

SUBMISSION BY
MEDIA, ENTERTAINMENT & ARTS ALLIANCE
TO
ATTORNEY GENERAL'S DEPARTMENT
AND
DEPARTMENT OF BROADBAND, COMMUNICATIONS AND
THE DIGITAL ECONOMY
REGARDING
2007 DISCUSSION PAPER ON THE EXTENSION OF LEGAL
DEPOSIT
APRIL 2008



The Media, Entertainment & Arts Alliance

The Media, Entertainment & Arts Alliance (Alliance) is the industrial and professional organisation representing the people who work in Australia's media and entertainment industries. Its membership includes journalists, artists, photographers, performers, symphony orchestra musicians and film, television and performing arts technicians.

The Media Entertainment & Arts Alliance welcomes the opportunity to make comment on the 2007 Discussion Paper on the Extension of Legal Deposit.

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 ‘best copy’)?

The Alliance is of the view that the legal deposit scheme should be extended to encompass audiovisual and electronic materials. There is no logical reason to distinguish between non-recorded media and recorded media. Film and television are firmly embedded in the cultural fabric of the nation and digital and electronic media are rapidly doing likewise.

The Alliance believes a broad definition is appropriate giving acknowledgment to the rapid development of new media technologies and formats and the possible emergence over time of media that was not conceived of at the time of drafting.

A list of examples of material could be included as guidance but that the list should remain open-ended.

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

The Alliance believes that while, in principle, it would be appropriate for the legal deposit scheme to be legislated within the existing Copyright Act 1968 since the deposit scheme for ‘Library material’ is in this Act, it may be better to create sui generis legislation for the sake of speed and efficiency. The Alliance is aware that much of the current Act as it pertains to audiovisual material remains confused, inconsistent and full of anomalies arising from the fact that “subject matter other than works” was included as amending additions to the original legislation.

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

The Alliance is of the view that were a legal deposit scheme to be accepted and introduced that Australia needs to meet world’s best practice standards. The AFC, in its submission, states that this involves the deposit of 3 copies of the material – a preservation copy, an access copy and an additional copy for copyright cleared loan purposes. While the Alliance seeks simplicity as an overriding principle in the legal deposit scheme, it supports the AFC’s proposed formula with regards to numbers of copies.

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

The Alliance is of the view that material deposited under a legal deposit scheme should be provided at the publisher’s expense. The Alliance supports consideration of measures used in other jurisdictions to ameliorate the cost of providing copies to the depositing institutions such as reimbursing the costs of sending material as mentioned in the AFC submission.

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?

and

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?

The Alliance believes that the NLA and NFSA are the most appropriate organisations to act as repositories for audiovisual material and that to extend the scheme to other organisations will necessarily increase the complexity of the scheme. It is important for there to be clear delineation of the material collected by each organisation in order to not confuse prospective stakeholders and clients. The Alliance believes it necessary that the NFSA and NLA identify areas of shared interest and negotiate clearly defined areas of collection in order to avoid confusion and duplication. The Alliance believes it to be critical that such demarcation be clear, be promoted through an information campaign at its introduction as well as a continuing information campaign through their websites and alerts detailing publisher rights and obligations and providing notices as to changes to the collection policy.

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

In applying the notion of technological neutrality the Alliance would support the collection of electronic versions of printed material.

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

The Alliance is open to the idea that the AFC has put forward to extend the legal deposit obligations to material that is ancillary to the electronic and audiovisual material in the specific case of feature films. However this needs to be clearly defined, simple and not unduly onerous.

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 Alliance believes that to exclude broadcasts from the legal deposit scheme would be to devalue the cultural contribution of Australian television production and therefore supports the extension of the legal deposit scheme to broadcasts. To limit legal deposit to particular material will also defeat the aim of technological neutrality.

The Alliance believes that legal deposit should apply to Internet material hosted in Australia provided the material relates to an Australian website. This should extend to all material with an Australian domain suffix (eg, .au) or non-identifiably Australian domain suffix (eg .com).

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

The Alliance agrees with the AFC's submission that legal deposit should not apply to material hosted outside of Australia. However the Alliance notes that there may be a situation where there is culturally significant Australian internet content hosted outside of Australia for legal, financial or business reasons – such a situation needs to be considered since there may be culturally significant sites to Australians that just don't happen to be technically “hosted” in Australia.

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?

In principle, the Alliance supports the AFC's proposed hybrid approach – whereby all material would be subject to legal deposit automatically but that the depositing organisation would determine particular classes of works that are to be excluded. The Alliance's support though is dependent upon a scheme being developed that is simple, clear, and understandable as well as promoted to all stakeholders in an appropriate and comprehensive manner. The Alliance notes that any material missed through prior exclusions introduced and subsequently requiring collection would need to be negotiated on a case by case basis with publishers and copyright owners.

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?

The Alliance has no comment on this issue.

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?

For simplicity's sake, the Alliance recommends that there should be a standard time period of 2 months set for the deposit of all material. Any variation to these should be negotiated on a case by case basis between the depositing institution and the publisher and producer where appropriate – for example in accordance with funding deliverables if a production is government funded, or where difficulties in delivery arise.

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?

The Alliance supports the notion that publishers should be obliged to provide depositing institutions with accessible copies of material restricted by any TPMs.

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

The Alliance believes that the existing restrictions placed on the use of material should continue to apply – that is, limiting access to viewing on the NFSA’s premise in Canberra, Sydney and Melbourne, or through their Access Centres in Hobart, Perth, Brisbane and Adelaide. The Alliance strongly asserts that the rights of copyright owners must continue to be strictly enforced and respected.

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?

The Alliance believes that in instituting an extension of the legal deposit scheme that provisions concerning their use by the repository institution and the public need to balance the rights copyright owners and users.

In addition, the Alliance believes that it is important that material accessed by the public should be done so in accordance with the classification guidelines as administered by the Office of Film and Literature Classification. That is access to PG, M, M15+, R18+ and X material should be enforced where appropriate and where possible.