



3 March 2008

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Submitted to legaldeposit@dcita.gov.au

Comments on the Feasibility of Extending the Current Legal Deposit Scheme to Include Audiovisual and Electronic Material

Dear Mr Cordina

Thank you for the opportunity to comment on the issues raised in the Discussion Paper on the Feasibility of Extending the Current Legal Deposit Scheme to Include Audiovisual and Electronic Material.

About the Australian Publishers Association

Established in 1948, the Australian Publishers Association (APA) is the industry association, and an advocate for, Australian publishers: large or small; commercial or non-profit; academic or popular; locally- or overseas-owned. The Association has over 160 members and represents about 91% of the industry, based on turnover. The APA's membership includes publishers from all sectors including consumer, school and academic who publish in all formats and across various platforms.

Access and market effect

The APA is particularly concerned with the suggestion in Clause 10 that legal deposit, which we understood to be for the the National Library of Australia (NLA) to acquire a complete collection of Australia's cultural heritage in published works, is to be extended "to develop a national collection of published material in order to preserve national heritage, **and to provide the public with access to that material** for research and study" (emphasis added).

If adopted this expanded definition would allow access to material that will prejudice the economic interests of our members. Library patrons would not need to purchase electronic and audiovisual works even though they are available from a publisher and libraries would be discouraged from purchasing the works.

Limitations on access and use of legal deposit electronic and audiovisual material must be put into place so that publishers are not unfairly disadvantaged. Publishers could be required to deposit material with the NLA at their expense and for no remuneration to find that the

material is used for inter-library loans and other uses which would otherwise have been met from material purchased from them on a commercial basis.

We support the suggestion made in the submission by the Copyright Agency Limited (CAL) that where material is commercially available those wanting access to it should not have access to the legal deposit copies for a period of time. CAL in its submission suggests 25 years.

We support a restriction on access to legal deposit copies of electronic (and hard copy) material for research and study on the library site (i.e. in this case the NLA). Any other access could be negotiated with the publisher on a case-by-case basis or by other agreement.

The APA opposes the adoption of any requirement for the depositing publisher to provide a copy without any technological protection measures (TPMs) in place where access to the material is not restricted to on-site library use. Our members are very aware of security issues in the digital environment and all are careful to protect their presence there. A sizeable percentage of our members are already reluctant to publish in a digital format for this reason and requiring the removal of TPMs can only further reduce the desire of our members to publish material in a digital form.

Cost and technical issues of compliance

The cost and ease, or otherwise, of making a legal deposit of electronic and audiovisual material must be addressed. The APA supports the deposit of one copy of published material. Unless the print version and the digital version differ significantly the publisher must be able to choose the version that is deposited. The publisher must be able to maintain control over the version deposited particularly where the issues of access discussed above are not clear.

Issue 4 asks whether the requirement that material be deposited at the publisher's expense continue to apply to an extended legal deposit scheme. For our members whose digital publishing is extensive, such as academic journal publishers, the issues are particularly complex. There is the question of format standards for digital publishing and what might be required of publishers to meet those standards in order to make a digital legal deposit. The costs of compliance may be large in terms of time and "real dollars". Is the NLA ready to receive material in all the formats that may be extant in the publishing community?

This also begs the question of "who is a publisher?" While the APA represents mainly commercial publishers the world of digital publishing would include many forms, including blogs, that are used by both commercial and non-commercial publishers. Will the operators of these sites be considered "publishers" for the purpose of the extended scheme? How will they be made to comply when they are more than likely outside the traditional "catchment area"?



What is culturally significant?

There needs to be discussion and a definition of what is “culturally significant” in the context of any extension of the current legal deposit scheme. This should be a first step in determining a scheme proposed to include a statutory requirement to deposit such material.

What is audiovisual and electronic material?

As the Discussion Paper asks in Issue 1, what is included in “audiovisual and electronic materials” also needs to be defined. It is our view that this issue and what is culturally significant cannot be discussed in isolation and are fundamental to any extended legal deposit scheme. A number of our members publish material that contains all manner of audiovisual and electronic material. A definition is essential.

Thank you again for the opportunity to comment. If you have any enquiries please contact Janice Fewin, Deputy CEO, on 02 9282 9788 or janice.fewin@publishers.asn.au

Yours sincerely

A handwritten signature in black ink, appearing to read "Maree McCaskill".

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