

Legal deposit in South Africa: transformation in a digital world

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South Africa



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ABSTRACT

Legal deposit is an internationally recognised practice within the global library community, which ensures that the documentary or cultural heritage of a nation is collected, accessioned, stored, protected, preserved and made accessible for the benefit of its citizens and future generations. Legal deposit is a statutory obligation that requires publishers who publish material, including digital content, to deposit a copy or copies of their publications in specified national and regional repositories within the context of national legal deposit legislation.

There has been a commitment to collecting and preserving South Africa's recorded cultural heritage through legal deposit in one form or another since 1842. As a result, extensive and valuable collections of printed material including books, reprints, periodicals, newspapers, maps, films, sound recordings, and other works have been built up in nominated legal deposit libraries in different parts of the country. As a country in transformation, South Africa updated and enacted its Legal Deposit Act No. 54 in 1997 to address the digital environment.

To ensure compliance of the law and more importantly, to ensure that South Africa's cultural heritage is preserved for perpetuity, the Ministry of Arts and Culture appointed a permanent Advisory Legal Deposit Committee. This Committee advises and assists the Minister on a range of issues, to ensure compliance of the legal deposit legislation and permanent accessibility to South Africa's rich cultural heritage.

The goal of the paper will be to present a broad overview of South Africa's transformation from a print-orientated legal deposit system to a system that now has to cater for print, multi-media and e-publications and will highlight the challenges and successes along the way. The paper will provide a brief historical timeline of the Legal Deposit System in South Africa. It will highlight some of the transformation that has taken place in this regard since South Africa became a democracy in 1994. It will also discuss the important work of the Legal Deposit Committee and the various challenges that legal deposit libraries and official publications depositories experience, particularly in the digital arena. It will also showcase some of the Legal Deposit Committee's strategic objectives, projects and efforts to find solutions, so as to improve and enhance legal deposit in South Africa for the sake of South Africans and other information users, now, and in the future.

Introduction

Legal deposit is an internationally recognised practice within the global library community, which ensures that the documentary heritage of a nation is collected, accessioned, stored, protected, preserved and made accessible for the benefit of its citizens and future generations. Legal deposit is a statutory obligation that requires publishers who publish material, including digital content, to deposit a copy or copies of their publications in designated national and regional repositories within the context of national legal deposit legislation.

Legal deposit was first introduced in 1537 in France, when King Francois I issued a royal decree, 'Ordonnance de Montpellier' forbidding the sale of any book without first having deposited a copy in the library of his castle. The decree was abolished during the French Revolution but was reinstated in 1793 as a formality to obtain copyright protection. Although not a popular decree, the system gradually found its way to other European countries and further afield. These countries adopted and formalised legal deposit to suit their domestic situations with the main objective of preserving and making their national published documentary heritage available to the public (Larivihre, 2000).

Gilchrist asserts that -

[i]n essence the deposit laws are an important part of the preservation of national cultural life and heritage. They are manifestations of a human value - the value of human identity: an understanding and respect for who we are. The past is part of us. It is inherent in all artistic, social, economic, scientific and intellectual development. It is important that future generations have access to, and understand, the past, to better understand themselves and to better deal with the future. In cultures based on written records, the greater proportion of material which is not preserved, the less likely that value will be respected and promoted (2005: 193).

Legal Deposit Legislation in South Africa

The legal deposit system was introduced in South Africa in 1842 during the second British Occupation (1806-1901) when the British Copyright Act of 1709 was extended to the entire British Empire. This was superseded by the Legal Deposit of Publications Act 17 of 1982 (Nkadimeng, n.d.).

As a new democracy in transformation, South Africa updated and enacted its Legal Deposit Act No. 54 in 1997 (hereinafter called 'the 1997 Act'). South Africa was amongst the first countries globally to include electronic publications in its legal deposit legislation (Nsibirwa, Hoskins and Stilwell, 2012). As a result, extensive and valuable collections of printed material including books, reprints, periodicals, newspapers, maps, films, sound recordings, and other works have been built up in nominated legal deposit libraries in different parts of the country (NLSA, n.d., "History...").

The preamble of the 1997 Act, reads as follows:-

To provide for the preservation of the national documentary heritage through legal deposit of published documents; to ensure the preservation and cataloguing of, and access to, published documents emanating from, or adapted for, South Africa; to provide for access to government information; to provide for a Legal Deposit Committee; and to provide for matters connected therewith.

This Act works in conjunction with the SA Constitution and various international conventions and national laws relating to human rights, libraries, persons with disabilities, promotion of access to information, protection of personal information, intellectual property,

electronic communications and transactions, privacy and traditional knowledge. It is administered by the Ministry of Arts and Culture and provides a broad legislative framework for depositors, e.g. number of copies to be deposited; format and quality; information required from publishers and producers; when and where copies must be deposited; and action to be taken in cases of non-compliance (PASA, n.d.).

Legal Deposit Libraries

Historically, valuable collections were donated to the South African Public Library in the early 1800's, but it only became a legal deposit library for the Cape Colony in 1873. From 1916 it received all printed items published throughout South Africa. The Library continued as a legal deposit library, but the City of Cape Town took over this function in 1954. It developed into a national reference library devoted to research based on its extensive stock, and its name was changed in 1967 to the South African Library (NLSA, n.d., "History ..."). On 21 September 1887 the Transvaal government at the time approved the constitution of the Staats-Bibliotheek or State Library. From the early 1890's to 1964, the State Library performed a dual role as public library and national library, and ultimately took on the responsibility of legal deposit too. These two libraries amalgamated in November 1999 and became the National Library of South Africa.

The 1997 Act designated the following places of legal deposit, which constitute the Legal Deposit Consortium of South Africa:-

- (a) City Library Services, Bloemfontein (now Bloemfontein Public Library);
- (b) Library of Parliament, Cape Town;
- (c) Natal Society Library, Pietermaritzburg (now Bessie Head Library);
- (d) South African Library, Cape Town (now National Library of South Africa);
- (e) State Library, Pretoria (now National Library of South Africa);
- (f) National Film, Video and Sound Archives, Pretoria (for purposes of certain categories of documents as prescribed); and
- (g) any other library or institution prescribed by the Minister for purposes of certain prescribed categories of documents.

Legal Deposit Committee

The 1997 Act provides for the establishment of a Legal Deposit Committee (LDC), which serves as an advisory body to the Minister of Arts and Culture and draws elected representatives from library and information services and the publishing sector. Its main purpose is to facilitate cooperation between publishers and legal deposit libraries for the effective implementation of legal deposit arrangements.

The LDC is serviced by a Technical Sub-Committee which attends to the day-to-day issues of the designated legal deposit libraries and official publications depositories (OPDs). This Sub-Committee refers matters to the LDC for attention, when necessary.

In June 2014, the current LDC set up working groups to address the following key objectives in its Strategic Plan for 2015-2017:-

- Execution of the LDC Mandate
- Legislation and Policy Review
- Funding
- Open and Equitable Access
- Optimal utilisation of ICT

- Marketing and advocacy
- Preservation

Other issues such as disaster management, infrastructure, storage, workshops for LDC members and training for legal depositories' personnel will be addressed, as and when necessary. A [Legal Deposit Libguide](#) assists stakeholders and contextualises the deposit system as the legal mechanism to preserve the country's print and digital footprint for future generations.

Legal Deposit Co-ordinator

The 1997 Act also provides for the appointment of a Legal Deposit Coordinator who is responsible for coordinating legal deposit activities in the legal deposit libraries and OPDs. He/she is responsible for communicating with depositors, promoting compliance, investigating problems arising in the depositories and liaising with the LDC and its Technical Sub-Committee. He/she is responsible for visiting the depositories on a regular basis, and organising training workshops. He/she is employed by the National Library but is obliged to give regular reports on his/her work to the LDC.

Official Publications Depositories

Apart from the five mandated legal deposit libraries, the 1997 Act and its 2001 Regulations make provision for the establishment of provincial Official Publications Depositories (OPDs), which are responsible for sourcing, collecting, making accessible and preserving printed government official publications or those provided digitally through free or subscription-based online services. Currently, there are OPDs in five of the nine provinces, namely:

- Constitutional Court of South Africa Library (Gauteng)
- Limpopo Library, Information and Archive Services
- Mpumalanga Provincial Library Service
- North-West Provincial Library, Information and Archives Services
- R. J. R. Masiea Public Library (Free State)

OPDs report to their parent organisations but liaise with other OPDs and legal deposit libraries. The Legal Deposit Coordinator works closely with the OPDs and provides training based on the National Library's [OPD Manual](#).

Legal Depositors

In South Africa, the depositor status applies to commercial or public publishers and producers, self-publishers that exceed a certain print-run, publishers who publish in South Africa but distribute to foreign countries only, or those who publish overseas but specifically distribute their works for the South African market. It also extends to private organisations, societies, academic institutions, clubs, churches, societies and institutes that publish or make available adapted works in South Africa (Nkadimeng, n.d.).

Depositors bear the costs relating to the publications and deposit thereof. The Legal Deposit Consortium is responsible for acquiring, cataloguing and making the works accessible, ensuring compliance by depositors, as well as preservation, digital curation, and maintenance of the online library management system.

Legal Deposit Compliance

Section 9 of the 1997 Act provides that “any publisher who fails to comply with section 2, 3, 4 or 5 (3) shall be guilty of an offence and liable on conviction to a fine not exceeding R20 000”. Section 10 provides action to remedy non-compliance to ensure publications are incorporated into the legal deposit collections.

It is very important that publishers are compliant, otherwise there will be gaps in South Africa’s cultural heritage and publications will not be accessible to the public, nor will they be preserved for perpetuity. It is imperative in terms of the 1997 Act that the National Library of South Africa receives a copy of every publication, as far as possible in accordance with the requirements of the legislation, even though some material (as permitted by the law) does not need to be deposited in the other designated legal deposit libraries.

Each time a national library does not retain a legal deposit publication, it risks not having a comprehensive collection and not having information that researchers may need. National libraries should not passively expect other libraries to fill gaps in the collection; some materials delivered under legal deposit are of very limited issue and may not be readily available to other institutions. Although a national library may never be comprehensive under any policy, it should retain all materials of likely public interest that reflect the national intellectual heritage (Crews, 1988: 569).

Compliance needs to be an ongoing collaborative programme between designated depositors and legal deposit libraries. A co-operative relationship between publishers and depositories is ‘key’ to the success of the legal deposit system. Swift and regular compliance helps to avoid any breakdown in collaboration and unpleasant remedial action against publishers. Libraries, publishers and producers generally enjoy a healthy symbiotic relationship in South Africa, which augurs well for a successful legal deposit system in the digital environment. In essence, the success of legal deposit is the responsibility of all stakeholders, all with one goal – to work together to keep South Africa’s documentary cultural heritage alive and accessible for future generations.

Legal Deposit Benefits

Although legal deposit for publishers and authors may be costly and an administrative burden for some, there are benefits for all stakeholders -

- Deposited publications are made available to users of the deposit libraries on their premises, are preserved for the benefit of future generations, and become part of the nation's heritage
- Publications are recorded in online catalogues, and become an essential research resource for generations to come
- Publishers have at times approached the deposit libraries for copies of their own publications which they no longer have, but which have been preserved through legal deposit
- Legal deposit supports a cycle of knowledge, whereby deposited works provide inspiration and source material for new books that will eventually achieve publication. (ALDL, n.d.: 1).

CDNL (2012: 2) posits that legal deposit underpins democracy and citizen participation, and that -

- [b]y collecting, recording and preserving all published material of a country, legal deposit guarantees each citizen access to the nation's published heritage without making any judgement on the intrinsic value of the materials should it be a judgement of a moral, political, artistic, or literary nature.
- Legal deposit has clear public interest benefits: it underpins competitiveness, creativity, research excellence and education and learning and, in so doing, it contributes to economic development and cultural well-being.

Legal deposit libraries provide publishers a marketing platform for their works, particularly new publications, and introduce new authors to the public. They also provide a public archive to showcase their publishing output over the centuries. In partnership with legal deposit libraries, publishers, producers and authors play a positive role in contributing to collection development and preservation of South Africa's published cultural heritage for perpetuity.

South African National Bibliography

Legal deposit libraries' collections collectively make up the South African National Bibliography (SANB), which is used by authors, librarians and publishers. Libraries around the world use it for copy-cataloguing, interlibrary loans and document supply purposes. It is available in print and various online formats, e.g. SACat, NISC's South African Studies Database, and OCLC's WorldCat. It serves as a comprehensive record of published monographs, pamphlets, government publications, microforms, maps, electronic media, videos, periodicals, newspapers, published conference proceedings, South African standards and specifications, and other published works, all of which make up South Africa's documented heritage (NLSA, n.d., "Introduction ..."). It also forms the basis of UNESCO's collection of international book production statistics, which is an invaluable source for stock selection and other business information for the book trade (PASA, n.d.). The National

Library of South Africa is an ISN Agency and provides South African publishers with ISBN and ISSN numbers, in line with international publication identification requirements.

Most of the functions concerned with the national documentary heritage and the provision of national infrastructure also imply some degree of international cooperation, e.g. contribution to Universal Bibliographic Control (UBC) and Universal Availability of Publications (UAP) (Lor, 1997).

Challenges and Opportunities

a) Access to National Documentary Heritage

Access to published material is a fundamental prerequisite of a legal deposit system (Lariviere, 2000, Lor, 1995). There is no purpose in collecting publications for deposit or preservation if they are not accessible to users. "Without free access to what has been already published by either the government or private citizens, freedom of information is limited and incomplete" (Lor, 1995: 96).

The issue of access has also created a certain amount of tension in the way that legal deposit is practically implemented especially for publishers, who are often uneasy about possible uncontrolled access to their publications (Lariviere, 2000; Muir, 2001).

The main issues of concern are multiple copies, document delivery and copyright, and in particular, with regard to digital content (Muir, 2001, Penzhorn, 2007). Although depositing can be an expensive obligation for publishers, particularly small publishers with limited print-runs, the practice of free deposits is internationally accepted.

There are always conflicting tensions between the requirements for access to legal deposit material and the preservation thereof. A balance is therefore necessary to ensure the country's heritage is accessible and available now and for future generations. This balancing act is the source of many challenges in legal deposit libraries, as well as sourcing and selection of digital material. There is a tendency when collecting legal deposit material to focus more on accessibility of content at the expense of ensuring long term preservation and digital curation.

In a digital world, users have come to expect speedy service and free online content. Electronic publications create problems for legal deposit libraries in South Africa as currently deposits are voluntary. Publishers are reluctant to part with their digital content in view of security concerns, ease of duplication, potential loss of sales and other issues. However, legal deposit legislation requires deposits of publications in different formats. As the requirements move from voluntary to compulsory deposits, agreements will need to be entered into between legal deposit libraries and publishers so that the concerns of both parties are addressed, but more importantly, that the collections are accessible by the public immediately, or by special request, depending on the content. The latter poses problems for access and privacy as researchers and other users generally wish to keep their identity and research topics private. Restricting or preventing access to electronic publications in legal deposit collections is tantamount to keeping printed material locked away in cabinets. All stakeholders have to work together to find workable solutions but focusing on the importance of access and preservation. It is therefore incumbent on legal deposit libraries to seek advice and embrace best practices, where possible, so that the legal mandate for collection and preservation of documentary and online cultural heritage can be exercised efficiently. Simplified concepts, models, policies and operational procedures are essential for the success of the legal deposit system

b) Long Term Preservation Strategy

Digital technology and the ongoing introduction of new technologies and devices open up a range of new opportunities but also create an extremely complex landscape for legal deposit libraries. To ensure ongoing access, conservation, preservation and digital curation of print and digital legal deposit collections, strong institutional commitment from legal deposit libraries and committed leadership from the Ministry of Arts and Culture is necessary to embrace internationally-accepted standards, best practices and modern technology. A long-term state-of-the-art digitisation and preservation strategy is a national priority to ensure that South Africa's cultural heritage will be preserved and made accessible now and for future generations. This strategy should be renewed on a regular basis to take into account technological changes, upgrades, new digital formats and obsolescence issues, and new innovations for storage, access and digital curation. Members of the LDC have the responsibility of monitoring international and regional trends and recommending best practices and standards for the legal deposit libraries and OPDs. Any necessary changes to legislation or policy documents would need to be recommended by the Committee to the Minister of Arts and Culture for his attention and referral to Parliament through various legislative processes.

a) Copyright Issues

Some countries enact legal deposit through their copyright legislation, whilst others have separate legal deposit legislation. South Africa has a Copyright Act No. 98 of 1978 (as amended) and a Legal Deposit Act No. 54 of 1997. The latter controls deposits of material in all formats into the designated legal deposit libraries. Both pieces of legislation have no provisions for format/media shifting or digitisation of works housed in legal deposit libraries. The burden placed on legal deposit libraries to collect and make electronic material accessible is quite heavy for many reasons, including having to trace rights-holders for permission; dealing with ‘orphan works’ where rights-holders are untraceable; negotiating licences and sourcing funds for permissions; and seeking circumvention codes to unlock digital protection measures. Without permission, legal depositories cannot carry out their statutory mandate to provide access and preserve the nation’s documentary heritage for perpetuity.

It is crucial that adequate and appropriate limitations and exceptions are included in future amendments to the Copyright Act. These should address the access needs of research, education, libraries and archives, but also to make provision for conversion of material into accessible formats for visually impaired persons, in line with the

Marrakesh Treaty for the Visually Impaired¹. Exceptions should also include fair use; format/media shifting as technologies become obsolete; digitisation and preservation; interlibrary loans and document supply services; circumvention for legitimate library purposes, and data and text mining.

Legal deposit for electronic materials is an important tool in the preservation of e-journals, e-books, sound recordings and film, echoing the philosophy that “Lots of Copies Keep Stuff Safe” (known as LOCKSS). It is important therefore that statutory exceptions for copying for preservation allow libraries to make as many copies in as many different formats as necessary, in order to migrate to current platforms and media to ensure continued access to the collections into the future (EIFL, 2009: 2)

b) Digital Rights Management Systems

Digital rights management systems (DRMs) are barriers that block access to information via technological protection measures (TPMs). They are problematic for libraries in general, but particularly for legal deposit libraries. The Copyright Act does not address DRMs, due to it being pre-digital legislation. However, to be in line with the WIPO Internet Treaties, South Africa adopted anti-circumvention measures in Article 86 of the Electronic Communications and Transactions (ECT) Act 25 of 2002. The problem is that this Act has no exceptions of limitations for legitimate library functions, or for visually impaired persons to circumvent technologies in order to access material legitimately. The ECT Act is arguably unconstitutional as it creates barriers or ‘locks out’ information and blocks legitimate access to information, thus infringing users’ rights which are permitted in the copyright law (Nicholson, 2012).

Visser (2006: 60-1) cautions that –

¹ Full name is Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled – adopted on 27 June 2013 (see: <http://www.wipo.int/treaties/en/ip/marrakesh>). South Africa supported this Treaty through the African Group at WIPO, but has not yet ratified it.

[t]he fact that possession of the physical object that contains the copyright work (the CD-ROM for example) no longer guarantees access to the work can have serious implications for the possessor of such object. Even a lawful possessor will not be able to access a copyright work shielded behind a TPM without an access key, or without circumventing the TPM. And without access, it is impossible to use the copyright work.

These technologies, and the legal protection afforded to them by the ECT Act, are an obstacle to the mandate and functions of the National Library and other legal deposit libraries. TPMs can prevent access and/or reproduction in any format or medium, and can impede preservation and web harvesting, causing major problems for legal deposit libraries. It is therefore crucial that when the Copyright Act is amended, that the ECT and Legal Deposit Acts are amended accordingly. “Digital is not different – contracts and potentially-restricting technologies like DRMs should not over-ride statutory exceptions and rights under copyright” (CDNL, 2012: 4).

It should be a provision in legal deposit law that publishers should not implement DRMs or other technological barriers on deposited works, and/or that libraries be granted the legal authority to circumvent TPMs to browse, access, and preserve the material for perpetuity. Alternatively, publishers need to provide legal deposit libraries with the necessary codes or devices to unlock deposited material for the purposes of legitimate access and preservation. If this is not legislated, the National Library of South Africa, on behalf of all the legal deposit libraries, will constantly need to negotiate with publishers with regard to terms of protection, access, circumvention, embargoes, access to encrypted or inaccessible formats; preservation, migration and other aspects of digital curation relating to legal deposit material. Canada and New Zealand, for instance, have useful exceptions for circumvention of TPMs regarding legal deposit and for digital preservation, which South Africa should investigate (Pabón Cadavid, Basha and Kaleeswaran, 2003).

It is important that legal deposit provisions be worded in such a way that repositories have permission to copy, reformat, refresh or migrate deposited publications for preservation purposes. If this permission is not granted, it will not be possible to maintain materials for posterity (CDNL, 1996: s.2(f)).

c) Electronic publications

South Africa’s current legislation includes the legal deposit of born-digital works. To date implementation of legal deposit of e-publications has been slow, as the Legal Deposit Consortium has encountered various technological and other challenges. These are not unique to South Africa but are experienced by most legal depositories that now have to deal with e-publications as part of digital heritage, with all their complex characteristics.

The 2003 UNESCO Charter on the Preservation of the Digital Heritage identifies legal deposit, voluntary or mandatory, for web material as the key action for digital heritage. Article 1 of the Charter defines ‘digital heritage’ as consisting of –

unique resources of human knowledge and expression. It embraces cultural, educational, scientific and administrative resources, as well as technical, legal, medical and other kinds of information created digitally, or converted into digital form from existing

analogue resources. Where resources are “born digital”, there is no other format but the digital object.

Digital materials include texts, databases, still and moving images, audio, graphics, software and web pages, among a wide and growing range of formats. They are frequently ephemeral, and require purposeful production, maintenance and management to be retained.

Digital technologies provide opportunities for facilitating legal deposit through rapid transmission, and better enabling the complex tasks of cataloguing, indexing and recording, managing, and providing access to deposited material. ... Digital technology also creates new concerns about unauthorized alteration, copying and dissemination of deposited material. Publishers and librarians must work together to ensure that the legitimate needs of both users and owners of deposited materials are accommodated in this evolving environment (IFLA, 2013: para. 4).

E-publications and media create unique problems for legal deposit libraries, for example, digitisation; acquiring born-digital works; finding server space and appropriate software and hardware; accessing obscure formats deposited by self-publishers; and preserving and migrating material as technologies change.

Electronic publications received through legal deposit must be identified, acquired, registered, catalogued, stored and maintained. They must also be recorded in the national bibliography, preserved and made available to researchers. ... It will take longer to process electronic publications than it will to process print publications.... Electronic media do not have the same life expectancy as high quality paper, and so bibliographic records will have to be amended more often to record the transfer of the content to new storage devices. The choice of storage medium and computer environment will need to cater for the way in which access is to be provided and preservation is to be undertaken (CDNL, 1996: s.3).

Accurate centralised cataloguing and descriptive metadata in online legal deposit systems, in line with international standards, are critical to accessibility of legal deposit collections. State-of-the-art library management systems are therefore very important. The Legal Deposit Consortium currently shares an integrated online library management system, Millennium, but there are plans to upgrade it to III Sierra or WorldCat in the near future. The legal deposit library personnel are not all competent in IT skills and will need upskilling and support to enable them to competently meet the challenges of e-deposits.

d) Trustworthy Digital Repositories

A trusted digital repository for the National Library of South Africa is crucial, if our documentary heritage is to be accessible to future generations. The National Library is currently negotiating options for an e-repository. “A trusted digital repository is one whose mission is to provide reliable, long-term access to managed digital resources to its designated community, now and in the future” (RLG, 2002: 5). It is imperative for such a repository to incorporate international best practices and standards to ensure its longevity and sustainability. Apart from the positive attributes of speed, accessibility, delivery to users globally and concurrently, there are potential threats and risks inherent in digital repositories too. Rosenthal, Robertson, Lipkis, Reich and Morabito (2005) highlight some of these threats, for example, media failure, hardware failure, software

failure, communication errors, failure of network services, media and hardware obsolescence, software, operator error, natural disaster, external/internal attack, economic failure, and organisational failure.

To carry out their mission of digital preservation, legal deposit e-repositories will need to engage in “constant monitoring, planning, and maintenance” and “conscious actions and strategy implementation will be required” (CRL and OCLC: 3).

All of these present an expensive, complex undertaking that depositors, stakeholders, ...will need to rely on in the greater collaborative digital preservation environment that is required to preserve the vast amounts of digital information generated now and into the future (CRL and OCLC: 3)

Based on “the emerging expert community’s thinking”, RLG (2002: 13) recommends a process for certification compliance (2002: i) and lists the following attributes for a trusted repository:-

- Compliance with the Reference Model for an Open Archival Information System (OAIS)
- Administrative responsibility
- Organizational viability
- Financial sustainability
- Technological and procedural suitability
- System security
- Procedural accountability

With ever-changing technology, and more frequent obsolescence, legal deposit libraries will need to constantly convert and migrate works, copying them to each new media form before the previous one becomes obsolete. Also, as new media is created, these libraries will need to preserve the knowledge of the methods of converting from one media to another, so they can still access the old works that have not yet been migrated. This is crucial for accessibility and longevity. Without this information, even preserved works could be unreadable or lost forever (Bricklin, n.d.).

Article 5 of the UNESCO Charter (UNESCO, 2003) states that -

[d]igital continuity of the digital heritage is fundamental. To preserve digital heritage, measures will need to be taken throughout the digital information life cycle, from creation to access. Long-term preservation of digital heritage begins with the design of reliable systems and procedures which will produce authentic and stable digital objects.

Electronic content is always at risk of being lost, corrupted, encrypted or blocked by technological protection measures. Such material is seriously at risk of being lost if some action is not taken to preserve access in some way. Electronic content can be in many versions and legal deposit libraries need to ensure they collect the correct versions, or all versions if changed significantly. Many websites change and delete content quite substantially, with non-current content often being deleted or deep-archived. Many ‘publication sites’ are short-lived and if part of cultural heritage, should be harvested quickly to avoid losing that material altogether. All websites are subject to risks of catastrophic loss through system failure, poor back-up systems, viruses or malware infiltration and damage (Jones, 1998).

Jones (1998: para. 3) suggests that due to considerable confusion about terms like "archiving", caution must be taken that valuable information is not lost or "discarded when use levels drop below a threshold set for storage needs instead of longer term usefulness or demand".

e) **Collection Development**

Muir (2005: 303) suggests that issues such as "development of a mechanism for identifying publications eligible for deposit, selection policies and procedures for submission, processing and preserving material" should be addressed. It is important that misconceptions and depositors' concerns are addressed through awareness campaigns and cooperation with publishers locally and internationally. "The overriding factor is the need to preserve the digital heritage" (Muir, 2005: 303).

When considering whether websites and other related online material, other than e-publications, should be harvested as part of legal deposit in South Africa, there are many considerations and challenges to address. The ubiquitous nature of the Web and "diverse information architectures, technologies employed, and content embedded in Web sites, pose challenges for harvesting" (Mason, 2007: 206). One of the biggest challenges of harvesting pertains to the glut of online materials that are constantly being created by conventional and not-so-conventional publishers (Foo et al, 2005). There is just too much material in too many places on the Web to be able to collect it all for legal deposit purposes.

Phillips (1998) suggests that the large amount of material of low research value, and the labour intensive nature of managing online publications with limited personnel may be a deciding factor in adopting a selective collection development policy. She points out that librarians engaged in selecting online publications largely lack the selection tools that they have been accustomed to with print. This may lead to the National Library of South Africa and other legal deposit libraries having to prioritise on what online materials are collected and where it will be deposited in future. Currently e-material is only collected by the National Library of South Africa, on a voluntary basis; not by the other deposit libraries. Centralised cataloguing essentially does away with 'multiple copies', as one copy is accessible by many users via the online library management system. It is important for the Legal Deposit Consortium, with assistance from the LDC, to adopt either a comprehensive or selective collection development policy for e-publications.

Phillips (1998: para. 18) suggests that –

Collaboration to share effort is important for broad coverage of the national output. Widespread use of standard metadata coupled with improved search engines that would search on this metadata would assist the process of identification of titles. Greater awareness by publishers of the need to archive, to use metadata and to report titles to preservation agencies is also needed.

Mason (2007:206) states that "[d]ecisions to prioritise made in selection, acquisition, appraisal, and preservation determine the presence and longevity of cultural heritage material". She points out that it is inevitable that some electronic publications will not find their way into library collections as -

some may have already vanished or will vanish in between domain crawls, may not be selectively crawled, or may be rejected through appraisal of harvested material because of damage or loss during technical transfer. There are electronic publications that are not yet feasible to retrieve, let alone acquire (such as content lost or deleted in dynamic databases or residing on decaying portable format), or not possible presently to preserve (because of unknown or unstable file formats) (2007: 206).

Mason (2007: 206) suggests that it is better to concentrate “on the material of high research value that can be captured now, rather than obsessing about the bits missed”. She states that -

publishers and researchers benefit from having the publishing community deposit “traditional” types of electronic publications with rich research value, that is, those produced in simple formats such as PDF and Word, as they publish them. This replicates the process undertaken in print, and connects readily with processes already in place for acquisition and cataloging. The benefits to publishers of getting their publications cataloged and listed in the national bibliographies are well established as a means of driving sales (2007: 206).

f) Amendment of Relevant Laws

On 26 May 2008, the SA Department of Arts and Culture published the Cultural Laws Third Amendment for public comment in the Government Gazette (No. 31082 - Notice 652). This Bill proposed to amend sections of eleven Acts. Nicholson (2008: 1) raised concerns about the delay in amending at least three of those Acts “which have particular relevance to libraries and educational institutions, namely, the National Library of South Africa Act, the South African Library for the Blind Act and the Legal Deposit Act”. She claimed that -

[t]his Bill could and should have been the perfect opportunity to update these Acts, to at least provide for better access, preservation, digitization and digital curation, and thus enable libraries to carry out their mandates. It seems the Department of Arts and Culture has decided to amend its legislation in two phases, addressing the less important issues first. Its second phase of amendments will apparently only be possible once the Copyright Act is amended (2008: 1).

The current Legal Deposit Act needs to be updated. Although it provides for deposit of digital content, it does not provide for format/media shifting, digitisation and/or digital curation to embrace new technologies as they supersede obsolescent ones. The current Copyright Act hinders proper implementation and application of the Legal Deposit Act, especially with regard to accessibility and digital preservation.

The Department of Trade and Industry has started a process of consultations with stakeholders with a view to drafting a new Copyright Bill during 2015. Only when this Bill is officially enacted, will the Department of Arts and Culture be in a position to execute Phase Two of the proposed Cultural Laws Third Amendment Bill of 2008.

It is important that South Africa’s legal deposit legislation is harmonised with its copyright legislation when it is amended. Permissible forms of access, preservation, and the use of material received under legal deposit, whether harvested or deposited by publishers, “should be no more restrictive than those permitted under copyright legislation” (CDNL, 2012: 4).

Conclusion

Legal deposit is critical for access to and preservation of South Africa's documentary heritage for perpetuity. Libraries and publishers must collaborate with a common goal – “to ensure the worldwide success of legal deposit of content, irrespective of format or technology” (IFLA, 2011: 1).

...in a world where information increasingly has no borders, it is an important principle both that deposit libraries should be able to make legal deposit copies accessible in the same manner as they do other collections, and that publishers should not be subject to unreasonable demands and can meet legal deposit requirements without undue complexity and burden.(IFLA, 2013: 1).

South Africa needs to amend the Copyright, Legal Deposit and ECT Acts and other relevant library-related laws as a matter of urgency. Legal deposit libraries need to adopt best practices and international standards to ensure longevity and security of their valuable collections. A comprehensive collection development and digitisation policy should be the guiding document for the National Library and other legal deposit libraries and OPDs. Issues such as trustworthy accreditation, privacy, security, server space and technological requirements, disaster management, format/media shifting and conversion to accessible formats for persons with visual impairments all need to be addressed in the policy too.

Legal deposit is extremely important for South Africa. It plays a key role in education, research and providing access to knowledge for socio-economic transformation. It is fundamental to freedom of information, access to information, preservation of South Africa's cultural heritage and to the perpetuation of an informed citizenry (IFLA, 2013).

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Biographical Information:

Denise R. Nicholson has a BA degree and Higher Diploma in Librarianship and Information Science from the University of South Africa and a Master of Laws from the University of the Witwatersrand, Johannesburg. Her Dissertation is entitled “*Accommodating Persons with Disabilities in South African Copyright Law*”. She has worked at Wits Library for 32 years in various posts, i.e. personnel, technical processing, publishing liaison, copyright and scholarly communication. She currently holds the post of Scholarly Communications Librarian and manages the Wits Scholarly Communications and Copyright Services Office. She is a member of various committees/workgroups in her institution and Library.

She is a member of various Committees, including the SA Ministry of Arts and Culture’s Legal Deposit Committee; IFLA Committee for Copyright and Other Legal Matters (CLM) and its Workgroup on a Treaty for Libraries and Archives (TLIB) and IFLA’s e-Lending Workgroup. She was the co-Convenor of Access to Information Network – Africa (ATINA) from 2008 to 2013. She is also a member of the South African National Council for the Blind’s Workgroup and is a professional member of the Library and Information Association of South Africa (LIASA). Denise will be attending the IFLA Conference in Cape Town 2015, as the official representative of the Ministry of Arts and Culture’s Legal Deposit Committee.

She is well-recognised locally and abroad for the positive role she has played in promoting access to knowledge, open access and copyright awareness. In 1998 and 2000, she was Convenor of two Copyright Task Teams representing the higher education and library sectors. These Teams challenged and stopped more restrictive Copyright amendments being passed by the Government. These amendments would have had a negative impact on education, libraries, archives, research and persons with disabilities. Denise continues to campaign for more balanced copyright laws in South Africa and other developing countries. She was Policy and Dissemination Advisor in the African Copyright and Access to Knowledge (ACA2K) Project (2007-2010) which studied the copyright laws and practices in eight African countries, including South Africa. She was also co-founder of the African Access to Knowledge Alliance which was involved in two key IP projects in Africa, i.e. the OA Leadership Summit in Botswana (2007) and the ACA2K Project as aforementioned.

She has won a number of prestigious library awards for her sterling work and contribution to the library profession internationally, regionally and in South Africa. She has many publications and has presented at more than 100 conferences around the world. She has also contributed to many international position papers, documents, policies and reviews for IFLA, eIFL, UK Govt., Commonwealth of Learning, WIPO, etc. Her free online “Copyright & A2K Issues” newsletter reaches more than 10 000 people around the world.