23/2011 de Depósito Legal [Law on Legal Deposit], B.O.E., July 30, 2011, https://www.boe.es/buscar/doc.php?id=BOE-A-2011-13114, *archived at* https://perma.cc/K3A8-8FFX.

[3] Real Decreto 635/2015, art. 6(1)–(2).

[4] *Id*. art. 2(e).

[5] *Id*.

[6] *Id*. art. 1(2).

publications, regardless of the printing location.[7] In case the publisher does not reside or have a branch in Spain, the individual or company in charge of its printing or production with permanent residence in Spain is responsible to comply with the requirements.[8] Publishers are subject to a fine in case of noncompliance.[9]

Legal deposit of electronic publications has to be done in such a way that a password would not be necessary to access its content and with a manual and software that would enable access thereto for research and preservation purposes.[10] When making the legal deposit, the responsible person is required to provide the information necessary for the transfer of data from the original format to the preservation support format.[11] Additionally, if the electronic publication has an expiration date, its content must be transferred in order to be accessed with no time restrictions.[12]

Websites and publications contained therein are subject to legal deposit, regardless of whether access is free or restricted, provided they contain bibliographic, audio, visual, audiovisual, or digital Spanish cultural heritage and are published in any official language of Spain; are published or edited by an individual or company with residence or a permanent establishment in Spain; or have a domain name linked to the territory of Spain.[13]

Online publications excluded from legal deposit include mail and private correspondence, content hosted on a private network, and restricted-access files containing personal data.[14]

The editor or producer of a website where an online publication is hosted is required to facilitate legal deposit.[15]

II. Management of Online Deposit

Conservation centers determine the websites and sources to be captured or deposited for preservation in order to facilitate their consultation, respecting the legal protection of personal data and intellectual property, and following the criteria of achieving better representation of the world of the internet and building a collection that is as complete as possible of publications such as electronic books and magazines.[16]

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[7] Ley 23/2011, art. 6.

[8] *Id.* art. 6.2.

[9] *Id.* arts. 18.a & 20.1.

[10] *Id*. art. 13.1.

[11] *Id*. art. 13.2.

[12] *Id.* art. 13.3.

[13] Real Decreto 635/2015, art. 3.

[14] *Id.* art. 4.

[15] *Id.* art. 5.

[16] *Id*. art. 6(2).

Conservation centers also inform the depository entity where the publisher or producer has its domicile, residence, or permanent establishment about any noncompliance with online deposit obligations. The depository entity is then responsible for enforcing the deposit obligations and, when appropriate, applying the pertinent sanctions in cases of violations of the law.[17]

Online publications are not assigned legal deposit numbers.[18]

Conservations centers capture online publications in websites and publications contained therein that are freely accessible online through communication networks.[19]

In the case of online publications with restricted access, the publishers or producers of such websites and other online publications with restricted access are obliged to enable the collection of their publications, providing conservation centers with passwords that allow access to all the contents or websites.[20]

The editor or producer of online publications deposited according to the preceding rules is required to allow such publications to be consulted and reproduced in the future without any password requirement. In addition, the publisher or producer of online publications, with limited time availability, is obliged to let conservation centers access these publications permanently.[21]

Compliance with these requirements may not affect the legitimate interests of rights holders or the commercial exploitation they make of such material.[22]

Conservation centers are responsible for the preservation of those online publications with which they are entrusted.[23]

Users' access to repositories containing restricted access material may only be done through the terminals installed at the headquarters of the National Library of Spain and conservation centers of the autonomous communities, in compliance with laws concerning the protection of personal data and intellectual property.[24]

Conservation centers have the power to reproduce, reformat, regenerate, and transfer resources in order to ensure their preservation while complying with intellectual property laws.[25] Holders of rights over works or services protected by technological measures are required to provide

[17] *Id*. art. 6(3).

[18] *Id*. art. 6(4).

[19] *Id*. art. 7(1)–(2).

[20] *Id*. art. 8(1).

[21] *Id*. art. 8(2).

[22] *Id*. art. 8(4).

[23] *Id*. art. 9(1).

[24] *Id*. art. 9(3).

[25] *Id*. art. 9(4).

conservation centers with the necessary information to allow for the reproduction of those resources.[26] Those responsible for providing information are required to provide the means necessary to allow the transfer of data from its original media to the preservation platform.[27]

The National Library of Spain and conservation centers designated by the autonomous communities may enter into cooperation agreements with public or private entities with distribution platforms for online publications and digital resources produced or edited by them, if considered safe repositories for preservation purposes.[28] In this case, the safe repository becomes the guardian of the resources instead of transferring it to the conservation center.[29]

[26] *Id*.

[27] *Id*.

[28] *Id*. art. 10(1).

[29] *Id*. art. 10(3).

United Kingdom

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SUMMARY The United Kingdom has a robust system of copyright laws that was revised in 2003. The 2003 Act provided the Secretary of State with the power to introduce regulations to require publishers to deposit non-print materials with the legal deposit libraries across the UK. Non-print materials that meet certain criteria must be deposited with the legal deposit libraries if published in the UK. The regulations also enable the legal deposit libraries to perform web harvesting to obtain content, and provide restrictions as to the use of such content.

I. Introduction

The deposit of books has been required by law in the United Kingdom since 1662.[1] It is currently provided for by the Legal Deposit Libraries Act 2003.[2] This Act requires publishers and distributors to send one gratis copy of each publication to the Legal Deposit Office of the British Library within one month of publication.[3]

Five other libraries, which collectively with the British Library are known as legal deposit libraries, may within twelve months of publication obtain, upon request, a free copy of any recently published book for deposit.[4] These libraries are the National Library of Scotland, National Library of Wales, Bodleian Library in Oxford, Cambridge University Library, and Trinity College Library in Dublin.[5] While the law states that the five other libraries must submit a request within a year of publication to receive materials, "in practice many publishers deposit their publications with all six libraries without waiting for a claim to be made."[6] The aim of this requirement is to preserve knowledge and information for future generations and "maintain the national published archive of the British Isles."[7]

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[1] *Legal Deposit*, BRITISH LIBRARY, http://www.bl.uk/aboutus/stratpolprog/legaldep/ (last visited May 29, 2018), *archived at* https://perma.cc/J6X8-QRT9.

[2] Legal Deposit Libraries Act 2003, c. 28, § 1, http://www.legislation.gov.uk/ukpga/2003/28, *archived at* https://perma.cc/VYP3-V8DT. This obligation was previously contained in the Copyright Act, 1911, 1 & 2 Geo. 5, c. 46, § 15, which was repealed by the Legal Deposit Libraries Act 2003.

[3] BRITISH LIBRARY, *supra* note 1.

[4] *About*, AGENCY FOR THE LEGAL DEPOSIT LIBRARIES, https://www.legaldeposit.org.uk/about.html (last visited May 22, 2018), *archived at* https://perma.cc/AZJ9-Z6QC.

[5] Copyright Act, 1911, 1 and 2 Geo. 5, c. 46, § 15(2). *See also* Legal Deposit Libraries Act 2003: Explanatory Notes, ¶ 4, http://www.legislation.gov.uk/ ukpga/2003/28/notes/division/3, *archived at* https://perma.cc/PKJ4-E6UZ.

[6] *About*, AGENCY FOR THE LEGAL DEPOSIT LIBRARIES, *supra* note 4.

[7] *Id*. *See also* Legal Deposit Libraries Act 2003: Explanatory Notes, ¶ 6, https://www.legislation.gov.uk/uksi/2013/777/pdfs/uksiem_20130777_en.pdf, *archived at* https://perma.cc/QE84-PDYQ.

Provided work is original and falls within one of the copyright categories, registration of copyright in the United Kingdom is automatic,[8] and as a result there is no official copyright register.[9] Whether a work is original is ultimately a determination that can only be made by the courts.[10]

II. Mandatory Deposit of Non-Print Materials

The Legal Deposit Libraries Act 2003 included a framework under which regulations could be introduced to extend the requirement to deposit print materials to non-print materials.[11] This power was used and, on April 6, 2013, ten years after the Legal Deposit Libraries Act was enacted, the Legal Deposit (Non-Print Works) Regulations 2013 entered into force.[12] These Regulations extended the obligation to deposit materials to non-print materials to enable the legal deposit libraries to build and preserve a "national collection of e-journals, e-books, digitally published news, magazines and other types of content."[13]

A. Background to the Regulations

The 2013 Regulations were created amid a significant increase in online publications, leading the government to acknowledge that the internet has emerged as "an important record of national and world events."[14] The government has stated that these regulations are to achieve the policy objective of ensuring that the UK's non-print publications are preserved for future generations:

> [t]he extension of legal deposit to non-print works is designed to ensure that the UK's non-print published output (and thereby its intellectual record and published heritage) is preserved as an archive for research purposes, while also reducing the costs of legal deposit to publishers overall.[15]

To help determine the best way to implement these new obligations, the government established an independent, nondepartmental public body in 2005, known as the Legal Deposit Advisory

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[8] Copyright, Designs and Patents Act 1988, c. 48, http://www.legislation.gov.uk/ukpga/1988/48, *archived at* https://perma.cc/XF24-9ERA.

[9] *How Copyright Protects Your Work*, GOV.UK, https://www.gov.uk/copyright (last visited May 29, 2018), *archived at* https://perma.cc/PZ49-Z46V.

[10] *Id*.

[11] Legal Deposit Libraries Act 2003, c. 28, § 6.

[12] Legal Deposit Libraries (Non-Print Works) Regulations 2013, SI 2013/777, ¶ 2, https://www.legislation.gov.uk/uksi/2013/777/made, *archived at* https://perma.cc/JEH8-DZP7.

[13] *Depositing Electronic Publications*, BRITISH LIBRARY, https://www.bl.uk/aboutus/legaldeposit/websites/elecpubs/ (last visited May 29, 2018), *archived at* https://perma.cc/6ZGC-EKCB.

[14] Legal Deposit Libraries (Non-Print Works) Regulations 2013, Explanatory Memorandum, SI 2013/777, ¶ 7.1, https://www.legislation.gov.uk/uksi/2013/777/pdfs/uksiem_20130777_en.pdf, *archived at* https://perma.cc/QE84-PDYQ.

[15] *Id*. ¶ 2.3.

Panel, whose remit was to advise the government on how to implement the 2003 Act.[16] The government undertook a consultation in 2010, soliciting input on recommendations from the Legal Deposit Advisory Panel on proposals for e-deposit and the response from the consultation prompted it to drop regulations that it had drafted.[17] Issues that were highlighted during the 2010 consultations included

- a lack of clarification over the scope of the material covered by the regulations and whether or not the requirement to deposit non-print materials applied to both offline and online materials,
- uncertainty over what non-print materials are considered to be published in the UK,
- restrictions on access to the content,
- costs of providing and maintaining this content, and
- the data security and integrity of deposited materials.[18]

The government determined from the responses provided to the consultation that the regulations as proposed would create a disproportionate burden, not overcome by the public benefit of deposit, to both libraries and publishers, and it worked to revise the draft regulations to take the feedback from the consultation into account.[19]

Concerns were also raised over how restrictions on access to content after the expiration of copyright protections would be managed, but the government stated that this issue would be addressed at a later date, during a review of the regulations after their implementation.[20]

In 2012, the government revised and clarified the draft regulations and issued a second consultation that clarified the scope of the regulations as covering offline and online content, including online content that can be obtained through web harvesting.[21] The Legal Deposit (Non-Print Works) Regulations 2013 were subsequently enacted.

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[16] Department for Digital, Culture, Media and Sport (DCMS), Consultation on the Legal Deposit of Non-Print Works, 2012, ¶ 1.4 (hereinafter DCMS Consultation), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/73046/Consultation_on_the_Legal_Deposit_of_Non-Print_Works.pdf, *archived at* https://perma.cc/HWW5-82LQ.

[17] *Id*. ¶ 1.8.

[18] Legal Deposit Libraries (Non-Print Works) Regulations 2013, SI 2013/777, Explanatory Memorandum, *supra* note 14, ¶ 8.2.

[19] DCMS Consultation, *supra* note 16, ¶ 7.

[20] Legal Deposit Libraries (Non-Print Works) Regulations 2013, SI 2013/777, Explanatory Memorandum, *supra* note 14, ¶ 8.3.

[21] *Id*.

B. Material Covered by the Regulations

The material covered by the Regulations includes both offline publications, such as material contained on CD-ROM, DVD, or microform, and online publications, such as e-journals.[22] The government has specifically stated as follows:

> Work published in a medium other than print means work published on line (such as content from the internet, an e-book or an electronic journal) or work published off line (that is, published in a physical form other than print such as a CD-ROM, DVD-ROM or microfilm).[23]

The regulations specifically exclude the following classes of material:

- Work that contains personal data and is available only to a restricted group, such as information provided on a social media site with restricted access, such as closed groups on Facebook or protected tweets. Materials on these sites that are available publicly fall within the remit of the regulations.[24]
- Work that consists predominantly of film or recorded sound, or material that is incidental to this.
- In cases of electronic materials that must be requested, rather than copied, work published prior to the Regulations entering into force.[25]

In order for material to fall within the Regulations, it must be published in the UK, and this occurs when

> (1) . . .
>
> (a) it is made available to the public from a website with a domain name which relates to the United Kingdom or to a place within the United Kingdom; or
>
> (b) it is made available to the public by a person and any of that person's activities relating to the creation or the publication of the work take place within the United Kingdom.
>
> (2) A work published on line shall not be treated as published in the United Kingdom if access to the work is only made available to persons outside the United Kingdom.[26]

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[22] Legal Deposit Libraries (Non-Print Works) Regulations, *supra* note 12, ¶ 13(1).

[23] Legal Deposit Libraries (Non-Print Works) Regulations 2013, SI 2013/777, Explanatory Memorandum, *supra* note 14, ¶ 2.2.

[24] Legal Deposit Libraries (Non-Print Works) Regulations 2013, *supra* note 12, ¶ 13(2)(b). *See also* DCMS, Guidance on the Legal Deposit Libraries (Non-Print Works) Regulations 2013, ¶¶ 4.5 & 6.3 *(*Apr. 2013) (hereinafter DCMS Guidance), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/182339/NPLD_Guidance_April_2013.pdf, *archived at* https://perma.cc/MK7L-ETQX.

[25] Legal Deposit Libraries (Non-Print Works) Regulations 2013, *supra* note 12, ¶ 13. *See also* DCMS Guidance, *supra* note 24, ¶ 4.7.

[26] Legal Deposit Libraries (Non-Print Works) Regulations 2013, *supra* note 12, ¶ 18(1)–(2).

C. Deposit of Non-Print Materials

The new regulations enable the legal deposit libraries to claim and receive non-print publications, notably those in an electronic format, from publishers. The British Library is entitled to one gratis copy of every offline work that is published in the UK. The other deposit libraries are able to request a copy.[27] The format of the copy of offline material "must be of a quality most suitable for preservation as agreed by the publisher and the library or, in the absence of agreement, of the quality decided by the publisher."[28]

1. Depositing Materials Under Agreement

In cases where publishers issue two versions of a single publication, an electronic version and a print version, the default form of deposit continues to be print, although the publisher and library may mutually agree that the work may be deposited in electronic format rather than print format.[29]

The regulations enable the publisher and deposit library to agree to another method of delivering online content, such as through a secure upload, and this agreement will satisfy the requirement contained in section 1 of the Legal Deposit Libraries Act 2003 to deliver content while continuing to be subject to the restrictions and exemptions that the regulations apply to non-print materials.[30] The material must be provided in the form that is "most suitable for preservation purposes,"[31] as determined by agreement between the deposit library and the publisher or, in the absence of such an agreement, as determined by the publisher.[32] If such an agreement is made, the materials must be delivered within one month after a request is made in writing by the deposit library.[33]

For cases of offline materials and online materials obtained under agreement, the publisher must include a copy of any computer program and/or information necessary to access the work provided and a copy of a manual or other material that accompanies the work and is available to the public.[34]

2. Obtaining Content through Web Harvesting

In cases where there is no agreement for the deposit of online material, the Regulations permit deposit libraries to obtain a copy of online materials that fall within the criteria of the regulations through an automated process, known as "web harvesting." This process, which is coordinated between the deposit libraries to ensure sufficient coverage and prevent overburdening publishers'

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[27] *Id*. ¶ 15.

[28] DCMS Guidance, *supra* note 24, ¶ 4.10.

[29] Legal Deposit Libraries (Non-Print Works) Regulations 2013, *supra* note 12, ¶ 16(1). *See also* DCMS Guidance, *supra* note 24, ¶ 4.9.

[30] *Id*. ¶ 16(2). *See also* DCMS Guidance, *supra* note 22, ¶¶ 3.5 & 5.2.

[31] DCMS Guidance, *supra* note 24, ¶ 5.2.

[32] *Id*.

[33] *Id*. ¶ 3.6.

[34] *Id*. ¶ 7.1.

websites,[35] occurs where a computer fitted with software requests content from a website, and the website the content is requested from responds automatically with a copy of the content and its associated metadata.[36]

The regulations provide that the material must be provided automatically once the content has been requested by the software.[37] This applies to content freely available as well as content subject to public-access restrictions, such as behind a login page.[38] In cases of material behind a login page, the deposit library must provide notice to the publisher at least one month before web harvesting commences to enable the publisher to provide login details to the deposit library.[39]

This login information must be used for subsequent requests to the same site for content contained behind a password-protected wall. In cases of material behind a login page, the visit by the web harvesting software to the login page is "deemed to be a request for the on line works behind that page."[40]

D. Use of Materials, Restrictions, and Exemptions

To ensure that the copyright holder's work is not violated, the deposit libraries are subject to some restrictions over how the materials obtained may be handled.

1. Transferring and Viewing Materials

Deposited non-print materials may be transferred or lent to other deposit libraries, and the deposit libraries may use the materials for their own research.[41] The deposit libraries must wait seven days after receiving the materials before they make it available to the public. At that point, the Legal Deposit (Non-Print Works) Regulations 2013 provide that non-print material may only be viewed at a work station on "library premises controlled by the deposit library,"[42] and the deposit library may only display the same item of non-print material at one computer terminal to a person located on the premises at any given time.[43]

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[35] *Id*. ¶ 5.4.

[36] Legal Deposit Libraries (Non-Print Works) Regulations 2013, SI 2013/777, ¶ 13. *See also* Legal Deposit Libraries (Non-Print Works) Regulations 2013, SI 2013/777, Explanatory Memorandum, *supra* note 14, ¶¶ 7.2 & 8.1.

[37] DCMS Guidance, *supra* note 24, ¶ 3.3.

[38] Legal Deposit Libraries (Non-Print Works) Regulations 2013, *supra* note 12, ¶ 16(3).

[39] DCMS Guidance, *supra* note 24, ¶ 3.4.

[40] *Id*. ¶ 3.4.

[41] *Id*. ¶ 4.17.

[42] Legal Deposit Libraries (Non-Print Works) Regulations 2013, *supra* note 12, ¶ 2.

[43] *Id*. ¶ 24.

2. *Copying Materials*

The Regulations provide that deposit libraries may make copies of non-print materials in three scenarios without infringing copyright: (1) for the purposes of preservation, (2) for researchers and to enable access to visually impaired individuals, and (3) if another copy is not otherwise commercially available.[44]

Deposit libraries are authorized to make copies of or adapt non-print material for the purposes of preservation, and these copies may be in a different form or medium than the original deposit.[45] Deposit libraries may also dispose of deposited materials by destroying them, but must keep one copy of all relevant material in the most suitable version for the purposes of preservation.[46]

Librarians may make copies of non-print materials for researchers if certain conditions are met and the material copied forms a reasonable proportion of the non-print material that it is copied from. Deposit libraries may also provide copies of non-print materials where a database right does not exist if the library is satisfied the copy is required by a "person for the purposes of non-commercial research or private study, criticism or review or reporting current events, parliamentary or judicial proceedings or a Royal Commission or statutory inquiry and will not be used for any other purpose."[47]

In cases of non-print materials where a database right exists under the Copyright and Rights in Databases Regulations 1997,[48] a deposit library may provide copies to a person if it is satisfied "that the copy is required by that person for the purposes of parliamentary or judicial proceedings or a Royal Commission or statutory inquiry and will not be used for any other purpose."[49]

The Regulations also contain a declaration that may be submitted to the deposit library, enabling a user to declare that her or she will only use the materials for the purposes above, and that if the materials are used for any other purposes that user will be liable for infringing copyright.[50]

3. *Copyright Holder Restricting Access to Materials*

The Regulations permit rights holders to stop deposit libraries from providing access to their material

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[44] *Id*. ¶ 26. *See also* DCMS Guidance, *supra* note 24, ¶ 4.20.

[45] Legal Deposit Libraries (Non-Print Works) Regulations 2013, *supra* note 12, ¶ 29. *See also* DCMS Guidance, *supra* note 24, ¶ 4.22.

[46] DCMS Guidance, *supra* note 24, ¶ 4.24.

[47] Legal Deposit Libraries (Non-Print Works) Regulations 2013, *supra* note 12, ¶ 27(2)(a).

[48] Copyright and Rights in Databases Regulations 1997, SI 1997/3032, ¶ 20A, https://www.legislation.gov.uk/uksi/1997/3032/made, *archived at* https://perma.cc/Q9RD-TA9Y.

[49] *Id*. ¶ 27(2)(b).

[50] *Id*. ¶ 27(2)(c).

> if they can demonstrate that allowing access to the non-print work would, or would be likely to, unreasonably prejudice their legitimate interests. A rights holder may request an initial embargo of up to three years and may make subsequent requests of up to three years, each time meeting the requirement to demonstrate prejudice to their legitimate interests.[51]

The aim of the government is to "extend the system of legal deposit progressively and selectively to cover various non-print media as they develop, including off-line publications (e.g. CD ROMS and microforms), on-line publications (e.g. e-journals) and other non-print materials."[52]

E. Costs

The Legal Deposit Act 2003 included a requirement that regulations requiring the deposit of other materials should not result in costs to publishers that are disproportionate to the public benefit achieved by the process of deposit. Specifically, regulations could not be introduced "unless the Secretary of State considers that the costs likely to be incurred as a result of the regulations by persons who publish works to which the regulations relate are not disproportionate to the benefit to the public arising from the delivery of copies of such works."[53]

After a consultation, the Secretary of State determined that the costs that would be introduced as a result of the 2013 regulations were not disproportionate to the public benefit.[54] The government noted that the regulations would provide an overall savings to publishers, but impose additional costs on legal deposit libraries, who would have to establish and maintain a web harvesting system, but that this cost was outweighed by the public benefit "in being able to collect on line works systematically to produce a shared archive of non-print works, and the potential savings that can be made from no longer needing to archive a proportion of printed works."[55]

F. Development of Collections Policy

Deposit libraries are required to maintain and publish collections policies for non-print materials that detail the collection strategy and high-level priorities, and identify which publishers are within the scope of the Regulations.[56]

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[51] DCMS Guidance, *supra* note 24, ¶ 4.19.

[52] Legal Deposit Libraries (Non-Print Works) Regulations 2013, SI 2013/777, Explanatory Memorandum, *supra* note 14, ¶ 6.

[53] Legal Deposit Libraries Act 2003, c. 28, § 11(4).

[54] Legal Deposit Libraries (Non-Print Works) Regulations 2013, *supra* note 12, *Introductory Text*.

[55] Legal Deposit Libraries (Non-Print Works) Regulations 2013, SI 2013/777, Explanatory Memorandum, *supra* note 14, ¶ 10.2.

[56] DCMS Guidance, *supra* note 24, ¶ 5.1.

III. Alternatives to the Regulatory Approach

A voluntary arrangement had been in place for a number of years, and the Agency for the Legal Deposit Libraries considered that,

> [i]n practice, most publishers of such works have already been depositing them under a long-established voluntary code of practice, the provisions of which are similar to those in the Legal Deposit Libraries (Non-Print Works) Regulations 2013. Therefore no significant practical change or impact is anticipated, except changing from a voluntary to a statutory basis for depositing.[57]

The government's view contrasted with this statement, and it noted that it had

> considered non-statutory alternatives to this instrument, such as voluntary deposit schemes for non-print works. These have not been taken forward, however, as they would not adequately resolve the issue of a growing gap in the comprehensiveness of the archives and records of the UK's digitally published output.[58]

[57] *Electronic Legal Deposit: Legal Deposit Libraries' Collecting Plans For 2013–2014*, AGENCY FOR THE LEGAL DEPOSIT LIBRARIES, https://www.legaldeposit.org.uk/electronic/2013-2014-collecting-plans.html (last visited May 23, 2018), *archived at* https://perma.cc/7ZFJ-85Z4.

[58] Legal Deposit Libraries (Non-Print Works) Regulations 2013, SI 2013/777, Explanatory Memorandum, *supra* note 14, ¶ 7.4.