

Struggles of the National Diet Library in Collecting Online Publications in Japan

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Abstract:

In 2012 (July 2013 in force) an amendment of the National Diet Library (NDL) Law and the Copyright Law gave NDL the right to record "online publications" in the private sector. In detail, private publishers are obliged to send to NDL or allow NDL to collect digital files on the Internet which have specific (1) file format type (PDF, EPUB and DAISY) or (2) bibliographic code (ISBN, ISSN and DOI).

NDL can collect only online publications which are (3) free of charge and (4) unprotected by Digital Rights Management (DRM) until an agreement is established among NDL, publishers, and authors. There are two crucial problems to be resolved: unlocking the protection of DRM for long-term preservation and financial compensation for the cost of deposit.

It took about 10 years to settle legal, technical, and organizational problems before initiating in 2010 the effective legal deposit of websites, including digital files (ex. PDF) operated by public agencies. On collecting fee-based or DRM protected online publications which have more stakeholders, sufficient preparation time and more sophisticated arrangements are required. Therefore, this year, the NDL will contract with some major cooperative publishers to temporarily (for 3 years) deposit online publications in the library for designing an effective e-legal deposit system in Japan.

Keywords: online publications, e-legal deposit system, national library, Japan

1. Brief history for collecting electronic materials in NDL

National Diet Library (hereinafter, NDL) has launched a collection of electronic publications in circulation on the Internet since 2002. Because books and serials were increasingly published only on the Internet or online, an objective of the legal deposit system for "the use and accumulation of cultural national property," one of the NDL's major missions had

become problematic. In 2012, the number of trade e-books circulated on e-bookstores reached about 380,000 titles¹.

The scope of collection of NDL of networked electronic information on online or circulated on the Internet has been steadily expanded as follows:

- (1) In 2002 selective collection of Internet materials (websites) with permission of webmasters (public agencies, universities, and organizations of cultural and international events held in Japan) (“[WARP](#)”)
- (2) In 2010 institutionalized collection per the NDL law of Internet materials² produced by national or local public agencies
- (3) In 2013 institutionalized collection per the NDL law of online publications³ (corresponding to books or serials) in the private sector (except those that are protected by Digital Rights Management or priced) (“[E-legal Deposit](#)”)

History of networked electronic publications collection

Nov. 2002	Acquisition of Internet materials in the form of the Web Archiving Project (WARP) began. The operation was permission-based.
Dec. 2004	The Legal Deposit System Council reported “Concept of the Acquisition System for the Networked Electronic Publications.”
Jul. 2009	The NDL Law was amended to enable institutionalized acquisition (i.e. no permission required) of Internet materials produced by national and local governments and related institutions. The law came into force on April 1, 2010.
Jun. 2010	The Legal Deposit System Council reported “Concept of the acquisition system for online publications.” The Council also submitted an interim report on a compensation scheme in March 2012.
Jun. 2012	The NDL law was amended further. It partially came into force in July 2013 in relation to privately published online publications available free and without DRM.
Jul. 2013	Acquisition of online publications available free and without DRM. Institutionalized acquisition for priced or with-DRM materials will continue to be examined by the Legal Deposit System Council.
2014-	The experimental project for contract-based temporal deposit of priced or with-DRM materials is expected to start with major commercial publishers.

¹ *eBook Marketing Report 2013* by Tokyo-based publisher and research firm Impress Business Media Corp (in Japanese)

² NDL Law Article 25-3: They are “texts, images, sounds, or programs recorded by electronic, magnetic, or any other means not directly open to human perception, and made available to the public on the Internet”

³ See next chapter.

At the same time amendments (2) and (3) of the [NDL law \(Article 25-3, Article 25-4\)](#) defined the legal deposit system, the [Copyright law \(Article 42-4\)](#) was amended too. Recording of the Internet or online publications by the NDL requires needs the permission of rights holders, but it is practically impossible for both NDL and legal depositors (publishers) to contract with innumerable rights holders. This amendment of the Copyright Law allowed reproduction of online publications without any permission for the purpose of accumulating these works in NDL.

In April 1999, the “[Legal Deposit System Council](#)” (hereinafter referred to as "the Council"), an advisory panel of outside experts was established, following the reorganization of the former Legal Deposit System Research Council. The purpose of the Council is to contribute to the improvement and proper management of the legal deposit system. This council is composed of not more than 20 members, such as university professors of intellectual property rights, administrative law, cultural studies, and representatives from major associations of authors, publishers and newspaper publishers, music record industry etc. relating to the legal deposit system commissioned by the Chief Librarian of NDL.

The Council have been producing some decisive reports to the Chief Librarian for institutionalizing acquisition of electronic materials from so-called “packaged digital publications” (CDs, DVDs etc. of books or serials, movies, programs, games) in 2000 to online publications in 2013.

2. Definition of online publications in NDL law

The NDL law Article 25-4: The “online publications” are *“texts, images, sounds, or programs recorded by electronic, magnetic, or any other means not directly open to human perception, made available to the public or transmitted through the Internet and other advanced information and telecommunications networks, and specified by the Chief Librarian as corresponding to books or serials (except confidential matters, blank forms, specimen pages and other simple publications).”*

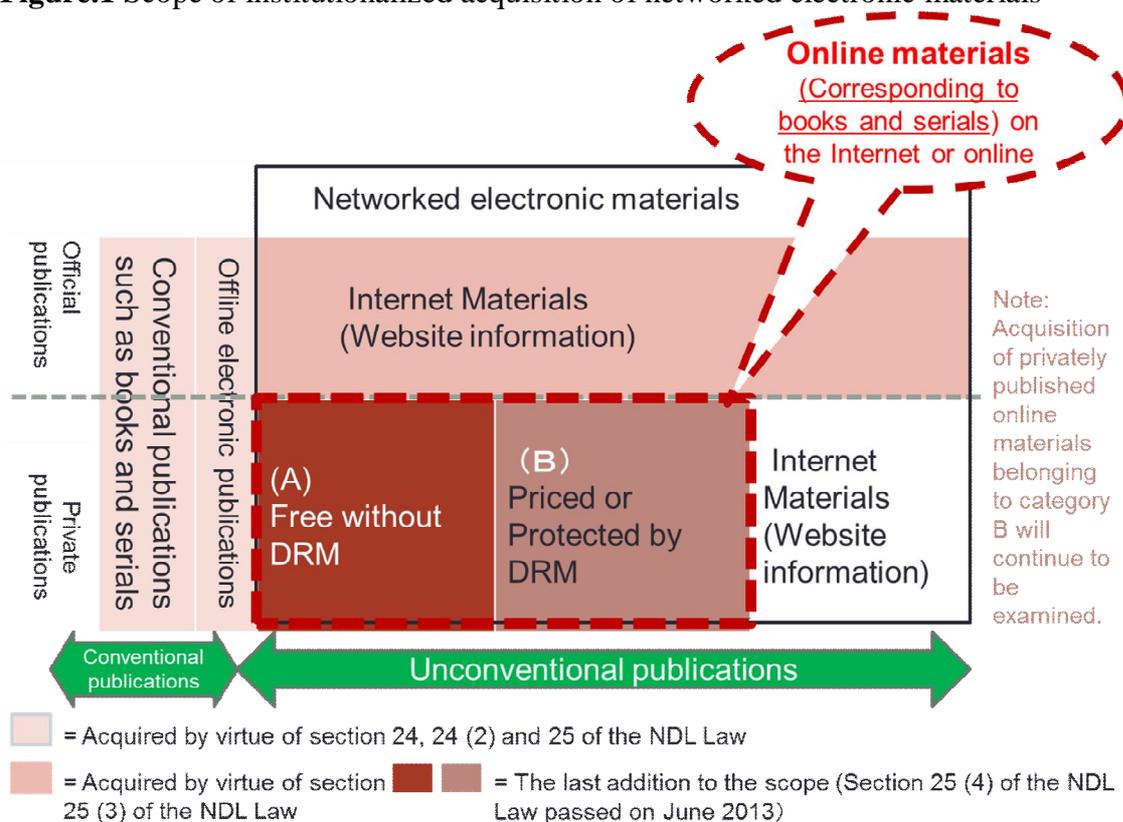
“Corresponding to books or serials” in this definition means that websites in general and private blogs etc. which are not intended to be fixed or deposited for long-term by any custodian, and broadcasting, digital video/music distribution are excluded. From a long term perspective, all websites as a national intellectual property should be comprehensively recorded by NDL, but at the present time it is not realistic due to concerns over cost, public fear of mass storage of websites which include individual thoughts and creeds by NDL as a tool of state power, and some technological difficulties.

Provisions of subsidiary rules (the Chief Librarian specifies “as corresponding to books or serials” in Article 25-4) define online publications; online publications have specific (1) *bibliographic codes (ISBN and ISSN, DOI: Digital Object Identifier) OR (2) file formats (EPUB and PDF, DAISY: Digital Accessible Information System)*. However, online publications that are made available on institutional repositories operated by research institutes, universities, etc. and have same fixed visual layouts with printing publications are excluded from the point of view of avoiding the overlap of investment.

Furthermore, the NDL excludes online publications that are (1) priced or (2) protected by DRM until mutual understanding for e-legal deposit is established among stakeholders, especially between NDL and expected legal depositors (publishers).

The NDL has been collecting free online publications such as annual reports, year books, directories, in-house organs, public relations magazines, bulletins, collections of papers, journal articles, research papers, academic journals, newsletters, and collections of abstracts by academic organizations, business reports, technical journals, CSR reports, company histories, statistics and others relevant materials to books or periodicals published after July 1, 2013.

Figure.1 Scope of institutionalized acquisition of networked electronic materials



3. Critical issues for acquisition of priced or DRM protected online publications

In the private sector, an increasing number of comics, literature, and similar materials are being published as online publications, the number of which is expected to reach 1,000,000 titles (about \$ 133million market) by the end of 2014 in Japan.

NDL and stakeholders relating to online publications unanimously agree to long-term deposit at the NDL for posterity. But the two most important points of discussion with publishers revolve around compensation for fee-based publications as well as technological difficulties, such as DRM and other issues affecting the formatting of online publications at the time of deposit.

(1) Compensation

Under the present legal deposit system, the NDL gives compensation equivalent to the expenses usually required for the issue and deposit of the publication (i.e. 40% - 60% of market price⁴) to private depositors.

When in 1948 the legal deposit system was launched, (a) this system was recognized by many publishers as a tool for censorship, which was notorious during the pre-war, and (b) in the dislocated economy just after the end of WWII, there were few incentives to deposit publications to be catalogued in the national bibliography. Thus, the NDL scarcely acquired publications by this system. This situation forced the NDL to change the course. In 1949, the NDL negotiated with private publishers, book wholesalers etc. and introduced a "carrot and stick" policy; that is, depositors shall receive the compensation for deposition and failed depositors are punished⁵ with a fine of up to 5 times of the retail price⁶.

In 2010, the report of the Council; "Concept of the acquisition system for online publications" concluded that because there are many differences between online publications and conventional books or serials, it is difficult to adopt the same measure for compensation. Online publications do not have process of printing and bookbinding, initial number of printings, price for ownership (rather price for use) etc. which presumably represent the initial cost of making conventional books (without benefit).

Gratis deposition of online publication alienated publishers and authors. They insist that online publications are not free of charge, need huge investment, and the situation will be unfair and unacceptable if the same content is published in paper and online, with the former paid and the latter unpaid. From point of view of authors, in Japan, royalty on a book is paid on the basis of number of first printed copies (not sold copies), on the case of online publications it is paid in proportion to the number of sold copies. Gratis deposition is unacceptable for many authors.

(2) Technical difficulties

Online publications are having some technical problems as follows.

- (i) For the purpose of the legal deposit system to accumulate online publications, DRM is a major obstacle.

Online publications on e-book stores in general are sold with specific format with DRM and can be read only through designated viewer software and hardware. In Japan, there are over 50 e-bookstores, which are not mutually compatible. Each e-bookstore is fiercely competing to secure their customers in their own reading environment. But information technology becomes easily obsolete, in near future, many publications sold by specific e-bookstores might not be readable for readers who paid.

- (ii) In addition, authors and editors have great interest in how their works are displayed on liquid crystal which are affected by viewers and devices. Particularly, in Japanese writings, there are columnar writing, and ruby

⁴ In Japan, books, serials, newspapers and music records/CDs are sold with maintenance-price.

⁵ There has not been any case of this punishment until 2014.

⁶ The NDL law Article 25-2.

or agate (printing pronunciation letters alongside Chinese characters etc.), then this leads to make situation more difficult to be solved.

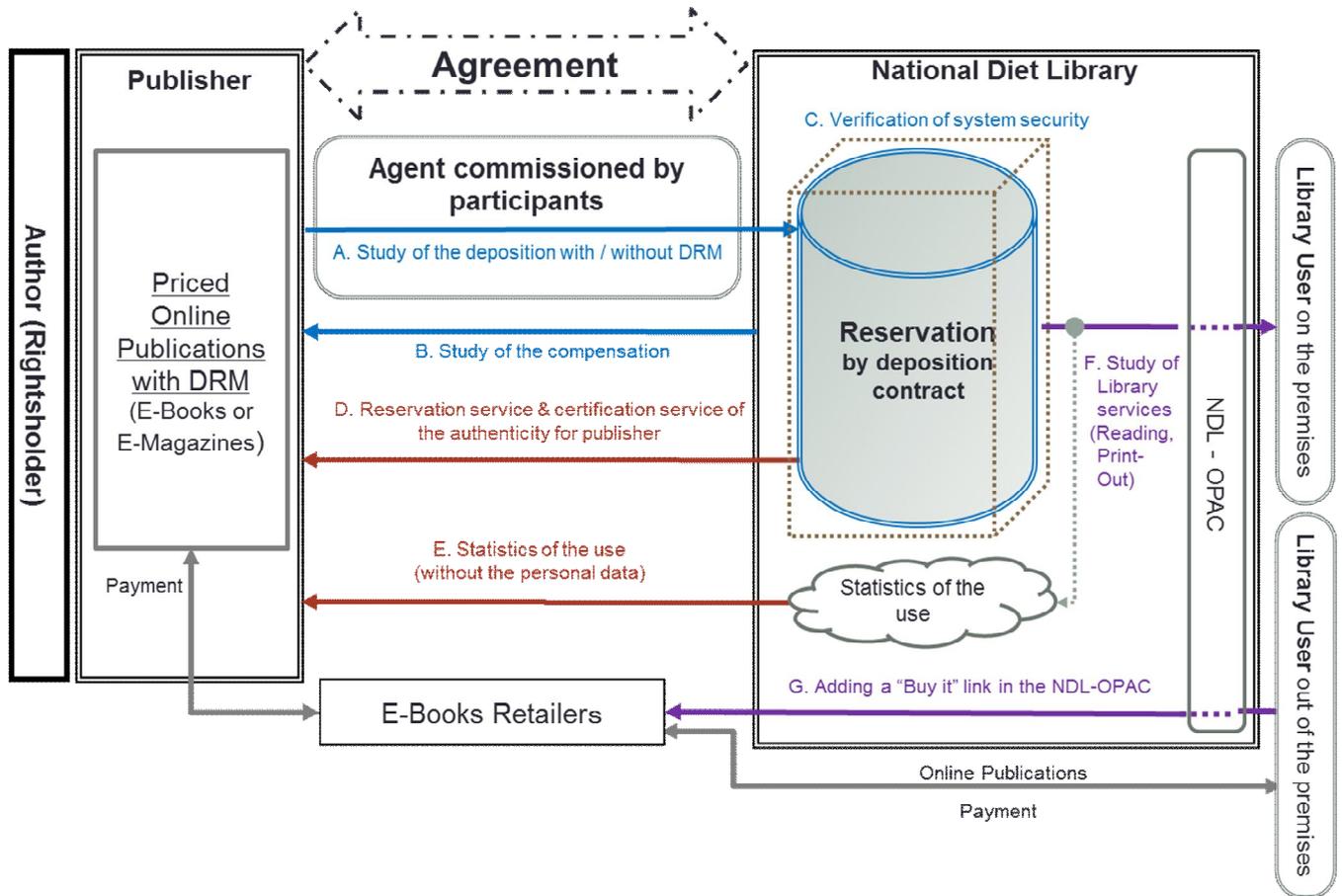
- (iii) Many publishers will produce online publications for multiple e-bookstores through electronic printing companies, therefore, publishers as depositor may not own the online publication, so called "a master file" or a final file of online publications without DRM which NDL requires to preserve, migrate into every current version of format and medium to be handed to posterity. Some publishers are afraid that NDL might finally transmit collected online publications to the public or the public libraries as the [Digitized Contents Transmission Service for Libraries](#) in Japan from NDL launched on January 2014, so publishers in general are hesitated to provide master file for deposit.
- (iv) NDL try to acquire the master file itself instead of limited access to the contents stored in publishers' server and technically copy-protected material. But if this condition of deposition is institutionalized, the NDL law has to be amended. Because information with DRM possibly affecting layout etc. is not literally information without DRM.

4. The Temporal Deposit of Priced Online Publications Project for the Legislation

In 2014, the NDL plans, in order to solve these problems with main stakeholders, that some selected online publications are be temporarily (for up to 3 years) deposited in NDL: "Temporal Deposit of Priced Online Publications Project". In this project, NDL will cooperate with [Japan Book Publishers Association](#), [Japan Magazine Publishers Association](#), Electronic Book Publishers Association of Japan and Digital Comic Association which are consisted of leading publishers of trade books and magazines (fictions, comics, etc.).

NDL and participants have to contract with all right holders on online publications to collect, duplicate their publications for this project.

Figure 2. Overview of the experimental project for the temporal deposit of priced online publications (under discussion among stakeholders)



(1) Phase 1: Collection and Storage (Figure2. A and B, C.)

- What is online publications with / without DRM in the process of production?
- When and how can it be specified?
- Who is most adequate depositor?
- How much does it cost for deposition? Is it necessary to be compensated by money?
- For what is be compensated, for production cost, handling fee, transfer fee and so on?
- How much size of the deposition server does NDL have to maintain?
- How does NDL technically protect master file from any risk to be stolen or destroyed?

(2) Phase 2: Services for Rights holder (Figure2. D and E.)

- What is the merit of deposition for authors and publishers?
- What service is non-commercial incentive for stakeholders?
- What statics is useful and abiding with user privacy for stakeholders?

(3) Phase 3 Services for the Public (Figure2. F and G.)

- What service should NDL provide for the user on the premises?
- How NDL provide services for the public on the premises?
- Is "Buy it" button linked to the bibliography in the NDL-OPAC is permissible and useful for the public? And is this button incentive for publishers to deposit their publications?

An effective and efficient deposit of online publications needs some agents who select and gather publications to be deposited instead of or commissioned by numerous would-be legal depositor (publishers). In the case of depositing printed conventional books, NDL contract with the Japan Publication Wholesalers Association to deposit them. NDL paid handling fee (150 yen) per item to this association since 1951. Both financial compensation for publishers and rights holders and system of depositing agent have been a very useful mechanism to comprehensively collect publications into NDL on the unique background where 3,700 publishers publish 78,000 new book titles in 2012⁷.

This project will be open to any publishers who are interested in it. The more participants there are, the more interest about so called “e-Legal Deposit System” in NDL arises. That is an additional object of this project.

⁷ See International Committee, Japan Book Publishers Association, [*An Introduction to Publishing in Japan 2014-2015*](#)