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Legal Deposit of on-line materials and National Bibliographies

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Listening to our speakers today there can be no doubt about the role and value of national bibliographies. The challenge is to convince funding agencies that a national bibliography is a fundamental tool that if adequately supported can really contribute to the cultural development and economic growth of a country.

A basic building block to achieving a truly comprehensive national bibliography is to ensure that all the publications of a country are included. An important tool to help achieve comprehensiveness is legal deposit. In the preface to the recently published revised edition of the *Guidelines for Legal Deposit Legislation*, I said: " the role of national libraries in ensuring universal and equitable access to information continues to be a cornerstone in the development of a knowledge society. A national library faces many challenges in ensuring that the published heritage of its country is acquired and preserved for all to use. An important vehicle in assisting national libraries meet this responsibility is legal deposit." Most countries do rely on a legal instrument of some sort in order to ensure the comprehensiveness of their national deposit collection.

In 1981, UNESCO published a study prepared by Dr. Jean Lunn from Canada entitled *Guidelines for Legal Deposit Legislation*. Interestingly enough this study resulted from a recommendation of the 1977 International Congress on National Bibliographies held in Paris. The idea was to develop model legislation which would assist countries in preparing their specific legislation and

which would, and I quote, "serve as a basis for Member States in attaining national bibliographic control." This work served the community well for a number of years, but as Dr Lunn's guidelines primarily studied the issues in relation to print material it became increasingly evident that the *Guidelines* needed to be revised. In spite of regular discussions about this need at meetings of the Conference of Directors of National Libraries and their excellent study on *The Legal Deposit of Electronic Publications*, it took a recommendation from the Second International Conference on National Bibliographic Services held in Copenhagen in 1998 for an actual process of revision to start. The result is an UNESCO document, published in 2000 *Guidelines for Legal Deposit Legislation* by Jules Lariviere, also from Canada. The major difference in this enlarged and updated work is inclusion of digital publications. It should be noted, though, that Dr. Lunn's work did refer to machine-readable data files. Even if she only devoted seventeen lines to this new format, it was clear even then that it would be a future issue for legal deposit.

It is probably obvious that this short presentation is really a commercial and what I am hoping is that you will all rush out and acquire a copy of these Guidelines.. While they are not exactly bedtime reading, unless you want to fall asleep quickly, I do recommend the Guidelines as an excellent reference guide to many issues relating to legal deposit legislation. Except for the few countries that have revised their legislation during the past few years it is probably safe to say that the legal deposit legislation of most countries does not adequately provide for the complex and fast moving world of digital technology and on-line publications. I might add that my own country, Canada, is in this latter group, although I know that work is underway to update the appropriate legislation.

Today what I would like to do is highlight some of the issues and the recommendations relating to digital formats. To begin with, the general theory of legal deposit is, and I would like to quote from the *Guidelines* , "any type of library material, so called to differentiate it from archival material, should be an object of legal deposit as long as it is made available to the general public and produced in multiple copies." It is this last clause which gives rise to many questions concerning online publications because in this environment there is probably only a single copy stored on the server of the author/publisher.

There is not enough time here to go into all the technical or legal possibilities of implementing legal deposit for on-line digital materials but there are six pages in the revised Guidelines, which raise a number of issues and suggest a possible solution, i.e., a combination of deposit and a form of licensing. Most importantly though, the *Guidelines* state quite clearly that online materials should be subject to legal deposit. It is essential that the role of national libraries to acquire and make known through national bibliographies, to preserve and to provide access to the published heritage of a country, in whatever format, be maintained in this new electronic environment.

At a minimum, two conditions will be required in order to find an acceptable solution. One is some creative technological support to allow controlled access in the electronic environment; and, second, and perhaps the most important, a degree of trust between publishers and the library community. The first problem is one of priorities and funding. The second is more difficult. Over the years the tensions between producers/publishers and the library community (on behalf

of users) has waxed and waned; but, in the long haul, we did reach a mutual understanding about the need for a balance between the rights of the producers and the needs of users. With the advent of information in an electronic format, it will not be enough for me that national libraries or national bibliographic agencies acquire these new formats and then have to stop once they have made them known and ensured preservation. This would be like reverting to a monastery library. As more and more electronic online publications are produced, the challenge of acquiring, making known, and preserving them will increase. The only way that funding agencies are going to support the important role of the national library in this new era is if there is a corresponding public good, such as access for all citizens which is strongly promoted and accepted.

I am going to close with a rather long quote from the Guidelines, which I feel, sums up the present situation quite well:

“Before legal deposit of on-line electronic publications becomes fully implemented in most countries, there are still a number of technical problems to be resolved and legal issues to be clarified. But it is important for any country wishing to include electronic publications in its legal deposit scheme to make sure that the appropriate legislation is properly amended, even if the scheme would not be fully operational. As with copyright legislation, legal deposit legislation within the electronic environment should be the result of a compromise based on the balance of rights between citizens and publishers. Whereas including a provision for unlimited free access for the users of a national legal deposit institution would be abusive, not providing at least one access to the registered users of such an institution would be as unreasonable.”

Thank you