



# 68th IFLA Council and General Conference

## August 18-24, 2002

---

<b>Code Number:</b>	126-140-E
<b>Division Number:</b>	IV
<b>Professional Group:</b>	Bibliography
<b>Joint Meeting with:</b>	National Libraries
<b>Meeting Number:</b>	140
<b>Simultaneous Interpretation:</b>	Yes

### **Publishers and legal deposit libraries co-operation in the United Kingdom since 1610: effective or not?**

**John Byford**

Head, Legal Deposit Strategy  
The British Library  
London, UK

---

#### ***Abstract***

*Describes the history of legal deposit in the United Kingdom since 1610 and the historical role of the Stationers Company. Analyses the rapid extension of legal deposit in the eighteenth and early nineteenth centuries, the pioneering activities of Panizzi, and the rationalisation achieved in the 1911 Act. The proliferation of electronic material in the last two decades and the legal deposit libraries role in acquiring national heritage material lead to a wider debate on the need for new legislation. Examines in detail the Kenny Report, reviews the Voluntary Code of Practice introduced in January 2000, and considers the latest plans for legislation. Co-operation between publishers and the legal deposit libraries is a key component in ensuring successful change.*

- 
1. In 2010 the United Kingdom, or to be more precise England, will celebrate four hundred years of legal deposit. Sir Thomas Bodley, the scholar and diplomat who had retired to Oxford, his alma mater, in 1597, devoted himself to the re-establishment of the university library (reopened in 1602) and subsequently named the Bodleian in his honour. Bodley was a foresighted man and recognised that for his library to succeed it would need to attract funding from sources other than the university. The re-opening of the library was delayed until Bodley considered that there was sufficient material on the shelves. "A small, insignificant library would attract less donations than one that gave the promise of future greatness." Not content with building a library in his lifetime he commenced negotiations with

the Stationers' Company and finalised an agreement with them in 1610 (three years before his death) whereby they agreed to send the Bodleian a copy of every new book registered at Stationers Hall.

2. The Stationers Company dates back to 1403 when the City of London approved the formation of a Guild of Stationers, i.e. booksellers who copied and sold manuscript books. By the early sixteenth century, printers had joined the Company and within fifty years had become the dominant partner. Royal incorporation followed in 1557 and their charter secured them from outside competition although they policed internal disputes, invariably infringement of ownership of 'copies'; i.e. copyright, which had been set down in a Guild rule of 1556. This obliged members to present to the Wardens every publication not protected by royal grant. A register of copies - an early 'national' bibliography in effect - was kept which assisted in resolving disputes. The Stationers' Company Register was kept from 1556 to 1695. In 1709 the first Copyright Act was introduced and subsequent Copyright Acts enshrined the Company as the place where copies had to be registered until the Copyright Act of 1911.
3. Relations with the publishers in the UK were complicated by the Press Licensing Act of 1662 which granted the Royal Library entitlement to a copy of all new publications or new editions containing alterations, i.e. a similar arrangement that has existed to this day. (This right passed to the British Museum - along with the contents of the Royal Library - in 1757.)
4. The aforementioned Copyright Act of 1709 extended the number of libraries entitled to receive books from two to nine: the Royal Library, the Bodleian, Cambridge University Library, the university libraries of Edinburgh, Glasgow and St Andrews, the library of King's and Marischal Colleges, Aberdeen, the library of the Faculty of Advocates, Edinburgh, and the library of Sion College, London. Further Acts followed in 1801, 1814, 1836 and 1842. The early part of the nineteenth century saw a series of legal actions to enforce the publishers to part with their publications. In 1824, Robert Durham, acting as the copyright agent for Cambridge University Library was taken on by the British Museum in a similar role; a proposal to extend his role to all copyright libraries was rejected by the British Museum Library in 1829.
5. The 1801 Act had extended legal deposit to eleven libraries; the 1814 Act tightened up the regulations. It was a significant change: the British Museum Trustees had proposed, albeit in 1805, delivery direct to the legal deposit libraries, i.e. bypassing Stationers' Hall and preventing evasion of the law. The Trustees' move was assisted by an action brought by the University of Cambridge in 1812 and which the Court of the King's Bench ruled in favour of, namely that the publishers must deposit with the Stationers' Company irrespective of whether an item was registered. The 1814 Act required deposit within one month; penalty for non-compliance was £5.00 (the equivalent of £200.00 today) plus the value of the book and all legal costs. As a concession to the publishers, copyright was extended from 14 to 28 years. Lack of knowledge of the Act's requirements led to several prosecutions, and in many cases, publishers settled out of court. The publishers, with parliamentary support, were able to ensure that the legal deposit libraries were placed under an obligation to provide returns of books claimed, indicating which had been retained by the libraries and which had been disposed of. Intake at the British Museum Library increased as a result of tightening up the Copyright Act; from 1814-1824 deposits were around 1300 per annum, in the three years from 1824-1827 the annual intake was over 3500 items.
6. The 1836 Copyright Act reduced the number of libraries entitled to receive legal deposit copies from eleven to five, The British Museum, the Bodleian, Cambridge University Library, the Faculty of Advocates in Edinburgh and Trinity College Dublin. The six libraries which lost the right received financial compensation. This was the first of two acts which laid the foundations for the 1911 Act - effectively the legislation in operation today; the 1842 Act was a direct result of Panizzi's zeal in

broadening the vision of the British Museum to achieve the position as a leading world research library. The 1842 Act's significance is that publishers were obliged to deliver direct to the Museum, without prior demand, i.e. not via the Stationers' Hall; the other copyright libraries had to request items, a procedure which continues today to this day. Panizzi pursued recalcitrant publishers with vigour and there are several examples of defaulters taken to court for non-deposit of items. His actions were not limited to London: solicitors were appointed in the provinces, Scotland and Ireland to demand that publishers deposit with the British Museum. Intake increased in one year by 67% (some of it arrears of material). Publishers reaction ranged from reluctant compliance to outrage, expressed, for example, by articles in the Westminster Review. One prosecution in 1853 generated significant publicity and ensured that publishers could not claim ignorance of the law.

7. Throughout the Victorian and Edwardian periods minor changes were proposed, occasionally approved, but it was not until 1911 that the last Copyright Act of significance was passed. One element of that Act to note is that the number of libraries to receive legal deposit material was increased from five to six; the government had opposed extending the privilege to the National Library of Wales (founded in 1909) but there was sufficient support to ensure the inclusion of the National Library, located in Aberystwyth. The publishers, given the opportunity in an arena other than the pages of literary journals or magistrates' courts to query their obligation to deposit, sought to limit the number items deposited to one (the British Museum) but this failed. Although there have been some revisions, the 1842 and 1911 Acts form the basis of legal deposit as it is enacted today, namely that publishers must deposit with the British Library within one month of publication a copy of all books published in the United Kingdom and Ireland; the five other libraries have the right to claim, within twelve months of publication, copies of the same material. The Copyright Agent, acting on behalf of the five other libraries to claim and distribute the material. (The establishment of the Irish Free State in 1921 led to reciprocal legislation in Ireland; the Industrial and Commercial Property (Protection) Act in 1927 includes provision for the deposit in the United Kingdom of material published in Ireland and vice-versa. This provision continues to this day.)
8. The legal deposit libraries of the United Kingdom and Ireland entered the twenty-first century operating under legislation passed in 1842 and 1911. It has been put forward that "the legal deposit system in the United Kingdom is now arguably out of date. The comprehensiveness of the national intellectual archive is becoming increasingly compromised as new types of publication are not covered by the legal deposit system." It is opportune to consider the objectives - and the merits - of legal deposit. Publications deposited at the British Library are:
  - Preserved for the benefit of future generations.
  - Added to the national heritage.
  - Made available to users in the Library's reading rooms.Additionally publications are:
  - Recorded in the British Library Public Catalogue (BLCP) <<http://blpc.bl.uk/>> <http://blpc.bl.uk>, accessible over the world wide web.
  - Listed in the British National Bibliography which is used by librarians and the book trade for stock selection, is available in printed, CD-ROM and online formats, and has a world-wide distribution.
9. On the whole, though with some significant concerns, publishers support the aspirational ideals behind legal deposit. The practical realities occasionally give cause for rumblings of discontent, e.g. the robust critique of legal deposit by David Whitaker in the pages of the Library Association Record in which he asserted that the Treasury "must accept that this unique tax in kind is an anomaly in the modern world and should be abolished". (As an aside Whitaker quotes an anonymous 1871 pamphlet 'Entered at Stationers Hall' in which the author rails against the power of the Stationers Company at the time of the Royal incorporation of 1557 and refers to the charter as "an admirable scheme, this

new Spanish-English press inquisition. Queen Mary burnt the authors, and the Stationers Company burnt the books.") He bases much of his argument on a total cost to the publishers which uses the average selling price of a book conveniently ignoring that it is the actual production cost that should be considered. One commentator observed, "the extravagant manner in which many publishers distribute review copies sometimes makes it difficult to take complaints about six deposit copies very seriously" (Stoker). A further observation in this article is pertinent to current thinking, namely "If the new law is to last ninety years it may be better to seek to define the 'information' itself, rather than the form in which it is delivered." Stoker concludes, "This is no mean task for information specialists, let alone the framers of new legislation." However to ensure that the legal deposit libraries do not have to go back to government in the future when new formats and/or information carriers are developed new legislation must be generic.

10. The impetus for change quickened in pace in the mid 1990s: following pressure from the legal deposit libraries and other interested parties, the British government issued a consultation paper in 1997 in which it sought to ascertain views on legal deposit and the possibility of extending legal deposit to other types of material. In January 1998 the Secretary of State for Culture, Media and Sport set up a Working Party under the chairmanship of Sir Anthony Kenny with the following terms of reference:
  - (i) to advise on how an effective national archive of non-print material might be achieved, taking into account the need to minimise the burden on publishers, the need to safeguard deposited material from unauthorised use, the archival value of the material, and the scope for making deposited material available among legal deposit libraries through secure IT networks;
  - (ii) to draw up and agree a voluntary code of practice to achieve deposit of electronic and microform publications until such time as the Government may decide to introduce legislation;
  - (iii) to ensure that such arrangements are compatible, where appropriate, with the existing arrangements for the voluntary deposit of films and sound recordings;
  - (iv) to advise on the scope for developing the existing arrangements for the deposit of printed publications with a view to ensuring greater co-operation between the different legal deposit libraries, encouraging greater selectivity in the material claimed from publishers, and the scope for developing IT networking solutions which can in the longer term be used to reduce the statutory burden on publishers in complying with the deposit arrangements.
  
11. The Working Party, made up of representatives from the publishing industry, the legal deposit libraries and other interested parties, presented its report to the Secretary of State in July 1998. "The Working Party was convinced that only a system of legal deposit will be adequate to secure a comprehensive national published archive. Agreement has been reached on the following general principles for such a system:
  - (1) legislation should empower the Secretary of State, after appropriate consultation, to declare, from time to time, publications in specific new media to be subject to the obligation of legal deposit;
  - (2) whenever an item in a specified medium is published, the rights owner should enable the national published archive to hold that item both for purposes of archiving and of access to that archive;
  - (3) in the case of items published in more than one medium, the publisher's obligation to any repository of the national published archive shall be satisfied by deposit only in a single medium, but the choice of the medium of deposit should be made by the repository;
  - (4) once a work has been deposited in a repository of the national published archive, access should be given to authorised users of that repository, unless it belongs to a category for which it has been determined that access will be temporarily restricted;
  - (5) the dissemination of the work in whole or in substantial part beyond the confines of the national published archive shall be permitted only (a) after the expiry of copyright or (b) by agreement with the rights holders;

(6) the Secretary of State, in declaring a medium to be subject to the obligations of legal deposit, may exempt certain categories of material whose deposit would place an unreasonable burden on their publishers;

(7) applications from publishers for additional material to be excluded or embargoed, and points of dispute about the application of the obligation of legal deposit should be determined by a standing committee, responsible to the

Secretary of State, containing representatives both of publishers and repositories and their users."

12. John Davies, then of the Publishers Association, wrote that "there is far more goodwill and mutual trust between the major players than would have been the case 20 years ago...[and] there are good reasons of self-interest for publishers to support a national archive of print and electronic publications." Authors and publishers, especially those involved in academic and professional publishing share common interests such as long term research value to the nation and their material preserved in a stable and organised environment. The legal deposit libraries are ideally suited to realise those and other objectives. The case for greater selectivity of materials is made and a recommendation is made that guidelines should be drawn up to assist publishers when depositing material. Perhaps not surprisingly the question of restriction of use of electronic material is addressed in depth, citing print "publications containing commercially sensitive matters [that] can be withheld from public use until the sensitive nature of the information has been eroded by the passage of time." The British Library continues to maintain restrictions on such material, in some cases for as long as four years. There is also a clear distinction between the Library's role as a national archive and the information services it provides throughout the United Kingdom and overseas.
13. Publishers recognise that libraries have a major role to play in the longevity of information although the emphasis that they place on the libraries' role is one of archiving. One wrote, "publishers would be highly unreliable as archivists" because it is not inherent in their "professional and organisational culture". The importance of standards was but a small part of discussion on the extension of legal deposit. Migration of material to new platforms has not been an issue of concern to many publishers who predominantly operate in an "individualist competitive environment". It is heartening to read that publishers were looking for a lead from librarians "with their long experience of preservation and organisational issues" because formulation of common standards, nationally and internationally, "does not lie within the culture or professional expertise of publishers". This emphasis on the archival responsibility of libraries for electronic material lead some publishers to assert that new legislation must ensure that "legal deposit is for archival purposes only...[and] the use of the archive would be limited to 'historic' material - that which is out of copyright or out of print." Thus, while acknowledging the legitimacy of extending legal deposit to electronic material there remain problems to resolve before issues of access could be agreed.
14. The Secretary of State's response concluded: "I agree with the report's conclusion that a voluntary code will not be viable in the longer term and I believe the report makes a convincing case for moving towards legislation for the legal deposit of non-print publications on the basis of minimum burden on publishers and minimum loss of sales (my italics). It will be necessary to do further work on definitions and the impact on business and I have asked Sir Anthony Kenny [Chairman of the Working Group] to take this forward through the medium of the technical group of library and publishing experts. Once that is done we shall move forward towards legislation." He requested that in the meantime a code of practice for the voluntary deposit of non-print publications should be drawn up and agreed between publishers and the deposit libraries. A 'regulatory impact assessment' of the costs and benefits of the statutory deposit of non-print publications should also be prepared before the drafting of the proposed legislation. The code of practice was drawn up and agreed by representatives of the legal deposit libraries and publishing trade bodies.

15. The code of practice was introduced in January 2000 and covers the deposit of United Kingdom non-print publications in microform and offline electronic media. The latter, also sometimes known as 'hand-held', 'portable' or 'packaged' electronic publications, are electronic publications issued on discrete physical digital media such as magnetic tapes, magnetic disks or, more commonly, optical disks of some kind, such as CD-ROM or DVD. The code of practice does not include:
  - film, sound, or Ordnance Survey digital mapping products, which are subject to separate voluntary schemes, and,
  - online publications (although the code does set out arrangements for online publications which are substantially fixed at the time of first publication, while continuously updated publications such as 'dynamic' databases are excluded from current proposals).The code recognises that deposit of offline publications which require separately licensed software for their operation presents particular problems and recommends that the publisher obtains the necessary licence on behalf of the deposit library. Under the voluntary scheme the publisher is under no obligation to deposit if they are unable or unwilling to do this.
16. Over 100 publishers have signed up to the voluntary scheme for the deposit of electronic publications. Over 1000 monographs and 850 journals (or over 20,000 separate issues) have been archived for the future as a result of the scheme. Publishers have also been encouraged to deposit publications in these media published before the end of 1999. In a British Library press release earlier this year Dr Clive Field, Director of Scholarship and Collections at the Library commented, 'The voluntary scheme has given us the opportunity to work with publishers in identifying some of the challenges in the practical implementation of future legislation. Whilst continuing to press for legislation, we are now starting to discuss voluntary deposit and archiving of online publications with publishers, and working to address the difficult technical issues in preserving these for the future.' Long-term access to digital materials can only be assured by planned and systematic archiving, capable of ensuring that content is transferable from one generation of technology to the next.
17. Publishers have also welcomed the establishment of the voluntary scheme and the proposed experimental activity on the archiving of online publications. Anthony Watkinson, Publishers Association representative on the Joint Committee on Voluntary Deposit, commented: 'The Publishers Association is fully committed to the importance of secure archiving of our national heritage of published material in digital form. We are pleased to have found so many areas of consensus in working with the copyright libraries and other publishing bodies. A number of challenges remain, such as access to archived copies. These are being actively discussed by the joint committee and, once they have been addressed, we will welcome legislation.'
18. The aforementioned Joint Committee on Voluntary Deposit was set up to implement and monitor the Code of Practice while acting as a forum for discussion between representatives of the legal deposit libraries and the four publishing trade bodies. Scholarly publishers generally would prefer access in one library only at a time and not have to deposit more than one copy; their preferred position is to have access limited as within a print environment. A sub-group of JCVD has been set up to look at questions of access, embargoes, business and economic factors relating to high value publications; meetings with publishers have been held and terms of reference for future work agreed. The legal deposit libraries maintain the position that it would be difficult to justify public funding for an archive to which the public would not have access.
19. One of the mechanisms for achieving a level of access that meets both the aspirations of the libraries and the concerns of publishers is to restrict the number of simultaneous users to any particular deposited resource. To this end, the libraries have been developing a secure network: twenty five titles were loaded on servers in each institution to test the running of the system and its performance in relation to the restriction of one user on one site. The project is based on a thin client solution. The

system used is CITRIX and the browser client is Internet Explorer. The applications are run on Windows 2000. There are 2 servers at the moment, one at the British Library at Boston Spa and the other at the Bodleian Library. All the applications used as part of the trial are CD-ROMs and not online products.

20. Applications to be run on this system needed to be designed with Windows 2000 in mind. It would be best if there was no encrypted coding tied to CD-ROM products to allow for their easy uploading onto the server. However, where such encryption exists then there were issues of how this could be circumvented (obviously with the publishers' permission). The system copes with making a small number of applications available across a large number of users over many sites. The handling of online applications by the system would be an issue of storage. The publisher representatives on JCVD found a recent demonstration to be very useful. Key management and administrative concerns were to do with how many applications could be successfully loaded onto each server, and what forms, and levels, of access would be possible and be acceptable. More work is in progress on encryption and scaling of the system upwards.
21. The metadata created by publishers is based on their own organisational needs and is not yet standardised between publishers. (Publishers often have to abide by legal requirements, e.g. anti-trust legislation, so full collaboration on common standards is not yet assured.) Publishers have worked with CEDARS (CURL Exemplars in Digital Archives), a project set up in March 1998, its broad objective is to explore digital preservation issues. These range through acquiring digital objects, their long-term retention, sufficient description, and eventual access) or are involved in other digital archiving projects with other bodies. This project has been completed and further work - to consider a system for the provision of metadata and software which publishers could attach to deposit items - is required: the British Library is working with Book Industry Communication (BIC, set up and sponsored by The Publishers Association, The Booksellers Association, The Library Association and The British Library to develop and promote standards for electronic commerce and communication in the book and serials industry) to identify appropriate software.
22. The other requirement placed upon the legal deposit libraries and the publishers by the Secretary of State, namely to prepare a 'regulatory impact assessment' of the costs and benefits of the statutory deposit of non-print publications before the drafting of the proposed legislation is also in hand. In May 2002, the Joint Committee on Voluntary Deposit awarded a contract to Electronic Publishing Services Ltd to provide the means and information for assessing the costs and other quantifiable impacts on business and to the legal deposit libraries of the extension of legal deposit to non-print publications. This involves gathering information on the costs and other quantifiable impacts of the extension of legal deposit to non-print publications affecting both publishers and legal deposit libraries and developing an underlying model for calculating and illustrating these costs and quantifiable impacts which can be used against variable assumptions as to the types of material to be deposited, and over time as the types, amount and value of material published changes. The timing was opportune as the Department of Culture, Media and Sport, the British Library's sponsoring agency in government had given early indication that legislation is back on the agenda.
23. The proposed vehicle for primary legislation is what is called a Handout Bill, which is, in effect, a Government-sponsored private member's bill. This would be generic legislation, with application to particular information formats by Order in Council. The assumption is that legislation would be applicable to all formats considered in the original JCVD brief, plus online commercial sources and non-commercial Websites. This Handout Bill process is suited to situations where two circumstances apply: (i) the measure is not deemed controversial (which reinforces the need to maintain and to demonstrate a working consensus between libraries and publishers regarding the application of legislation); and (ii) the impact of the measure on the industry concerned should be low, the definition

of low being less than £20 million per annum (which reinforces the need for JCVD to keep the impact on publishers below that level).

24. The first stage in the process was passed successfully in June when the Cabinet's Legislation Policy Sub-Committee approved the proposal as suitable for a Handout Bill. The report commissioned by JCVD is on schedule for completion at the end of August 2002, timed to contribute to the revised Regulatory Impact Assessment. The legal deposit libraries will continue to work with the publisher trade bodies to ensure that the national heritage is acquired and preserved for future use - much in the same way as Bodley had planned nearly 400 years ago.

## References

Book Industry Communication <<http://www.bic.org.uk/prodinf.html>> <http://www.bic.org.uk/prodinf.html> (visited 27.7.02)

British Library (2002) 'Publishers support voluntary scheme to save electronic publications for the future' <<http://www.bl.uk/cgi-bin/press.cgi?story=1229>> <http://www.bl.uk/cgi-bin/press.cgi?story=1229> (visited 27.7.02)

Cedars Project (2002) 'CURL exemplars in digital archives' <http://www.leeds.ac.uk/cedars/index.htm> (visited 27.7.02)

Cox, John (1998) 'Is everyone passing the buck'. *Journal of information science* 24 (6) 1998, pp. 444-446

Davies, John (1998) 'Safe deposit: a UK publishing view'. *Alexandria* 10 (2), 1998 pp.159-166

Electronic Publishing Services Ltd (2002) 'Proposed legislation to extend legal deposit - cost impact assessment' <<http://www.epsltd.com/>> <http://www.epsltd.com> (visited 27.7.02)

Harris, P.R. (1998) *A history of the British Museum Library 1753-1973*. London: The British library, 1998

Muir, Adrienne & Davies, J. Eric (2000) 'Legal deposit of digital material in the UK'. *Alexandria* 12 (3), 2000 pp.151-166

Smith, Geoff (1999) 'The legal deposit of non-print publications'. *Serials*, vol.12, no.2, July 1999

Stoker, David (1997) 'Tangible deposits'. *Journal of librarianship and information science*, 29 (2) June 1997, pp.65-68

Whitaker, David (2001) 'Nobody expects the Spanish Inquisition'. *Library Association Record*, 103 (8), August 2001, pp.492-493

Working Party on Legal Deposit (1999) *Code of practice for the voluntary deposit of non-print publications* <<http://www.bl.uk/about/policies/codeprac.html>> <http://www.bl.uk/about/policies/codeprac.html> (visited 27.7.02)

Working Party on Legal Deposit (1998) *Report*. <<http://www.bl.uk/about/policies/workreplegdep.html>> <http://www.bl.uk/about/policies/workreplegdep.html> (visited 27.7.02)

The Worshipful Company of Stationers' and Newspapers Makers <<http://www.stationers.org/history/intro.htm>> <http://www.stationers.org/history/intro.htm> (visited 27.7.02)