

Legal Deposit
Content Regulation Branch
Department of Broadband, Communications and the Digital Economy
GPO Box 2154
Canberra ACT 2601

Dear Sir/Madam

2007 Discussion Paper on the Extension of Legal Deposit

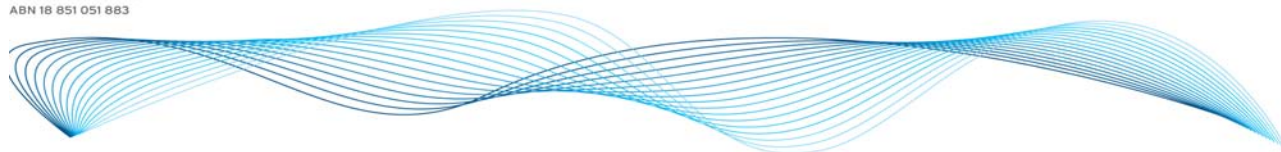
ASTRA writes to you with regard to the 2007 Discussion Paper on the Extension of Legal Deposit.

ASTRA represents the interests of subscription television platforms and channel providers. A list of ASTRA's members can be found at www.astra.org.au/members.asp.

Background

Currently, legal deposit in Australia is implemented under s201 of the *Copyright Act 1968* and operates to ensure Australian publishers deposit copies of all paper-based publications with the National Library of Australia (NLA). There is concern that the current legislation does not specifically provide for audiovisual and electronic material to be deposited to the NLA. The proposal to extend the current legal deposit scheme in Australia reflects an aim of building up a comprehensive collection of culturally significant Australian material to preserve national heritage.

In extending provisions to the legal deposit of audiovisual and electronic material, it is likely that provisions would be made for broadcast material. At present, broadcasters deposit material to the NLA and National Film and Sound Archive (NFSA) through mutually beneficial arrangements on an *ad-hoc* basis depending on individual circumstances. ASTRA has an obligation to represent the interests of broadcasters in the subscription television industry who may be affected by changes to the current legal deposit scheme. The Australian Subscription Television and Radio Association (ASTRA) is the peak industry body for subscription television.



Executive Summary

ASTRA submits that extending the legal deposit scheme to broadcast material is an unnecessary measure that will add administrative and financial burdens to both broadcasters and collecting institutions by trying to achieve through government regulation a goal that is currently being accomplished through co-operative arrangements between collecting institutions.

ASTRA submits that the status quo should be maintained in relation to broadcast material, however, if the legal deposit scheme is extended, ASTRA supports a selective approach to the collection of broadcast materials rather than a comprehensive model.

ASTRA submits that if the legal deposit scheme is extended to broadcast material there should be some system of cost recovery in place to compensate for the cost of transfer and postage incurred by broadcasters in the legal deposit process.

Should an extended legal deposit scheme apply to broadcasts? If so should this be limited to any particular types of material?

At present, the legal deposit scheme implemented under s201 of the *Copyright Act 1968* requires Australian publishers of all paper-based publications (including “books, periodicals, newspapers, pamphlets, sheets of letter press, sheets of music, maps, plans, charts or tables”) to deposit copies of the aforementioned material with the NLA¹. The scheme does not currently apply to films, sound recordings or other materials in an electronic form such as web material or books published electronically.

The purpose of a legal deposit scheme, as reflected in UNESCO’s *Guidelines for Legal Deposit Legislation*, is 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 or study”.²

While film, sound recordings and other material in electronic form become arguably more relevant to Australia’s cultural and intellectual heritage, there is no need to extend the legal deposit scheme in Australia. The current legal deposit scheme is currently operating satisfactorily in relation to building an archive of audiovisual material through voluntary co-operative agreements between broadcasters and the NLA and the NFSA.

The NFSA audiovisual media archive has grown rapidly since the 1970s since the introduction of voluntary deposits and audiovisual material now accounts for about half the items in the NFSA collection.³ The NFSA lists acquisition by donation, deposit and purchase amongst its methods of acquiring materials.⁴ Through such

¹ *Copyright Act 1968* s 201 (5)

² *2007 Discussion Paper on the Extension of Legal Deposit* (10)

³ *NFSA Collection Policy & Statement of Curatorial Values* September 2006 (1.5.2 – 1.5.3)

⁴ *Ibid* (2.6.1)

mutually beneficial arrangements, broadcasters and archival institutions like the NLA and NFSA are co-operating to fulfil the debated short-comings of the legal deposit system.

Extending the current legal deposit scheme to encompass audiovisual material is an unnecessary measure to achieve an outcome that is already being reached without need for further regulation. If such a measure were taken, it would in all likelihood incur financial and administrative burdens for broadcasters who are already co-operating with archival institutions to achieve the proposed public good.

What approach, comprehensive, selective or hybrid, should be used for collection of materials under an extended legal deposit scheme?

ASTRA submits that the ideal approach to the collection of archival materials is to maintain the current legal deposit scheme and not extend the scheme as it currently stands in relation to broadcasting materials.

If the government was minded to extend the legal deposit scheme to broadcast material it could adopt a selective system, such as that suggested by the Copyright Law Review Commission, rather than a comprehensive deposit system.

A Comprehensive Model

Adopting a comprehensive approach like that currently used in relation to the deposit of print material would prove significantly more expensive for both broadcasters and the collecting institutions, and is not likely to noticeably improve the quality of the national archive. Under a strict comprehensive model of collection, recordings of audiovisual and electronic material used by broadcasters would have to be deposited despite the fact that such recordings may not be of a sufficient standard for archiving.⁵ Requiring broadcasters to submit all programming material rather than relevant programming material would incur unnecessary costs for broadcasters and others for recording and transfer of material, and also for the collecting institutions in terms of storage and copying material.

A Selective Model

A selective approach to legal deposit in which collecting institutions identify and request specific broadcast material that is relevant for archiving would operate more efficiently than a comprehensive one. A selective approach may more appropriately take into account the expense of resources and availability of personnel. Collection of archival material would require less regulation by collecting agencies and broadcasters. Limited storage space and personnel would be utilised for the archiving of relevant material. Under a selective approach the costs involved in recording and transfer of broadcasts would be reduced. Material would also be more easily accessible for the purpose of research or study, the primary purpose of a legal deposit scheme, as the archive would not be flooded with irrelevant material or material of unsatisfactory quality.

⁵ 2007 Discussion Paper on the Extension of Legal Deposit (46)

The issue of whether a selective approach should distinguish relevant material by format (as per the Japanese and UK legal deposit models) or by content (as per the Danish model) is a curatorial issue that should, if the extended legal deposit scheme is imposed, be decided by the collecting agencies.

Cost Recovery

The United Nations Education Scientific and Cultural Organisation (UNESCO) states that “as a matter of principle, legal deposit should be free since its objectives are to serve the public interest”. If the legal deposit scheme is to be extended to broadcasts, broadcasters should, in principle be able to recover the costs involved in depositing materials. In some countries, publishers are compensated for the costs involved in legal deposit. Denmark and Sweden compensate for the postage costs, while in Japan it is possible to file an application for full cost recovery in relation to both postage and the cost of the product. However, this is not the case under the current Australian legal deposit scheme.

If a mandatory legal deposit system were enforced in relation to broadcast materials, especially under a comprehensive collection scheme, it would incur further financial burdens for broadcasters and others who are already co-operating to achieve a public good.

Additional Provisions for the *Copyright Act*

ASTRA has no comment at this time in regard to additional provisions for the *Copyright Act*, but supports provisions that will help ensure that archival material is used for the purposes of study and research only. If the legal deposit scheme is extended, there will be need for further consideration on the issues of accessing the archival material, and protecting archival material.

Restriction of Access to Material

ASTRA makes no comment at this time in regard to restriction of access to material, but supports a system that will copy copyright owners’ interests.

Conclusion

ASTRA sees no need to extend the current legal deposit scheme to broadcast material. The voluntary, mutually beneficial agreements that currently exist between broadcasters and the National Archives of Australia are ensuring the preservation of our national heritage without need for external regulation.

Yours sincerely



Debra Richards
CEO