

## 2007 Discussion Paper on the Extension of Legal Deposit

Response from:

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January 2008

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National & State Libraries Australasia (NSLA) is the peak body representing the National Libraries of Australia and New Zealand, and the State and Territory Libraries across Australia. These ten major public research libraries connect people to information – on all subjects, in any format, and for any purpose – and preserve our intellectual and cultural heritage for future use.

### Summary

Global publishing has shifted, and is continuing to shift, towards digital access and distribution. The internet is the preferred mainstream platform for information-seeking, and publishers and creators of all kinds are generating information in digital form.

It is critical that the Commonwealth of Australia's legal deposit provisions evolve to reflect this change. Legal deposit legislation exists to provide the Australian public with access to a comprehensive national collection of published materials. Information in digital form is more transitory than physical material due to continuously developing technological environments, and the challenge to preserve it and to keep it accessible in the long term must be supported by strong enabling legislation.

The libraries represented by NSLA currently work under a variety of jurisdictional legal deposit legislation. In some states and in New Zealand new provisions concerning electronic publications have been successfully enacted, while others are either drafting new legislation or attempting to move the issue forward in their government's agenda.

NSLA strongly supports the extension of Commonwealth legal deposit provisions to include audiovisual and digital materials. To enable the National Library of Australia

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to use new legislation effectively, NSLA advocates the following key points be considered in developing the new provisions.

The extended scheme should:

- Be technology-neutral, to allow for rapidly changing formats and technological environments;
- Allow flexibility in collecting methods, also for technological considerations;
- Support selective acquisition, within institutional guidelines;
- Permit the right to produce multiple copies for preservation and management purposes;
- Allow open, free and unrestricted access to digital information wherever possible; and
- Increase financial penalties for non-compliance with legislation, to more effective levels.

### **Issue 1: Should the legal deposit scheme be extended to audiovisual and electronic materials and, if so, how should the materials be defined (including the quality of the legal deposit materials, such as “best copy”)?**

The legal deposit scheme should be extended to cover audiovisual and electronic materials. Definitions should be broad and technology-neutral as formats and platforms have, and will continue to have, rapid life-cycles.

The original format of a published work may be collected as the best, and often only, copy available. Preservation, cost effectiveness and long term access are highly likely to require copying and reformatting. An extended legal deposit scheme should include flexibility of format without the limitations of technical protection mechanisms.

### **Issue 2: Should an extended legal deposit scheme be in the *Copyright Act 1968* or is a separate piece of legislation more appropriate?**

A separate piece of legislation for extended legal deposit would be more appropriate, to allow for flexible definitions and provisions.

### **Issue 3: How many copies of published material should a publisher be required to deposit under an extended legal deposit scheme?**

Publishers should be required to deposit at least one copy of the publication (including print and digital formats) for preservation. Some internet sites may require multiple capture if they change over time.

NSLA libraries work in collaboration to maintain a distributed national collection. An extended legal deposit scheme should recognise that where networked access can be provided from one institution, duplication can be minimised.

**Issue 4: Should the existing requirement that material be deposited at the publisher's expense continue to apply under an extended legal deposit scheme?**

Publishers should continue to bear the expense of depositing material, whether print or digital. The National Library of Australia and other collection institutions are working towards reducing unit costs for managing digital deposit through flexible models.

**Issue 5: Should there be a role for other organisations, in addition to the NLA and NSFA, to act as repositories for material under an extended legal deposit scheme?**

It is not necessary to extend Commonwealth legal deposit rights to other organisations. Current models of collaboration and cooperation can continue to provide workable solutions within an extended legal deposit scheme. For example, national web archiving (PANDORA) is currently achieved through collaboration across the national, state and territory institutions.

**Issue 6: How might duplication of material collected by legal deposit agencies be avoided? For example, should publishers be required to deposit relevant material with more than one institution?**

Deposit with one institution would be sufficient.

**Issue 7: Should an extended legal deposit scheme apply to electronic versions of printed material?**

Yes. Where material is available in both printed and electronic versions, NSLA supports flexible provisions.

**Issue 8: What other material should an extended legal deposit scheme apply to?**

Legal deposit should extend to microform materials and all reformatting media.

**Issue 9: Should an extended legal deposit scheme apply to broadcasts? If so, should this be limited to any particular types of material? Should the scheme apply to internet material hosted in Australia?**

The internet hosts Australian mainstream published material and it is critical that this be included in an extended legal deposit scheme. Provisions should be flexible to allow selective acquisition.

**Issue 10: Should an extended legal deposit scheme apply to internet material hosted outside Australia and in what situations?**

Material owned by Australian publishers but hosted overseas should be covered by extended legal deposit provisions.

**Issue 11: What approach, comprehensive, selective or hybrid, should be used for collection of material under an extended legal deposit scheme? Should 'significance', say to Australian audiences, be the basis of any scheme? Should online and offline be treated differently and if so, on what basis?**

Extended legal deposit provisions should be flexible and technology neutral. Selection criteria, for example by 'significance', should not be prescribed.

**Issue 12: In light of the existing provisions in the Copyright Act, is there a need for any additional provisions to ensure the safe storage and preservation of legal deposit materials?**

An extended scheme should allow for multiple copies to be made for preservation and management purposes.

**Issue 13: What timeframe should apply for deposit under an extended scheme? Should different timeframes apply to the deposit of different published materials if legal deposit is extended?**

The current timeframe of one month would be appropriate under an extended scheme.

**Issue 14: In light of the recent amendments to the technological protection measure provisions in the Copyright Act, are any additional provisions required to ensure access to materials deposited under an extended scheme? Should publishers be required to ensure that the copy of published material provided under an extended scheme will be accessible?**

Publishers should ensure that materials are deposited, or made available for capture, free from technological protection measures so that copying and preservation actions can be undertaken successfully and cost-effectively.

**Issue 15: On what basis, if any, should access be restricted to material deposited under an extended scheme?**

Access to material should be as open and unrestricted as possible, within the Copyright Act. An extended legal deposit scheme should aim to facilitate access to all materials.

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**Issue 16: Under any extended scheme should legal deposit materials be subject to separate provisions concerning their use by the repository institution and the public? What kinds of provisions are desirable to ensure that repository institutions can provide the public with adequate access?**

An extended scheme should allow the repository institution to make multiple copies for preservation, management and access. The repository institution should also have the right to provide remote public access to web resources originally made freely available on the web.

**Issue 17: Are there any other issues that you consider relevant to the extension of the legal deposit scheme?**

The \$100 penalty for publishers not complying with current deposit legislation is inadequate as a deterrent.