Legal Deposit for Audiovisual Material: Preliminary survey results

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Legal Deposit for Audiovisual Material-
• Importance of legal deposit
• Methodology
• Respondents
• Findings
• Future Research

Why is legal deposit Important?
• Builds a national patrimony
  – “public interest”, “complete record of works”, “aid research & documentation”, “conserve our national heritage”, “make works available for future generations”, “systematic & comprehensive”, “creation of a national collection”
• Is easiest to collect works when they are first issued (rather than much later in their life)

Aims of legal deposit law
• Preservation of works; building a national collection, “to collect the cultural heritage for the future”
• Corollary objectives include:
  --“to create standard bibliographic record of library material published” (Malaysia);
  --“national bibliographic control” (Croatia);
  --so that, “commercial and self-published work receive wide exposure” (Australia);
  --“Bibliographical registration” (Czech);
  --“production of the national Slovene bibliography” (Slovenia National and University Libraries)

Short History of Legal Deposit
• 1537 France, Ordonnance de Montpellier
• 1594 Belgium, then abolished 1886, reinstated 1966
• 1610 Great Britain-Bodley
• 1661 Sweden, 1697 Denmark, 1702 Finland
• In 18th century (beginning with 1709 Statute of Anne) became a pre-requisite to obtaining © protection
• In 1886 Berne Convention abolished any pre-requisite to © protection, and countries either had to find another method for Legal Deposit, or abolish it completely (like Belgium)
• Aim evolved over years from preserving for future generations, to creation of a national bibliography, to creating research collections

Difficulty of researching legal deposit laws for audiovisual (1/2)
• Legal Deposit laws for audiovisual are often in many different parts of the legal statutes
  – Some parts are often in library mandates, and other parts might be in copyright laws
  – Legal Deposit for radio may be in 1920s or 1930s laws governing use of broadcast spectrum
  – Legal Deposit for television may be in 1950s laws governing use of broadcast spectrum
  – Legal Deposit for cinematic film might be in import laws or in tax laws
  – Legal Deposit for digital works may be in completely different laws
Difficulty of researching legal deposit laws for audiovisual (2/2)

- Responsibility for collecting Legal Deposits for audiovisual may reside in different repositories
  - National Library
  - National Archive
  - National Film Archive
  - National Radio or Television Archive, or Public Broadcasting company
  - Regional specialized or non-specialized collections

Methodology

- Invitation to complete online survey through prodding by IFLA/AVMS members, CCAAA
- 78 Responses from October 2009 through April 2010
- 16 respondents entered only their contact information, and 24 of the respondents were from regional (sub-national) institutions
  - Discrete national responses combined
  - Excessively incomplete responses disregarded
  - Minimal additional research performed, where responses were overly vague or uninformative

Responses from 35 Countries

- Australia
- Austria
- Canada
- Croatia
- Czech Republic
- Denmark
- Estonia
- Fiji
- Finland
- France
- Germany
- Greece
- Hungary
- Italy
- Japan
- Latvia
- Lithuania
- Luxembourg
- Malaysia
- Namibia
- Netherlands
- New Zealand
- Norway
- Poland
- Serbia
- Seychelles
- Slovak Republic
- Slovenia
- South Africa
- South Korea
- Spain
- Sweden
- Switzerland
- United Kingdom

Responses from 5 Continents, but skewed towards Europe

- Europe 24
- Asia (west only) 5
- Africa 3
- Oceania 2
- North America 1
- South America 0

Respondents (1/2)

- Highly skewed towards developed part of the world, but does include poorer countries
- No participation from South America, Middle East, most of Asia, most of Africa
- Some conflicting impressions amongst institutions within same country as to specifics of legislation

Respondents (2/2)

- Only 7 respondents cited job titles indicating their direct relation to a national bureau/office charged with administering Legal Deposit:
  - Australia
  - Canada (as well as, Québec)
  - Croatia
  - Finland
  - Netherlands
  - South Africa
- Respondents were not Legal Deposit experts
What is the legal rationale for legal deposit? (1/2)

- Berne International © agreement forbids making legal deposit a requirement for giving copyright protection (copyright protection must be granted upon completion of a work, without any registration or paperwork requirements)
- But the US gets around this by granting automatic copyright protection upon creation of a work, but preventing the collection of statuary damages or attorneys fees for copyright violation unless the work has been registered and deposited

What is the legal rationale for legal deposit? (2/2)

- Only 3 respondents to the question of whether legal deposit was based in copyright or tax law, but from write-in notes we find that:
  -- Austria, Canada, and Australia all include clauses whereby any film or TV production receiving federal funding must deposit a copy. This implies that their legal deposit is not based on ©

Legal deposit Laws: A Chronology

- Many existed pre-1900 (1/3 of respondents)
- Among respondents, A/V deposit laws begin to appear post WWII
- Number of deposit laws appears to rise at a fairly continuous rate, except that:
  -- Among respondents, number of A/V deposit laws doubled in the 1990s & 2000s (only 44% of A/V deposit laws existed before 1990)

Legal deposits are not centralized

- 94% of respondents reported that their own institution was not the only national legal deposits depository
- Additional legal depositories, by type:
  -- 31% additional deposit at another National Library
  -- 31% additional deposit at another Regional Library
  -- 24% additional deposit at an AV-specific institution
  -- 17% additional deposit at a University institution
Sub-national & extra-national legal deposit requirements

- Both the Bibliothèque et Archives nationales du Québec (BANQ) and Libraries and Archives Canada (LAC) collect Québec provincial publications, thus a more complete cultural record for Québec is likely than for, say, Saskatchewan
- Similar provincial-level legal deposit laws in certain Canadian provinces —eg. the Manitoba Legislative Library
- Republic of Ireland has one of its 4 depositories as the British Library
- Redundancy as insurance, however these strategies may result in collection inconsistencies —eg. the Bibliothèque Nationale de Québec may have better collection of Québec culture than Libraries/Archives Canada

Legal deposit is mandatory in most countries

- 86% Required by Law
- 14% Voluntary

How is the deposit law enforced?

- Only 1 respondent claimed that the law was always enforced
- 2/3 of the respondents said that the penalty for non-compliance was a fine, but almost half of those admitted that this wasn’t seriously enforced
- 15% said that jail time was a penalty for non-compliance, but no one cited any specific example of this
- Many responses emphasized that they will make repeated contacts to pester someone to comply
  - “We prefer to persuade rather than prosecute. In the entire history of legal deposit we have only prosecuted a publisher once, and that was for flagrant, repeated refusal to deposit. The Library won the case.”
- Only 1 respondent cited tax implications for non-compliance

Countries with high compliance rates have more serious enforcement

- Among those countries that claim they collect at least 90% of the legal deposits that they should ideally collect:
  - All have legal requirements mandating legal deposit
  - 80% have some kind of enforcement mechanism

How much of a country’s audiovisual output is actually deposited?

- Responses range from 5%-100%, with most answers clustered in the 70%-90% range
- Mean average of 75%

Where they are collected, what A/V materials are specifically exempted?

- Any film gauge larger than 35mm (Canada)
- Analog films (Germany)
- Audio Books (Finland)
- Born-digital materials not distributed in a physical format are implicitly exempted (Australia)
Who is responsible for legal deposit?

Legal Deposit is more the realm of producers/distributors than creators
- 75% say publishers are responsible
- 36% say manufacturer/printer is responsible
- 36% say distributor is responsible
- Only 18% say author/creator is responsible
- And for 18%, the national repository was responsible for obtaining the works on their own

What event initiates deposit requirement?

What event initiates deposit requirement?
- Publication: 83%
- Receipt of request, or claim: 17%
- Specified calendar date: 14%
- Other events: 21%
  - Broadcast, First Editions only

Who pays the cost of creating depository copies?

This cost can be substantial for a film negative or print
- 86% the Depositor
- 21% the Depository

Financial Support for legal deposit

- 78% of Depositories are fully funded for legal deposit activities
- 11% of Depositories are partially funded for legal deposit activities
- 11% of Depositories receive no funds for legal deposit activities
- This somewhat mirrors funding for general management of A/V collections (74%)
  - Governments feel that this is an activity worth funding
Quality and Number of copies for legal deposit

- A number of respondent countries stipulate the number of legal deposit copies based upon format:
  - more copies for print material than for sound,
  - more copies of sound than for video, and/or more copies for video than for film
- Only a few respondents state requirements for "complete copy," "finest copy," "best edition," "of good quality", etc.

A/V Formats (1/2)

- Format requirements (esp. for moving images) are often weak & of commercial/public-grade quality;
  - "in the form in which it has been made generally available" (Norway)
  - "formats that are meant for the market" (Slovenia)
  - "copy "intended to be generally available" (Namibia)
  - "form in which it is published" (New Zealand)
  - "copies, as commercially available" (Germany)
  - often legislative language is vague, stipulating "copies," evidencing lineage reflected in paper documents

A/V Formats (2/2)

- Exceptions to vague format specificity:
  - In France & Denmark: broadcasts are pulled directly off-air, via satellite
  - Czech Republic: intermediate positive or negative
  - Korea: "a print" - Canada: "for a film released on a photochemical medium, the producer must deposit a new copy of the film made under optimal calibration conditions. For a film that is not released on that medium, the producer must deposit a copy recorded on a medium that ensures screenings of optimum quality."
  - some specification for "best," "finest," and "new" copies/editions
  - Note that, for the United Kingdom: "These principles are deliberately general and abstract, so that they can apply to publications in different media, including media not yet invented."

Not much legislative mandate specifying digital works

- Only 41% of respondents say that their law specifically covers audiovisual works in digital form, yet legislation does not specify formats beyond, in the form in which it is "published, " or, "made generally available."
- This can present serious digital format discrepancies

What do respondent organizations themselves collect

- 96% collect sound recordings
- 71% collect moving image material
- 50% collect still images
- 22% collect computer games
- 79% collect "other media" such as websites, CD-ROMs, software, ...
- (Item # counts from survey not well responded to, and without common units)

Respondents’ A/V Physical conditions aren’t good
Respondents’ A/V Physical conditions aren’t good

- Very good condition: 19%
- Acceptable overall condition: 30%
- Somewhat at-risk condition: 44%
- Severely at-risk condition: 7%
- Core cited challenges: machine obsolescence; fluctuating storage conditions; lack of financing for mass digitization projects

Preservation Copying is an issue for some institutions

- Only 58% of respondents have the right to copy everything in their collection for preservation purposes
- 35% can only copy certain works for preservation purposes
- 8% have no right to make preservation copies

Most respondents cannot provide full open access to their collection

- Only 31% have “open” access
- 65% have “limited” access
- 4% provide no public access

For those offering collection access:

- 75% cite on-site access only
- Only 25% report some degree of online accessibility

Legal Deposit for Audiovisual Material: Future Steps

- 2nd round of survey responses—October 2010 - January 2011, but first:
  - Translate survey into Spanish and Arabic?
  - Clarify the text of questions that had low response rates
  - Try to hire someone to do telephone/skype interviews to get fuller responses, and to do research on the actual laws

Thanks!

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