

Visibility of International Recommendations for Legal Deposit of Publications in National Legislations

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1. Introduction:

In 1974 Unesco and IFLA undertook the task of guiding the efforts of those countries willing to adhere to the program of National Bibliographical Control, with the aim of achieving the highest aspirations of Universal Bibliographical Control (UBC). These programs were the framework for the issuing of general recommendations for the components of the national systems, that is, the legal deposit law, the national bibliographical agency and the national bibliography. These three elements work in a dialectical way.

The procedure recommended as effective for collecting copies of national publications in an institution responsible for its care is a legal deposit legislation with certain features, all of which are of considerable importance for the shaping and preservation of the national collection and the coverage of the national bibliography.

The first recommendations arose from the 1977 International Congress on National Bibliographies (ICNB 1977) and they resulted in the suggestions proposed by Dr. Jean Lunn in her 1981 *Guidelines for Legal Deposit Legislation* (Lunn 1988). In 1996, the CDNL (Conference of Directors of National Libraries) achieved the first update of the previous work, *The Legal Deposit of Electronic Publications* (LDEP 1996). In 1998 the International Congress on National Bibliographic Services (ICNBS 1998) was held and two years later, Jules Larivière published its *Guidelines for Legal Deposit Legislation* (Larivière 2000). Observance of these guidelines was preached both to those nations lacking in legislation and to those nations that would modernize the texts of their existing regulations.

Were these suggestions considered by the nations? Which countries did this? Which levels of compliance are achieved by legal deposit laws of different countries? Which are the most widely applied recommendations for legal deposit? Which are the ones that are not yet reflected in most of the legislations? Which reasons can be given to consider some of the legal deposit laws currently in force as strong/weak instruments of the Universal Bibliographical Control? These questions are answered through the study of a sample of national legal deposit laws.

Most prior studies that have adopted legal deposit legislation as object of research are comparative in nature and seek to sustain certain recommendations or to show the evolution of electronic publications legal deposit (Lunn 1986, Mackenzie Owen and Walle 1996; RWPLD 1998; Larivière 2000; Muir 2001; PADI 2003). So far there are no registered inquiries that approach the topic of adapting legal deposit laws to the international recommendations.

2. Material and methods:

With the general objective of getting to know the general characteristics of different national legal deposit legislations, as well as the extent to which they comply with the international recommendations and the likeness among them, this research went through the following stages:

a. Selecting of legal deposit laws. The selected texts belong to the following countries:

1. ARGENTINA. Ley 11723 (1933); Dec. 41233 (1934); Dec. 3079 (1957).
2. BENIN. Ordinance 75-79 (1975).
3. BRAZIL. Dec. 1825 (1907) e Instruções de 19 de dezembro de 1930.
4. CANADA. National Library Act (1985) and National Library Book Deposit Regulations (1995).
5. COLOMBIA . Dec. 460 (1995) y Dec. 2937 (1948).
6. CUBA. Dec. 265 (1999).
7. DENMARK. Act 423 On Copyright Deposit of Published Works (1997).
8. SPAIN. Dec. 642/70 y Órdenes Ministeriales 30 de Octubre de 1971 y 20 de Febrero de 1973.
9. FINLAND. Law 420 (1980).
10. FRANCE. Loi 92546 (1992) ; Dec. 931429 (1993).
11. JAPAN. National Diet Library Law (No. 5, 1948) and modifications until 2002.
12. MEXICO. Dec. del 23/7/1991.
13. NORWAY. Act 32 (1989) and Royal Dec. 25/5/1990.
14. NEW ZEALAND. National Library Act 1965, Section 30 A, amended 1994.
15. PANAMA. Ley 47 (1946), art. 92, modific por Ley 34 (1995); Ley 11 (1978), art. 8.
16. PERU. Ley 26905 (1997) y Dec. Supremo No 01798 ED (Reglamento).
17. PORTUGAL. Dec- Lei 74 (1982), Dec-Lei 362 (1986); Despacho 54 (1982).
18. UNITED KINGDOM. Legal Deposit Act (2003).
19. VENEZUELA .Ley de Depósito Legal en el Instituto Autónomo Biblioteca Nacional (1993) y Reglamento Dec. 1975 (1997).
20. SOUTH AFRICA. Legal Deposit of Publications Act (1997).

b. Definition of 19 categorical active variables and of 2 supplementary ones and their modalities. The variables were classified into 3 typologies: 1) Strength and structure of legislation (including 5 variables); 2) Elements of legal deposit (including 10 variables); and 3) Coverage of publications (including 4 variables). Design of a checklist (Appendix 1).

c. Assessment of laws using a checklist to calculate the presence of variables within their texts. Rating of laws according to the number of positive aspects found in their texts. Ranking and classification of countries according to percentages of compliance of their legal deposit legislations with international guidelines (Table A).

d. Study of presence of positive features corresponding to international recommendations within the texts of the laws. Classification of these features into groups of high, medium and low level of presence (Table B).

e. Application of multivariate statistical analysis, clustering and mapping techniques to produce two-dimensional graphics and the automatic classification of the individuals and their characteristics. Identification of groups of countries that display similar characteristics and a similar level of compliance in their respective legislations (Charts 1 to 4).

3. Results and discussion:

Table A shows the classification of countries into three groups taking into account their compliance with the international recommendations in a general way. Twenty percent of the analyzed laws are highly tailored to meet the above-mentioned recommendations; the countries in this category are Norway, South Africa, Peru and Venezuela, with a compliance average of 83%. Fifty-five percent of the cases have a fairly appropriate legislation; this group reaches a compliance average of 58% and includes Portugal, the United Kingdom, Cuba, Finland, France, Colombia, Brazil, Denmark, Canada, Benin and New Zealand. The last group include countries that have laws which qualifies as barely appropriate in relation to international recommendations, it represents 25% of the sample, its compliance average is of 42% and its members are Japan, Spain, Mexico, Argentina and Panama.

Table A. Legal deposit laws from 20 countries ranked according to the score they reached in their individual assessment. Classification of countries according to v20-Compliance.

	Country	Compliance percentage	V20-Compliance	f	%
1	Norway	85.8	High		
2	South Africa	85.8	High		
3	Peru	82.5	High		
4	Venezuela	77.1	High	4	20
5	Portugal	65	Medium		
6	The United Kingdom	62.9	Medium		
7	Cuba	62.5	Medium		
8	Finland	62.5	Medium		
9	France	60.4	Medium		
10	Colombia	58.3	Medium		
11	Brazil	55.4	Medium		
12	Denmark	55	Medium		
13	Canada	53.3	Medium		
14	Benin	52.5	Medium		
15	New Zealand	50.8	Medium	11	55
16	Japan	49.2	Low		
17	Spain	46.7	Low		
18	Mexico	46,6	Low		
19	Argentina	36.3	Low		
20	Panama	31.3	Low	5	25
	Total			20	100

In Table B three groups of positive features corresponding to international recommendations for legal deposit are ranked according to the frequency of their appearance within the texts of the laws. The features with high presence are 5 (26.3% of the total): the setting of a period of up to 4 months after the issuing of the publication to deposit copies, the preference for the appointment of several depositories- possibly working cooperatively - and of a bibliographic agency -usually the national library- as the main depository; the requirement of bibliographical information in order to have the registration data in different instances - inventory, receipt for the depositors, cataloguing, records of the national bibliography -, and the existence of some kind of power on the part of the depository to oversee and to implement mechanisms that facilitate the enforcement of the law.

The guidelines on legal deposit with medium presence in the laws are 7 (36.8%). They are: coverage of materials by means of a broad definition of the word “publication” and the use of same criteria to include or exclude publications. Other features are: specificity, flexibility and a clear and easily comprehensible structure. It is also of medium presence the significant recommendation concerning the mention of (at least two) objectives of the legal deposit, which could encompass to build and to develop the national publication collection, to help the national bibliography production, to preserve the collection for research and to ensure its transmission to future generations.

The percentage of features or guidelines with low presence is also of 36.8% (7 out of 19). They include characteristics concerning preservation of copies (existence of two collections, permission to make backup copies), coverage of publications through the mention of document categories, comprehensive definition of depositors, appointment of obligated parties and consideration of appropriate ways of depositing online electronic publications whose omission can imply certain reluctance or delay in formalizing the deposit of this type of materials. Other features are the presence of definitions of terms to avoid the ambiguity in the interpretation of the law; also the consideration of any kind of compensation as a device to encourage the deposit of copies, given the necessity to cooperate with publications producers.

Table B. Ranking of 19 positive features corresponding to international recommendations for legal deposit according to their presence in the laws of 20 countries.

Recommendations	Score	Presence	f	%
V9.Period of up to 4 months to deposit	19	High		
v11.The main depository is a bibliographic agency	18	High		
v13.Requirement of bibliographic information	16	High		
v14. The depository has some kind of law enforcement power	15	High		
v10.Many depository agencies (cooperation)	15	High	5	26.3
v16.Broad concept of Publication	13	Medium		
v17.Other inclusion criteria apart from territoriality	13	Medium		
v18. Listing or exclusion criteria	13	Medium		
V1.Specificity	11	Medium		
V2.Flexibility	11	Medium		
V4.Clearly comprehensible structure	11	Medium		
V6. It mentions at least two objectives of legal deposit	10	Medium	7	36.8
V19.It includes categorizations	8	Low		
v15.Permission to make backup copies	6	Low		
V3.Definition of specific terms	6	Low		
V5.Enforcement mechanisms with compensations	6	Low		
V7.Obligated party defined in a broad way	5	Low		
v12.Existence of two collections	3	Low		
V8.Method of deposit includes remote access	2	Low	7	36.8
Total			19	100

Charts 1 to 4 show the distribution of the individuals and their characteristics in the space. In the first three charts, there are groups of countries gathered together by the similarity of their laws in connection with the characteristics of each proposed typology; the aspects they share are also shown. In the fourth chart, the nations cluster according to the likeness of their legislations in terms of all the analyzed variables, although these are hidden. The supplementary variables V20-compliance and V21-year of the law were applied to those clusters; they didn't determine the clusters.

When reading the representations of the first three charts, it should be considered that the distribution of the v20-compliance matches the number of points scored by the law in its individual evaluation of all the variables. In this way it can be interpreted that there are countries that, having reached a certain general score (high, medium or low level of compliance with international recommendations), present aspects in which they have a higher or lower score than in the former. In general this variable distributes its modalities along the horizontal axis - the quality diminishes as the coordinates increase - locating the median category near the center of the system, above and opposite the ends in the second or third dimension. Their reading helps to identify areas of compliance levels: mostly low in the first quadrant, medium in the second and fourth, and high in the third. On the other hand, the axes divide opposite modalities both horizontally and vertically; it is possible to check how the most positive qualities are located with a systematic tendency toward the left of the charts. This is even verified in the distribution of the individuals, since countries with higher scores in the individual evaluation are located on the left.

From the combination of all the variables (Chart 4) 5 clusters of countries arise due to the similarity of their legislations.

-Group 1: Peru, Norway, South Africa (15% of the sample). They have laws with a high percentage of compliance. They reach an average of 84,7%.

-Group 2: Cuba, France, Venezuela, the United Kingdom, Brazil, Finland (30% of the sample). Countries with legislations whose compliance percentage fluctuates between high and medium, with a positive answer average of 63,46%.

-Group 3: Portugal, Colombia, Canada, Benin and New Zealand (25% of the sample). The level of compliance corresponding to the legislations of these countries ranges between medium and low; the group reaches an average of 55,98%.

-Group 4: Japan, Mexico and Spain (15% of the sample). They have laws with a low compliance percentage, just an average of 47,5%.

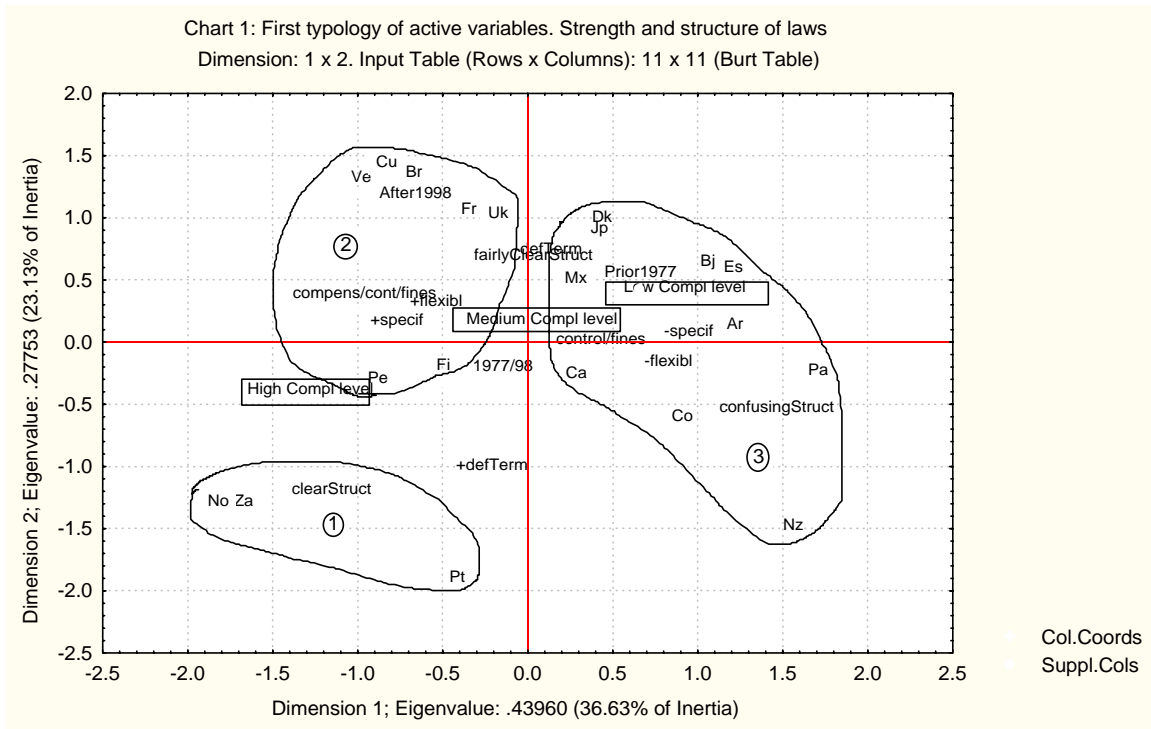
-Group 5: Panama, Argentina and Denmark (15% of the sample). Their laws show a compliance average of 40,8%.

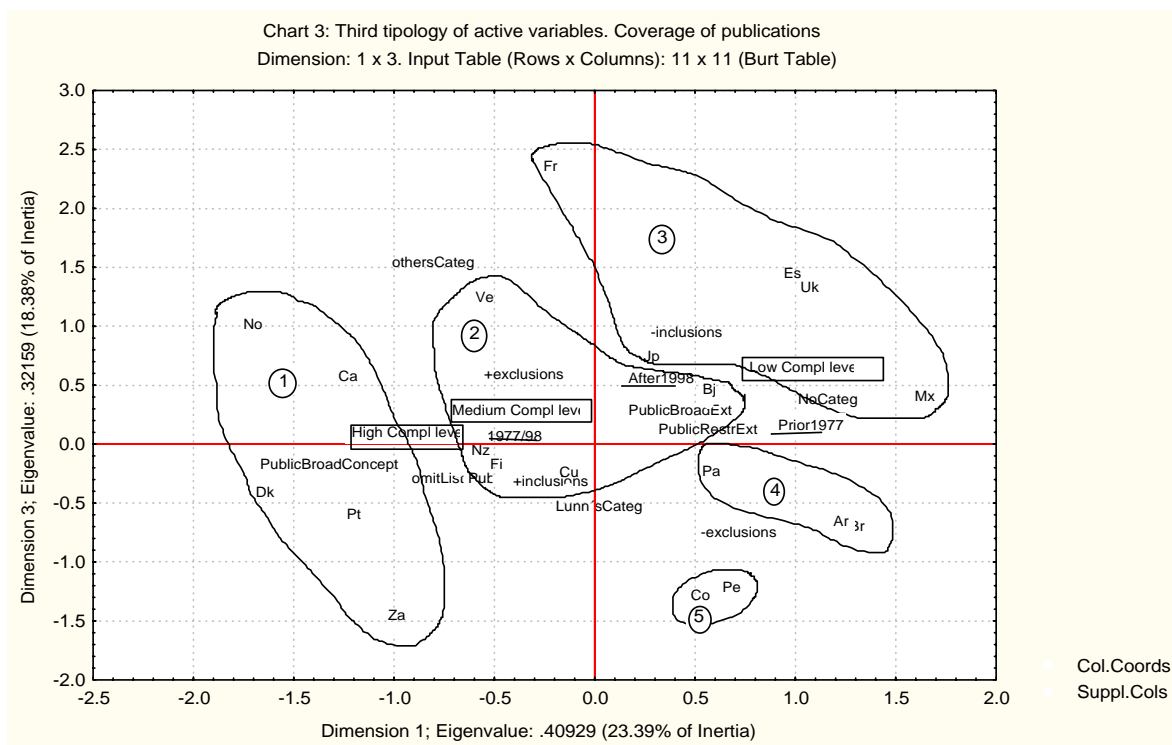
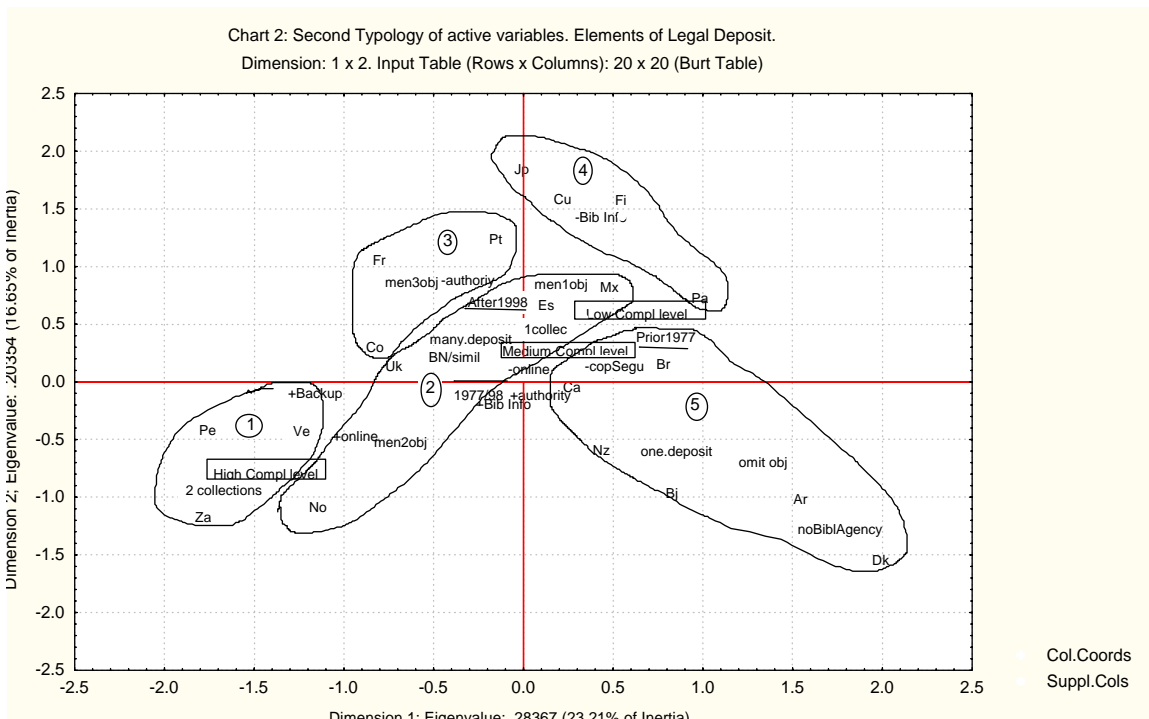
Both the study of levels of presence and the multivariate statistical analysis let us identify groups of countries that meet the recommendations for legal deposit to a lesser or greater extent; they also point out which groups of positive features are more or less frequently present in the laws. The clustering of individuals and of variables are generally coincident in both observations but, given the different nature of the analyses, there are some differences that allow the adjustment of the classification of the elements.

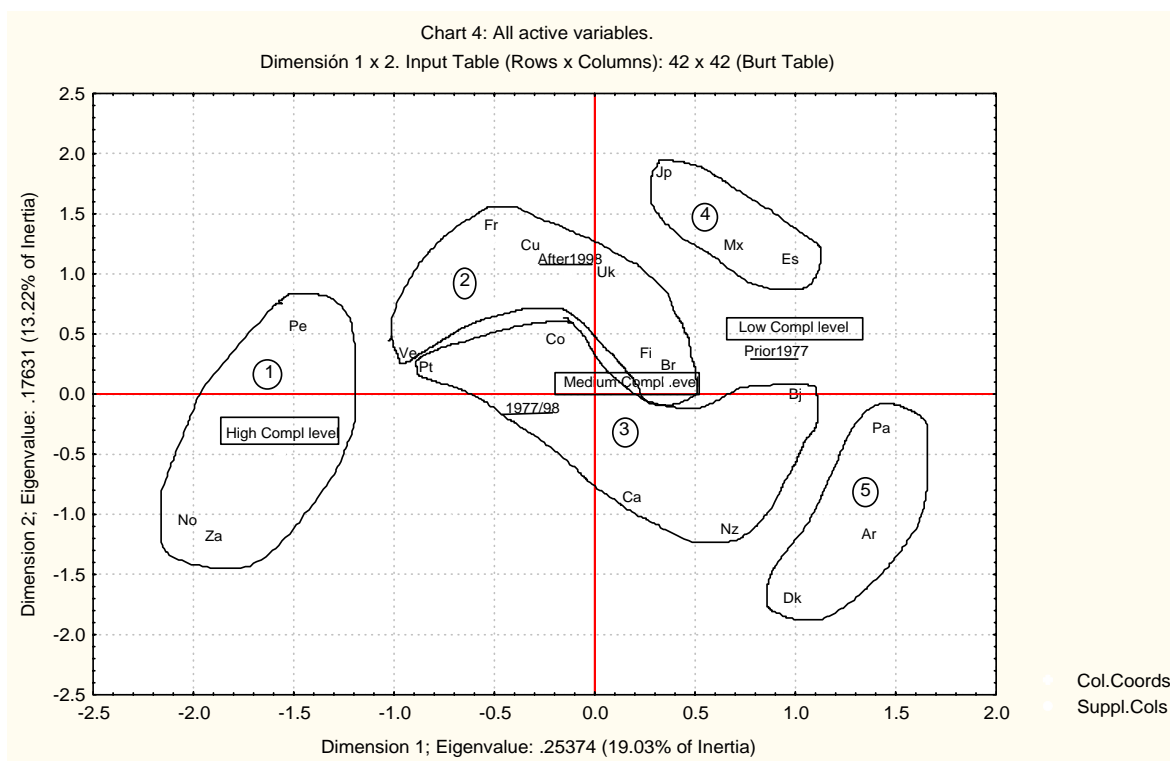
A general comparison of the emerging groups, both in Chart 4 and in Table A, indicates that the large group with medium compliance level and composed by 11 individuals is graphically projected in two subgroups, one of high-medium and other of medium-low compliance levels. It is also observed the mobility of two countries, Venezuela and Denmark. The former was considered among the countries with a high compliance percentage, but now it is present in areas of high-medium general compliance. The latter has a law that was considered of medium compliance percentage, but now it appears within a group characterized by low compliance; this can be due to the statistical weight of some variables more than to possible deficiencies.

The similarity of the individuals as regards the variables of the typologies made it possible to know in what aspects the legal deposit laws increase or diminish their quality as effective instruments of the Universal Bibliographical Control. Several laws whose global compliance level is high, medium or low, change their status when being tested in the particular aspects included in the segmentation of the variables. Just to mention an example of each typology it can be said that the laws of Peru, highly compliant in general but not so good in terms of strength and structure, is faulty in the application of the recommendations on the coverage of publications, as opposed to Denmark, that shows itself to be strong in that aspect; it is also underlined that the legislation of Benin belongs to the group with medium compliance percentage in general terms although it has one of the lowest scores within the

range, possibly due to its weaknesses concerning the elements of legal deposit in whose typology it displayed a low compliance percentage. The law of Portugal was considered as of medium compliance level, but its percentage increases in the first typology.







4. Conclusions:

The conclusion that can be drawn from the study is that the international recommendations for legal deposit have been fairly adopted by the countries. Not all the countries observe in their legal deposit legislations the entirety of the guidelines issued since 1977.

Nearly 100% of the sample constitute legal deposit laws that, in general, include the highly observed recommendations (it represents 26,3% of all studied variables) which refer exclusively to the second typology of variables (elements of legal deposit). Between 80% and 85% of the sample - countries that have laws with medium and low compliance percentage- meet, in general, the recommendations with high and medium presence (that represents 63% of the positive features listed in Table B which belong mainly to the first and third proposed typologies of variables (strength and structure of the laws and coverage of publications). But only between 15% and 20% of the sample comprises laws with high levels of compliance; these laws include in their texts most previous recommendations and also the guidelines with low presence (36,8% of variables) which belong mostly to the second typology (elements of legal deposit).

The positive features with low presence are important because they refer to the clarity of the text to mention the coverage, to define terms so that it can be properly understood and applied and to achieve the preservation of all types of publications. Their low presence leads us to infer an international legislative panorama characterized by certain weakness in covering formally the wide spectrum of publications and in ensuring the gathering and preservation of the copies; in consequence, this could also explain the origin of gaps in national collections. The effective way of applying legal deposit laws to the online electronic documents is a constant source of worry for the international librarian community; this is evidenced in the profusion of studies about this topic, but in spite of this, the adequacy of the laws in this respect is lagging behind.

An important point to be noted is that two individuals of the studied sample -Panama and Argentina- still lack a national bibliography. The legislations of these two countries are shown to be scarcely adequate in all the analyses, with a relative score below 40%.

This study about the compliance of legal deposit laws with the international recommendations found the answers to the questions asked in the introduction within the texts of laws; however, nothing can be said about their application. Any interpretation of the texts carried out during their application was left outside the analysis. Its results imply a certain slowness on the part of the countries in formalizing the suggested criteria.

References

- LUNN, Jean (1988). *Recomendaciones para legislación de depósito legal*. -- Madrid : Ministerio de Cultura, Dirección general del libro y bibliotecas, 1988. -- 31 p. -- (Informes, normas y recomendaciones ; 2). Estudio realizado para el PGI y UNISIST (Unesco). Traducción de Alicia Girón .
- ICNB (1977). CONGRÈS International sur les Bibliographies Nationales [Unesco/PGI/FIAB]. (I : París : 1977). *Rapport final*. -- Paris : Unesco, [1978]. -- (PGI/77/UBC 3).
- ICNBS (1998). “*The FINAL recommendations of the International Conference on National Bibliographic Services*”. -- En : INTERNATIONAL Conference on Bibliography and National Services (Copenhague : 1998). -- www.ifla.org/VI/3/icnbs/fina.htm. -- (consulta del 23/1/2000).
- LARIVIÈRE, Jules (2000). *Guidelines for legal deposit legislation*. -- París : Unesco, 2000. -- En : www.ifla.org/VII/s1/gnl/legaldep1.htm (consulta del 18/11/2000).
- LDEP (1996). *The LEGAL DEPOSIT of electronic publications*. -- París :UNESCO, 1996. -- 42 p. -- (CII- 96/WS/10). -- Prepared by a CDNL working group chaired by Brian Lang.
- MACKENZIE OWEN, J. ; WALLE, J. V. D. (1996). *Deposit collections of electronic publications*. -- Luxembourg : Office for Official Publications of the European Communities, 1996. -- 165 p. -- (Libraries in the Information Society Series; EUR 16910).
- MUIR, Adrienne (2001). “*Legal deposit and preservation of digital publications : a review of research and development activity : [research review]*”. -- p. 652-682. -- En : Journal of documentation. Vol 57, No 5, (September 2001).
- PADI (2003) Preserving Acces to Digital Information [Página web]. -- En : www.nla.gov.au/padi/topics/67.html (consulta del 24/8/2003).
- RWPLD (1998). *Report of the working party on legal deposit*. -- En: <http://w.w.w.culture.gov.uk/LDWGRTP.HTM> (consulta del 6/11/2000).

Appendix 1. Checklist

a) FIRST TYPOLOGY: STRENGTH AND STRUCTURE OF THE LEGISLATION	Points
V1) Specificity of the law	
1) It is a specific law	1
2) It is part of another law	0
<i>Supplementary information:</i>	
<i>-It is part of the national library law</i>	
<i>-It is part of the copyright law</i>	
<i>-It states that there is no relationship between the deposit of copies and the protection of copyright</i>	
<i>-Failure to deposit copies affects copyright</i>	
V2) Legislation flexibility	
1) It is made up of a main body of text that indicates general aspects of system. Its is supplemented with provisions stating specifications (flexible)	1
2) It is made up of a main body of text, without supplementary provisions (less flexible)	0
V3) Definition of specific terms in the text	
1) It defines some important terms	1
2) It does not define any terms	0
V4) Structure of the law	
1) Clear	1
2) Fairly clear	0,5
3) Confusing	0
V5) Mechanisms to facilitate law enforcement. Does the law include any of the following?	
➤ Compensation (reduction on taxes, free registration, free shipment, refund for the value of copies, producers register)	
➤ Control devices (assignment of legal deposit number, producers affidavit, inspections)	
➤ Fines	
1) Compensations, control devices and fines	1
2) Control devices and fines	0,5
b) SECOND TYPOLOGY: ELEMENTS OF LEGAL DEPOSIT	
V6) Objectives. It states any of the following objectives:	
a) <i>To build and develop the national publication collection</i>	
b) <i>To help the national bibliography production</i>	

<i>c) To preserve copies for future generations and to ensure research access</i>	
1) It refers to the three of them	1
2) It refers to only two of them	0,66
3) It refers to only one of them	0,33
4) It does not refer to any of them	0
V7) Definition of the obligated parties (publication producers)	
1) It defines them comprehensively enough to encompass all possible producers (in a comprehensive way)	1
2) It does not define them, it just list some of them (in a restricted way)	0
V8) Deposit method	
1) Deposit of copies and depository access to online material	1
2) Only deposit of copies	0,50
<i>Supplementary information:</i>	
<i>How many copies does it request?</i>	
<i>It requests a different number of copies for printed, nonprinted and special material</i>	
V9) Dealines for depositing copies	
1) Up to 4 months after date of publication	1
2) More than 4 months after date of publication	0
3) Not specified	0
V10) Depository agency	
1) It identifies only one depository agency (responsible for the reception and care of copies)	0,50
2) It identifies many depository agencies (bibliographic and specialized)	1
3) It does not mention any depository agencies	0
V11) The main depository agency is:	
1) The National Library or a similar bibliographic agency	1
2) A non-bibliographic agency	0
V12) Destination of the copies	
1) It mentions the existence of two collections (reference and preservation)	1
2) It does not mention the existence of two collections	0
v13) Requirement of bibliographic information (form, receipt,etc).	
1) Yes	1
2) No	0
v14) Powers of the depository agency. Does the depository agency have the authority to set up control and penalty mechanisms that facilitate the enforcement of the law?	
1) Yes, it does	1

2) No, it does not	0
v15) Is the depository agency authorized to make backup copies for security and preservation purposes (despite copyright stipulations)	
1) Yes	1
2) No	0
c) THIRD TYPOLOGY: COVERAGE OF PUBLICATIONS	
V16) Concept of publication	
1) It defines correctly the term Publication (with a broad concept)	1
2) It defines "Publication" in a broad extensional way	0,50
3) It defines Publication in a restricted extensional way	0,25
1) It does not define Publication	0
v17) Does it mention other inclusion criteria apart from territoriality?	
1) Yes	1
2) No	0
<i>Supplementary information on mentioned inclusion criteria:</i>	
<i>-Territoriality (it affects publications issued within the country). It is contemplated by default.</i>	
<i>-Foreign publications issued by publishers living in the country;</i>	
<i>-Foreign publication by national author;</i>	
<i>-Imported publications: foreign publications that enter the country to be sold</i>	
<i>-Neutrality as regards the content of publications to avoid (moral, political, religious, etc.) censorship.</i>	
<i>-Variation in content (abbreviated, revised or enlarged editions)</i>	
<i>-Variations in the language (translations)</i>	
<i>-Variations in the format (different media, braille)</i>	
<i>- Others. Which ones?</i>	
v18) Does it include a listing of exclusions or it mentions exclusion criteria?	
1) Yes	1
2) No	0
<i>Supplementary information on mentioned exclusion criteria:</i>	
<i>➤ Declaration in favor of censorship.</i>	
<i>➤ Variations in format (different media supports)</i>	
<i>➤ Others. Which ones?</i>	
V19) Mentioned publications are classified into categories. Which ones?	
1) Lunn's categories	1
2) Larivière's categories	1
3) Other categorizations	0,5
4) Listing without categories	0
5) It omits listing	0

	<i>Score calculation=</i>
d) SUPPLEMENTARY VARIABLES	
V20) Level of compliance with international recommendations	
1) High	
2) Medium	
3) Low	
V21) Year of the law (existence and revision of the law)	
1) Prior to 1977 (not influenced by the recommendations)	
2) Passed between 1977 and 1998 (possibly influenced by the 1977 ICNB and subsequent studies till 1998)	
3) Passed after 1998 (possibly influenced by the 1998 ICNB and subsequent studies)	
<i>Observations:</i>	