

CHAPTER ONE

INTRODUCTION

WHAT IS LEGAL DEPOSIT?

Legal deposit is a statutory obligation which requires that any organization, commercial or public, and any individual producing any type of documentation in multiple copies, be obliged to deposit one or more copies with a recognized national institution (Larivière, 2000). Legal deposit legislation should cover all kinds of published material produced in multiple copies and offered to the public regardless of the means of transmission.

Harrod's Librarians' Glossary and Reference Book (2000) defines legal deposit as a method whereby certain libraries are entitled by law to receive one or more copies of every book or other publication which is printed or published in the country. In other words, it is a statutory provision, which obliges publishers to deposit copies of their publications in libraries in the country in which they are published. In fact, government provision for the legal deposit of printed material for copyright purposes and for the preservation and use of government publications dates back into history when Francis I of France established a legal depository in 1537 for printed materials including the laws and parliamentary debates of the country (Shaw, 1975).

In most countries, the national institution chosen to receive the deposited material is the national library of the country. But, it could also be the parliamentary library, the national archives, one of the government libraries or, in a few cases, one of the main university libraries. If the national library of a country is chosen as the depository library,

it will be the focal point for receiving the historical, literary and cultural heritage of the nation. It is also the responsibility of the national library to assemble, record and organise comprehensive collections of the published outputs of the nation for use as well as preserve them for posterity.

In many countries, requirements for legal deposit appears in the legal deposit act of the country; while in some countries legal deposit is part of another act such as the copyright act, or the national library act. In Australia for example, under the *Copyright Act*, 1968 and various state Acts, a copy of any work published in Australia must be deposited with the National Library of Australia and the appropriate state library. While in Canada, the *National Library Act* and the *National Library Book Deposit Regulations*, 1995, require Canadian publishers to send copies of their publications to the National Library within a week of their release.

Legal deposit legislation ensures the acquisition, recording, preservation and the availability of a nation's published heritage (Larivière, 2000). It is the role of a legal deposit system to ensure the development of a national collection of published material in various formats. Most national libraries have been able to develop their print collections through legal deposit and in most countries, legal deposit is traditionally applied to print publications because for centuries the traditional means of storage and display of publications was as print on paper. However, with the development of new media for the storage of information, it has brought about a fundamental change in thinking within national libraries about future collection policies and storage requirements and an

awareness that in order to maintain comprehensive collections of national publications for present and future generations of users, it will be necessary to obtain an increasing amount of non-print material (*The legal deposit of electronic publications*, 1997).

As a result of new development, where new techniques have been developed for the production and delivery of publications, and as the number of publications produced in other formats have increased, the legal deposit legislation of most countries need to be revised. Thus, a database stored on one server is now subject to legal deposit since it is made available to the public through technology enabling the public to read, hear, or view the material. A detailed account of worldwide developments in legal deposit legislation for the new media and especially of electronic publications will be discussed later in this chapter.

There is no doubt that all countries with a legal deposit system have included published material such as books, periodicals, newspapers, microforms, sheet music, maps, brochures, pamphlets, etc. for legal deposit. However, not all countries have included audio-visual material such as sound recordings, films, videos, etc. for legal deposit; and very few countries, have included electronic publications in their legal deposit legislation. As it was considered the greatest challenge of all of today's publishing media, and national libraries have a duty to serve current and future generations of users, the Conference of Directors of National Libraries (CDNL) set up a Working Group in 1994 to look into matters associated with the legal deposit of electronic publications.

WHAT ARE ELECTRONIC PUBLICATIONS?

The *Encyclopedia of Information and Library Science* (1993) states that electronic publishing sometimes refers to any computerised publishing activities, which can include use of word processing, for author origination and publisher's editing, leading to the transmission or transfer of a document in machine readable form, for input into a phototypesetter.

With the widespread availability of computers and the Internet, electronic publishing is giving every individual the ability to publish their ideas, stories and books, without the prohibitive costs associated with conventional publishing (Reilly, 1999). In other words, the new technology allows anyone to self-publish their literary works. Authors can format, and submit a manuscript and have it published. It also offers lower costs, which means more titles can be published.

There is no doubt that electronic publications has revolutionised the publishing industry. People are reading electronic books and journals now. Technological advancement has made electronic publishing a reality³. With the low cost of Internet access, a document or Web page⁴ can be downloaded electronically by as many people as the bandwidth allows.

The 1994 Conference of Directors of National Libraries (CDNL) Working Group that studied the legal deposit of electronic publications described electronic publishing as the use of electronic means of communication to make information available to the

public. Electronic publications are stored in computers and may be displayed for viewing either on a computer screen or as a printout. The production process itself need not necessarily involve electronic techniques until the final stages.

The CDNL Working Group further identified several types of electronic publications, which include the following:

- (a) Electronic equivalents of print publications such as books, journals, pamphlets, etc.
- (b) Interactive databases containing for example, bibliographies, statistics, spatial data, image data or text
- (c) Interactive multimedia such as games
- (d) Software and expert systems
- (e) New publication forms such as bulletin boards, discussion lists and electronic pre-prints, which are available through electronic networks.

The above mentioned types of electronic publication may be made available as individual physical items on a diskette, CD-ROM or other off-line media, or they may be made available through on-line host systems or directly to the user via computer networks. They may appear in electronic form only or they may be published in electronic form and as print on paper, in parallel. There is also retrospective publication, which converts the record of the past to electronic form for better access, preservation of content and the production of new works.

Electronic techniques are now increasingly being used not only to represent publications of the form traditionally associated with print on paper but also to represent items traditionally associated with other media. The advent of multi-media electronic publications, where texts, sounds and images are packaged together, shows the varied capabilities of the new technology.

With reference to legal deposit, it is important to note that the definition of electronic publications has to be as inclusive as possible to ensure that all electronic publications are covered regardless of the type of carrier. It is essential to make sure that the definition is worded in such a way that amendments will not be necessary each time a new mechanism or technique for providing information is made available.

For the purpose of legal deposit, Larivière (2000) has divided electronic publications into two main categories namely, off-line and on-line publications. "Off-line" or tangible publications are made available on a physical data carrier such as diskettes and CD-ROMs. They are sometimes also identified as "packaged electronic publications." According to Larivière, since these are distributed as individual physical objects, their legal deposit process is quite similar to that of print products.

The other category of electronic publications is "on-line" material. This type of material is characterized by the fact that it exists only as a unique copy that is stored on a computer host system or worldwide collection of computer systems (Internet). It includes e-journals and multimedia materials that can be easily accessed on-line and personal e-

books that can be ordered only from a master copy available from the publisher's database.

Other forms of electronic publications put forward by Larivière (2000) are "dynamic electronic publications," which include databases and "organised public communications". Dynamic electronic publications are kept up-to-date on a permanent basis, either weekly, daily or hourly or even on real-time basis. Organised public communications include Netnews, listservs, etc.

In Japan, *The Interim Report: On Institution and Management of the Legal Deposit System of Electronic Publications* (1998) has also divided electronic publications into two categories namely, packaged electronic publications and networked electronic publications. Packaged electronic publications is defined as electronic publications fixed on a physical media, such as CD-ROMs; while networked electronic publications are publications transmitted or received over a communication network, for example electronic journals.

The National Library of Canada (1998) defines networked electronic publications as digitally encoded information resource made available to the public through a communication network. While dynamic networked electronic publications is distinguished by a high update frequency in which any component of the publication can change at any time. It is often intended to be accessed only in its most current state and

the current version is often considered the only valid version. Databases are often, but not always examples of this type of publication.

DEVELOPMENT OF LEGAL DEPOSIT LEGISLATION OF ELECTRONIC PUBLICATIONS WORLDWIDE

As mentioned earlier, there has been considerable interest in most countries to expand their scope of their legal deposit to not only cover print on paper but also other non-print materials. This has led to some of the countries to revise their legal deposit legislation to take into account the new publishing media. Countries like France, United States, Australia, Canada, Denmark, Finland, The Netherlands, Norway, Japan, Sweden, South Africa and United Kingdom have revised their legal deposit legislation, and each of the country's experience in revising their legal deposit legislation is accounted below. As for Malaysia, it has also taken into account the new publishing media where the *Preservation of Books Act, 1966* was replaced with the *Deposit of Library Materials Act, 1986*. Malaysia's experience is discussed separately in this chapter.

In France, where legal deposit has its origins since 1537, the law only covered deposit of books by the printer. However, there has been progressive revision of the law to include phonographic and cinematographic works (1925), and sound, audio-visual and multimedia documents (1943, 1975 and 1977). The most recent changes, which came about in 1992, allow for more or less all types of publication to be deposited with the *Bibliothèque Nationale de France*. This law applies to static but not dynamic electronic

materials, which include off-line databases but not on-line databases. The legal deposit of CD-ROMs has been enforced since 1994 and can only be accessed within the library.

As for the United States of America, the copyright law has been modified which requires the deposit of new formats as they are being developed. The *Copyright Act, 1976* gives the Copyright Office of the US in the Library of Congress, the authority to issue regulations to require deposit of the best edition of works in all formats. Categories of material subject to copyright include *literary works, musical works, dramatic works, pantomimes and choreographic works, pictorial, graphic and sculptural works, motion pictures and other audio-visual works, sound recordings and architectural works*. Literary works include computer programs and non-print materials include machine-readable works as well as CD-ROMs but does not include on-line databases. Deposit of CD-ROMs will include all accompanying documentation as well as the print version if available.

In Australia, legal deposit legislation for "library materials" is defined in the *Copyright Act, 1968* and the National Library is designated as the national depository for deposit materials. The definition of "library materials" is however, limited to print on paper publications only. A joint proposal has been made to extend the range of publications, which will cover microforms, audiovisual materials, electronic publications, off-line and on-line publications and all formats yet to be developed. In February 1999, the Copyright Law Review Committee recommended among others that the definition of

"library material" be broadened to include audiovisual materials, and materials in electronic form.

Legal deposit in Canada is legislated in the *National Library Act and the National Library Book Deposit Regulations, 1995*. Deposit of a book, print or non print publication include any document, paper, record, tape or other forms published by a publisher, on or in which information is written, recorded, stored or reproduced. CD-ROMs and CD-Interactive, and some electronic journals are acquired through the legislation. The National Library searches the Internet for Canadian on-line journals, texts and databases and keeping copies in either print or electronic form with the co-operation of publishers through the Electronic Publications Pilot Project.

In Denmark, the *Legal Deposit Act, 1927* covers only print material. Under the new *Act on Copyright Deposit of Published Works*, which came into effect in 1998, all published material is subject to legal deposit, regardless of the production technique or type of carrier. The law has been extended to include not only print material but also microforms, sound and video recordings, radio and television broadcasts, films, photography, braille, multi-media publications, and electronic publications. However, online electronic documents are not included in the Act.

Japan's legal deposit is covered by the *National Diet Library Law* (1948), amended in 1949. *The Interim Report: on Institution and Management of the Legal Deposit System of Electronic Publications* (1998) suggested that only "packaged

electronic publications" be included in the legal deposit system; while "networked publications" will not be included for the time being. Following this report, the law was amended in October 2000 to provide for the legal deposit of electronic publications. It only covers physical format digital publications or "packaged electronic publications".

The *Legal Deposit Copies Act and Statute, 1980* of Finland covers print products, sound and image recordings, which are deposited at the National Library. Motion pictures, films and videos are covered in a separate Act of 1984 and are deposited at the Finnish Film Archive. Radio and television broadcasts as well as electronic publications are not covered in the Act. However, between 1997 to 1998 a revision of the Act proposed that both physical format and online electronic information be included for legal deposit.

Norway's legal deposit legislation enforced in 1990 provide for the deposit of print materials, sound recordings, films, videos and both static and dynamic documents in electronic formats. In fact, the Act is written in such a way that it will be applicable to future electronic formats.

While in Sweden, the *Legal Deposit Act, 1993* enforces the legal deposit of electronic documents and other non-print formats. Deposit of electronic documents only applies to static electronic documents, while dynamic or online electronic documents like those found in the Internet are not covered by the Act.

The *Legal Deposit Act, 1997* of South Africa came into effect in 1998. The terms "document" and "medium" in the Act applies to electronic publications available both offline and online. The term "document" is defined as any object which is intended to store or convey information in textual, graphic, visual, auditory or other intelligible format through any medium. While the term "medium" is defined as any means of recording, or transmitting information intended for subsequent reading, listening or viewing.

While in the United Kingdom, legal deposit regulations are based on the *Copyright Act, 1911*, where publishers have to deposit one copy of each of their publications to the British Library. Materials for deposit covered by the Act include books, journals, magazines, newspapers, pamphlets, plans and maps, and sheet music. In 1996, the British Library has recommended for legal deposit to be extended to all forms of non-print publications, both on-line and off-line.

LEGAL DEPOSIT LEGISLATION IN MALAYSIA

Legal deposit legislation in Malaysia started with the *Preservation of Books Act, 1966* which required all publishers in Malaysia to submit two copies of books to the National Library of Malaysia which was then a unit within the National Archives. However, in 1986, the *Deposit of Library Material Act, 1986* (Appendix 1) replaced the *Preservation of Books Act, 1966*. The objects of deposit in the *Deposit of Library Material Act, 1986* is now referred to as "library material" instead of books as in the 1966 Act, thus increasing the scope of objects that need to be deposited. The 1986 Act also

provides for the collection, conservation, bibliographical control and use of library material published in Malaysia.

The *Deposit of Library Materials Act, 1986* defines "library material" as "any form of printed, graphic, audio, electronic or other media, on or in which information is written, recorded, stored, displayed or produced". Printed library material is specified in the Act to include books, serials, maps, charts and posters while non-printed library material include cinematograph films, microforms, phonorecords, video and audio recordings and other electronic media. However, the term "other electronic media" is not elaborated and therefore is not well defined.

The *Deposit of Library Material Act, 1986* also defines "published" as material which has been produced and made available to the public to whom it may be sold or distributed free of charge and would include the following:

- (a) publication of any second or subsequent edition of library material if that edition contains additions or alterations to the original content of such material and;
- (b) subsequent publication of such material in any other form or format.

The *Deposit of Library Materials Act, 1986* has lead to the establishment of a National Depository Centre within Perpustakaan Negara Malaysia. The objectives of the National Depository Centre as stipulated in Section 3 (I) of the 1986 Act are:

- (a) to provide for the conservation and use of library material published in Malaysia
- (b) to create standard bibliographic record of library material published in Malaysia; and
- (c) to maintain statistical records of library material published in Malaysia.

The establishment of a National Depository Centre is also stipulated in Part II Section IV of the *National Library Act, 1972(Amendment Act, 1987)* which states that one of the functions of the Director-General, is to establish within the National Library the National Depository for the storage and conservation of library resources received by the National Library. Thus, Perpustakaan Negara Malaysia now acts as the National Depository Centre for local publications that constitute a major portion of Malaysian literary and intellectual heritage.

As the National Depository Centre, Perpustakaan Negara Malaysia will receive from publishers copies of printed library material published in Malaysia within one month of the publication, while that of non-print material is within one year of their publication as prescribed in Schedule 1 and Schedule 2 of the Act. As for non-print material, the Director-General shall pay for the cost of the library material delivered, if payment is demanded by the publisher.

The number of copies to be delivered to Perpustakaan Negara Malaysia are five best copies of printed library material including books, serials, maps, charts and posters;

and two best copies of non-print library material including cinematograph films, microforms, phonorecords, video and audio recordings and other electronic media (as prescribed in Schedule 1). While description of best copy of library material is prescribed in Schedule 2 of the *Deposit of Library Material Act, 1986*, where a best copy of print and non-print library material is a copy equal in quality to the best copy of the library material that is published.

STATEMENT OF THE PROBLEM

With the development of new carriers for the storage of information, libraries, especially national libraries, need to change their collection policies and storage requirements in order to maintain comprehensive collections of national publications for present and future generations. Through legal deposit legislation, a comprehensive collection of national publications can be created, recorded, preserved and made accessible to print and non-print materials and especially to electronic materials.

The 1994 CDNL Working Group recommended that proposals for new legislation for legal deposit should not just cover electronic publications but cover the whole range of publications, including published film recordings, sound recordings, multimedia publications, microfilms and microfiches and all other existing and future types of publications. In fact, some countries have avoided making reference to particular formats of publication in order not to exclude items which had not been thought of at the time; while other countries are more selective and specific in the forms to be deposited.

As for Malaysia, the *Deposit of Library Material Act, 1986* has defined library materials as print and non-print materials which include books, serials, maps, charts and posters while non-print library material include cinematograph films, microforms, phonorecords, video and audio recordings and other electronic media. However, the term "and other electronic media" is not elaborated or specified. It is important that as other techniques are being developed for the production and delivery of publications, and as the number of publications produced in other formats increases, the legal deposit legislation has to be revised to take into account of the newer publishing media.

Although electronic publications are deposited by publishers to Perpustakaan Negara Malaysia, they are limited to off-line electronic publications such as CD-ROMs and diskettes. Perpustakaan Negara Malaysia has yet to see to the legal deposit of on-line/networked electronic publication in order to ensure a comprehensive national collection of published material in various formats.

RESEARCH QUESTIONS

This study proposes to answer several questions regarding the legal deposit of electronic publications received and registered by Perpustakaan Negara Malaysia. The research questions identified are as follows:

- (a) What are the types of non-print/electronic publications received and registered from 1988 - 2000?
- (b) What is the total number of non-print/electronic publications received and registered annually?

- (c) What is the subject coverage of the non-print/electronic publications received and registered, from 1988 - 2000?
- (d) What are the issues related to legal deposit of electronic publications?
- (e) What are the recommendations to ensure legal deposit of electronic publications?

PURPOSE OF THE STUDY

The main purpose of this study is to analyse the statistical data of non-print/electronic publications received and registered by Perpustakaan Negara Malaysia since the enforcement of the *Deposit of Library Material Act, 1986*. It is also the aim of this study to address the issues related to legal deposit of electronic publications in Malaysia and make recommendations on how to overcome these issues. Thus, this study hopes to:

- (a) Identify and classify the types of non-print/electronic publications received and registered from 1988 - 2000.
- (b) Determine the total number of non-print/electronic publications received and registered annually.
- (c) Identify and classify the subject coverage of the non-print/electronic publications received and registered from 1988 - 2000.
- (d) Determine issues related to the legal deposit of electronic publications.
- (e) Make recommendations to ensure legal deposit of electronic publications.

SIGNIFICANCE OF THE STUDY

Malaysia is fast transforming into a knowledge-based society. Recognising that information technology (IT) is a tool to support the socio-economic development of the nation, the Government has invested and allocated a substantial sum to Ministries and Government agencies to invest in IT-related programmes and projects under the Seventh and Eighth Malaysia Plans. As early as 1990, Vision 2020 was introduced whereby the government set a national agenda for Malaysia to achieve the status of a fully developed nation by the year 2020. Recognising that information has become the cutting edge of global competition, Malaysia has made information technology as one of the main thrusts for national socio-economic development. In 1996, Malaysia's Multimedia Super Corridor (MSC) was launched, and is intended to be a high growth multimedia/IT catalyst centre where world class multimedia/IT companies will be invited to locate business units and R & D facilities in the MSC to serve regional and world markets for multimedia/IT products and services.

In order to spearhead the development of the MSC and give shape to its environment, seven primary areas for multimedia applications were identified. Known as the seven Flagship Applications they include the following:

- (a) electronic government,
- (b) multi-purpose card,
- (c) smart schools,
- (d) telemedicine,
- (e) R & D cluster,

- (f) worldwide manufacturing webs and
- (g) borderless marketing.

The government is also encouraging software houses to develop local multimedia contents, which include Malaysian cultural heritage in multimedia formats made accessible through the Internet or any computer networks (*What is MSC?* 2001).

Chin (1996) noted national efforts to promote the diffusion and application of new information technologies and multimedia formats within Malaysia. There are five elements being progressively implemented by the government namely, fiscal measures, infrastructural development, legislative guarantees, authorship incentives, user access development and digital libraries development. These elements offer an attractive policy environment and adequate infrastructure to not only providers of multimedia content but also to its users.

The national education system is also changing towards more IT-based learning. Computer-in-education programmes have been introduced at selected primary and secondary schools as well as technical and vocational schools. Universities and training institutions have developed campus networking which facilitate use of IT amongst students and lecturers. Most of the universities have introduced distance learning programmes. These developments have and will definitely change the information needs and learning process of the present and future Malaysian society.

The trend towards development of multimedia digital libraries in the country has resulted in a repository of knowledge and information resources in various libraries. Libraries are not only capable of gathering on-line knowledge and information content accessible through the worldwide web, but are also involved in enriching the nation's intellectual heritage through the creation and development of local multimedia information resources and databases. These resources are then made accessible and available on the network for users throughout the country and abroad.

As a result of all this technological development and the emergence of electronic publishing, Perpustakaan Negara Malaysia need to be more proactive in developing and maintaining its collection. As the National Depository Centre, Perpustakaan Negara Malaysia is responsible for acquiring and maintaining a comprehensive national collection of library resources reflecting the intellectual and cultural heritage of the nation. This study will provide the necessary input for Perpustakaan Negara Malaysia to ensure legal deposit of all types of materials are to be collected and preserved for present and future generations.

Perpustakaan Negara Malaysia's mission is to ensure that all Malaysians regardless of their status and locations, should have equal access to library services and facilities, as well as, have the capability to utilize the Malaysian and universal intellectual heritage through the integrated knowledge infrastructure of electronic libraries of the nation. As the depository centre, the library is responsible for collecting and maintaining the published outputs of the nation, recording and organising them for use, and

preserving them for posterity. It has been able to develop its collections through both the *Preservation of Books Act, 1966* and the *Deposit of Library Material Act, 1986*.

In striving to be the centre of excellence for information resources on Malaysiana, one of the strategies undertaken by Perpustakaan Negara Malaysia is to ensure that Malaysia's intellectual heritage as well as all the latest and retrospective Malaysiana publications are collected for the convenience of researchers and for the reference of present and future generations. Thus, Perpustakaan Negara Malaysia should also be able to develop not only its print collection, but also its non-print collection, especially its electronic publications through legal deposit. The study will definitely reveal how much the *Deposit of Library Material Act, 1986* has contributed towards the development of the electronic publications collection since its enforcement in 1987.

SCOPE AND LIMITATIONS OF THE STUDY

This study only analyses statistical data of non-print/electronic publications received and registered by the National Depository Centre, Perpustakaan Negara Malaysia since the enforcement of the *Deposit of Library Materials Act, 1986* from 1988 to 2000. The findings of this study with regards to the issues related to legal deposit of electronic publications would be limited to the experience and knowledge of the respondents namely, the Director of the National Depository Centre, Perpustakaan Negara Malaysia and selected publishers who are directly involved in the legal deposit of electronic publications. It should also be noted that the findings of this study will only be

applicable to Perpustakaan Negara Malaysia and will help the library management make more informed decisions concerning legal deposit of electronic publications.

SUMMARY

This chapter serves as an introduction to the study. What is meant by legal deposit and electronic publications, legal deposit legislation with special reference to electronic publications of other countries have been discussed here. Malaysia's experience is discussed under the topic Legal Deposit Legislation in Malaysia. Other points of discussion in this introductory chapter include statement of the problem, research questions, purpose and significance of the study, and scope and limitations of the study.