



Screen  
Producers  
Association  
of Australia

17 January 2008

Mr Simon Cordina  
Assistant Secretary  
Content, Programs and Regulation Branch  
Department of Communications, Information  
Technology and the Arts  
GPO Box 2154  
Canberra ACT 2601

Dear Mr Cordina,

Please find attached SPAA's submission to 2007  
Discussion Paper on the Extension of Legal Deposit.  
SPAA thanks the department for the opportunity to  
comment. Please contact me at SPAA for further  
information or discussion as required.

Yours sincerely,

Bethwyn Serow  
SPAA Policy Manager

34 Fitzroy Street                      Surry Hills                      NSW                      2010  
Tel 02 9360 8988



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Submission to the  
Attorney General's Department and the Department of  
Broadband, Communications and the Digital Economy

2007 Discussion Paper on the Extension of Legal  
Deposit

17 Jan 2008

**SPAA**

SPAA is the industry body that represents Australian independent film and television producers on all issues affecting the business and creative aspects of screen production.

SPAA members include television, feature film, animation, documentary, TV commercial and interactive media production companies as well as services and facilities providers such as post-production, finance, distribution and legal companies.

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**SPAA Submission:  
2007 Discussion Paper on the Extension of Legal Deposit**

SPAA's specific remit is to consider the introduction of new legislation might impact the Australian producer's. SPAA recognises the cultural inherent in establishment of more extensive legal deposit offers and is therefore in principle is supportive of the proposition that legislation be introduced to extend legal deposit requirements to audio visual and electronic materials.

Key issues for our embers are; affordability of the scheme, the timeframes and resources to service the scheme, the potential penalties or non compliance and the imperative that producer's copyright interests are respected with regard to public access of the material.

SPAA has consulted with the Australian Film Commission and read the agency's penultimate draft submission to this enquiry. SPAA endorses the recommendations expressed within the AFC submission (see appendix) with the exception of the follow points;

**Cost, burden, materials**

- SPAA does not support the cost of compliance resting completely and in all circumstances with the publisher and therefore does not agree with the suggestion that material deposited under an extended legal deposit scheme should continue to be provided at the publisher's expense.
- SPAA recognises a relationship between cost and quality of the copy required for lodgement and therefore, while acknowledging the best archival result in the case of film projects is that a new clean film print be lodged, cannot support such a principle without the issue of cost being readdressed and the burden removed for the Independent producer.

The cost of lodgment of new, clean non-digital material necessitates that such material should not be compulsory unless financial relief (at cost) can be provided. Legislation must allow an option for publishers to be able to acquit their lodgment responsibility through lodgment of an existing program master or sub-master or prints, when deposited at the end of a projects commercial theatrical run.

As the AFC submission notes, the cost involved in generating a copy of projects released in digital formats are relatively low and insignificant. However, the cost of creating an additional film print is high (e.g. the current price for a 35mm x100min release print or a short run is between \$3500-\$4000 per print). SPAA also notes, few Australian films are released on the scale of *Happy Feet*, hence the bulk rates quoted within the AFC submission of \$1200-\$1800 are rarely applicable. In any case a \$1200 cost or a \$4000 cost for an individual print is prohibitive for independently funded projects, i.e. projects without direct federal funding.

The audiovisual sector is a mixed economy with audiovisual artists and entrepreneurs. New talent often fund early works in surprising and unpredictable ways. Budgets are often limited and at times almost non-existent. The industry has a tradition of supporting some of these with equipment and time and stock. The insistence at law for these projects to legally deposit a new, clean print is an unfair burden for producers.

The suggestion that, projects funded by the Producer Offset are likely to be more commercial in nature and therefore are able to absorb the cost of the archive deposit requirements, is rejected by SPAA. It underestimates the challenges Australian independent producers often confront in raising film budgets, carrying the expense of cash flowing the offset until it is reimbursed, the lag time producers are likely to experience (i.e. publishers) before receiving the offset refunds and any returns from gross receipts. In addition the Producer Offset is only available to projects with qualifying budgets above \$1million dollars. Within the projects that do qualify, a wide range of projects will access the Producer Offset scheme; some projects will be controlled by studios, some by capitalised producers and many by non-capitalised producers. It is not, therefore, a 'given' that the costs involved in generating an additional print for archival purposes can be easily absorbed into production budgets. For non-capitalised independent producers, and producers of low budget features, the cost of compliance represents a major burden.

- SPAA recommends the legislation allow flexibility on the actual material required for lodgement so that the relevant archive authority and the controlling producer are able to negotiation for lodgement of the best available print.
- The archive should have the power, at its discretion to provide addition funds to pay for recreation of a clean, new print specifically intent to satisfy a legal deposit of the project.

- SPAA supports AFC's recommendation that, in the case of film deposit requirements, a requirement for multiple copies to be lodged is also too onerous in cost to be supported in legislation.

SPAA does not accept the hybrid system without ensuring the issues raised in this paper are addressed fully. A Hybrid system could, for example, mean that, unless the legislation is also amended to allow addition options with regard to the material required for lodgement on film projects, so as to offset the potential cost burden, a situation could arise where significant additional expense is incurred by the publisher with the archive after assessment deeming the material inappropriate to retain. While this is unlikely, it points out another flaw in the requirement that significant specific expense be incurred to fulfil the legislative requirements.

#### **Timeframe for compliance:**

, The requirement that every project be lodged with permission for the archive body to then selectively retain or cull, should only be done within flexible lodgement time frames for the publishers.

- SPAA recommends timeframes not be specified in legislation, rather that they be included in accompanying guidelines and that these guidelines recognise and allow for reasonable delays based on individual project circumstances.

(For example; an independent producer, actively developing a grass roots distribution campaign, is likely to have limited resources to meet attend to all such legal requirements as legal deposit within a 2 month time frame from commercial release.)

#### **Enforcement**

- SPAA rejects the AFC recommendation for criminal charges to be incorporated in the legislation for non-compliance as a repugnant and outrageous recommendation.

In another area of our industry not even the ABA and now the ACMA had such criminal charges available for dealing with a broadcaster's non compliance to the Broadcasting Services Act 1992, until very recently. The situations are very different, the cultural and commercial impact of repeated non compliance by a broadcaster to the BSA is of far greater

magnitude to the issues of non compliance within the legal deposit legislation.

- SPAA accepts there may be benefit in a modest penalty system however the criteria for fines being applied needs careful consideration.

For further information contact

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## Appendix

SPAA endorses the following points as raised within the AFC submission

- An extended legal deposit scheme should apply to all electronic and audiovisual material published in Australia (i.e. CDs, DVDs, films) as well as all material published via radio and television broadcasts and internet material hosted in Australia. Electronic versions of print material should also be included as well as print and advertising material accompanying the release of a film.
- Definitions of material subject to deposit need to be drafted with sufficient breadth to encompass electronic and audiovisual content, irrespective of the physical media in which it originated, or the form in which it is broadcast or communicated. A prescriptive list of media formats subject to legal deposit would become obsolete and require continual updating.
- The establishment of an extended legal deposit scheme should be through separate legislation rather than amendments to the *Copyright Act*.
- Publishers should be required to deposit material in quantities that reflect the number of copies that are published.
- The NLA and the NFSA possess the technical expertise, trained personnel, equipment and storage for dealing with audiovisual and electronic material. These organisations should be the only two repositories for electronic and audiovisual material under the scheme. Duplication of material would be avoided through the existing demarcation of material deposited to the NLA and the NFSA.
- A hybrid approach to the deposit of published materials should be adopted for an extended legal deposit scheme. Under this approach, publishers of electronic and audiovisual material would be obliged to provide copies of all published electronic and audiovisual material to the NFSA. The NFSA would then select which material or classes of material it considers appropriate for deposit, as well as determine which items are to be excluded from the obligation to deposit. (if SPAA recommendations with regard to removal of cost burden and short timeframes are addressed)

- Amendments to the Copyright Act will need to be made to ensure that the reproduction of deposited material, for the purpose of safe storage and preservation, does not constitute infringement of copyright. Existing exceptions allowing material to be copied by libraries and archives for preservation and other purposes are too narrow in relation to audiovisual works.
- Publishers should be required to deposit material free of technological protection measures, or provisions should be included that allow the NFSA to circumvent technological protection measures, for the purposes of legal deposit.
- The NFSA should have a right to copy television and radio broadcasts and websites for the purposes of legal deposit. However, any restrictions that apply to these materials (such as password protection on particular websites) will continue to apply to any material held in the collection.
- Existing restrictions that apply to material collected under the NFSA should continue to apply to additional material collected under the legal deposit scheme.
- Ownership of the physical material collected under legal deposit should rest with depositing institution. Intellectual property rights would continue to reside with the relevant rights holders.
- The NFSA should have the right to destroy material where the owner cannot be found, after the agency has made a reasonably diligent attempt to locate them.