



department for
**culture, media
and sport**

BIS | Department for Business
Innovation & Skills

Consultation on the Legal Deposit of Non-Print Works

29 September 2010

improving
the quality
of life for all

Our aim is to improve the quality of life for all through cultural and sporting activities, support the pursuit of excellence, and champion the tourism, creative and leisure industries.

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Part 1: Introduction

- 1.1 The purpose of legal deposit is to ensure that the nation's published output (and thereby its intellectual record and future published heritage) is preserved as an archive for research purposes and the use of future generations.
- 1.2 The Legal Deposit Libraries Act 2003 (The 2003 Act)¹ reaffirmed existing provisions for the deposit of printed publications whereby a copy of each book or serial or other printed publication which is published in the UK is required to be deposited free of charge, in the British Library. In addition, five other libraries (the National Libraries of Scotland and Wales, and the University libraries of Oxford, Cambridge and Trinity College Dublin) are each entitled to receive, on request, one free copy of any book or other printed publication published in the UK. These libraries, together with the British Library, are collectively known as the Legal Deposit Libraries².
- 1.3 The 2003 Act also created a framework in which Regulations could be made to extend the system of legal deposit to cover various non-print media as they develop, including off line publications (e.g. CD ROMS and microforms), on line publications (e.g. e-journals). This will ensure that publications of significance are deposited, regardless of the medium in which they are published, and are preserved as part of the national archive of UK publications, so as to remain available to future generations of eligible users.
- 1.4 The Legal Deposit Advisory Panel (LDAP), an independent non-departmental public body, was set up in September 2005 to work at arm's length from the Government, to advise on the implementation of the 2003 Act and to make recommendations on regulatory options for the deposit of non-print publications.
- 1.5 At the beginning of March 2010, DCMS and BIS completed a public consultation, based on recommendations from LDAP, on the legal deposit of off line publications and on line publications which are available free of charge and without access restrictions. The consultation ran from December 2009 to March 2010 and we received 57 responses. At the end of March 2010, we received LDAP's proposals for commercial and protected on line publications.
- 1.6 For off line publications, we previously proposed a self-regulated voluntary scheme (which required the deposit library to make a request for a specific non-print publication). However, we have now included off line publications in the draft Regulations. We believe this will not place a significant additional burden on Publishers and that it will benefit both Publishers and the Legal Deposit Libraries by enabling them to take advantage of the statutory exemption from liability for e.g. breach of contract, copyright infringement and defamation for activities carried out in accordance with the Regulations.

¹ See: http://www.opsi.gov.uk/acts/acts2003/ukpga_20030028_en_1

²The Faculty of Advocates in Scotland holds legal publications in Scotland which it receives from the National Library of Scotland.

- 1.7 The draft Regulations cover all types of non-print publications. Whilst specific types of non-print publication are listed in the draft Regulations, this list is non exhaustive as we do not wish to preclude new types of publications which may develop in the future. The blog is an example of a relatively new type of publication whose popularity and significance may not have been foreseen just a few years ago.
- 1.8 As in the case of printed publications, sound and film recordings are not covered by the deposit obligations unless they are incidental features of the main body of a work and not its purpose.
- 1.9 We believe that we have achieved a reasonable and fair balance between the interests of the Publishers and the Legal Deposit Libraries. To do this we have followed several key principles:
- Where appropriate we have drafted the Regulations so that they mirror the system which applies to printed publications;
 - The draft Regulations must not lead to the likelihood that the costs incurred by Publishers are disproportionate to the benefit to the public arising from the deposit of the works;
 - The draft Regulations are broad in scope so that Legal Deposit Libraries can continue to build and preserve a rich and useful archive;
 - These draft Regulations must not unreasonably prejudice the interests of Publishers of the works to be deposited. Therefore, the draft Regulations stipulate limited access to the deposited works. They also provide for the possibility of embargoes so that the Legal Deposit Libraries may not provide access to specific works in certain circumstances. Similarly, we propose tight restrictions on how the deposited works may be used.
 - The draft Regulations are designed to remain faithful to the ultimate purpose of legal deposit. Therefore, they give the Legal Deposit Libraries the ability to take copies and format shift for preservation purposes. On the other hand, they also make it clear that the Legal Deposit Libraries cannot, for example, sell the copies of the non-print works which they acquire under the legal deposit regime, even when the works are no longer in copyright.
- 1.10 The 2003 Act allows for non-print works to be deposited with Trinity College Dublin (TCD). The 2003 Act is clear that we will not extend legal deposit to TCD unless the Secretary of State is satisfied that restrictions on the use of the deposited material under Irish law are not substantially less than in the UK. We are still awaiting information from Ireland on this issue and we do not propose to extend the Regulations to cover Ireland until we have this comfort. However, for the purposes of the consultation, we have included TCD as a potential Legal Deposit Library in the draft Regulations and we seek your views.
- 1.11 This Government has a policy that any regulation which comes into effect from April 2011 should be subject to a sunset clause. Consequently we have included in the draft regulation a clause which provides that the Regulations should cease to have effect on 5 April 2018. The intention behind this policy is to ensure that regulations that place burdens on industry do not stay on the statute book once they are no longer needed. The existence of a sunset clause does not mean that the Regulations would

necessarily cease to have effect. It would be open to the Secretary of State to decide to extend the Regulations with or without amendment. The things that the Secretary of State would take into account in reaching such a decision would be whether there is still a need to secure the outcome that the regulations are intended to deliver and whether the regulations are still the least burdensome way of achieving that outcome.

1.12 Where appropriate it is possible, instead of a sunset clause, to require the regulations to place a duty upon the Secretary of State to review the operation and effect of the regulations with the aim of taking a view as to whether the regulations should be amended or removed. The issues considered in such a review would be essentially the same as those considered when looking at whether to extend the life of the regulations beyond a sunset date. We would welcome any comments on whether, and if so why, you consider that a duty to review would be more appropriate for these Regulations.

1.13 In the event that these Regulations cease to have effect as a result of the sunset clause, all the obligations and the permitted activities would cease to have effect. This means, for example, that the Legal Deposit Libraries would no longer be permitted to display or use any publications which have been deposited as a result of these Regulations.

Part 2: Purpose of this consultation and next steps

- 2.1 This consultation sets out our draft Regulations, Guidance and Impact Assessments for the legal deposit on non-print works. We are seeking your views on all aspects of the proposals and have also set some specific questions to which we would welcome your answers (Annex A).
- 2.2 Following this consultation our aim is to introduce affirmative secondary legislation before Parliament³.
- 2.3 The consultation period will run for 12 weeks from 29 September 2010 to 22 December 2010.
- 2.4 Please respond before the closing date, using the questionnaire at Annex A, to deposits.consultation@culture.gsi.gov.uk or by using the online questionnaire (which will be available shortly) online⁴. If you do not have access to email, please write to:
- Frances Love
Libraries and Archives Team
Culture Directorate
2-4 Cockspur Street
London
SW1Y 5DH
- 2.5 For enquiries about the consultation (handling) process only please contact the DCMS Public Engagement and Recognition Unit (PERU) at the above address or email using the form at http://www.culture.gov.uk/contact_us/ heading your communication '*Consultation on the Legal Deposit of Non-Print Works*'.
- 2.6 Copies of responses will be published after the consultation closing date on the Department's website: www.culture.gov.uk.
- 2.7 Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that

³ This will require formal approval by both the House of Commons and the House of Lords.

⁴ Access the online form at <http://www.culture.gov.uk/consultations/7449.aspx>

confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

- 2.8 The Department will process your personal data in accordance with the DPA, and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.
- 2.9 The consultation is guided by the Government's Code of Practice on Consultation which is available at: <http://www.bis.gov.uk/files/file53268.pdf>.

Part 3: Guidance Document



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Consultation on Non-Print Legal Deposit Guidance Document

Authors: Darren Grubb and Michel Woodman

Our aim is to improve the quality of life for all through cultural and sporting activities, support the pursuit of excellence, and champion the tourism, creative and leisure industries.

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Section 1: Introduction

- 1.1 This guidance document seeks to help Publishers and Legal Deposit Libraries to interpret their obligations under the draft Legal Deposit Libraries (Non-print Publications) Regulations 2011 and should be read in conjunction with those draft Regulations.
- 1.2 The purpose of legal deposit is to preserve publications of significance as part of the national archive. The aim is to maintain an archive of the nation's published output (and thereby its intellectual record and future published heritage) both in order to preserve the material for the use of future generations and, with certain important exceptions (set out later in this document), to make it available to readers in premises controlled by the Legal Deposit Libraries in accordance with the Legal Deposit Libraries Act 2003 (the 2003 Act).
- 1.3 The Legal Deposit Libraries Act 2003 (The 2003 Act)⁵ reaffirmed existing provisions for the deposit of printed publications whereby a copy of each book or serial or other printed publication which is published in the UK is required to be deposited free of charge, in the British Library. In addition, five other libraries (the National Libraries of Scotland⁶ and Wales, and the University libraries of Oxford, Cambridge and Trinity College Dublin) are each entitled to receive, on request, one free copy of any book or other printed publication published in the UK. These libraries together with the British Library are collectively known as the Legal Deposit Libraries.
- 1.4 The 2003 Act also created a framework of legislation in which Regulations could be made for the deposit of non-print publications.
- 1.5 The Regulations seek for non print publications to mirror as closely as possible the existing regime for printed publications.

⁵ See: http://www.opsi.gov.uk/acts/acts2003/ukpga_20030028_en_1

⁶ The Faculty of Advocates in Scotland holds legal publications in Scotland which it receives from the National Library of Scotland.

Section 2: What is included in non-print legal deposit?

2.1 The draft Regulations cover non-print works available both off line and on line. For the purpose of these draft Regulations we have made the following distinctions:

- **An off line publication.** This means a non–print work which is not accessed or delivered by means of the internet and is recorded in a physical form including a CD Rom, DVD or microform (film and fiche).

Examples of the sort of publication which is currently produced in these media are an encyclopaedia and a serial of educational and legal material.

- **An on line publication.** This means a non-print work which is accessed or delivered by means of the internet and includes:
 - a publication which is free and also a publication for which there is a charge;
 - a publication which may be accessed without any public access restriction⁷;
 - a publication which is subject to a public access restriction and therefore requires a password or other information before it can be accessed; and
 - a publication which is produced in response to an enquiry from a reader such as material compiled from a legal database.

2.2 A non-print work is not subject to the deposit obligations if it:

- comprises a sound recording or film unless they are incidental features of the main body of work and not its main purpose; and
- is a private work which has not been published or made available to the public; or
- is shared by means of the internet using some form of private network such as an intranet;
- is a work which contains personal data and is restricted to a defined group of people. This means that members' only areas within a public site (such

⁷ A public access restriction includes a technical measure which prevents access to a non-print publication unless the user or publisher supplied further information such as a password.

as restricted areas of Facebook) would not be covered by the draft Regulations.

Section 3: When do the deposit obligations apply?

Off line works

- 5.1 Publishers of off line works must deposit one copy of their publication within one month of the publication date with the British Library Board and within one year of a request from the other Legal Deposit Libraries.

On line works that are free of charge and without access restrictions

- 5.2 Publishers must deposit these works as soon as reasonably practicable after a written request from a Legal Deposit Library has been received. In the most part, this written request will be sent by a web harvester.
- 5.3 The obligation only applies in relation to the first Legal Deposit Library to make a request. This means that the obligation only applies once and that the Publisher does not need to deposit a copy with each Legal Deposit Library.

On line publications for which there is a charge or which are subject to public access restrictions

- 5.4 Publishers must deposit these works within three months of a written request from a Legal Deposit Library unless the request specifies delivery within a period exceeding three months in which case delivery must be within the period specified..
- 5.5 We have allowed for the possibility of a period longer than three months for delivery in order to allow the Publisher (particularly a small Publisher) time to make any necessary technical set up changes to facilitate deposit.
- 5.6 Again, the obligation only applies in relation to the first Legal Deposit Library to make a request so the obligation only applies once.

Summary

- The deposit obligations in relation to off line publications mirror the obligations which apply to printed publications.
- As regards on line publications, Publishers are not obliged to deposit their publications until they have received a written request from a Legal Deposit Library. In the case of an on line publication which is not subject to any access restriction or charge, the written request will usually be made by a web harvester.
- For on line publications, the Publisher will only have to deposit a publication once. In practice, we anticipate that the deposited work will be stored on a secure off line network shared between the Legal Deposit Libraries.

- Written requests for on line publications for which there are charges or which are subject to public access restrictions will be issued by the Legal Deposit Libraries on a Publisher by Publisher basis. Such requests may cover all the on line publications that are made available to the public on or after a date specified in that written request. A Publisher may, thereafter, find it easier to allow such works to be harvested.

- Examples of delivery method may include, but are not limited to:
 - Publisher deposit of complex publications such as full text XML and/or complex file structures with metadata;
 - Publisher deposit of simple publications without metadata;
 - Publisher deposit of simple publications with metadata;
 - A “harvesting” approach may be agreed with the Publishers; the aim is to minimise the impact on Publishers. By providing the Legal Deposit Libraries with usernames and passwords that can be programmed into the harvesting process, the deposit of future publications can become mainly automated for the Publisher. See Section 10 for more details on the harvesting process;
 - If a harvesting approach for deposit is agreed, the Legal Deposit Libraries may:
 - a. harvest/download discrete but complex web-based publications;
 - b. harvest/download discrete and simple file publications, such as PDF;
 - c. harvest entire websites on a systematic basis for separate cataloguing.

Section 4: What access is allowed to deposited works?

- 4.1 Access to works that the Legal Deposit Libraries have received under Legal Deposit is restricted to the display terminals on premises controlled by the Legal Deposit Libraries.
- 4.2 There are no restrictions on how many display terminals a Legal Deposit Library may have. However, they must be situated on premises controlled by the Legal Deposit Libraries and only readers who are on premises controlled by the Legal Deposit Libraries can be allowed access to (i.e. can view) the work on a display terminal.
- 4.3 Access to the same non-print work is restricted to one display terminal at any one time in any premises controlled by each of the Legal Deposit Libraries. Therefore the same non-print work can only be viewed on a maximum of six display terminals at the same time as there are only six Legal Deposit Libraries (including Trinity College Dublin). This mirrors the system for printed publications whereby a maximum of six copies of the same work are available for readers across the six Legal Deposit Libraries.

Section 5: In what medium, quality and format must the works be deposited?

Medium

- 5.1 We recognise that in many cases, the same work (or substantially the same work) may be published in both print and non-print and we intend to give the Publishers and the Legal Deposit Libraries as much scope as possible to find a solution which suits them both. Therefore, the draft Regulations provide that they may agree whether the print or non-print work should be deposited, but that in the absence of any agreement, it is the print work which must be deposited.
- 5.2 Similarly, we recognise that the same non-print work (or substantially the same non-print work) may be published in more than one medium i.e. a word document or a pdf. In such cases, the draft Regulations provide that the Publisher and the Legal Deposit Library may agree in which medium the work should be deposited. In the absence of an agreement between the Publisher and the Legal Deposit Library, it is the Publisher who chooses in which medium the non-print work should be deposited.

Quality best for preservation purposes

- 5.3 Since one of the key aims of Legal Deposit is to ensure the preservation of an archive of the nation's published works, there are a number of provisions in the Regulations which are concerned with preservation.
- 5.4 Publishers must ensure that the copy of the non-print work which they deposit must be of the quality most suitable for preservation purposes. Again, it is for the Publisher and the Legal Deposit Library to agree which quality is most suitable for preservation purposes. In the absence of such an agreement, it is the Publisher who decides which quality is most suitable.
- 5.5 We consider that it is most appropriate to give the Publisher the final decision if agreement cannot be reached on these matters since it is the Publisher who will bear the costs. Moreover, as detailed later in this guidance, the draft Regulations contain detailed provisions allowing the Legal Deposit Libraries to take copies of and format shift the deposited works for preservation purposes.

Section 6: Can Publishers obtain an embargo to prevent access to non-print works which have been deposited?

- 6.1 To ensure that the impact on Publishers' business models is kept to a minimum, the draft Regulations include some general provisions about embargoes. These are intended to protect the commercial interests of those Publishers who may be unreasonably prejudiced if readers are allowed access to their works in a Legal Deposit Library, albeit on the limited basis prescribed under the draft Regulations and described in section 4 above.
- 6.2 Although the possibility of an embargo does not remove the obligation to deposit the publication with a Legal Deposit Library, an embargo means that readers will not be able to access the publication for a specified period of time.
- 6.3 There is no automatic provision for an embargo and the draft Regulations do not give specific time periods during which particular types of publication must be withheld from readers at a display terminal. We consider that the appropriate period will vary depending on the particular circumstances and the publication concerned. The draft Regulations provide that the Legal Deposit Library must impose an embargo if the Publisher submits a written request and demonstrates on a balance of probabilities that viewing by a reader would:
- conflict with the normal exploitation of the work; and
 - unreasonably prejudice the legitimate interests of the Publisher.
- 6.4 It is worth noting that this goes further than the position in relation to print publications for which embargoes are negotiated on an informal basis and without any statutory basis.
- 6.5 The draft Regulations provide that an embargo can be requested at any time and the request must specify a period not exceeding three years from a specified date. A publisher can make subsequent requests for further and consecutive embargoes for the same publication.

Section 7: Do I have to deliver a copy of any computer program and any information necessary to access the work?

7.1 The draft Regulations provide that the Publisher must provide a copy of any computer program and any information necessary to access the non-print work. This information must be deposited at the same time as the corresponding work is deposited and includes:

- a copy of any computer program and any information (including any tools and data), necessary to access the work including any information required, including usernames and passwords, to allow a reader to read the work; and
- a copy of any manual and other material that accompanies the work.

Section 8: What is meant by ‘connected to the United Kingdom’?

- 8.1 The deposit obligations in the 2003 Act apply to those who publish in the United Kingdom⁸. The draft Regulations set out the categories of non–print works which must be deposited, but they do not prescribe the nature of the content of those works.
- 8.2 We do not consider that the draft Regulations should confine the scope of the Legal Deposit archive by reference to qualitative criteria. We consider that views are likely to change over time as regards the significance of particular publications.
- 8.3 Moreover, this would be a departure from the approach for printed works and our policy has been to mirror the system for printed works as far as this is possible.
- 8.4 In any event, we have been told that excluding from the scope of the deposit obligations those non–print works which are published in the United Kingdom but are primarily aimed at readers based outside the United Kingdom would present considerable technological and administrative challenges. .
- 8.5 Therefore, the draft Regulations take a broad approach and do not restrict the range or type of non–print publications which fall within the deposit obligations. However, the limits on what should be deposited by Publishers and harvested by the Legal Deposit Libraries reside in the scope of the exemptions from liability for defamation and copyright infringement contained in the 2003 Act and the draft Regulations.
- 8.6 These exemptions from legal liability apply in relation to the harvesting of an on line publication which is ‘connected with the United Kingdom’ and which is harvested from a person ‘connected with the United Kingdom’⁹. This is covered in draft Regulation 36 in line with the approach adopted in the e-Commerce Regulations¹⁰ and is as follows:
- an on line publication is connected with the United Kingdom if it is published in the United Kingdom; and
 - a person publishing an on line publication is connected with the United Kingdom if that person publishes for an indefinite period using a fixed establishment in the United Kingdom for an indefinite period.
- 8.7 Draft Regulation 35 provides that the exemptions from liability apply in relation to publications which are from Publishers based in the United Kingdom **and** are also published in the United Kingdom.

⁸ Section 1(1) of the 2003 Act

⁹ Section 10(5)(b) of the 2003 Act.

¹⁰ See the definition of “Established service provider” in Statutory Instrument 2002 No. 2013 The Electronic Commerce (EC Directive) Regulations 2002 <http://www.opsi.gov.uk/si/si2002/20022013.htm>

- 8.8 These draft Regulations are outcome rather than process based and we recognise that this broad framework means that it will be for the Legal Deposit Libraries and the Publishers to find technical and practical solutions. Nevertheless, we have a number of suggestions which are intended to provide guidance and clarify the position.
- 8.9 For on line publications which are free of charge and are not subject to access restrictions (which will normally be requested by a web harvester), the Legal Deposit Libraries may wish to assume (unless they are told otherwise) that a Publisher is based in the United Kingdom and is publishing from the United Kingdom if:
- (i) the publication is made available from a website with a top level UK domain name such as a domain name ending .co.uk or org.uk or any other ending which refers to the United Kingdom or any part of it such as .cymru or .london; or
 - (ii) the publisher has made it clear on its website that it is based in the United Kingdom and is based in the United Kingdom for the purposes of the e-Commerce Regulations¹¹.
- 8.10 We recognise that the top level domain name will not always accurately indicate where a publication is published or where the publisher is located. With domain names which end in, for example, .com, the Legal Deposit Library will have to make enquiries to find out whether it is within the scope of the Regulations. Moreover, in the event that the assumption in 8.8 (i) above proves incorrect, the Publisher could refuse the deposit request. If, in the meantime, a publication had been harvested and proved to be outside the scope of the Regulations, the Legal Deposit Library should limit the extent of any liability by ensuring that the publication is not available to any readers.
- 8.11 For on line publications for which there is a charge or which are subject to public access restrictions, the test for what amounts to whether the Publisher is connected to the United Kingdom should be based on the location of who decides to publish the work and the Legal Deposit Library will need to make enquiries to find this out.
- 8.12 Similarly, for on line publications from individuals based in the United Kingdom but who do not have a UK trading address, the Legal Deposit Libraries will have to make enquiries to find out whether the Publisher is based in the United Kingdom.

¹¹ Under the E-Commerce Regulations, a service provider will be within the scope of the Regulations only while it is providing services within the scope of the Regulations. The same Service Provider can be established in a number of Member States at once but can only be providing its services from one establishment at a time. In order to determine which regulatory regime applies, you look at which establishment the services are being provided from. If it cannot be determined from which establishment the services are being provided then the service is to be regarded as provided from the place of establishment where the provider has the centre of his activities relating to that service.

Section 9: What are the permitted activities in relation to the deposited works?

- 9.1 We are mindful of the need to ensure that these Regulations must not unreasonably prejudice the interests of the Publishers of the deposited non-print works. We also recognise that new business models are rapidly developing and will continue to evolve as publishers find new ways of commercially exploiting their works.
- 9.2 Only those activities which are specifically permitted in the draft Regulations may be carried out in relation to the deposited non-print works. These permitted activities are deliberately restrictive and mirror as closely as possible the regime which currently applies in relation to print works

Proving access to the relevant works

- 9.3 The draft Regulations provide that a Legal Deposit Library may only allow readers to view the same relevant material at one display terminal at any one time. More detail on this provision and how a Publisher may be able to seek an embargo to prevent access to specific deposited non-print works is contained in Section 6 of this guidance.

Research and study

- 9.4 The draft Regulations largely mirror the existing law which governs how and when a library may take a copy of part of a work and provide that copy to a reader. The Deposit Library must be satisfied that the copy is for a person who will use it for the purpose of research for a non commercial purpose or private study and will not use it for any other purpose.
- 9.5 A copy of part of a non-print work may only be copied and taken away from a Legal Deposit Library in print and cannot be removed in a non-print medium unless the relevant Publisher has given permission for this to be done.

Visual impairment

- 9.6 The draft Regulations also allow Legal Deposit Libraries to make accessible copies of non-print works for the visually impaired. Once again, these are based on the existing law which governs how libraries can make accessible copies of the publications which they hold.¹²

Copying for preservation purposes

- 9.7 The draft Regulations contain provisions based on those which the Intellectual Property Office has previously consulted upon in relation to the Gowers recommendation for

¹² See section 31A-31F of the Copyright Designs and Patents Act 1988 as amended by the Copyright (Visually Impaired Persons) Act 2002.

libraries and archives to be able to take copies and format shift for preservation purposes¹³.

- 9.8 Accordingly, we are proposing that the Legal Deposit Libraries may copy the deposited non-print works in order to preserve them and in order to replace a copy of a non-print work which has been deposited in another Legal Deposit Library and subsequently lost, destroyed or damaged. We are also proposing that the Legal Deposit Libraries may make a copy in a different format or medium when they consider that this is necessary for preservation purposes.

¹³ <http://www.ipa.gov.uk/pro-policy/consult/consult-closed/consult-closed-2009/consult-2009-gowers2.htm>

Section 10: When are the Legal Deposit Libraries and the Publishers exempt from certain legal liabilities?

- 10.1 The effect of section 9 of the 2003 Act is that compliance with the deposit obligations in the draft Regulations will be taken not to breach any contract relating to any part of the work nor to infringe any copyright, publication right, database right or patent in any part of the deposited non-print works or other material (such as any computer program or other information which must also be deposited in order to access the work).
- 10.2 Section 10 of the 2003 Act provides that any liability of the Legal Deposit Libraries for defamation resulting from prescribed activities relating to deposited works will arise only where they know or ought to know that the material is defamatory and have had a reasonable opportunity to prevent activities giving rise to defamation claims.
- 10.3 The prescribed activities are those detailed in the draft Regulations and covered in more detail in Sections 4, 7, 9 and 13 of this Guidance. In summary, the prescribed activities cover the circumstances in which the Legal Deposit Libraries can:
- provide access to the deposited works;
 - supply a copy of part of a deposited work to a reader for research and private study;
 - make accessible copies of deposited works for visually impaired persons;
 - copy and format shift a deposited work for preservation purposes;
 - adapt material contained in a computer program or database in accordance with the deposit obligations; and
 - dispose of deposited works.
- 10.4 As detailed in Section 8 these exemptions from legal liability apply in relation to the harvesting of an on line publication which is 'connected with the United Kingdom' and is harvested from or deposited by a person 'connected with the United Kingdom'. This is covered in the draft Regulations as follows:
- an on line publication is connected with the United Kingdom if it is published in the United Kingdom;
 - a person publishing an on line publication is connected with the United Kingdom if that person publishes for an indefinite period using a fixed establishment in the United Kingdom.
- 10.5 This gives the Legal Deposit Libraries broad scope in terms of the types of non print works which they can include in their legal deposit archive. It also means that they are

not exempt from legal liabilities in respect of works deposited or harvested requested from outside these parameters.

Section 11: What is harvesting?

Harvesting

- 11.1 The duty to deposit on line publications which are available free of charge and without access restrictions only comes into effect once the Legal Deposit Library, whether by the web harvester or other means, requests the Publisher to do so. This harvesting method of deposit may also be used for other types of works where the Publisher has provided appropriate access conditions for the Legal Deposit Library harvesting tool (see Section 3).
- 11.2 The draft Regulations do not provide details on how the harvesting process should operate but we have set out below how we envisage that this will work.
- 11.3 We envisage that the following process will be initiated to deposit on line publications which are free of charge and without any public access restrictions:
- An initial seed list of Uniform Resource Locators (URLs) will be loaded into the harvester by the Legal Deposit Library. These will usually be URLs for the home or root pages of web domains that are within the scope as set out in Section 8.
 - For each URL, the harvester will issue an electronic request to the Publisher's web hosting server for delivery of a copy of the page or file. Each request will include information which identifies:
 - the Internet Protocol (IP) address of the harvester issuing the request
 - the URL for the page or file requested
 - a 'user-agent string' which identifies the Legal Deposit Library controlling the harvester and the fact that it is a harvesting request
 - the URL for a web page containing details of how to contact the Legal Deposit Library.
- 11.4 Having discussed this with the Legal Deposit Libraries this is our understanding of how the harvesting process will work. The web hosting server responds automatically, delivering a copy of the page or file (the deposit) to the harvester. Once the copy has been delivered to the harvester, it will then be incorporated into the Legal Deposit Library's archive collection.
- 11.5 The Legal Deposit Libraries will set rules and parameters for the harvester to ensure that there is no harmful impact upon the performance of the web hosting server:
- Only web pages and documents that are publicly and freely available will be requested; harvesting will not go anywhere that is not public.

- Legal Deposit libraries will use standard automated protocols in order to inform the website manager (via a “user-agent string” submitted to the web server’s log of server requests) on each occasion that a copy of their content is harvested for legal deposit purposes; the website owner may choose whether or not to use this information, but there will be no requirement for a website owner to make any change to their robots.txt files, nor take any other action.
- Web pages and documents will only be harvested periodically, and defined in the collections policy. When multiple requests for different pages and files are issued to the same web hosting server, an interval between each request will safeguard against any risk of using up bandwidth or overloading the server.
- The harvester will not obtain any works that are protected by a firewall or by any kind of barrier such as username/password protection, unless agreed with the Publisher.
- The harvester will not request any pages or documents that do not have web links to them; therefore any pages or files which are not freely available cannot be requested.

11.6 The harvester will automatically follow links from the home or root page to the next levels down within the same domain, issuing a separate request for each page or file.

11.7 Publishers who agree to use the harvesting process must provide the harvesting tool with the relevant works; the Publisher is not required to do anything else. However, where publishers do not provide facilities for harvesting, the Legal Deposit Library will have to send the request by other means.

Non Harvest Works

11.8 The table below sets out the different methods for depositing non harvested works.

Description	Delivery	Content	Metadata
1. deposit of complex publications (full text XML and/or complex file structures with metadata)	FTP	Full text XML, and/or publications comprising multiple files in complex structures	Typically XML (or SGML), either full text or headers
2. deposit of simple publications <u>without</u> descriptive metadata.	FTP or Direct Delivery	Simple binary files: typically PDF but also Word, Excel, Photo image collections etc plus MHTML files.	n/a
3. deposit of simple publications <u>with</u> descriptive metadata.	FTP or Direct Delivery	Simple binary files: typically PDF but also Word, Excel, Photo image collections etc	Typically XML headers in a separate file, but may be TXT or

		plus MHTML files. May also be appropriate for depositing new web-based pages via a bespoke RSS feed	another file type, or the metadata may be packaged in with the content (HTML, EPUB files or other options).
4. harvest / download of discrete but complex web-based publications	Direct Harvest	Simple binary files, typically PDF, but combined with HTML web pages and linked to other publications, often published via a CMS	Likely to be contained within the HTML and derivable from surrounding web pages
5. harvest/download of discrete and simple publications as files (typically PDF)	Direct Harvest	Simple binary files, typically PDF	May be derivable from linked / surrounding web pages
6. harvest of entire websites on a regular and frequent basis, for individual discovery separate from a web archive	Direct Harvest	Web pages, often dynamic, often published via a CMS	Likely to be contained within the HTML and generated by harvesting tool
7. Crawler harvesting of multiple websites, in periodic snapshots for a web archive.	Direct Harvest	Freely available web pages and documents only (i.e. no access restriction and no login or password required)	Likely to be contained within the HTML and generated by harvesting tool

Section 12: Do Publishers have to deposit metadata?

12.1 Metadata is the information that describes an electronic publication and includes details such as: its author and title; its physical properties (type of file, file size); unique characteristics (numerical identifier, an ISBN). All of this information helps a reader to find an electronic publication. In many cases metadata may form part of the non-print work and would fall within the legal deposit obligation.

12.2 The draft Regulations are based on the following principles:

- Publishers are not expected to generate metadata solely for the purpose of Non-print Legal Deposit;
- Where metadata forms part of the works it should be deposited at the same time as the remainder of the non-print works;
- The creation, adaptation, enhancement and use of metadata do not form part of the Legal Deposit draft Regulations;
- Metadata that is collected by the Deposit Libraries through the legal deposit of works cannot be sold to any third party.

Section 13: How can the Legal Deposit Libraries dispose of deposited works?

- 13.1 Legal Deposit Libraries may dispose of copies of the non-print works which they acquire through the legal deposit obligations, but only by destroying them and they cannot destroy all copies of those works.
- 13.2 This means that Legal Deposit Libraries cannot sell any copies of the non-print works which have been obtained under the legal deposit regime, even on expiry of the copyright in the relevant works.

Section 14: Management Structure and Process

- 14.1 We do not propose to regulate the management structure or define how the technicalities of the legal deposit process should operate. However, we would expect the Legal Deposit Libraries to put in place a robust management structure for non-print Legal Deposit concurrent with the introduction of the Regulations.
- 14.2 Similarly, between the Legal Deposit Libraries and the Publishers it is expected that there will be an informal appeals process through which disputes can be resolved. However, this will be independent from any Government supervision and the process must be agreed between the Legal Deposit Libraries and the Publishers.
- 14.3 We set out below for guidance purposes only, some features and practices which we would expect to be put in place through collaboration between the Legal Deposit Libraries and the Publishers

Collection Policy

- 14.4 The management structure is expected to include an open and transparent collection policy, including policies on the maintenance of non-print legal deposit works and the policies for collection and methods to ingest different types of non-print works. We would expect the Legal Deposit Libraries to seek the advice of other parties, and take full account of any potential burden. Such parties should include representatives from the publishing industry, individuals having appropriate expertise and knowledge of digital publishing, and other stakeholder interests.
- 14.5 The Legal Deposit Libraries collection policy must be reviewed annually and a copy of the policy will be made publicly available.

Grievance Procedure

- 14.6 The Legal Deposit Libraries are expected to put in place a robust and transparent grievance procedure.
- 14.7 A Publisher may dispute or appeal against the works and application of any part of the non-print legal deposit collection policy. The Legal Deposit Libraries collection policy must include a description of the appeals process.

Annex A: Questionnaire

We are seeking your views on the draft Regulations and impact assessments for non print legal deposit. Specifically we would appreciate your responses to the following questions. These questions can be answered on line¹⁴

Question Number	Question
1	<p>Will these Regulations provide for a meaningful national archive of non-print publications to be deposited with the Legal Deposit Libraries? Please provide an answer for each category:</p> <p>Off line publications, On line publications which are free of charge and without access restrictions, On line publications which are subject to a charge or access restrictions</p> <p>If not why not? Please provide reasons and evidence.</p>
Draft Regulations - Introduction	
2	<p>Regulation 2(3) – The Regulations are intended to cover all types of non-print publications.</p> <p>Do you agree with this approach? If not, why not? Please provide reasons and evidence.</p>
3	<p>Regulation 2(3) – The Regulations provide some illustrative examples of the types of non-print publication which are covered. Are there any other examples of non-print publication which should be that should be expressly included? Please list them.</p> <p>Do you foresee any difficulties with the definitions which we have used? If so, please give reasons and evidence. Please suggest an alternative.</p>
4	Regulation 2(3)

¹⁴ Access the online form at <http://www.culture.gov.uk/consultations/7449.aspx>

	<p>Should we include the following in the Regulations:</p> <p>Off line publications?</p> <p>On line publications which are not subject to any access restrictions and which are freely available?</p> <p>On line publications which are there is a charge or which is subject to public access restrictions?</p> <p>Electronic publications which comprise material packaged and filtered in response to an enquiry from a user?</p> <p>If not, why not? Please provide reasons and evidence.</p>
	<p>Draft Regulation - Deposit</p>
<p>5</p>	<p>Regulation5(2) – When substantially the same work is published in both print and non-print, the Regulations must provide that the medium for delivery is print unless an alternative medium has been agreed between the publisher and the Legal Deposit Library.</p> <p>Are there any consequences that make this impracticable? If so what are they? Please provide reasons and evidence.</p>
<p>6</p>	<p>Regulation5(2) – The Regulations do not make provision as to the circumstances in which works are or are not to be regarded as substantially the same for these purposes as we think that this will depend on the nature of the work and will evolve over time. We also consider that this is an issue which the Legal Deposit Libraries and the publishers can and should agree between themselves.</p> <p>Do you agree? If not, please provide reasons and suggest how: (a) the Regulations or (b) the Guidance should address this. Please provide evidence.</p>
<p>7</p>	<p>Regulation 5(3) – When substantially the same work is published in more than one medium i.e. a word document or a pdf, the Regulations provide that the medium of delivery shall be agreed between the publisher and the legal deposit library. However, the Legal Deposit Libraries Act 2003 stipulates that we must make it clear in the Regulations which medium prevails. Therefore, the Regulations provide that if the publisher and the legal deposit library cannot reach agreement, it is up to the publisher to decide in which medium they should deposit the work.</p> <p>Are there any consequences that make this impracticable? If</p>

	so what are they? Please provide reasons and evidence.
8	<p>Regulation 5(3) – The Regulations do not make provision as to the circumstances in which works are or are not to be regarded as substantially the same for these purposes as we think that this will depend on the nature of the work and will evolve over time. We also consider that this is an issue which the Legal Deposit Libraries and the publishers can and should agree between themselves.</p> <p>Do you agree? If not, please provide reasons and suggest how: (a) the Regulations or (b) the Guidance should address this. Please provide evidence.</p>
9	<p>Regulation 13 – The quality of non-print work should be agreed between the Legal Deposit Libraries and the publisher and should be the most suitable for preservation purposes. If agreement cannot be reached the publisher will decide upon the quality of works to be deposited.</p> <p>Do you consider this the most appropriate approach? If not what do you suggest and why? Please provide evidence.</p>
10	<p>Regulation 14 - This covers on line publications which are available free of charge and which are not subject to any public access restrictions. These publications must be delivered as soon as reasonably practicable after a request from a legal deposit library.</p> <p>Publishers will only have to deposit once with the requesting legal deposit library and will not have to send copies to the other legal deposit libraries.</p> <p>Do you agree with this approach? If not, please provide reasons and any suggestions you may have for an alternative approach. Please provide evidence.</p>
11	<p>Regulation 17 – This covers on line publications for which there is a charge or which are subject to public access restrictions. These publications must be delivered within three months of a request from a deposit library unless the request specifies delivery within a period exceeding three months but within the period specified.</p> <p>As indicated in the Guidance, we included the possibility of a period longer than three months in order to accommodate those publishers who may need more than three months in order to meet this obligation</p> <p>Regulation 18- Publishers will only have to deposit once with the requesting legal deposit library and will not</p>

	<p>have to send copies to the other legal deposit libraries.</p> <p>Do you agree with this approach and are these timings practical? If not, please provide reasons and any suggestions you may have for an alternative approach? Please provide evidence.</p>
12	<p>Regulation 19 – A request for deposit must be made in writing (whether sent by web harvester or other means).</p> <p>Are there any consequences that make this impracticable? If so what are they? Please provide evidence.</p>
13	<p>Regulation 21 – This covers both on line publications for which there is a charge or which are subject to a public access restriction and also on line publications which are available free and which are not subject to any public access restriction. The regulation provides that the quality of the deposited work should be agreed between the legal deposit library and the publisher and should be the quality most suitable for preservation purposes. The regulation also provides that if agreement cannot be reached the publisher will decide upon the quality of the work to be deposited.</p> <p>Do you consider this the most appropriate approach? If not what do you suggest and why? Please provide evidence.</p>
	Draft Regulations - Permitted Activities
	<u>Providing access to the relevant material</u>
14	<p>Regulation 23 - This provides that access to the same non-print work is restricted to one display terminal at any one time in each of the Legal Deposit Libraries. Therefore the same non-print work can only be viewed on a maximum of six display terminals at the same time as there are only six Legal Deposit Libraries (including Trinity College Dublin). This mirrors the system for printed publications whereby a maximum of six copies of the same work are available for readers across the six Legal Deposit Libraries.</p> <p>Do you agree with this approach? If not please give reasons and suggest an alternative. Please provide evidence.</p>
15	<p>Regulation 24 - This provides that a legal deposit library may not allow access to a deposited work if a publisher has requested an embargo for a period not exceeding three years from the date of the request. The deposit library may not refuse the request if the publisher has shown that on a</p>

	<p>balance of probabilities, viewing by a reader would conflict with the normal exploitation of the work and unreasonably prejudice the legitimate interests of the publisher.</p> <p>Regulation 27-This provides that an embargo may be extended. Do you agree with this approach? If not please give reasons and suggest an alternative. Please provide evidence.</p>
	<p><u>Research and private study</u></p>
16	<p>Regulations 29 and 30 - A legal deposit library may only provide a print copy of an article or part of a work unless permission has been given by the publisher for the legal deposit library to make a copy in another medium.</p> <p>Do you agree with this approach? If not please give reasons and suggest an alternative. Please provide evidence.</p>
	<p><u>Visual Impairment</u></p>
17	<p>Regulation 31 - This regulation sets out the circumstances in which a legal deposit library may make an accessible copy of a deposited work and the conditions which apply.</p> <p>Do you agree with this approach? If not please give reasons and suggest an alternative. Please provide evidence.</p>
	<p><u>Copying and adapting for preservation purposes</u></p>
18	<p>Regulations 32 and 33 - These regulations set out the circumstances in which a legal deposit library may copy or adapt copies of deposited works for preservation purposes and the conditions which apply.</p> <p>Do you agree with this approach? If not please give reasons and suggest an alternative. Please provide evidence.</p>
	<p><u>Disposing of copies of deposited works</u></p>
19	<p>Regulation 34 - This provides that a deposit library may dispose of duplicate works by destroying them but may not destroy all copies of the deposited works. This regulation also provides that the deposit library must retain the copy or copies of the deposited works which it considers most suitable for preservation purposes.</p> <p>Do you agree with this approach? If not, please give reasons and suggest an alternative. Please provide evidence.</p>

	Draft Regulations - Exemption from liability
20	<p>Regulation 35 - This regulation sets out the circumstances in which exemptions from liability apply and thereby define the geographic scope of the works and publishers covered by the regulations.</p> <p>Do you agree that the regulations should only cover publications which are from publishers based in the United Kingdom and also published in the United Kingdom?</p> <p>If not, please give reasons and suggest an alternative. Please provide evidence.</p>
21	<p>Regulation 36 - Do you agree that the regulations should NOT cover works which are accessible to readers based in the United Kingdom unless they are published in the United Kingdom by publishers based in the United Kingdom?</p> <p>If not, please give reasons and suggest an alternative. Please explain your position.</p>
22	<p>Guidance: section 8</p> <p>We have suggested that for on line works which are free of charge and without access restrictions (which will normally be requested via a web harvester), the Legal Deposit Libraries should assume (unless told otherwise) that a Publisher :</p> <ul style="list-style-type: none"> - is based in the United Kingdom; and - is publishing from the United Kingdom; <p>If:</p> <ul style="list-style-type: none"> - the publisher has made it clear on its website that it is based in the United Kingdom, has provided its trading location in the United Kingdom and is based in the United Kingdom for the purposes of the e-Commerce Directive; or - the publication is available from a website with a top level UK domain name. <p>In the event that these assumptions prove incorrect, the Publisher could refuse the deposit request by blocking the web harvester.</p> <p>Other websites may be within scope but will need to be asked</p>

	<p>directly.</p> <p>Do you agree with this approach?</p> <p>We have suggested that for an on line publication for which there is a charge or which is subject to a public access restriction, the test for what amounts to a UK publisher should be based upon the location of who decides to publish the work. How do you think this approach can work in practice?</p> <p>Do you agree that for on line publications from UK based individuals who do not have a trading address, the Legal Deposit Libraries should find a way of directly asking the Publisher whether they are based in the United Kingdom? If not, please give reasons and suggest an alternative Please provide evidence.</p>
	Impact Assessment
23	<p>Do you agree with the impact, as set out in the impact assessments, for the Deposit Libraries? If not why not? Please provide evidence and a breakdown of your calculations.</p>
24	<p>If you are a publisher who currently deposits publications in print would you change to depositing non-print works instead? Would this prove to be more economical for you in the (a) short; (b) medium; or (c) to long term? Please state if you are a small, medium and or large business.</p>
25	<p>If you are a publisher, how much does it currently cost you to deposit print works? Please provide a breakdown of your calculations. Please state if you are a small, medium or large business¹⁵.</p>
26	<p>If you are a publisher, how much will it cost you to legally deposit non-print works? Please provide an estimate of the initial set up costs for depositing non-print works. Please provide a breakdown of your calculations and when you estimate you would recover these costs? Please state if you are a Micro, small, medium or large business.</p>
27	<p>If you are a publisher who only produces non-print publications and are therefore not currently depositing publications, but will become subject to the Regulations</p>

¹⁵ micro (<10 employees), less than 20 employees, small (< 50 employees), medium (<250 employees) and large organizations (250+ employees)

	because you will be required to deposit non-print works, please estimate the initial set up and ongoing costs for doing this. In particular please provide an estimate of your costs for depositing any of the non-print works covered by the Regulations (offline and online non print works). Please provide a breakdown of your calculations. Please state if you are a micro, small, medium or large business.
28	Do you agree with the Impact as set out in the impact assessments for publishers? If not please give your reasons providing evidence for your conclusions. Please state if you are a micro, small, medium or large business.
29	If you are a publisher, do you consider there will be savings in the medium to long term by being able to deposit electronically? Please provide your calculations. Please state if you are a micro, small, medium or large business.
30	If you are a publisher for how long do you believe works will continue to be produced in print and electronic form? Please state if you are a micro, small, medium or large business.
	Ireland
31	<p>The 2003 Act allows for non-print works to be deposited with Trinity College Dublin (TCD). The 2003 Act is clear that we should not extend legal deposit to TCD unless the Secretary of State is satisfied that restrictions on use of the material under Irish law are not substantially less than in the UK. We are still awaiting information from Ireland on this issue and we do not propose to extend the Regulations to cover Ireland until we have this comfort. However, for the purposes of the consultation, we consider that the most prudent course is to include TCD as a legal deposit library in the draft regulations.</p> <p>Are there any points which you would like make on this issue? Please include, if possible, any evidence with your answer.</p>
	Other
32	Do you have any other comments, issues, concerns or questions? If so please can you clearly label what it is and then set it out, providing any relevant evidence.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). **If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential.** If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA, and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

The consultation is guided by the Government's Code of Practice on Consultation which is available at: <http://www.bis.gov.uk/files/file53268.pdf>.

Annex B: Glossary of Terms

Terms as defined by or referred to in the 2003 Act

Term	Definition	Source and/or Comment
Legal Deposit	The Legal Deposit Libraries Act 2003 states that one copy of every book published (which includes pamphlets, magazines and newspapers) must be sent to the British Library upon publication; five other libraries, the National Library of Scotland, the National Library of Wales, and the University Libraries of Cambridge, Oxford, and Trinity College, Dublin, are entitled to request a free copy within one year of publication.	Legal Deposit Libraries Act (the Act) section 4, 5, 15
Legal Deposit Libraries	<p>The Legal Deposit Libraries to which this Recommendation refers are: the British Library, the National Library of Scotland, the National Library of Wales, and the University Libraries of Cambridge, Oxford, and Trinity College, Dublin. References to access or using materials deposited also include the Faculty of Advocates, as provided in section 7 of the Legal Deposit Libraries Act 2003.</p> <hr/> <p>Note, however, that Trinity College Dublin cannot be a Legal Deposit Library for non print works until the Secretary of State is satisfied as regards the legal protection in Ireland, as noted in section 13 of the Legal Deposit Libraries Act 2003.</p>	The Act section 14 Also, LDAP's ' <i>The Legal Deposit of UK Commercial and Other Protected Online Publications Recommendation</i> '
Copyright/Publication Right	Copyright: Copyright is a property right...The owner of the copyright in a work has, in accordance with the following	From <i>Copyright, Designs and Patents Act 1988</i>

	<p>provisions of this Chapter, the exclusive right to do the following acts in the United Kingdom— (a) to copy the work (see section 17); (b) to issue copies of the work to the public (see section 18); (c) to perform, show or play the work in public (see section 19); (d) to broadcast the work or include it in a cable programme service (see section 20); (e) to make an adaptation of the work or do any of the above in relation to an adaptation (see section 21)]</p> <hr/> <p>Publication right: A person who after the expiry of copyright protection, publishes for the first time a previously unpublished work has, in accordance with the following provisions, a property right ("publication right") equivalent to copyright.</p>	<p><i>From Statutory Instrument 1996 No.2967: The Copyright and Related Rights Regulations 1996. Paragraphs 16 and 17</i></p>
Display Terminal	means a terminal on premises controlled by a Legal Deposit Library from which a reader may view relevant material	
Electronic Retrieval System	<p>To be understood in the following manner: Any electronic equipment that allows for the finding of and access to information from memory or other forms of storage, such as files. For the purposes of the Act, this includes disc players (for CDs, DVDs), microform readers, PCs, laptops, tablets, smartphones, catalogues etc</p>	<p>Mentioned but not defined in the Act. However, the Act refers to the definition of 'electronic' in the 1988 Act: actuated by electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy.</p>
Medium	Refers to any medium of publication, including in particular any form of on line or offline publication	<p>The Act, section 14</p> <p>For legal deposit, and popularly, the delivery and storage type for a publication, for instance print, CD, electronic file</p>
Publication	<p>(a) means the issue of copies of the work to the public, and (b) includes making the work available to the public by means</p>	The Act 14, section 14

	of an electronic retrieval system.	
Publisher	Means the person to whom the obligation in section 1(1) of the Act applies.	The Act, section 1 This 'person' may or may not be the 'rights holder', generally defined as the individual or entity that holds or controls certain intellectual property rights such as copyright.
Reader	A reader means a person who, for the purposes of research or study and with the permission of the Deposit Library is on library premises controlled by it.	The Act, Section 5(a) User of the material, in reading rooms at the Legal Deposit Libraries, including the general public, academics, researchers
Reading Room	means premises controlled by a Legal Deposit Library from which a reader may view relevant material.	
Relevant Person	a Legal Deposit Library or person acting on its behalf; a reader.	The Act, Section 7 (5)
Relevant Material	a copy delivered under section 1 of a work published in a medium other than print; a copy delivered pursuant to regulations under section 6 of a computer program or material within section 6(2)(b)	The Act, Section 7 (5)
Unreasonable Prejudice	Regulations under section 1(4), 2 or 6 may not be made unless the Secretary of State considers that the costs likely to be incurred as a result of the regulations by persons who publish works to which the regulations relate are not disproportionate to the benefit to the public arising from the delivery of copies of such works.	The Act, Section 11.5

‘Relevant Material’ to be deposited under regulation

Term	Definition	Source and/or Comment
Commercial publication	Although any online publication using advertising, banners, product placement etc can be considered commercial, for the purposes of legal deposit, this refers to publications where a direct payment (subscription, micropayment etc) is required for access to read.	
Digital publication	Equivalent in meaning to one that is ‘born digital’, in other words it is an online publication that has no print equivalent. Strictly speaking, ‘digital’ refers to a specific means by which data is stored electronically.	Popularly, it is often used interchangeably with ‘electronic publication’. See the Digital Preservation Coalition http://www.dpconline.org/advice/introduction-definitions-and-concepts.html
Electronic publication	an electronic publication which (a) is — <ul style="list-style-type: none"> ➤ predominantly text; or ➤ a sheet of letterpress or music; or ➤ a map, plan, chart or table; and ➤ a part of any such work; 	
Hybrid publication	Publications incorporating multimedia – text, images, videos, embedded linked video, and even print publications	In LDAP publisher interviews, the phrase was used most often in this sense.
Media	The term is used in a few different ways: <ul style="list-style-type: none"> i) in general, it refers to the currently predominant means of mass communication: for example, newspapers, radio, television (in this sense it is a singular or collective noun) ii) it can also refer to communication through sound, video, or text, which is often expressed as <i>multi-media</i>. Websites often use multimedia the delivery of which is facilitated by software iii) In computers, delivery and storage mechanisms, such as hard drives, CDs, DVDs, USB drives, floppy disks. (in this and in ii, it is a plural noun) 	In general, meanings ii and iii are used most often in connection with legal deposit.

Monograph	A scholarly or academic work, most often of book length, on a specific sometimes limited subject.	Although this is the formal definition, the term is sometimes used interchangeably with 'book' or 'title' of any kind. However, a 'title' is an identifying name given to a work that could include multiple books, sometimes with different sub-titles.
Non-print publication	means an electronic publication ⁽¹⁶⁾ which (a) is — <ul style="list-style-type: none"> ➤ predominantly text; or ➤ a sheet of letterpress or music; or ➤ a map, plan, chart or table; or ➤ a part of any such work; and ➤ is available free or for a charge; and ➤ is published after the date on which these Regulations are made. 	
Offline Publication	means a non-print work which is not accessed or delivered by means of the internet and is recorded in a physical form including a CD ROM, DVD or microform	
Online publication	means a non-print work which is accessed or delivered by means of the internet (including an electronic publication which comprises material packaged and filtered in response to an enquiry from a user) but not including a private intranet	
Private Intranet	means a private network that uses the internet protocol to share any part of an organisation's information within that organisation	
public access restriction	includes a technical measure which prevents access to a non-print publication unless the user or publisher with	

⁽¹⁶⁾ see the definition of "electronic publication" in section 14 of the Act. An "electronic publication" means an on line or off line publication including any publication in electronic form (within the meaning given by section 178 of the Copyright Designs and Patents Act 1988 A whereby "electronic" means actuated by electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy, and "in electronic form" means in a form usable only by electronic means)

	supplies further information including, for example, a password	
Serial	A publication issued in successive parts and for an indefinite time period. These parts are usually in number or date sequence. Examples are journals, newspapers etc	
Web Page	Any single 'page' on the World Wide Web, representing information from an electronic file that can include text, images, sound etc. The file will also include code (markup language) which directs how the information should be presented on the page, and how the information is to be discovered.	<p>'Site level' refers to the web site as a whole. For instance, a reader may be interested in the subject matter of an entire site.</p> <p>'Page level' refers to singular pages within a site. In this case a reader may not be interested in the site as a whole, but only in specific information, or sub-topic, contained within a single page on a site.</p> <p>For the purposes of harvesting, a harvester can be set to collect data at the site or domain level and/or page level</p>
Web site	A collection of related web pages accessible via a unique branding and URL.	Often, the works distributed over the various pages are contained in files. These files are organised for structural or administrative purposes into folders or directories. The root directory usually contains the 'homepage' or introductory first page of a site and a list of all the related directories/folders containing the works of the site. These files/directories are not usually visible or accessible to web users.

File Types

Term	Definition and Source	Comment
Digital manifest	A file which lists all files deposited as part of a publication (main text files, supplementary media files, metadata files etc). Similar to a postal packing slip	
DRM	Digital Rights Management: A generic term covering all methods and forms of describing, identifying, protecting, monitoring, and tracking rights usage.	This term, as well as TPM, is included in this category as certain measures for such are often encoded into the file itself or included in a sub-file. However, such measures as Encryption and Password are included in the next category as they specifically disable electronic delivery.
DTD	Document Type Definition: A file that defines how applications interpreting a document should present the works. Most notably used in conjunction with XML documents.	
File formats	The format of a file refers to the method by which information is encoded and structured, indicating, for example, how it is to be organised and presented on a page.	
HTML	Hypertext Markup Language: A set of symbols or code (markup language) inserted into the works of a file which indicated how the works is to be displayed on the Web through the use of a browser.	
PDF	Portable Document Format: a file format developed by Adobe which replicates a variety of formatting applications to reproduce a publication in the exact manner in which it is intended to appear, on any monitor or printer.	
Metadata	Data or information about a publication that that makes it discoverable ('information that enables resource discovery')	A description or descriptors of the publication's intellectual works or subject matter (including author, title etc); physical properties (type of file, file size, etc); unique characteristics (such numerical identifiers as ISBNs, etc).

		From LDAP's <i>'The Legal Deposit of UK Commercial and Other Protected Online Publications Recommendation'</i>
RTF	Rich Text Format: a proprietary file format developed by Microsoft intended to facilitate easy transfer across different applications, programs, and technical environments.	The ease by which files can be accessed across different applications, versions of software etc is known as 'portability.'
SGML	Standard General Markup Language: A system, accepted as an international standard (ISO8879), for the creation, management, storage, and delivery of works. HTML and XML are subsets, popularised by the Web	
Supplementary files	A single journal article may be composed of one or more files. LDAP refers to supplementary files as those which are submitted in addition to the main text file, such media or metadata files etc	
TPM	Technical Protection Measures: A subset of DRM, restricting or preventing access to copying or sharing	
XML	Extensible Markup Language: As with HTML, XML defines the delivery, appearance of a document over the Web. However, it provides a wider variety of structured format and also allows for coding that describes works in a semantic way, i.e. through the inclusion of fields for metadata	

Deposit Transactions and Activities

Term	Definition	Source and/or Comment
Access	The relevant material can be used in order to give access <u>for reading</u> by library readers on library premises of each deposit library entitled to deposit of a work published online, but in such a way that no more than one person in each deposit library can read the same work at any one time	
Bot	Short for 'robot', a piece of software designed to	

	accomplish a repetitive task automatically. For example, search bots will periodically perform the same web search.	
Digital Asset Management (related: Digital Object Management)	Systems, including hardware, software, and mediated processes, which manage tasks and decisions for the ingest, annotation, cataloguing, storage, retrieval, and distribution of electronic objects or publications.	Note that the British Library uses a Storage service designated as 'DOM' (see http://www.bl.uk/profiles/ejournal/BL_ejournal_profile.pdf) and the National Library of Wales uses 'DAMS' http://pubs.or08.ecs.soton.ac.uk/95/
Discovery (Resource discovery)	The process of searching, finding, and retrieving information	
Copying (print and digital)	The duplication of information (either part or whole). Material can be duplicated either by making a print copy (to paper) or a digital copy (downloading to a storage device, for example a disk, memory stick etc)	
Dual deposit	For legal deposit, delivery of publications in two formats, e.g. PDF and print	
Encryption/Encryption key	A digital code used in such a way as to render the works of a file as unreadable, or readable by only those with access to the code. The act of rendering works unreadable, usually for security purposes. Considered part of DRM/TPM.	
File conversion/transfer/format shift	Converting data from one file type to another	While the guidance states that publishers should not be expected to convert files to proscribed formats in order to fulfil deposit obligation, libraries may need to convert for preservation and access purposes.
FTP	File Transfer Protocol – Enables the transfer of files from one local computer to any other over a network. For instance information can be downloaded from one site and uploaded onto another site via the File Transfer Protocol.	
Harvesting/Harvester	means the software which is used to search the world wide web and requests delivery of an on line publication on behalf of a deposit library.	
Ingest	The process of taking or importing files for computer	

	storage, usually as part of works or digital asset management.	
Mediated Delivery/Transaction	In an electronic transaction, where human intervention is required in order to monitor, evaluate, or initiate/complete a task	
Migration	In preservation, the process of transferring non-print publications from one hardware/software platform to another, usually in order to ensure ongoing access and against obsolescence.	
Password	Any combination of characters (alpha, numeric, etc) that is used to prove identity or gain access to a resource	LDAP has specified that electronic publications are either to be delivered without password protection, or with the passwords.
Preservation (digital)	<p>The series of managed activities necessary to ensure continued access to digital materials for as long as necessary.</p> <ul style="list-style-type: none"> • Long-term preservation - Continued access to digital materials, or at least to the information contained in them, indefinitely. • Medium-term preservation - Continued access to digital materials beyond changes in technology for a defined period of time but not indefinitely. • Short-term preservation - Access to digital materials either for a defined period of time while use is predicted but which does not extend beyond the foreseeable future and/or until it becomes inaccessible because of changes in technology. 	<p>Definition taken from Digital Preservation Coalition http://www.dpconline.org/advice/introduction-definitions-and-concepts.html</p>
Repository	A term used especially in connection with academic publishing indicating a print or digital facility for the deposit of academic or scholarly publications, such as journal articles or conference papers	.
Snapshots	In harvesting for deposit, a individual file-based duplication of the state of any given online publication at any point in	While a snapshot is a single copy of a publication, multiple 'instances' or a series of

	time	snapshots are stored to form a cohesive representation of that publication over time.
Uploading/Downloading	Uploading is the transfer of data, in the form of a file for example, to a remote system, for storage, to provide access, etc. Downloading is the receiving of or retrieval of that data. Examples of remote systems include web, FTP, email or other servers.	
Web Feeds	Web feeds are a form of distribution or syndication over the web by which data is streamed continuously over time. The most commonly recognised sources of web feeds are from news sites, but more structured specific data can be streamed, such as weather data. RSS, or Really Simple Syndication, is one type of Web feed.	

Other Technology

Term	Definition and Source	Comment
Backup	The act of copying files or databases in order that they are preserved, usually in the case of equipment failure or data corruption.	
Catalogue	A set of structured records representing all the resources within any given library, quite often made available online and via the Web. Presented in the form of an online database with specialised search software used to find and retrieve records of books, magazines, electronic publications, audio-visual materials, etc. Catalogues often provide links to the electronic full-text of publications, where applicable. A catalogue can be considered an 'electronic retrieval system'	
Corruption (as in data)	The deterioration of data, often in a file, rendering it unreadable	
Domain Name	A domain name is a subset of a URL (Uniform Resource Locator) that is selected and registered by an individual,	The domain name is composed of different parts, one of which is the

	<p>business or organisation to represent its web presence. It is an alpha-numeric web name, corresponding to the numeric IP address, which may have various suffixes, such as .com, .net, .edu, or.org, that can designate the type or location of a site.</p> <p>Because the Internet is based on IP addresses, not domain names, a 'domain name server' is required to translate them into an IP addresses. For example, the domain names of large organisations, such as Microsoft.com, can represent various IP addresses. And, the Microsoft url extends beyond the domain name to include pages for all its services and products, for example, http://mobile.microsoft.com/windows/en-us/windows7/default.mspx is the url for its Windows 7 mobile web page</p>	<p>'country code top level domain', in other words, that part referred to, for example, as .uk. This is known, then, as the 'UK domain' and as such has been estimated as including over 7 million registered domain names.</p>
(Technical) Infrastructure	<p>Generally, the physical hardware used to deliver information and services, but usually also includes the software required by the system, especially to facilitate the interaction between the user and the data stored by the hardware.</p>	
Internet	<p>A world wide system of computer networks that uses a standard, Internet Protocol Suite (TCP/IP) to facilitate data transmission. Not to be confused with the World Wide Web, it uses this international communication standard to route data around the world, with delivery facilitated by IP addressing.</p>	<p>Where the 'Internet' is the delivery mechanism and the 'WWW' is the presentation mechanism. The relationship is one of 'whole to part' where the 'Web' is a subset of the 'Net'</p>
IP Address	<p>Internet Protocol Address: A numerical identifier or label attributed to any device (PC, laptop, tablet etc) which is active on the Internet. The label identifies the computer and where it is located, and is the means by which ('address') data is sent to a computer upon request.</p>	
Platform	<p>A technological framework, consisting of hardware, software, applications through which information and services can be delivered</p>	

Robots.Txt	This is a permissions file, located in the root directory that controls which web pages can be harvested or indexed by a search engine. This file contains instructions to be read by harvesters regarding what 'snapshots' can be taken. However, robots.txt cannot prohibit a harvester from harvesting all works: it is considered a 'courtesy' to abide by the instructions given.	
Root/Root directory	See Web site	
Terabyte	This is a measure of computer storage that is considered 2 to the 40 th power or approximately a trillion bytes (or a thousand gigabytes)	
Third-party (platforms, aggregators etc)	An intermediary between the works and the user, pulling in information from multiple sources and making them available on a web site.	
URL	Uniform Resources Locator: Whereas an IP is a computer's address on the internet, a URL is the address representing a site on the Web.	
Web 2.0	This refers to a set of web applications that allow for users to interact (social networking), create works individually or collaboratively (blogs, wikis), and share information (web feeds, podcasts).	
Web Browser	A program used to view web-based documents/publications etc.	
World Wide Web	A series of hyperlinked documents or publications (presented as 'web pages' and 'web sites') broadcasted through such mark-up languages as HTML and XML, and viewed through the use of 'web browsers'	

Government Departments and other organisations

Term	Definition and Source	Comment
BIS	Department for Business, Innovation and Skills http://www.bis.gov.uk/	

DCMS	Department of Culture, Media and Sport http://www.dcms.gov.uk/	
LDAP	Legal Deposit Advisory Panel	
IPO	Intellectual Property Office http://www.ipo.gov.uk/	

We can also provide documents to meet the specific requirements of people with disabilities. Please call 020 7211 6200 or email enquiries@culture.gov.uk

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