

Statement on the Implementation of (Statutory and Voluntary) Deposit Schemes for Non-Print Publications.

A joint committee of representatives from the Conference of European National Libraries and the Federation of European Publishers has produced a new Statement on the Implementation of (Statutory and Voluntary) Deposit Schemes for Non-Print Publications, and recommends that it be endorsed by the CENL and the FEP.

This Statement substantially replaces earlier Statements, first published in 2000 and revised in 2005, on the Development and Establishment of Voluntary Deposit Schemes for Electronic Publications. Although not prescriptive, the earlier Statements were intended as a model to encourage the establishment of new voluntary deposit schemes for non-print publications in member states where no provision had yet been made. However recent surveys indicate that most member states now have voluntary or statutory schemes in place for offline non-print publications, and that several national libraries have made substantial progress in developing web archives and deposit schemes for other online publications

In view of the substantial developments that have occurred since 2005, and the continued level of co-operation between national libraries and publishers throughout Europe, the purpose of this Statement has also changed. Although never prescriptive, the earlier Statements in 2000 and 2005 both described key features of model schemes that could be recommended by the FEP and the CENL to their respective members, for the deposit of mainstream publications. However many archiving schemes now also cover websites and web-based materials issued by individuals and organisations who may not be the type of mainstream publisher represented in FEP. Therefore this new Statement does not describe a model scheme for recommendation by the FEP and CENL; instead, its purpose is simply to summarise the key features of existing schemes and best practice developments, with the intention of:

- informing national libraries and publishers in member states who may not yet have implemented any scheme, or who have only implemented schemes for certain types of non-print material, and
- assisting in the further development and improvement of existing schemes by highlighting some important issues for consideration.

In 2005 the Committee was given a new mandate to act as a trans-national steering group under the existing collaborative arrangements, to

- monitor deposit practices and legislation
- give advice on deposit practices (at the request of CENL and FEP members)
- function as a platform for discussion and as an exchange of information on matters of common interest
- produce clarifications, definitions and agreements on issues of mutual interest to national libraries and publishers.

In furtherance of this mandate the Committee recommends that each member library of CENL, with national publishers and members of FEP, should:

- endorse the new Statement¹, and
- continue to advise the Committee of any new deposit schemes or modifications to existing deposit schemes, and
- establish joint national groups of publisher and library representatives for the purposes of: monitoring the use and effectiveness of deposit schemes, jointly improving schemes and resolving issues, and advising the Committee of any new issues or practices which would be of interest to national libraries and publishers in other member states.

¹ The FEP's endorsement is only on behalf of mainstream book and journal publishers, and does not extend to other types of publisher not represented in the FEP.

THE STATEMENT

PART A: INTRODUCTION

1. The main purpose of deposit in any member state is to facilitate the long term preservation of, and continuity of access to, the member state's heritage of published materials. Additional benefits include, for example, supporting the maintenance of a national bibliography.
2. Deposit means the process of adding a copy or copies of relevant publications, free of charge, to a national archive that is maintained by one or more designated institutions, typically the national library². This Statement, and the word 'deposit', covers *any* method of transferring or collecting relevant material for the archive, including both a publisher delivering copies of their publications to the national library, and the national library copying relevant materials direct from the web ('harvesting').
3. Deposit schemes may be voluntary or, more often, the subject of legislation. They should help ensure that the published record of human memory, creativity, discovery and other activity or information in a country is both preserved and made available for use, without unreasonably prejudicing the rights holders' legitimate interests or conflicting with their normal commercial exploitation of the material.
4. Most countries already have a long tradition of deposit for printed materials. Many have also implemented, or are in the process of implementing, deposit schemes for non-print materials, including digital publications issued on a physical carrier such as CD-ROM (offline publications), plus websites, e-books, e-journals or other types of digital online publication. This Statement reflects the common themes, practices and lessons learned from such deposit schemes for non-print materials, both to inform those who may not yet have implemented schemes or have only implemented schemes for certain types of non-print material and to assist in the further development and improvement of existing schemes.
5. Deposit schemes vary between member states in the scope of material covered. This Statement only covers non-print publications that consist primarily of text and images, plus any audio-visual content that may be included as part of a multimedia publication. Thus, for example, CD-ROMS and websites which consist of information with sound and video clips are covered by this Statement, whereas websites and publications which consist exclusively or primarily of audio-visual content, such as YouTube, Spotify, cinema DVDs, recorded music CDs, or streamed TV

² For convenience, all references in this Statement are to a national library as the designated institution, although the deposit schemes in different countries may include university libraries, state libraries and other archives as designated deposit institutions.

and radio broadcast material, have not been taken into consideration. Several member states do have deposit schemes for such materials as well, but they are often the subject of separate arrangements.

PART B: THE SCOPE OF NON-PRINT DEPOSIT

Types of content

- 6.i In most deposit schemes, ‘publication’ and ‘publisher’ are defined broadly to include any material that is “issued or made available to the public” in the relevant member state (subject to paragraph 5, above), and any individual or organisation with a significant presence in that member state who makes such material available there. Thus websites, blogs, e-books, e-journals, web-based news and magazine content may all be included and are not specified as particular categories of non-print publication, except perhaps being quoted as examples by way of illustration.
- 6.ii However, deposit schemes do normally provide for specific exclusions, such as:
- private emails and correspondence between individuals,
 - material that is only shared by means of a private network such as an intranet, and
 - sensitive or personal data which is only made available to a restricted group.

Ancillary material

- 7.i Deposit schemes aim to ensure that any relevant information or materials that are made publicly available to help users find, access and use a non-print publication, such as a manual or descriptive metadata, are also deposited together with the content itself.
- 7.ii Deposit schemes often include a requirement for the deposit of any passwords or tools that are needed in order to access and use the deposited publication. In the case of paid-for content that is normally viewed online, this means providing access credentials for the national library’s harvester to collect a copy. In the case of e-books and other discrete publications that are normally delivered to the customer for viewing, this refers to the means of accessing the material enclosed within a digital rights management / technical protection environment. Alternatively, schemes may require the removal of such technical protection measures prior to deposit of the publication. In either case, schemes should ensure that continuity of lawful access to the deposited publication is made possible, and that a national library is able to make copies for the purpose of preservation.

- 7.iii Some deposit schemes may include a requirement for the deposit, in addition, of any computer programs or software that are necessary to access and use the deposited publication. However this requirement would normally be understood as being limited to bespoke software ‘plug-ins’ and tools that are not otherwise publicly available and without which the content cannot be used; it would not normally be interpreted as a requirement for a publisher to provide licences for software packages which are already publicly and widely available.

Medium and format

- 8.i Deposit schemes may provide guidelines for situations in which substantially the same content is made available by the same publisher in more than one medium (such as print, offline on CD-ROM, online on the web, or downloadable for use on a particular device), and perhaps in more than one non-print format (such as HTML, PDF or EPUB).
- 8.ii Where substantially the same content is published in more than one medium such as print, offline, online or downloadable, the publisher is normally only required to deposit the content once and the choice of medium or media in which it is deposited should be normally be dictated by preservation needs. Deposit schemes may specify whether copies are to be deposited in all the available media, in just one medium, or other alternatives such as specifying a default medium (print) with the option of mutually agreeing a non-print alternative medium instead.
- 8.iii For publications in a non-print medium, the choice of non-print format to be deposited should also be dictated by its suitability for long-term preservation, subject to reasonableness in the costs of depositing it and provided that the content does not substantially differ between non-print formats. For publications that are delivered to the deposit library by a publisher, the choice of format is usually decided by mutual agreement between the publisher and national library. Schemes may permit the national library to specify preferred formats, but would not require publishers to deposit in a format that they do not already use in making the work available to the public. For content that is harvested by the national library directly from the web, the choice would naturally be limited to the format or formats in which the content is made available to the public.

Territoriality

- 9.i There are well-understood traditions for defining the place of publication and the national boundaries of deposit schemes for printed materials. These traditions can easily be applied to offline publications on a physical carrier, because the methods of distribution and deposit are similar to those for printed materials.

- 9.ii However, for online publications it is often impractical to use the same definitions, even though most schemes seek to apply similar principles. Typically, the national boundaries of deposit for online material are defined as including:
- websites, and material issued from websites, with a relevant national or regional top level domain name such as .fr, .de or .uk, including potential future geographic top level domain names such as, perhaps, .sco (Scotland), .cym (Wales), .cat (Catalonia) or .london.
 - websites, and material issued from websites, with other top level domain names such as .com or .net, where it can be established that the creator or publisher is in that country, or that a substantial part of the activities relating to the material's creation or publication has taken place in that country.
- 9.iii Some deposit schemes may also permit a national library to harvest or copy web-based material that is created or published elsewhere, provided that the material is connected with that country's heritage, for example by a shared language or culture, or because the content concerns that country, or because it is actively targeted for distribution within that country.
- 9.iv However, with certain exceptions, publishers in one member state are not usually expected to deliver copies of their online publications to, or actively facilitate their harvesting by, the national library of a second member state, unless a substantial part of the activities relating to the material's creation or publication has taken place in that second member state. And the mere fact that an online publication is accessible in a member state is not sufficient reason on its own for requiring that it be deposited in that member state.

PART C: THE PROCESS OF DEPOSIT FOR NON-PRINT PUBLICATIONS

10. Deposit of a publication may be achieved by various methods, such as the publisher delivering it to the national library, the national library harvesting it from the web, or the national library collecting it from an intermediary or secure online computer system. Deposit schemes may specify one method, or a default (preferred) method with additional options, or may permit a range of methods. They may also specify the number of copies to be deposited by a publisher or harvested by a national library.

Delivering offline publications on physical media (CD-ROMs etc)

- 11.i Deposit for offline publications usually requires the publisher to deliver at least one copy of each publication to the national library, within a specified time (typically up to one month) after its date of publication or after a request for deposit from the national library.

- 11.ii A requirement for additional copies to be deposited may also be specified, [either] according to the number of additional designated deposit institutions in a member state's scheme [or, in some countries, perhaps in order to provide one copy for access and another for preservation only].
- 11.iii The address to which copies are delivered may be specified. In most schemes a copy is delivered direct to the national library and each additional designated deposit institution where appropriate. However other options may allow for delivering several copies to a single address from which they are then distributed to the relevant institutions.

Harvesting websites and openly accessible web-based material

- 12.i The advent of web crawling and harvesting technologies means that tools are available to libraries for the automated and efficient collection of large amounts of data from the open web. Allowing such material to be harvested is also more cost-efficient for most publishers than delivering it to a national library. Therefore, for websites and other online materials available on the open web, deposit schemes typically assume harvesting as the default method of deposit, with publisher delivery only as an option.
- 12.ii Deposit schemes in some member states may include specific requirements for harvesting, such as only permitting the collection of freely available material (no paid-for content), restricting the frequency of harvests, or specifying how to deal with crawler exclusions and exceptions.
- 12.iii The national libraries' collection policies in most member states typically include up to three collecting strategies for web-based material, often in combination:-
 - 1) Large-scale or bulk harvesting, such as national domain harvesting, that aims to collect data as comprehensively as possible from a given (national) top level domain or domains. The process is automated, with quality assurance through sampling. Some websites may be captured at the surface level only, and it is normally only possible to complete one or two such large-scale harvests each year. The results may be likened to wide-angle landscape snapshots (photographs) of the whole domain.

It is not usually possible to carry out such large-scale harvests under a voluntary scheme, as it would be impractical to approach web publishers individually in order to clear the rights; appropriate legislation is required to authorise harvesting on such a large scale. Alternatively, in some cases, national libraries have implemented an 'opt out' arrangement in which material is collected without permission but immediately deleted and excluded from any further harvesting if requested by the rights holder ('notice and takedown').

- 2) Selective harvesting, of data from a smaller number of websites, on a more frequent or regular basis, potentially in greater depth, and with more rigorous quality assurance. The goal is to collect data as comprehensively as possible from specific websites selected according to qualitative criteria. The results may be likened to time-lapse photography of a particular subject, with great depth of field in the focusing.

Selective harvesting is a practical option for voluntary as well as statutory deposit schemes, because the smaller number of websites makes it possible for the national library to identify and contact relevant publishers. Voluntary schemes may require the publisher to confirm explicit permission before harvesting occurs ('opt in'), or the national library to notify the publisher before harvesting and delete collected material if subsequently requested by the rights holder ('notice and takedown').

- 3) A particular type of selective harvesting, often implemented on a frequent basis but for a limited period, of data relating to specific events, topics or themes chosen by the national library.

Deposit for licensed e-books, e-journals and other online publications

- 13 Both publisher delivery and national library harvesting are possible as methods of implementing deposit for licensed e-books, e-journals and other online publications that are not openly accessible. Deposit schemes may specify publisher delivery, or may specify national library harvesting, or they may allow for either method under specific circumstances; there are examples of all three models. However a common approach in several schemes is to assume harvesting as a default, but provide for publisher delivery either as an alternative option by mutual agreement between the publisher and deposit library, or as a requirement in circumstances where harvesting proves unsuccessful, such as when the publication is only made available by the publisher on payment of a charge or subscription and is therefore not accessible for harvesting.

PART D: THE USE AND MANAGEMENT OF DEPOSITED NON-PRINT PUBLICATIONS

- 14 Deposit schemes for non-print publications typically govern how the deposited material may be used. They must balance the needs of being able to copy, preserve and provide access to deposited material while also ensuring that such activities do not conflict with normal commercial exploitation of the material or unreasonably prejudice the rights holders' interests. Deposit schemes often cover both material that is made openly available by publishers without restriction and material that is made available on payment of a charge or subscription, and due consideration

should also be given to publishers' commercial interests in material that they make available free of charge but use to support an advertising or other commercial model. Some deposit schemes specify a single set of provisions for the use and management of deposited material based upon a balanced assessment of all these interests, while other schemes make different provisions for the use and management of deposited copies according to the circumstances in which the original material was published.

Access arrangements for library users

15.i Controlled access. By far the most common approach in most deposit schemes is that user access to deposited materials is provided subject to one or more restrictions, such as:

- only for authorised users of the national library, typically for research; and
- only within the premises or reading room(s) of the national library, not online; and/or
- (typically for commercially published works) only to a limited number of concurrent users, replicating the *de facto* experience of printed publications, where their physical nature imposes practical limits on their use; and/or
- only on designated computer screens.

15.ii No access. In some deposit schemes, at one extreme deposited material may be kept “dark” for a period, with no access permitted to anyone except authorised staff for curatorial and preservation purposes, until certain conditions have been met. This is typically in one of the following circumstances:

- For web-based material that has been harvested without the benefit of enabling legislation, perhaps on an ‘opt out’ basis—see paragraph 12.iii.1)—and no access is to be provided until after the rights holders’ intellectual property interests have expired.
- To protect the privacy of individuals whose web presence includes personal data, and copies of which have been harvested and archived. A requirement of the relevant authority governing the management of personal data (see paragraph 17.iii) may be that no access is provided to the archived copies, or access can only be provided upon special application or licence, during the individual’s lifetime.
- In some deposit schemes, access to the deposited copies of certain publications may be temporarily embargoed for a period of months or years (but rarely more than three years) during the period of its greatest commercial value to the rights holders. Embargos are only used in exceptional cases where the publisher is selling to a small market at an unusually high price, and where providing any access to deposited copies would unreasonably prejudice the rights holders interests and conflict with their normal exploitation of the work.

- 15.iii Unrestricted access. At another extreme, some deposit schemes may permit the national library to provide open access, both in the national library's premises and online, without restriction, to any authorised library user with a relevant password, or even to any person visiting the library's website and online resources. Where such generous provisions are made within a scheme, they only apply to deposited copies of websites and materials that were published non-commercially, i.e. free of charge. Due consideration should also be given to whether such provisions are appropriate for material that is published free of charge but which nevertheless supports advertising or another commercial business model.

Library copying for preservation

- 16.i Most deposit schemes permit the national library to make copies of deposited publications for preservation purposes. As the long-term usability and accessibility of non-print publications in their deposited form cannot be assured, it is essential that the contents can be copied to other media (magnetic and optical) and to other formats (e.g. for rendering in updated versions of the viewer software) for preservation purposes.
- 16.ii The copy made "for preservation" may in fact be used for access instead of accessing the original deposited copy in long-term storage. However these copies should not be used to provide increased, additional access beyond the terms envisaged (under paragraphs 15.i to 15.iii) by the deposit scheme, unless by separate licence or with the explicit permission of the rights holder.

Additional considerations

- 17.i Security. Computer technology potentially makes it very easy for a person to make and distribute multiple copies of a digital work, at a very small cost. The risk of 'piracy' is a significant issue for rights holders, especially commercial publishers whose business models are threatened by it. Therefore an important concern for publishers in depositing, especially when DRM technical protection measures are removed in order to facilitate long-term preservation, is that the deposited material should be held and managed securely by the national library. It would be unusual for a deposit scheme to impose specific information security requirements upon the national library, although there may be requirements for security to be managed and regularly reviewed. National libraries usually implement and review their information security policies in recognition of the fact that a deposit scheme is unlikely to be successful if publishers do not feel assured that the deposited copies of their publications will be properly managed.
- 17.ii Supplementary materials Some publishers, for example of scientific, technical, medical or academic e-journal articles, also provide access to additional information such as research data that underpins the published article. Where possible, it is desirable to preserve these supplementary

materials together with the published content. However this can pose additional challenges, for example because the data may not be discretely packaged in a suitable format for the repository, or because the national library, author or publisher may not be able to clear rights for taking and preserving a copy of the data. Therefore it may not be possible for supplementary materials to be formally covered by a deposit scheme. However national libraries and individual publishers often cooperate, perhaps also collaborating with other institutions and repositories, to develop and implement mutually acceptable solutions.

- 17.iii *Personal data and privacy.* An inevitable consequence of collecting large quantities of data by automated harvesting from the open web is that the resulting archive may contain consolidated information about individuals, whether that information was published by the individuals themselves or distributed across a wide range of websites and other content. The laws governing privacy and personal data in member states may therefore affect how the archive may be used and whether any parts of it may need to be reviewed or suppressed. In some member states, the national library may be required to obtain a special licence from the relevant authority in order to permit access to the web archive, and the authority may place special restrictions on how it may be used. In others, the authority may simply need to review the deposit scheme and satisfy itself that the national library's policies take due account of privacy and the risk of the archive being misused to collate personal data for non-research purposes. This is a matter for separate discussion and agreement, principally between the national library and relevant authority, in each member state.
- 17.iv *Transferring or lending deposited non-print publications.* In some deposit schemes that include more than one designated archiving institution, it may be a requirement that the deposited copy of a publication can be lent, transferred, copied or otherwise shared by secure network amongst the designated institutions. This can benefit publishers who are only required to deposit with one institution, typically the national library, instead of setting up multiple arrangements. However deposit schemes do not permit the national library to lend or transfer copies of a deposited non-print publication to individual users outside the national library's premises, or to other non-designated institutions, except by special licence or with the rights holder's explicit permission.
- 17.v *Copying/printing for national library users.* In addition to viewing deposited material on screen, national library users typically want the facility to make copies of material, perhaps for further (non-commercial) research in another location, perhaps for use in statutory or judicial proceedings, or perhaps for other specific and limited purposes. If any facility for user copying is to be permitted, then the amount that may be copied and the medium in which copies may be taken should all be discussed and agreed between the national library and publisher representatives as part of the deposit scheme. In countries where copying for users is allowed, such copies are normally only permitted in hard copy (printed) form. The

inherent risks of digital copying, both of damaging the archived publication itself and of harming the rights holders' interests and business models if the digital copies were to become uncontrolled and widely distributed, mean that digital copying, including 'copy and paste', is normally only permitted under separate licence or with the explicit agreement of the rights holder.

- 17.vi *Disposals*. It is understood that, for non-print publications, 'disposal' means the deletion and/or destruction of copies rather than transferring them to a third party, whether free or for a charge. Deposit schemes normally allow the national library to dispose of duplicate copies, or interim copies that the library makes for preservation or access and which are no longer required. However the national library would not expect to dispose of every copy including the original deposited copy, as doing so would diminish the archive collection; indeed some deposit schemes may make it an explicit requirement that the archive collection is kept intact.

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