



Australian  
Library and  
Information  
Association

## **Submission to the 2007 Discussion Paper on the the Extension of Legal Deposit**

**18 January 2008**

**Attention:**

Mr Simon Cordina  
Assistant Secretary  
Content, Programs and Regulation Branch  
Department of Broadband, Communications and the Digital Economy  
GPO Box 2154  
Canberra ACT 2601

Dear Mr Cordina,

The Australian Library and Information Association (ALIA) welcomes the review of the extension of legal deposit and the opportunity to present this submission.

ALIA is the professional organisation for the Australian library and information services sector. It seeks to empower the profession in the development, promotion and delivery of quality library and information services to the nation, through leadership, advocacy and mutual support. <http://www.alia.org.au>

ALIA has among its key objectives, 'Promotion of the free flow of information and ideas through open access to recorded knowledge, information, and creative works' and 'Preservation of the human record'. It supports partnerships to advance these objectives. The outcomes of this review are therefore of particular significance to ALIA and the organisations it supports.

If you require any further information please do not hesitate to contact me at [Sue.Hutley@alia.org.au](mailto:Sue.Hutley@alia.org.au) or by telephone 02 6215 8215

Yours sincerely,

Sue Hutley  
ALIA Executive Director  
Australian Library and Information Association

## Introduction

ALIA welcomes the review of the extension of legal deposit and the opportunity to present this submission.

ALIA has among its key objectives, 'Promotion of the free flow of information and ideas through open access to recorded knowledge, information, and creative works' and 'Preservation of the human record'. It supports partnerships to advance these objectives. The outcomes of this review are therefore of particular significance to ALIA and the organisations it supports.

The incredibly rapid growth in the delivery of information in electronic formats has left organisations responsible for the preservation of, and access to this information unable to adequately meet their obligations, in part because of the complexity of technological, economic and organisational requirements, but also because the existing deposit legislation is not designed for, or adequate to deal with this new digital environment.

Significant information that is on the web today may not be there tomorrow. Government publications that were made available in print through Library deposit programs appear and disappear on the web on a daily basis. The National Library is attempting to archive 'culturally significant' websites with its 'PANDORA' project, but its ability to do this is hampered by existing legislation. The requirement to obtain permission from publishers before harvesting websites severely limits the amount of material that is preserved.

There is no requirement that producers of films or musical recordings deposit copies with the National Film and Sound Archive and despite the dedicated work of those in the Archive much material is probably lost.

The issues are complex, but there is an urgent need for Legislation to support the work being done by various agencies including the National Library and the National Film and Sound Archive to archive, preserve and provide access to our cultural heritage for future generations.

### ***Issue 1: Should the legal deposit scheme be extended to audiovisual and electronic materials and, if so, how should such materials be defined (including the quality of legal deposit materials, such as the 'best copy')?***

ALIA supports the extension of the legal deposit scheme to include audiovisual material such as films, photographic images, sound recordings, radio and television broadcasts, audiovisual kits and electronic material such as websites, e-publications, computer programmes and games, and microform publications to support the aim of capturing, preserving and providing access to 'culturally significant' material. Any definition should clarify that all the 'intellectual content' of these formats should be covered by the legislation.

ALIA is very concerned that extremely important material in these formats is currently being lost due to the lack of deposit legislation.

Defining these materials becomes problematic where the technology available tomorrow is currently unknown; therefore an open ended statement is required to allow for future developments, as well as clearly stating existing formats.

In effect all items published in Australia in any format should be subject to the extended deposit scheme, with guidelines for selection to be applied to eliminate the vast amounts of irrelevant material.

Japan's definition 'texts, images, sounds or programs recorded by electronic, magnetic or other methods which can not be directly perceived by human senses', and the Danish definition 'works published in physical format (regardless of the medium) and materials made public via electronic communication network' could only work in practice where deposit organisations are given control over how they are notified about new resources and are able to apply a selective approach.

Given that long term preservation and public access would be the aims of collecting agencies, ALIA believes that 'best copy' should be defined as the format which is best able to be cost effectively preserved and made accessible by the depositing institution.

Any new legislation should support the work of agencies developing new technologies and standards for the long term preservation of digital data, as this is integral to the success of any project to preserve the country's digital cultural heritage.

***Issue 2: Should an extended legal deposit scheme be in the Copyright Act 1968 or is a separate piece of legislation more appropriate?***

Given that the original reason for the inclusion of Deposit Legislation within Copyright Legislation no longer applies, there is a strong argument for creating separate Legislation that could be clearer and more easily accessed and amended.

Issues of compatibility between Deposit and Copyright Legislation would provide some justification for maintaining Legal Deposit provisions within the Copyright Act. As the Copyright Act contains measures, that have direct impact on the effective working of any extended deposit legislation, it is vital that the any new Deposit Legislation is compatible and works effectively with Copyright Legislation to achieve the balanced aims of protecting the interests of the owners of the intellectual property and preserving and providing appropriate access now and in the future.

***Issue 3: How many copies of published material should a publisher be required to deposit under an extended legal deposit scheme?***

ALIA believes that one copy of relevant material should be deposited, given the significant costs associated with preservation and access to this material.

There are limitless possibilities for disseminating and altering electronic data and a key issue here is not 'how many copies' should be deposited, but what technological means will be used to make sure the publishers rights are not infringed by inappropriate access to and use of this material. Legislation would have to provide clear access guidelines and the latest technologies used to enforce this.

For the scheme to be cost-effective, deposit organisations would have to work closely together to avoid duplication.

***Issue 4: Should the existing requirement that material be deposited at the publisher's expense continue to apply under an extended legal deposit scheme?***

ALIA supports the continuation of the current requirement that items should be deposited at the publisher's expense. Legislation should clarify that all 'intended intellectual content' should be covered by the Legislation and that all measured to override encryption should be included ensuring that the material is accessible. Serious penalties for non-compliance are vital. The current \$100.00 penalty is not realistic and needs urgent upgrading. If an actual amount is mentioned there needs to be an inbuilt inflation factor.

***Issue 5: Should there be a role for other organisations, in addition to the NLA and NFSA, to act as repositories for material under an extended legal deposit scheme?***

ALIA supports the National Library and the National Film and Sound Archive as the two national repositories for material under an extended legal deposit scheme.

The National Library and the National Film and Sound Archive will need to work with other repository organisations to ensure that all material is stored and made accessible, and the legislation should facilitate this. Some agencies such as the ABS, AUSTLII and ARROW currently provide an excellent example of how to effectively manage, preserve and provide access to culturally significant materials. The National Library liaises with these and other organisations such as GeoScience Australia and AGIMO regarding management, preservation and access to digital information. An effective legal deposit regime will not include anything which inhibits a collaborative approach to solve complex technical issues and manage a national digital collection.

The National Library currently selectively archives culturally significant web based documents and would be the logical organisation to continue with this.

For the National Library to do this effectively:

- legislation must give the National Library the ability to harvest electronic documents from the web without seeking the owners permission
- deposited material would need to be free of passwords and 'encryption'
- publishers would need to be responsible for providing **accessible** electronic materials.

***Issue 6: How might duplication of material collected by legal deposit agencies be avoided? For example, should publishers be required to deposit relevant material with more than one institution?***

ALIA believes that one copy of relevant material should be deposited with the National Library or the National Film and Sound Archive.

Separate legislation at state and territory level should continue and should preserve the State Libraries' identity and role in the collection of material.

***Issue 7: Should an extended legal deposit scheme apply to electronic versions of printed material?***

ALIA supports the deposit of electronic versions of printed material for a number of reasons:

- electronic and print provide different ways to access content. Research would be enhanced by providing electronic as well as print format
- preservation may be improved with electronic formats
- equity and access issues can be addressed by providing access to electronic versions of print documents.

***Issue 8: What other material should an extended legal deposit scheme apply to?***

An extended legal deposit should apply to audiovisual material such as films, photographic images, sound recordings, radio and television broadcasts, audiovisual kits and electronic and online material such as websites, e-publications, computer programmes and computer games, with an open ended definition which allows for the development of new technologies and formats.

***Issue 9: Should an extended legal deposit scheme apply to broadcasts? If so should this be limited to any particular types of material? Should the scheme apply to internet material hosted in Australia?***

The legal deposit scheme should definitely apply to broadcasts and internet material hosted in Australia using the limiting criteria of historical or cultural significance.

Existing legislation needs to be amended to allow the deposit agency to harvest material without seeking the permission of copyright owners.

***Issue 10: Should an extended legal deposit scheme apply to internet material hosted outside Australia and in what situations?***

ALIA supports the National Library's view that an extended legal deposit scheme should apply to internet material hosted outside Australia by Australian publishers.

It should extend to significant material about Australia or Australians overseas where overseas copyright laws permit. This may need to be very selective given the time and cost involved in dealing with overseas copyright measures.

***Issue 11: What approach, comprehensive, selective or hybrid, should be used for collection of materials under an extended legal deposit scheme? Should 'significance', say to Australian audiences, be the basis of any extension of legal deposit? Should online and offline material be treated differently and if so, on what basis?***

ALIA supports the CLRC recommendations 7.135 and 7.139. A selective approach to the extension of deposit is necessary given the extremely large volume of electronic information available, much of which is not culturally significant.

A hybrid model may be required to allow for the comprehensive collection of some formats such as websites using automatic harvesting techniques and a more selective approach to deposit for some other formats, such as computer games.

Current provisions in the Copyright Act allowing the depositing institution to decide whether a work 'is of historical or cultural significance to Australia', should be applied to the extended range of deposit formats.

***Issue 12: In light of the existing provisions in the Copyright Act, is there a need for any additional provisions to ensure the safe storage and preservation of legal deposit materials?***

ALIA supports the CLRC recommendation 7.142 that the National Library of Australia and the National Film and Sound Archive should not need to seek

the authorisation of the copyright owner with respect to the storage of deposited materials and that no special exceptions to moral rights of authors under the revised scheme be provided.

Legislation regarding number of copies that can be made may need to be revised in the electronic environment, for long term preservation purposes. To ensure that data available using today's technology can be accessed by future technologies the Legislation needs to incorporate some flexibility with number and format of copies.

The commercial availability test may prevent actions by deposit institutions to preserve material for long term and needs to be revised for electronic materials

***Issue 13: What timeframe should apply for deposit under an extended legal deposit scheme?***

- ***Is the timeframe for deposit suggested by the CLRC appropriate in the context of a selective approach to extending legal deposit?***
- ***Should different time frames apply to the deposit of different published materials if legal deposit is extended?***

ALIA supports the CLRC recommendation 7.136. Notification should be required within a month and a further month allowed for deposit. Extensions of the time frame may need to be made for some electronic materials where commercial viability may be compromised, such as in the case of commercial electronic journals.

***Issue 14: In light of the recent amendments to the technological protection measure provisions in the Copyright Act, are any additional provisions required to ensure access to materials deposited under an extended legal deposit scheme?***

- ***Should publishers be required to ensure that the copy of published material provided under an extended legal deposit scheme will be accessible?***

ALIA strongly supports additional provisions in the Copyright Act to ensure that any material deposited in an extended Legal Deposit scheme is accessible, and that it is the publisher's responsibility to make sure that the copy deposited includes any additional software, passwords etc. required to override any encryption.

***Issue 15: On what basis, if any, should access be restricted to material deposited under an extended legal deposit scheme?***

Any extension of the deposit scheme to electronic formats should be subject to the same 'principles' of access that currently exist for print materials, including restricted remote access. Where the commercial interests of the

copyright owner are compromised, existing legislation allows for agreements to be made between the deposit organisation and the publisher to provide access to the material.

Where the material was made freely available to the public at the time of capture continued free access should be provided for in the legislation.

New provisions to deal with some electronic formats may be necessary where existing legislation is unworkable. To supply a 'reasonable portion' of a computer software program would not be useful.

***Issue 16: Under any extended legal deposit scheme should legal deposit materials be subject to separate provisions concerning their use by the repository institution and the public?***

- ***What kind of provisions are desirable to ensure that repository institutions can provide the public with adequate access to legal deposit materials under any extended scheme?***

Under any extended Legal deposit scheme, there may need to be new provisions enabling deposit organisations to copy material more frequently and into different formats to support its long term preservation.

Otherwise, existing provisions in Part IV, Division 6 of the copyright act could be appropriately applied to electronic material included as part of the extended deposit.

***Issue 17: Are there any other issues that you consider relevant to the extension of the legal deposit scheme?***

No.