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Response to the Government Consultation Paper on Legal Deposit of Publications

Introduction

The Society submitted a response in May to the Government consultation paper 'Legal Deposit of Publications'. Legal deposit is the arrangement under which publishers of print publications are currently required to deposit one copy of every publication in the British Library and in addition, on request, with the five agency libraries in the UK and the Republic of Ireland. The objective of legal deposit is to maintain an archival record of the nation's published output and preserve it for future generations, allowing access for academic and business users.

The consultation paper invited respondents to submit their views on a number of specific questions relating to: the existing system of legal deposit; options for extension to non-print forms of publication with particular reference to recent growth in volume of electronic publications; the implications for publishers' intellectual property rights; and costs.

Response to the Government Consultation Paper on Legal Deposit of Publications

The Royal Society welcomes the opportunity to give its views on legal deposit: it is a system which is of continuing importance to the conduct of science. Professor J.S. Rowlinson, Sir Alan Cook, Sir Roger Elliot, Professor J.L. Harper, Dr O. Kennard, Dr S.H.P. Madrell, Professor J.B. Pendry, Professor F.T. Smith, Professor P.D. Wall and Professor S. Zeki have contributed to this response which has been endorsed by the Council of the Royal Society.

Statutory legal deposit should continue to ensure that a comprehensive archive of UK publications is available to scientists and to those who study science: voluntary deposit would not ensure that a comprehensive archive was maintained. The information base resulting from legal deposit is of value not only for the advancement of science and as a record of past progress; it is of international importance as a permanent record of publications in all fields.

The importance of the archive resulting from legal deposit depends fundamentally on the archive being accessible. Access for research must be maintained and, where possible, enhanced otherwise its value would be greatly reduced.

Libraries with the duty to maintain legal deposit archives must be provided with sufficient resources to ensure archiving and accessibility. Ultimate responsibility for maintaining the archive lies with Government.

All publications in forms other than print, including electronic and microform publications, should be covered by the statutory system of legal deposit, following the same principles as are applied to the deposit of print publications. Unless such measures are taken, the national information archive will in future be incomplete when particular publications are produced solely in forms other than print. Such a situation could result in published information being lost or inaccessible to both present day and future researchers. Such an extension of the legal deposit system should include both electronic publications in a tangible format and, when appropriate archiving technology allows, on-line publications.

The number of legal deposit copies of any publication should be decided with explicit consideration of access and the long-term preservation of the archive. It is important that the number of deposits enable reasonable access for researchers in terms of location and the number of copies available. In order to avoid erosion of the archive as a result of accidental loss or damage, there should always be at least two deposit copies of a publication, each held at a different location. It may be necessary to hold more than two copies in different libraries to ensure good regional access (paragraph 2.22).

If the provision of written receipts for deposited material is felt to be unnecessary by publishers it should be brought to an end (paragraph 2.29).

The question of whether legal deposit libraries should have legal powers to dispose of material (paragraph 2.30) begs a more fundamental question: if material is not required, should deposit copies have been requested in the first place? Legal deposit libraries and their agents should request only sufficient copies to meet archival objectives. However, there are circumstances when disposal may be needed: Limited disposal, with the agreement of the relevant publisher, should remain an option in archive management, but must not compromise the objectives of archive integrity and accessibility. Libraries should keep records of disposal and be accountable for such actions.

Electronic publication is evidently an emerging, rapidly developing technology. New legislation must be sufficiently flexible to allow for revisions to be made as technology advances. Legislation should therefore set out the principles for legal deposit and include enabling powers to extend legal deposit by means of subordinate legislation (paragraph 3.20). Such flexibility is essential to ensure that legislation can be adapted as new forms of publication emerge in the future, particularly on-line publications.

Statutory legal deposit provisions should be extended to electronic publications in tangible format (and in future for on-line publications) to ensure the continuing long-term integrity of the archive and preserve regional access. Any modifications to user access should allow the free conduct of research, with appropriate provision for copying under fair dealing provisions (paragraphs 3.23, 3.24 & 3.28).

Voluntary deposit of the digital version of legally-deposited print publications is discussed in the consultation paper (paragraph 3.25). This arrangement is satisfactory in facilitating digitisation of print material but should not set a precedent for general voluntary deposit of electronic publications. If a publication is produced in two formats, one at least must be subject to statutory legal deposit. As confidence in technology for archiving electronic materials develops, legal deposit of the digital version may prove to have advantages over that of the paper version. Legislation should take account of this option and give discretion as to which version should be

subject to statutory deposit to the deposit library, taking account of the need for optimum accessibility to be maintained (Paragraph 3.26).

Publication of materials solely in on-line format is growing in importance and some form of legal deposit is needed for on-line publications in order to ensure continued access for scientific research. The issues identified for definitions, responsibility for publication, and deposit and archiving strategies are sufficiently important and, at present, sufficiently difficult to address that separate future discussion and consultation is needed. Such future discussions should set the UK archive within an international context in order to consider issues such as standards for electronic archiving and the items to be included in a UK archive, given that many publications are available internationally. The arguments for the strengths and weaknesses of particular strategies will need to be subject to close examination and justification in such consultation (paragraphs 3.27 & 3.28).

Legal deposit legislation should enable the deposit libraries to transfer published material to different media with the aim of preservation if there is a legitimate concern that material would become inaccessible if transfer were not performed (paragraphs 3.22, 4.4 & 4.5).

It is reasonable to restrict access to a limited number of categories of deposited items for a specified time from publication date, where the publisher can demonstrate the potential for significant commercial damage if immediate unrestricted access were allowed (paragraphs 3.19 & 4.9).

If material on CD-ROM could not be viewed in a deposit library without a breach of copyright law, there would seem to be little value in deposit. Legal deposit libraries should therefore be allowed to grant on-the-spot access by a single user at a time to material which has been legally deposited. Access through a network within the deposit library, again for on-the-spot access to a single user at any one time, would seem to be an appropriate option for access (paragraphs 3.24 & 4.10).

Extension of the legal deposit system to non-print publications is vital in order to maintain a complete national archive. It should remain the responsibility of Government to provide sufficient resources to enable extension of the national archive and ensure accessibility (paragraph 5.14)