



Australian Society of Authors

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Mr Simon Cordina  
Assistant Secretary  
Content, Programs and Regulation Branch  
Department of Broadband, Communications, and the Digital Economy  
GPO Box 2154  
Canberra ACT 2601

Dear Mr Cordina

**Re: Review of the Extension of Legal Deposit**

Thank you for the opportunity to comment on the issues raised in the Discussion Paper on the Feasibility of Extending the Current Legal Deposit Scheme to include Audiovisual and Electronic Material.

*About the ASA*

The Australian Society of Authors is the peak body representing Australia's literary creators. Our members are biographers, illustrators, academics, cartoonists, scientists, food and wine writers, historians, children's writers, ghost writers, librettists, travel writers, romance writers, translators, computer programmers, journalists, poets and novelists. The ASA was formed in 1963 to promote and protect the rights of Australia's writers and illustrators, and now has almost 3000 members across Australia. The ASA has been instrumental in setting up the Copyright Agency Limited and the Australian Copyright Council, and successfully campaigned for the implementation of Public Lending Right in 1975 and Educational Lending Right in 2000. The ASA sets minimum rates for pay and conditions for authors and illustrators, and publishes books, papers and lists for emerging and established writers.

*Issues for consideration*

I believe it is fair to state that the ASA has maintained a close and productive relationship with the National Library of Australia (NLA) since the Society's formation. Many individual members of the ASA have also had close and

mutually beneficial relations with the NLA. The ASA values the work of the NLA in maintaining an archive of Australia's cultural heritage and we support the NLA's continuing role in this regard.

The issue of legal deposit, and the review, is of relevance to our members as many of them are self-publishers of their work in print form and many more these days produce online material (websites) that is both complementary and supplementary to print forms of their work. We address the issues from this perspective.

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

The ASA is not adverse to legal deposit being extended to audiovisual and electronic materials where these are new concrete works. For example, we would argue that a DVD or CD-ROM recording poets performing their works should be treated in the same way as a new book of any of these poet's works and subject to legal deposit provisions. However, we do not see that an "e-book" version of a previously printed book needs to be covered by legal deposit provisions, since the print version is already in the cultural heritage archive.

It may be, too, the current provisions for legal deposit could be amended so that "facsimile" editions (as opposed to amended or revised editions) of works need not be subject to legal deposit when the original edition had already been lodged.

We would also argue that there are no clear definitions of what audiovisual and electronic materials and we support the view of the Australian Publishers Association in calling for such definitions.

However, from a logistical and practical viewpoint we cannot comprehend how websites could be collected for legal deposit since they are not concrete but virtual, and frequently subject to constant change.

We suggest that for future cultural heritage and study purposes it may be that a "snapshot" of website URLs could be collected by an agency such as the National Archives of Australia (NAA) and stored in some manner for the use of future researchers (and released for access say after 25 years, the current copyright period for a published edition), but since these websites are currently so widely available and accessible, it would seem onerous for both the NLA and the publishers of these websites for a legal deposit procedure to be implemented.

Where materials are available for use through a commercial licence, we would argue that it is in the interest of creators and publishers for collecting agencies to avail themselves of such licences. We do not feel that legal deposit provisions should become an impediment to commercial publishing. The ASA does not believe that material provided through legal deposit provisions should be used in place of materials a library would otherwise acquire as part of its collections policy. For example, we do not believe works provided under legal deposit provisions should be used for inter-library loans, borrowing or unfettered public

access. The primary purpose of these works is the maintenance of an archive of cultural heritage.

And how would this new deposit of websites differ/contribute to the current Pandora web archive (<http://pandora.nla.gov.au/about.html>) that the NLA manages? PANDORA, Australia's Web Archive, is a growing collection of Australian online publications, established initially by the National Library of Australia in 1996, and now built in collaboration with nine other Australian libraries and cultural collecting organisations.

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

An extended legal deposit scheme could be covered by amendments to the *Copyright Act*. However our suggestion above that an agency like the NAA take a "snapshot" of Australian websites and keep this as an archive for future researchers may need to be covered by separate legislation.

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

One, and at no cost or on a remunerated basis when provision of the material threatens commercial agreements.

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

If by doing so commercial returns to the publisher and creator are decreased, then adequate remuneration should be made for the legal deposit copy.

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

See our comments above regarding the NAA.

*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 should be made only once. The collecting agencies must ensure their records note what is deposited and where. This should be a minor problem in this day and age when data can be transferred and accessed swiftly by electronic means and libraries and collecting agencies maintain comprehensive online catalogues.

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

The ASA does not believe that the extended legal deposit scheme should apply to an electronic version when that version is a facsimile edition of the printed material (for example, an e-book). We would also argue that a paperback facsimile edition of an original hardcover book should be excluded from the current legal deposit rules.

*Issue 8: What other material should an extended legal deposit scheme apply to? If films are to be subject to legal deposit, the same rules should apply to electronic games. It does not seem fair to impose such an obligation only on those who make electronic games, so this should be extended to mall games. In fact to ensure a full and complete record of our cultural heritage all visual works, designs, artworks, ceramics, manufactured goods, patented items, etc should be subject to legal deposit.*

However, this is obviously impossible and excessively onerous. And the ASA argues that the same is true for websites and similarly published material.

*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 ASA believes the extended legal deposit scheme should apply to radio, television and internet broadcasts. We do not believe that this should be limited to any type of material as all material broadcast is indicative of the tides and currents our culture at the time of broadcast.

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

No.

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

The ASA does not believe "significance" is a sufficiently objective term. We would argue that the term needs to be very clear and precise to ensure they can be appropriately implemented in the best interests of both the collecting agencies and publishers/creators. We support the views of the Australian Publishers Association in this regard.

*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?*

Yes. These materials should not be on open access or used in place of material collecting agencies would otherwise acquire as part of their collections policy.

*Issue 13: What timeframe should apply for deposit under an extended legal deposit scheme?*

- *Is the timeframe for deposit suggested by the CLRC appropriate in the context of a selective approach to extending legal deposit?*
- *Should different time frames apply to the deposit of different published materials if legal deposit is extended?*

See our suggestion above with regard to the NAA and an archive of website "snapshots" with access restricted for at least 25 years.

*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 legal deposit scheme?*

No. In fact, the ASA would argue that the recent amendments go too far in providing collecting agencies with the ability to access material that would otherwise be available through commercial licence.

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

Access should be restricted so that the material is not used in place of what collecting agencies would otherwise acquire as part of their collections policy

*Issue 16: Under any extended legal deposit scheme should legal deposit materials be subject to separate provisions concerning their use by the repository institution and the public?*

Yes. See above.

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

Not at this point.

Please do not hesitate to contact the ASA if you require any further information on the views expressed here.

Yours sincerely

Dr Jeremy Fisher  
*Executive Director*