

Legal Deposit for Audiovisual Material: Preliminary survey results

Howard Besser & Kara van Malssen
NYU Moving Image Archiving & Preservation
Program
<http://besser.nyu.edu/howard>
<http://www.nyu.edu/tisch/preservation/>

IFLA 2010, Besser/Malssen-Legal Deposit

1

Legal Deposit for Audiovisual Material-

- Importance of legal deposit
- Methodology
- Respondents
- Findings
- Future Research

IFLA 2010, Besser/Malssen-Legal Deposit

2

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)

IFLA 2010, Besser/Malssen-Legal Deposit

3

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)

IFLA 2010, Besser/Malssen-Legal Deposit

4

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

IFLA 2010, Besser/Malssen-Legal Deposit

5

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

IFLA 2010, Besser/Malssen-Legal Deposit

6

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

IFLA 2010, Besseri/Malissen-Legal Deposit

7

Methodology

- Invitation to complete online survey through prodding by IFLA/AVMS members, CCAA
- 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 uninformed

IFLA 2010, Besseri/Malissen-Legal Deposit

8

Responses from 35 Countries

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

IFLA 2010, Besseri/Malissen-Legal Deposit

9

Responses from 5 Continents, but skewed towards Europe

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

IFLA 2010, Besseri/Malissen-Legal Deposit

10

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

IFLA 2010, Besseri/Malissen-Legal Deposit

11

Respondents ^(2/2)

- Only 7 respondents cited job titles indicating their direct relation to a national bureau/office charged with administrating Legal Deposit:
 - Australia
 - Canada (as well as, Québec)
 - Croatia
 - Finland
 - Netherlands
 - South Africa
- Respondents were not Legal Deposit experts

IFLA 2010, Besseri/Malissen-Legal Deposit

12

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 statutory damages or attorneys fees for copyright violation unless the work has been registered and deposited

IFLA 2010, Besser/Malsßen-Legal Deposit

13

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 ©

IFLA 2010, Besser/Malsßen-Legal Deposit

14

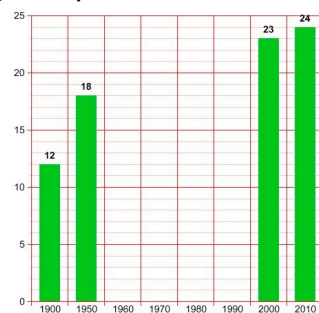
Legal deposit Laws: A Chronology

- 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)

IFLA 2010, Besser/Malsßen-Legal Deposit

15

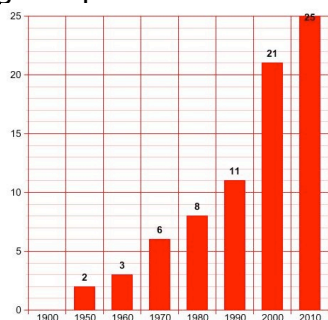
Legal Deposit Laws over time ^(print material)



IFLA 2010, Besser/Malsßen-Legal Deposit

16

Legal Deposit Laws over time ^(a/v material)



IFLA 2010, Besser/Malsßen-Legal Deposit

17

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

IFLA 2010, Besser/Malsßen-Legal Deposit

18

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

IFLA 2010, Besser/Malissen-Legal Deposit

19

Legal deposit is mandatory in most countries

- 86% Required by Law
- 14% Voluntary

IFLA 2010, Besser/Malissen-Legal Deposit

20

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

IFLA 2010, Besser/Malissen-Legal Deposit

21

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

IFLA 2010, Besser/Malissen-Legal Deposit

22

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%

IFLA 2010, Besser/Malissen-Legal Deposit

23

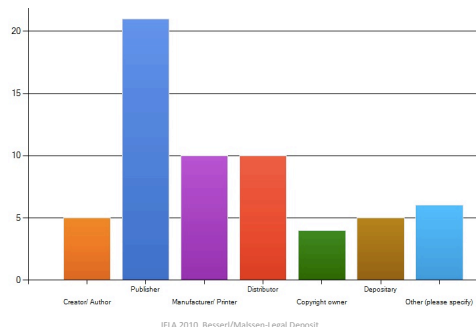
Where they are collected, what A/V materials are specifically exempted?

- 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)

IFLA 2010, Besser/Malissen-Legal Deposit

24

Who is responsible for legal deposit?



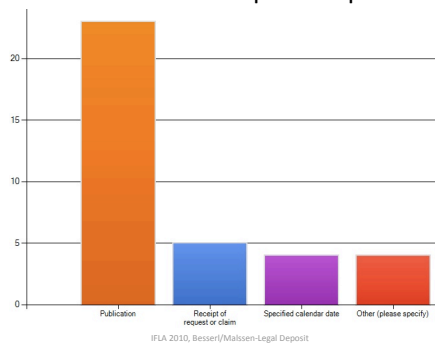
Legal Deposit is more the realm of producers/distributors than creators

- 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

IFLA 2010, Besser/Malissen-Legal Deposit

26

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

IFLA 2010, Besser/Malissen-Legal Deposit

28

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

IFLA 2010, Besser/Malissen-Legal Deposit

29

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

IFLA 2010, Besser/Malissen-Legal Deposit

30

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.

IFLA 2010, Besseri/Malissen-Legal Deposit

31

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

IFLA 2010, Besseri/Malissen-Legal Deposit

32

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."

IFLA 2010, Besseri/Malissen-Legal Deposit

33

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

IFLA 2010, Besseri/Malissen-Legal Deposit

34

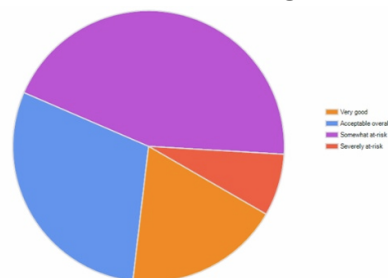
What do respondent organizations themselves collect

- 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)

IFLA 2010, Besseri/Malissen-Legal Deposit

35

Respondents' A/V Physical conditions aren't good



IFLA 2010, Besseri/Malissen-Legal Deposit

36

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

IFLA 2010, Besser/Malssen-Legal Deposit

37

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

IFLA 2010, Besser/Malssen-Legal Deposit

38

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

IFLA 2010, Besser/Malssen-Legal Deposit

39

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

IFLA 2010, Besser/Malssen-Legal Deposit

40

Thanks!

- Professor James Turner and his University of Montréal students who drafted and tested the first version of the questionnaire
- IFLA AVMS Section members and CCAAA Coordinator Kurt Deggeller who helped prod libraries and archives around the world to respond to the survey
- NYU Research Fellow Walter Forsberg who helped analyze the results
- NYU Program Coordinator Alicia Kubes who handled the administrative work on questionnaire responses

IFLA 2010, Besser/Malssen-Legal Deposit

41

Legal Deposit for Audiovisual Material: Preliminary survey results

Howard Besser & Kara van Malssen
 NYU Moving Image Archiving & Preservation Program
<http://besser.nyu.edu/howard/Talks/>
<http://www.nyu.edu/tisch/preservation/>

IFLA 2010, Besser/Malssen-Legal Deposit

42