

CURRENT ISSUES

Electronic Legal Deposit and the Advocates Library

Abstract: The Advocates Library provides a library and information service to around 470 members of the Faculty of Advocates, the Scottish Bar. The library also acts as the national law library for Scotland, having the privilege of claiming law materials on legal deposit. The Senior Librarian, Andrea Longson (the author of this article), and the library's management group work closely with staff at the National Library of Scotland and have been involved in strategic discussions about the drafting and implementation of legal deposit legislation for over ten years.

Keywords: legal deposit; electronic legal deposit; the Advocates Library

LEGAL DEPOSIT – THE CHANGE IN THE LEGISLATION

2013 marked a major development in the world of information and its preservation and ended thirty years of campaigning by the British Library to extend print legal deposit to other forms of publication. When the Legal Deposit Libraries (Non-Print Works) Regulations 2013¹ came into force on 6th April 2013, the means by which the vast amounts of information published electronically is retained and made accessible became assured.

It has been a long and complicated journey since the enactment of the Legal Deposit Libraries Act of 2003² but the UK now has the legal framework which enables the extension of the pre-existing printed archive to cover most formats of non-print material.

Legal deposit is, of course, the means by which this nation, like many others around the world, has created a national archive of published material and made it available to the public. Since 1662, legislation has awarded legal deposit status to various libraries around the country and compelled publishers to deposit their printed output with these libraries. Currently, the British Library, National Libraries of Wales and Scotland, the university libraries of Oxford and Cambridge and the library of Trinity College, Dublin, are legal deposit libraries.

ELD AND THE ADVOCATES LIBRARY

The Advocates Library in Edinburgh is the library of the Faculty of Advocates, the professional body governing the advocate branch of the legal profession in Scotland, and has been directly involved in the legal deposit system since 1709. The library was founded in 1689 and is renowned as the best working law library in Scotland, in no small part due to legal deposit. The library was awarded the

right of legal deposit in the Queen Anne Copyright Act of 1709 and acted as the national library for Scotland until 1925 when the National Library of Scotland was established. At that time, the Faculty of Advocates donated its non-legal stock of around 750,000 items to the nation to form the basis for the National Library of Scotland. To recognise the role played by the Faculty and to enable the Advocates Library to continue to receive law books on legal deposit, the National Library of Scotland Act 1925 allowed the Faculty of Advocates the privilege of claiming law books received on legal deposit by the National Library of Scotland. This privilege has been retained to this day and was extended to cover non-print by the Legal Deposit Libraries Act 2003.

The legal deposit libraries have worked together and with other important stakeholders, like publishers, over the ten year period since the 2003 Act. The focus has been on ensuring that the resulting regulations mirror print legal deposit as far as possible while protecting the legitimate business needs of publishers and the intellectual property rights of authors. A shared technical infrastructure has been developed, centred at the British Library, to facilitate the collection of material and its distribution to the other legal deposit libraries. Material is ingested at the British Library then replicated in four nodes in London, Boston Spa, Edinburgh and Aberystwyth, so distributing it to the other legal deposit libraries. The system allows for the collection of 70 terabytes of data every year and an additional 30 terabytes of other digital content leading to a petabyte of data to be collected over ten years. The need for absolutely reliable information security has been of paramount importance and the system has been developed with security and preservation of data very much a priority. Special care has been taken to put in place measures to restrict access to authorised readers on the premises of the legal deposit libraries only.

To enable users of the Advocates Library to have access, provision has been made in the regulations (regs. 21 and 22) so that offline legal publications may be permanently transferred to the Faculty of Advocates, just like printed materials, and online legal publications may be transferred from the National Library of Scotland or lent by them to the Faculty. The practical effect of the latter is that the Advocates Library will receive legal CDs on legal deposit from the National Library of Scotland, as it has been doing for the last ten years by virtue of a voluntary scheme, and its users and staff will have access to the shared technical infrastructure which hosts online publications, e-books, journals and websites, both free and commercial. Only one user in each of the legal deposit libraries is permitted access to the same item at any time. For the Advocates Library, this means that only one user at a time, at either it or the National Library of Scotland, is able to consult any item. Users can, however, search the libraries' online catalogues and identify deposited content, but that content is only accessible on the premises of the legal deposit libraries. The Advocates Library is deemed to be on the premises of the National Library of Scotland for this purpose.

There are also restrictions relating to printing and copying. Digital copying of deposited electronic content is not permitted. The regulations permit users to print out only one copy of a reasonable portion of any deposited work, for non-commercial research or other defined purposes such as criticism and review or journalism, parliamentary or judicial proceedings or a Royal Commission or statutory inquiry.

In order that implementation of the regulations can be accomplished effectively, it is vital to control the move from print to electronic deposit. Some publishers have already been keen to make this move and have been working with the legal deposit libraries in the run-up to the implementation of the regulations. Going forward, electronic deposit for commercial publications will be request-based, with the legal deposit libraries approaching and negotiating with specific publishers so that their transition to electronic deposit can be accomplished at a manageable rate and within the resources available at the British Library. A portal for publishers to easily deposit material has been developed. The amount of content on the system will increase but will be constrained by technical, operational and financial resources. At the moment, the speed at which the database will grow is difficult to predict.

Currently, non-print items accessible to readers in the legal deposit libraries are largely serial publications, though a few e-books have also been ingested. Metadata for this content is sent by the British Library to the other legal deposit libraries, where it is converted for display to users through catalogues and search engines, via the libraries' websites³. However, the items are catalogued like any other items received by the libraries and this makes it quite tricky to search for material stored in the electronic legal deposit system. Most users will not of course be concerned as to whether an item has been

received on legal deposit or not, they will just want to know if the item is available. However, in the Advocates Library, staff have an interest in knowing what has been received by electronic deposit so that we can assess the impact of the new regime and its impact upon us.

At present most of the e-content is coming from three major serials publishers: Wiley, Maney and Informa Healthcare. Around 100,000 journal articles have been deposited.

If works are published in both print and electronic media, only one medium is subject to deposit, and the default medium remains print unless both the publisher and deposit library or libraries agree otherwise. If no agreement to deposit electronically is in place, the obligation to deposit in print remains.

Publishers are compelled to deposit any software, tools, manuals and information such as metadata and login details necessary for using and preserving the publication. They must also deposit content of the quality most suitable for preservation.

In the next year or two, the British Library will be approaching publishers of electronic content which requires a password, subscription or payment to access and make arrangements for the deposit of this material.

The regulations do include exemptions from some depositing obligations for start-up and micro-businesses, defined as having fewer than ten employees. These exemptions will last until 31st March 2014 to minimise the impact on such businesses and allow them to manage the transition effectively. Under the regulations they may, however, choose to deposit in non-print format by agreement with the British Library. The regulations also allow publishers to ask for an embargo on access to their content should they be of the opinion that access will unreasonably prejudice their interests. It will be interesting to see how often this right is exercised.

The regulations cover websites, e-journals, e-books, digital newspapers and digital maps. Due to the variety of publishing formats involved, and the different complexities of each, implementation of the regulations is being accomplished on a project basis and at different rates.

TYPES OF MATERIAL COLLECTED

Websites and web pages

The British Library has already started crawling or harvesting the web to collect electronic content which is freely accessible. A whole web crawl for the UK domain has been carried out and will be made available to readers in the legal deposit libraries soon. The aim is to archive 4.8 million websites at least once each year. In 2013–2014, some 200–500 websites will be archived more frequently. Such websites are being selected by the legal deposit libraries for their importance and research value. The Advocates Library is hoping to provide input to this selection process via the National Library of Scotland, to try to ensure that important legal sites are included. In addition, content for special

events and occasions will be targeted. For example, the National Library of Scotland will aim to ensure that content about the Scottish independence debate and referendum and the Commonwealth Games in Glasgow in 2014 will be collected. Unfortunately, due to the length of time taken to agree and implement regulations, online coverage of some major events, like the London bombings, has disappeared into a digital black hole. Even if the content was collected as part of the pre-implementation trials, it is now in a “dark archive” and cannot now be made accessible to the public.

E-journals

E-journals are being collected by a third party, Portico, who then deposit with the British Library. Portico has been involved with this project for some time and has tested the system prior to the implementation of the regulations. With the co-operation of the publishers taking part in this trial, the material gathered before implementation is being made available. It is anticipated that agreements with only five publishers providing around 1000 journal titles will be made during 2013 increasing to perhaps 10–15 publishers and 2,500–2,600 journal titles overall in 2014.

Journal items are being deposited at article level, which is beneficial to the user in identifying whether a particular article is available, enabling more detailed searching.

E-books

The British Library has developed a pilot process for the deposit of e-books in ePub format. Publishers are able to deposit their own content via a portal or can authorise a third party, like a distributor, to do that on their behalf. The national libraries of Wales and Scotland are approaching Welsh and Scottish publishers of e-book titles respectively with a view to ensuring good coverage in the archive of their content.

CDs and other offline works

Most publishers are already depositing CDs under the long-established voluntary code of practice, so no practical change or impact is anticipated from the change to a statutory basis for legal deposit.

IMPACT ON THE ADVOCATES LIBRARY

At this stage it is quite difficult to predict the impact of the move to non-print legal deposit on the Advocates Library and its ability to continue to fulfil its aims. When the move to non-print deposit really takes hold, the library will

certainly not be able to say that it acts as the national law library for Scotland, at least not in the same way as it currently does. Over time, it is inevitable that the Advocates Library will become increasingly dependent on the National Library of Scotland to access material previously held in print. Access and use restrictions which apply to electronic legal deposit material are likely to make it more difficult for our members to use such items in relation to their work as legal practitioners. The library may have to purchase additional copies in order to alleviate these problems and this may prove difficult in terms of affordability, which in turn will affect the level of service we provide to our members. It will be important for us to monitor progress and speed of implementation. In particular it will be crucial to be able to anticipate the move to non-print legal deposit of the major legal publishers, such as Thomson Reuters and LexisNexis. Bloomsbury Professional has already indicated its keenness to deposit electronically. Continuing good communications and involvement in discussions with the legal deposit libraries will be vital.

Initially, the Advocates Library will have access to electronic legal deposit materials on a few staff PCs only, but it is hoped that the level of access will be extended to all staff. In due course, we will look at ways of making the material securely available to other users on library premises. Until full access is available, the usability issue mentioned above will be a problem. Users of the library will be more dependent on staff, at a time when staffing resources are stretched. Hopefully, though, this issue will be resolved quickly.

One potential benefit of electronic legal deposit will be the greater range of material available to our users. More often nowadays we are finding that documents disappear from websites so the web archive should reduce the “loss” of such items.

The Advocates Library is currently developing a strategy to deal with electronic legal deposit. Our aim is that legal items stored on the infrastructure will be catalogued by library staff so that our users continue to have a search tool which directs them to all UK legal publications.

Of course, the most positive aspect of this is that the age-old library problem of a lack of physical storage space should disappear! I suspect that other challenges will present themselves, but that is what makes working at the Advocates Library so interesting.

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Footnotes

¹ The Legal Deposit Libraries (Non-Print Works) Regulations 2013, SI 2013/777.

² Legal Deposit Libraries Act 2003, c. 28.

³ National Library of Scotland website: <http://discover.nls.uk/> and British Library website: <http://www.bl.uk/aboutus/legaldeposit/index.html>.

Biography

Andrea Longson has worked at the Advocates Library at Parliament House in Edinburgh for twenty years, the last eleven as Senior Librarian, managing a staff of sixteen who provide a library and information service to around 470 members of the Faculty of Advocates, the Scottish Bar.

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This *Current Awareness* column, and previous *Current Awareness* columns, are fully searchable in the *caLIM* database (Current Awareness for Legal Information Managers). The *caLIM* database is available on the Institute of Advanced Legal Studies website at: <http://ials.sas.ac.uk/library/caware/caware.htm>

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