Response to Consultation Paper: Extending Legal Deposit

13 April 2012

Copyright Agency Limited

Copyright Agency is a rights management company, whose members include more than 20,000 Australian writers, illustrators, photographers and publishers. Through agreements with similar collecting societies in other countries, we manage overseas content as well as Australian content, and enable the use of Australian content overseas. We are the government-authorised collecting society for collection and distribution of copyright payments for the use of text and images under Part VB of the Copyright Act (educational use) and Part VII Division 2 (for government use), and also license our members’ works as their agent.

Summary of our position

Thank you for providing us with an opportunity to respond to the Consultation Paper Extending Legal Deposit. In summary:

- we support the preservation of material that is of historical and cultural significance to Australia, and the role of the National Library of Australia (NLA) in doing this;
- we are not sure that mandatory legal deposit provisions are necessary to achieve this objective;
- if there are to be mandatory legal deposit provisions, they must be aligned with the objective of preserving material of historical and cultural significance;
- some access should be provided to this material to researchers, but the level and means of access requires careful consideration;
- the legal deposit provisions should not be regarded as a means of extending the NLA’s acquisition budget; and
- any legal deposit provisions must be consistent with the requirement of the Australian Constitution that property not be acquired by the Commonwealth on other than just terms.

Issues in consultation paper

Definition of ‘library material’

There are two major aspects of the current definition that exceed the objectives of legal deposit:

- there is no alignment with the NLA’s collection development policy; and
- there is no alignment with the legal deposit requirements for other libraries.

Section 201 requires the deposit of all material published in Australia in the paper formats described in the definition of ‘library material’, irrespective of the historical or cultural significance of the material. There is no alignment between this requirement and the NLA’s Collection Development
Policy.¹ This would suggest that publishers are depositing material with the NLA that does not fit within the NLA’s development policy.

There are other legal deposit provisions in State and Territory legislation. This means that publishers must deposit the same material with a number of libraries.²

If there is to be a requirement to deposit material with the NLA, then the requirement should be confined to material that:

- is covered by the NLA’s collection development policy at the time the material is published;
- is the ‘best copy’ of the material in any format (for example, if the paper version of a book is the ‘best copy’, then a publisher is not required to deposit the eBook version of the same book);
- is not already in the collection (including as a result of voluntary deposit); and
- is not covered by other legal deposit requirements.

On the other hand, material published digitally that the library wants to collect, such as a blogs, would not seem to be covered by the definition proposed in the Consultation Paper.

TPMs

We think that a requirement that a publisher strip material of any technological protection measures (TPMs) is not necessary to meet the objectives of legal deposit, and that it would pose unnecessary risks for the security of the content.

We assume the objectives of the proposed requirement are to address situations where a TPM would prevent or interfere with:

- preservation of the material; and/or
- access to the material that would otherwise be available for legal deposit content.

We address the extent to which access should be provided to legal deposit material below.

These objectives could be met by the publisher providing the NLA with the means to ‘unlock’ the content for these purposes, subject to the NLA’s obligation to not disclose those means to others.

Administration and compliance costs

Given the legal deposit provisions benefit the NLA, and publishers are required to supply material they would otherwise sell to the NLA, the burden on publishers should be minimised as much as possible.

We are not clear how online material would be ‘deposited’ with the NLA, including the extent to which this would require systems to be established by publishers to enable the ‘deposit’. We look forward to receiving more information about this.

Public access to deposited materials

We acknowledge that there must be some provision for the viewing of material acquired by the legal deposit provisions, but oppose the proposal that each of the library use provisions apply to this material in the same way as they apply to other material.

Provisions in the Copyright Act allow libraries to supply copies of material in their collection:

- to their clients (section 49);
- to other libraries’ clients (section 50); and
- to other libraries for inclusion in their collections (section 50).

Unlike copies provided under the educational statutory licence, there is no requirement that a copy made in reliance on the library provisions never be used for another purpose.

One way in which the NLA provides copies to its clients from its collection is its Copies Direct service. Under that service, a client can get a digital scan of up to 50 pages of a work in the library’s collection for $16.50. This fee is based on the NLA’s ‘cost recovery’ for the service, and does not include any payment to copyright owners. We understand that this service applies to material acquired by the NLA under the legal deposit provisions in the same way as it applies to material acquired by other means.

In our view:

- section 50 should not apply to legal deposit material (either for inclusion in a library’s collection or for supply to that library’s client); and
- section 49(5A) could apply to legal deposit material, but the other parts of section 49 should not.

We could support the supply of copies of some legal deposit material under the Copies Direct system if there were provision for the payment of equitable remuneration to rightsholders. There may be ways for this system to work more efficiently with material that is acquired in electronic form, so that the price charged to the customer was similar to that charged now, but a component of that price would be payable to the rightsholder.

Use of deposited material by the National Library

We do not object to the National Library reproducing the material in order to preserve it. We do not think it is necessary to limit the number of reproductions, provided the purpose is preservation.

Libby Baulch
Policy Director

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3 https://copiesdirect.nla.gov.au