Consultation on the Legal Deposit of Non-Print Works
Response by LACA: Libraries and Archives Copyright Alliance
May 2012

1. Introduction

The Libraries and Archives Copyright Alliance (LACA) is a UK umbrella group convened by CILIP (Chartered Institute of Library and Information Professionals). LACA brings together the UK’s major professional organisations and experts representing librarians and archivists to lobby in the UK and Europe about copyright issues which affect delivery of access to knowledge and information by libraries, archives and information services in the digital age.

2. General comments on Legal Deposit

Legal deposit has a very important role to play in the preservation and access of materials published in the UK. While we would emphasise the value of all libraries to the UK economy, it is crucial that there are libraries with a designated role of collecting all materials published in the UK.

Publishing has changed exponentially since the advent of digital technology, particularly the World Wide Web. It is no longer merely an industry; the ability to publish one’s own work is a powerful feature of the Web and within the nine years since the introduction of the Legal Deposit Libraries Act of 2003 it has become an activity that is integral to the everyday lives of many UK citizens. As of April 2012, Nominet has registered 10,089,480 websites (under the second level domains it manages) in the UK.¹ Not only is there more material being published than ever before, it is also more transient. The average lifespan of a web page is

44-75 days. Unless material from websites is collected regularly and systematically it is often lost.

These two factors combine to create an urgent need for a framework for the legal deposit of non-print material. A survey of national libraries, conducted by the British Library in Spring 2011, found that more than 40 per cent of countries had already implemented a legal framework for the deposit of online publications, and this figure is likely to have risen to 55% by April 2012. The UK is falling behind so LACA urges the government to lay the Regulations before Parliament at the earliest possible date.

While underlining the urgent need to implement a statutory framework, our response also stresses the outstanding issues pertaining to copyright that will potentially have a significant impact on the value of the collections in the deposit libraries in years to come.

It is assumed that the Legal Deposit Libraries will have responded to the questions which cover the practical aspects of collecting materials under the regulations. This response will therefore focus on those which are most relevant to LACA's remit; i.e. issues surrounding access to, and usability of, deposited materials. Please note that the lack of comment in response to other questions should not be taken to imply LACA's approval or disapproval of regulations in other areas.

3. Response to specific questions

Question 1. Consultees

Other. See 1. Introduction.

Question 2. Non-print works within scope

Clarifying the type of non-print works within scope of the Regulations seems a sensible approach. It will avoid ambiguity and serve as a basis for discussion on the possibility of extending the scope as new methods of collecting are developed.

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Question 6. Published in the UK

LACA welcomes this clear, practical definition of when works are to be treated as being published in, or connected with, the United Kingdom.

Question 10. Research and Private Study

LACA welcomes the inclusion of a regulation permitting a deposit library to provide a copy for the purpose of parliamentary or judicial proceedings, or a Royal Commission or statutory inquiry. However, LACA believes that Regulation 32(2) should be extended to permit the making of copies for any of the purposes allowed under the CDPA 1988. This would include copying for criticism, review and news reporting, which is important for education, research and the freedom of the press, as well as copying under Statutory Authority.

As stated in our response to the first Consultation on the Draft Legal Deposit Libraries (Non-print Publications) Regulations 2011, we do not believe that Legal Deposit Libraries should be restricted to supplying only print copies of a work to a reader unless the publisher has agreed that copies may be provided in another medium as stated in Regulation 33(2). More and more content is being provided in a format that cannot be reproduced on paper and to reflect this LACA believes that the Regulations should not restrict to print, especially where it is impracticable, by virtue of the nature of the work, to do so.

Question 11. Adapting relevant material for preservation purposes

LACA welcomes Regulation 35, which it regards as essential to the long term maintenance and preservation of the deposited material.

Question 14. Micro-businesses and start-ups

As regards the exemption of micro-businesses and start-ups from the obligations to deliver off line work and to provide login details to websites, LACA believes that the value to the public and benefits to micro-businesses and start-ups in this instance justify the waiving of the moratorium policy and the inclusion of those publishers in the Regulations from the outset. The impact assessment has estimated a burden of £26 per annum for the micro-business and start-ups. LACA would argue that this burden is justifiable when considering the potential value of deposited material to such enterprises and the public, both now and in the future, were it to be collected by the deposit libraries.
We also hold some concern regarding the practical implications for legal deposit libraries of distinguishing between micro-businesses and start-ups from other forms of companies and organisations when requesting login details and copies of works. Waiving the moratorium would avoid the administrative burden and/or inefficiencies of mistakenly contacting micro-businesses and start-ups to request material or information that they are not required to supply.

**Question 23. Other**

In our response to the first Consultation on the Draft Legal Deposit Libraries (Non-print Publications) Regulations 2011, we expressed our concern that the regulations made no provision for the use of works that are no longer in copyright, resulting in the enforcement in perpetuity of restrictions that are intended to protect the rights of rights holders.

We note with considerable regret that the regulations have not been amended to align these restrictions with the duration of copyright under the CDPA 1988.

LACA recognises and respects the legitimate interests of publishers and rights holders and is not arguing that copyright law should not apply to non-print works deposited under these Regulations. However, we firmly believe that it is not in the public interest to place restrictions on use when copyright has expired, and we can see no reasonable justification for doing so. Indeed, far from extending copyright restrictions, the Government has made proposals to implement the recommendations of the Hargreaves Review of Intellectual Property and Growth which seek to redress the balance between the interests of rights holders and the public, thereby supporting innovation and promoting economic growth. In the Consultation on Copyright issued in December 2011, the Government’s view is stated:

“The Government agrees with the Hargreaves Review's premise that it should prevent copyright over-regulating activities that do not prejudice the central objective of copyright - the provision of incentives to creators. According to this view, removal of unnecessary and disproportionate copyright regulation from businesses, individuals and other groups will help to encourage innovation and will provide new opportunities for economic growth” (paragraph 7.8).

And in paragraph 7.11:
“The Government wants to ensure that everyone has an opportunity to contribute to society, and that copyright does not over-regulate activity that is of social benefit. This is particularly the case with regard to public goods such as education that deliver spill over economic benefits over time”.

By restricting the use of material after the normal term of copyright has expired, these Regulations would hinder the creation of new knowledge and be harmful to the nation’s economic growth. Perpetual enforcement of terms is also contrary to the Term Directive: Directive 93/98/EEC, and contrary to the Government’s policy of encouraging the re-use and wider dissemination of public sector information that is not, or no longer, subject to third party rights.

Furthermore, the regulations have not been amended to allow uses of works that are permitted under terms of licence or a waiver authorised by the rights holder. If a rights holder has used a device such as Creative Commons to indicate that anyone can copy the material, we believe it is unreasonable for access to, and use of, the legal deposit copy to be restricted. The regulations would thus make it more difficult to clear materials for uses that are not permitted. A recent study on the feasibility of a Digital Copyright Exchange has highlighted the difficulties associated with the licensing of copyright material, which the Exchange would aim to address3. By overlooking works in which the copyright has expired or which has been published under an open licence, the draft regulations contribute to those difficulties by adding a further barrier to the use of those works. Failure to address this issue will have a significant impact on the value of the archive of deposited material in the long term. The regulations must provide that restrictions on use shall apply only to works in which copyright subsists, and shall do no more to limit use than the terms of any licence or waiver authorised by the rights owner.

End.