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Implementing e-Legal Deposit: A British Library Perspective

[Ronald Milne](#) and [John Tuck](#) give a brief report of progress towards implementation of the Legal Deposit Libraries Act 2003 which extended provision to non-print materials. Particular reference is made to the British Library.

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Introduction

'The purpose of legal deposit is to ensure that the nation's published output (and thereby its intellectual record and future published heritage) is collected systematically and as comprehensively as possible, both in order to make it available to current researchers within the libraries of the legal deposit system and to preserve the material for the use of future generations of researchers' [1].

In his *Alexandria* article of 2004, Dr Clive Field, Director of Scholarship and Collections at the British Library (2001-2006), provided a detailed account of the Legal Deposit Libraries Bill and its progress through Parliament to the statute book. To quote directly from the article: 'The Act [Legal Deposit Libraries Act 2003 [2]] was brought into force on 1 February 2004 ... From this point legal deposit of printed works has operated under the new Act rather than under the now repealed Section 15 of the Copyright Act 1911. Extension to non-print media requires secondary legislation through Regulations. Government has determined that this process cannot commence until an Advisory Panel, independent of Government, is in place, to advise the Secretary of State on the Act's implementation.' [3]

It is the intention in this short article to provide an account of progress since 2004 from the enabling legislation provided by the Act towards secondary legislation. It is only through secondary legislation that deposit of electronic and other non-print material under the Act can commence. We focus on the work of the independent Legal Deposit Advisory Panel, set up following the Act, the six legal deposit libraries in the British Isles and the publishers. Some particular examples of working practice will be drawn from the experience of the British Library.

Legal Deposit Advisory Panel

The Legal Deposit Advisory Panel (LDAP [4]) came into being as an Advisory Non-Departmental Public Body in September 2005 and comprises fifteen members: five librarians, five publishers, and five independent members, one of whom is Dr Ann Limb, the Chair, who has spent her career in public service, including leadership of substantial educational institutions and working with government ministers and officials. In summary, LDAP's remit, revised in March 2007 [5], is to advise the Secretary of State for the Department for Culture, Media and Sport (DCMS) on the deposit of print material, and on regulatory and non-regulatory options for the deposit of non-print material. The primary focus of LDAP during its first years has been on analysing types of non-print material and, in particular, on evaluating options for the deposit of three categories: off-line, by which is meant hand-held items such as CDs and DVDs (excluding sound and moving image which are not covered by the Act); free UK online publications, by which is meant free publicly available UK Web sites where there is no barrier to access through commerce or subscription; and scholarly e-journals. Other key elements of the Panel's work have been arriving at a definition of the UK in a digital environment (the question of 'territoriality') and scoping publications which comprise the e-universe.

Legal Deposit Libraries

The move towards e-legal deposit in practice has had a significant impact on all the legal deposit libraries. As a result, following the passing of the Act, the six libraries (the British Library; the National Library of Scotland; the National Library of Wales; the Bodleian Library, University of Oxford; Cambridge University Library, and the Library of Trinity College Dublin) set about reviewing their own co-ordinating structures relating to legal deposit.

Through the Legal Deposit Librarians Committee, which comprises the Principals of all six libraries, a Legal Deposit Librarians Committee Implementation Group (LDLC IG) was set up, chaired by Andrew Green, Librarian of the National Library of Wales. It has representation from all six libraries and is tasked collectively and collaboratively to address the wide range of *library* issues necessary to facilitate the implementation of e-legal deposit. These include technical infrastructure, access, metadata, shared cataloguing, preservation, legal issues such as data protection, as well as gathering the necessary library costings and evidence from pilot and voluntary schemes set up under the auspices of LDAP. To facilitate this consolidated approach, the post of Legal Deposit Libraries Project Officer, funded by and working for all six libraries, was established in March 2007. It is the role of the Project Officer, Richard Gibby, to ensure join-up across the institutions, to gather data and evidence, and to act as the conduit to LDAP through a close working relationship with the LDAP Policy, Project and Research Officer and with the publishers and their representative bodies.

The British Library

The British Library was established by statute in 1972 and under the terms of the British Library Act was established as the national library of the UK, 'consisting of a comprehensive collection of books, manuscripts, periodicals, films and other recorded material printed or otherwise' [6]. The British Library, recognising the fundamental importance of legal deposit in underpinning its content development strategy, accorded a legal deposit matrix role to a senior member of staff in 2006 to ensure that work on all the various strands of e-legal deposit activity were co-ordinated and directed towards the priorities agreed by the LDLC IG.

This matrix role was located within British Collections as a component of the post of Head of British Collections who set up formal and informal structures and channels of communication within the Library to ensure join-up and to monitor progress. Particular responsibilities for the matrix role holder were to ensure that British Library strategy and policy across a wide range of areas, for instance digital preservation, e-journals management, licensing and technical developments, Web archiving, and the Library's overall newspaper strategy were synchronised with legal deposit priorities and policies.

This was particularly important as the British Library was lead partner for the UK Web Archiving Consortium (UKWAC - see below); had moreover managed an e-journals pilot for legal deposit in 2005/06; and subsequently, within the current e-journals voluntary scheme, was playing the lead technical role in testing file formats for legal deposit. It was also embarking on a major newspaper strategy. The matrix role holder was also responsible for ensuring strong communication between the British Library and the other legal deposit libraries as well as with other stakeholders, for example, the newspaper industry.

Working with Publishers

The legal deposit libraries have worked co-operatively with publishers over many years, for instance through the Joint Committee on Voluntary Deposit and in connection with the Voluntary Scheme for Offline Materials, set up in 1999 [7]. After the passage of the Act, this body became the Joint Committee on Legal Deposit (JCLD) which continues to meet regularly, under joint library/publisher chairmanship, and comprises representatives of the legal deposit libraries and publisher trade associations. It has proved to be a very useful mechanism, both to discuss issues of common concern, e.g. territoriality, and to prepare reports and documentation for LDAP. For instance, with reference to e-journals, a joint LDAP/JCLD committee has been set up to oversee progress on the current voluntary scheme.

Identifying and Scoping the Universe

The process required by government to achieve Regulation can be summarised as one of options appraisal and, as indicated above, this is being applied category by category. A main driver of this approach has been a report, commissioned by LDAP and carried out by David Powell (then EPS, now Outsell), to consider the universe of e-publications as it would apply to e-legal deposit. The report [8], which forms the basis for LDAP's planning framework, outlines a new taxonomy based not on the traditional print-world formats such as books, journals, newspapers, maps, etc but rather on categories such as online/off-line; content delivered to/collected by users; freely available content/content protected behind a barrier.

The work of LDAP has also progressed against the background of the government's Better Regulation initiative, which seeks to minimise administrative burdens for business. It has therefore been necessary for LDAP to consider the costs, benefits, risks, and disadvantages of a number of options in respect of each category. Consequently, LDAP has set up sub-committees, which include co-opted members with relevant expertise, for Web, off-line and e-journals.

Web

In the case of free UK online publications, three options have been assessed and costed:

1. permissions-based harvesting and archiving (this is where explicit permission has to be gained from a Web site owner before a Web site can be harvested and it is the model used by UKWAC) [9];
2. regulation-based harvesting and archiving; and
3. archiving left to the market.

After full analysis and costings, these options were put to LDAP in May 2008, together with a recommendation for the full Regulation option. The full Regulation option would allow the legal deposit libraries in the UK to harvest, preserve and make accessible this category of material without the need for permissions but within certain restrictions laid down by the Act, for instance, access to the content on legal deposit library premises only. At the same time the Act affords publishers and libraries protection on copyright infringement and defamation.

It is estimated that this Regulation-based approach, not requiring permissions, would be much more cost effective than the UKWAC permissions approach. In comparison with the approximately 3,000 sites so far collected by UKWAC, it would enable whole UK domain harvesting and would secure an estimated 80% of the domain for the national published archive after 10 years at a current annual cost of £215 per terabyte. LDAP accepted this recommendation, subject to clarification of one or two points. The next step is for the recommendation to go to DCMS whose officers will prepare the next stages of the process, which are:

- approval of the recommendation by the Secretary of State;
- an economic impact assessment; a public consultation; and then
- affirmation by both Houses of Parliament.

The earliest time by which Regulation could be implemented would seem to be late 2009 or early 2010.

Off-line

A similar process was followed for off-line materials and a recommendation brought to the May 2008 meeting of LDAP. In this case, based on the evidence provided through a relaunched voluntary scheme which ran from February 2007 to January 2008, the recommendation, approved by LDAP, was for a self-regulated voluntary scheme. One strong argument for this is linked to the Better Regulation agenda for the good reason that publishing in an off-line format is declining in favour of online and it would seem inappropriate for the whole regulatory process, therefore, to be applied. The next step is the submission of this recommendation to DCMS and then consideration of how and when the self-regulatory scheme can be implemented. In the meantime, the legal deposit libraries will continue to apply the practices and procedures which underpinned the relaunched voluntary scheme.

e-Journals

A voluntary scheme is currently under way for scholarly e-journals. This is focussing on testing file formats from particular publishers. In parallel, a scoping study of the e-universe of UK e-journals has been commissioned, the results of which are due later in 2008. The outcomes of the scoping study and the voluntary scheme, which is subject to an annual review, will provide evidence for LDAP's work on assessing options for any recommendation for this category of material. It would seem likely that it will be two or three years before a full options appraisal can be undertaken and a recommendation made.

Next Steps

Later in 2008, LDAP will consider next steps for the remaining categories in the context of this new taxonomy and will assess the feasibility of proceeding with recommendations for other categories, not one by one but more collectively.

Conclusion

The electronic environment brings with it a whole range of challenges and opportunities. They apply to and have a significant impact upon the practices of the legal deposit libraries and the publishers. Of course, they apply beyond the UK and other national libraries are grappling with the same issues. LDAP

the legal deposit libraries and the publishers. Of course, they apply beyond the UK and other national libraries are grappling with the same issues. LDAP and LDLC IG are keeping abreast of these international developments. LDLC IG has also put in place a Technical Infrastructure Committee which is planning and preparing the shared technical infrastructure for the legal deposit libraries. In accordance with the provisions of the Act, this will receive, preserve and make accessible the e-content collected under legal deposit.

A more detailed article on the subject of progress towards e-legal deposit is being prepared by Andrew Green and Richard Gibby and will appear soon in the *New Review of Academic Librarianship*.

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