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## Legal Deposit of Audiovisual Materials at Library and Archives Canada

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**Meeting:** 95 Audiovisual and Multimedia, Copyright and other Legal Matters, National Libraries and Bibliography  
**Simultaneous Interpretation:** English, Arabic, Chinese, French, German, Russian and Spanish

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### *Abstract*

*Legal Deposit at the National Library of Canada (now Library and Archives Canada) for audiovisual materials began in 1969 with sound recordings and has grown to include multimedia kits, videorecordings and CD-ROM.*

*As well as changing formats, the industry has changed from domination by major international companies to an industry where most Canadian AV publications are released by independent publishers or individual musicians or bands. The demographic for independent music publishers means dealing with people who are mostly under 30 and who place relatively little importance on the idea of preserving their heritage.*

*This paper will look at how the LAC has responded to these challenges over the decades, and how it hopes to deal with the new challenges on the horizon as electronic publications, including musical and audiovisual files, became subject to legal deposit in 2007.*

### **Background on Legal Deposit in Canada**

Legal Deposit began at the same time that the National Library of Canada (now Library and Archives Canada) was created in 1953, with the passing of the National Library Act. At the time, Legal Deposit was limited to print materials, such as books, pamphlets, and annual publications. The National Library Act was revised in 1969 and broadened the definition of a “book” to be “any document, paper, record, tape or other thing published by a publisher, on or in which information is written, recorded, stored, or reproduced”; this is when the Legal Deposit of sound recordings began. (Information about Legal

Deposit can be found on our website at <http://www.collectionscanada.gc.ca/041/008/index-e.html>.)

According to the regulations that accompanied the 1969 revision, to be accepted on Legal Deposit, musical sound recordings must have some “Canadian content, or major Canadian contributor such as a composer, artist, narrator, conductor, orchestra, performer, writer or producer”, in addition to being manufactured in Canada. This has limited the number of titles that we acquire, and has also made building the collection very labour-intensive, since the Canadian content must be verified for each item. Sound recordings are acquired in one copy in all formats in which they are released, so occasionally this means that we may acquire recordings for which we do not have playback equipment.

Spoken word recordings are required in two copies, in order to provide one copy for service to the print-handicapped community. Spoken word titles include not only audiobooks, but also conference proceedings and continuing education materials.

In 1978, multimedia kits were added to Legal Deposit. In the beginning, these frequently consisted of slide-tape presentations; today they are more likely to be a book with a CD-ROM appendix, or an educational video with a teacher’s guide.

In 1993, videorecordings were added to Legal Deposit; these are also acquired in all the formats in which they are released. Currently, most videos are deposited in DVD format. Only Canadian productions or co-productions are acquired. Legal Deposit of CD-ROMs also began in 1993.

Broadcast materials and feature films are not acquired through Legal Deposit, but are acquired selectively by the Film and Broadcasting Archives at LAC. LAC does have agreements with agencies that fund film and television production in Canada, such as Telefilm and the Canadian Television Fund, whereby funding recipients must donate an archival master and a reference copy of their productions to LAC.

Publications are required on deposit if 4 or more copies have been published, which means that we acquire a great many independent releases. We do try to be comprehensive, in that we try to request every sound and video recording released in Canada. In the fiscal year, 2007/2008, we acquired more than 6500 AV publications on Legal Deposit.

### **Current Situation for Legal Deposit**

In 2004, the National Library of Canada and the National Archives of Canada were merged to become Library and Archives Canada. The latest revision of the Act, now called the Library and Archives of Canada Act (<http://laws.justice.gc.ca/en/L-7.7/index.html>), and the Legal Deposit of Publications Regulations (<http://laws.justice.gc.ca/en/N-12/index.html>), came into effect on January 1, 2007. The new definition of materials that are subject to Legal Deposit is “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”. The Act also specifies that “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”. In the Regulations, the publisher is defined as “a person who makes a publication available in Canada that the person is authorized to reproduce or over which the person controls the content”. This is a very broad application, and easily includes all types of audiovisual materials, and all types of publishers. Publications made available “on demand” are for the first time also subject to Legal Deposit.

One common question I get is about the connection between Legal Deposit and copyright. Since copyright in Canada is covered by common law, it is not necessary to deposit materials with LAC in order to claim copyright. However, many musicians appreciate the fact that a Legal Deposit receipt can act as backup proof in case of a copyright dispute.

The nature of collecting AV materials has changed considerably since its beginning in 1969. At that time, it was very difficult and expensive to make and release a recording. Most recordings in Canada were released or at least distributed by one of the major international record labels, and the largest number of recordings deposited came from them. Smaller, independent labels did exist, but there were relatively few of them. In 1969, the library collected black vinyl recordings, cassettes, and 8-track and reel-to-reel tapes. We have migrated to other formats, with CDs currently being the primary medium, although vinyl has recently had an interesting resurgence in popularity.

With the advent of new technologies, it has become easier for musicians or bands to record and release their own sound recordings. The result has been a dramatic shift in emphasis, with more than 85% of new releases acquired coming from very small record labels or individuals. In the AV Unit, we contact approximately 2,000 new publishers a year concerning the Legal Deposit of their recordings.

### **Identifying Audio-Visual Material for Deposit:**

LAC staff are very active in soliciting AV publications for Legal Deposit, and we use a wide variety of sources to identify new publications that should be deposited. We go through several periodicals and catalogues, some aimed at the music industry and others that are targeted at fans. We have a clipping service that scans all Canadian newspapers for information about new releases. We also check websites that feature new Canadian releases. Basically, if something gets any publicity, it will probably be requested.

### **Challenges in Legal Deposit:**

One of the most challenging parts of the job is tracking down addresses for the independent releases, so that we can mail a Legal Deposit request letter to the musician or record company. While we do use print sources, the information in these can quickly go out of date, so internet searching and e-mailing a publisher is the primary way we have of locating an address. Even if we do have an address, the odds of a musician being at their permanent address to receive our Legal Deposit request, particularly during the festival season, are very low. Musicians frequently change residences, or have no permanent address at all.

Another challenge is that posed by demographics: with most people releasing independent recordings being quite young, they are often not particularly concerned about making sure that their music is preserved for the future.

The response of publishers to a Legal Deposit request can vary significantly. Most publishers deposit their publications, eventually, although they often will ignore the request until they have received two or three reminders. Many are delighted with the idea of having their music preserved in a national collection. However, some are very resistant, for a variety of reasons. Some cite the financial burden. Others are opposed simply because we are a government department. Some call it an invasion of privacy. In general, we send out approximately three reminders for each audiovisual publication that we receive. And I spend a lot of time on the phone or in e-mails trying to persuade someone who has received a request that depositing their publication is in their best interest.

In comparison with the area of print publications, AV faces another challenge: the low profile of the LAC in the AV industry. Many print publishers learn about the LAC through the ISBN and CIP programmes, which predispose them to willingly deposit their publications. As I am sure you are well aware, there is no international standard number for CDs, and while some video publishers choose to get an ISBN for their videos, the use of an ISBN within the community is not as well-known or standardized as in the book industry. Therefore, the first time an AV publisher has heard about the LAC and Legal Deposit is often when they get a Legal Deposit request letter. I have had musicians tell me that they thought that the request was a joke, because they didn't know LAC existed; others have called it a scam.

### **Raising Awareness of Legal Deposit:**

In order to promote the LAC and Legal Deposit within the musical community, we attend music industry conferences across the country. These include regional conferences of organizations such as the East Coast Music Association and the Western Canadian Music Alliance, genre organizations such as the Canadian Country Music Association and the Ontario Council of Folk Festivals, and Canadian Music Week, which covers the whole spectrum of the music industry in Canada. In order to let all the delegates learn about Legal Deposit, we have developed a small brochure which we distribute in delegate bags at these conferences. The brochure explains the role of LAC, particularly in regards to

music, what Legal Deposit is, and the benefits to Canadian musicians. It certainly has improved our profile over the years that we have been distributing it, but we must continually do outreach. The community is so young, and the turnover is great, as bands break up, record companies go under, and musicians quit because they decide that there must be an easier way of making a living.

### **Bibliographic Procedures:**

Each title requested on Legal Deposit receives a preliminary bibliographic record as soon as the request is prepared. This record appears immediately on our website in AMICUS, the national bibliographic database (<http://www.collectionscanada.gc.ca/collection/index-e.html>). When we receive the item, the bibliographic information is updated, and a Legal Deposit receipt is issued. Only basic information about the publication appears on the receipt, such as the name of the performer, the title, the recording label and number (if applicable), the name and address of whoever sent it to us, and the date we received it. The item is then described more fully by the cataloguers.

### **Storage and Access:**

There are more than a quarter of a million published recordings held at LAC. A collection of this size presents many preservation and storage issues. Published sound and video recordings are stored in closed stacks in the Music Section of the main LAC building in Ottawa. Unpublished (archival) materials are stored in the Gatineau Preservation Centre in Gatineau, Quebec. AV materials are not available for loan. Researchers may come to LAC and access the recordings; sound and video recordings are played for researchers by on-site technicians, in order to preserve the physical item, and to ensure that copyright is not violated. We will copy recordings for clients if the recordings are in public domain, are considered to be fair dealing, or permission has been obtained from the rights holders. Selected materials from our collection that are in the public domain appear on our website, the Virtual Gramophone (<http://www.collectionscanada.gc.ca/gramophone/index-e.html>).

### **Preservation Issues:**

LAC has sound technicians and other specialists who work to preserve the physical item, where possible, and to transfer the data to another format, when the physical item cannot be preserved.

### **Electronic Publications:**

In January 2007, electronic publications became officially subject to Legal Deposit. This includes audiovisual publications available as downloads.

Although, according to the current Legal Deposit regulations, sound and video recordings available only as downloads from the internet are subject to Legal Deposit, the LAC is unable at the present time to accept them. For the most part, the barriers are technical.

The LAC is currently in the process of implementing a Virtual Loading Dock, for acquiring and providing temporary storage for electronic publications, and a Trusted Digital Repository for storing, preserving and providing access to them. The Legal Deposit priority at the moment is for text-based electronic publications.

The challenges we anticipate, when we do begin accepting AV electronic publications, will be enormous. Delivery of sound recordings will change from a package of 10 or 12 songs on one CD, to individual songs. This in itself could make us responsible for acquiring 10 times as many titles as we do at present. In addition, it is quite likely that many people who can't, or won't, pay for having a CD manufactured, will be willing to make their song available on the internet for downloading. While the current Legal Deposit restriction of the number of copies manufactured is quite low, it at least does set some kind of limitation, and saves us from being a copyright depository for unpublished demos.

Nothing in the regulations for Legal Deposit allows us to be selective about the quality of the materials to be acquired. Therefore, challenges face us if we need to limit what we acquire. If we try to be selective, we will need to come up with some way of ensuring that personal bias does not unduly influence what we acquire. Selection criteria might include a requirement for standardized metadata, that the recording be available elsewhere on the internet, or that it be deposited only in certain accepted formats.

It is expected that acquiring music available as free downloads will not be too difficult, since there will be no need to send a letter requesting the titles. The Act does allow us to harvest websites, which would allow us to gather materials from music and video sites. Currently, LAC is harvesting Government of Canada websites, some of which may contain sound and video files. However, it is still not precise as to how deep into a web site the archiving will go, and if the individual sound files will be accessible directly as music files or only as part of the archived web site.

For titles not made available for free to the general public as downloads, discussions have been held with the service delivering sound files to radio stations about the possibility of availing ourselves of the service as well. The primary challenge will be ensuring that there are enough resources to process what we receive.

### **Storage and Preservation Issues for Electronic Documents:**

There are many questions regarding long-term storage and preservation issues for born digital materials, particularly for AV materials which require more storage space than text materials. There are issues about cataloguing and metadata. And of course, with so many people concerned about copyright issues, there is the problem of ensuring some kind of access, while still protecting copyright. But the key to digital deposit is managing the technology.

LAC is using the Guidelines on the Production and Preservation of Digital Audio Objects published by the International Association of Sound and Audiovisual Archives to

establish archiving standards. Many of the standards call for formats which are of better quality than what is currently commonly used for distribution on the web. MP3, the most common format, uses compression technology which makes it easier to distribute but which affects the quality of the recording. This presents another question: do we maintain permanently technically low quality recordings? We will need to have some kind of process and permission in place to ensure that digital information can be transferred to new technologies, when the ones currently being used become obsolete. Traditionally sound and audiovisual archives have always had a policy to retain the original, even if it has been transferred to another format, because the original recording contained audio and physical artefacts that are considered to be an essential part of the recording's history. Is this practical or necessary in the digital age? If we lose the ability to access the content because of changes in technology, then should we not be obliged to convert it to an accessible format? If we can not convert or access that document, are we obliged to keep it?

How do these decisions affect LAC's commitment to permanent preservation? Managing large quantities of digital files not only means migration from old software to new software but migration from old storage platforms to new storage platforms. Digital data may always be in a state of permanent flux. What of the original then? When we accept something on Legal Deposit, we need to be cautious as to what we are promising our depositors. That promise needs to be carefully considered and clearly stated to ensure that LAC is not committing to, or implying, anything that is beyond our capacity and our capabilities. Cooperation from musicians, record companies, and other depositors, is essential for Legal Deposit. We do not want to mislead the music community.

## **Conclusion**

Our web site states, "Library and Archives Canada administers Legal Deposit as part of its responsibility to preserve the nation's published heritage and make it accessible to present and future generations". The digital world will challenge every aspect of Legal Deposit and our commitment to select, acquire, preserve and make accessible Canada's audiovisual heritage. The decisions we make in the coming months will move Legal Deposit in new and exciting directions that have the possibility of fundamentally altering how we conceive, approach and execute our responsibilities to make today's culture available to future generations of Canadians. Adapting Legal Deposit to the new technologies will be exciting and challenging but, however, it will not be easy.