



Submission to the Review Committee on aspects of the Copyright and Related Rights Act, 2000

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Trinity College Library is the largest library in Ireland, its collections of manuscripts and printed material having been built up since the end of the sixteenth century. In addition to the purchases and donations of four centuries, the Library has since 1801 had the right to claim all British and Irish publications under the terms of successive Copyright Acts, and related legislation. In addition to serving the community of Trinity College, over 12,000 external readers visit annually to use the Library's collections.

The review of the Copyright and Related Rights Act 2000, "...to identify any areas of the legislation that might be deemed to create barriers to innovation" highlights a deficiency in the current legislation which presents an obvious barrier to innovation. This is that the ephemeral nature of electronic publication puts at risk the ability of researchers, innovators and the wider community to access information in pursuit of research and development.

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1. Legal Deposit

Many documents published electronically in the past ten years have already disappeared or changed unrecognisably. While many are regarded as insignificant and ephemeral in nature, their loss presents a lacuna in the national record and also a gap in knowledge which would be of potential value to research and innovation. The evidence is that five billion documents are produced annually in the European Union, or which 2% or 100 million are worth preserving. Of these, two million are in electronic formats at risk of loss. An example of the loss of information can be provided by the publishing output from government departments or funded agencies in Ireland. An increasing number of Official Publications are published in on-line form only and therefore not archived under Legal Deposit, resulting in the loss of valuable information. Government websites are regularly updated, thereby deleting information

providing a snapshot of an historical event or position. A survey carried out by the CONUL group of research libraries in Ireland in 2009 found that 85% of responding government departments and agencies had no policy for archiving born digital publications.

Over the past number of years, Trinity College Library has been working closely with the other United Kingdom Legal Deposit Libraries in the development of an extension of the UK legislative and operational framework, to encompass the deposit of non-print publications in the United Kingdom. This exercise has provided much valuable information on issues including territoriality, commercial impact, costs, technical standards and access conditions.

Unlike some other countries, Legal Deposit in Ireland has been restricted to publications on paper and was not extended in the last century to emerging formats such as film, sound recordings and other non-print formats. No voluntary schemes have been set up to collect and preserve these formats. The exclusion of non-print formats from legal deposit continues to be a major impediment to the ability of legal deposit libraries in Ireland to create a truly comprehensive collection for Ireland.

The review of the Copyright and Related Rights Act, 2000 provides an ideal opportunity to facilitate the legal deposit of Irish electronic publications, so as to preserve the national record and to sustain innovation through the provision of access to published information.

The current legal deposit legislative framework is unwieldy and lacking in clarity. S 198 of the *Copyright and Related Act, 2000* largely reproduces, with some updating, the terms enshrined in the 1963 Copyright Act while attempting to provide a level of recognition of the emergence of publishing in formats other than print. The awareness of the legislators of the 1990s of the need to extend the legal deposit provisions to emerging electronic formats is clear. S.199 is much more specific and clearly deals with extending legal deposit to works published in formats other than print (including sound) for deposit with the National Library of Ireland, in the first instance, and by Ministerial regulation to other legal deposit libraries. Formats covered by the terms of S.199 are listed in detail, many of which are already obsolete or nearing obsolescence but the phrase “...¹or other thing on or in which works or information or the representation thereof is written, recorded, stored or reproduced...” is interpreted as future proofing the legal deposit requirement for formats as yet to emerge.

The commencement of S.199 will amend the *National Cultural Institutions Act, 1997* and this has yet to happen. The legislative framework of legal deposit is further complicated in that it now falls under the remit of separate department namely the Department of Enterprise and Employment (S.198 - *Copyright and Related Rights Act, 2000*) and the Department of Arts Culture and the Gaeltacht (S.199 - *National Cultural Institutions Act, 1997*)

An examination of countries in the process of extending legal deposit to emerging formats clearly demonstrates that a mandatory approach based on a sound legislative framework has the best chance of success. Current Irish legislation lacks clarity in identifying the rights and responsibilities of both publishers in new formats and the deposit libraries. It is silent for example on whether access may be provided to this content, if so what level of access and on the re-use of content be re-used. In order to ensure a robust framework underpinning the collection and preservation of the public record of the nation's

¹ Copyright and Related Rights Act, 2000 - S199 clause 5

intellectual and published heritage into the future, revised or new legal deposit legislation is required.

The following is a summary of the legal deposit provisions set out in these sections.

Copyright and Related Rights Act, Section 198

S.198 updates the deposit provisions previously set out in S.56 of the *Copyright Act, 1963*. It was commenced by Statutory Instrument on 1 May 2007. New provisions set out in S.198 of the 2000 Act are intended to offer additional privileges to the legal deposit libraries in respect of electronic publications. However, key provisions of S.198 are unclear and open to varying interpretations and significant issues of interpretation remain to be resolved in the context of its operation. For example there was no definition of the expression 'publication' in the 1963 Act and that given at S.198 (12) is untested. The definition is firmly rooted in the print environment and it is unclear whether 'born digital' documents are covered or merely alternate formats. The repeated use of the term 'book' is unhelpful in the digital environment.

Among other issues which have not been satisfactorily resolved:-

- S.198 (4) The Irish legal deposit libraries and the British Library listed under clause (1) may request before delivery that the book be supplied 'in a particular form, being one of the forms in which the book is published'. It is not clear that this description actually comprehends an electronic publication? However, S.198 (4) (ii) states: 'Where a copy of a book requested under subsection (1) [i.e. Irish legal deposit libraries & British Library] is delivered in a form other than an electronic form (the Irish legal deposit libraries) may request, in addition, a copy in an electronic form'. This presumably means that the libraries of Oxford, Cambridge, National Libraries of Wales and Scotland are not entitled to an electronic copy.
- One reading of 198(6) would suggest that the Irish legal deposit libraries and the British Library are not entitled to subsequent parts of encyclopedias, newspapers and serials. However, the wide definition of 'book' for the purposes S.198(1) would suggest that Irish legal deposit libraries and the British Library should automatically receive each part of a work.
- The Section is silent on issues of concern to publishers (deposit, level of access, uses of the content, security, defamation) and the libraries (collection, archiving, preservation, territoriality access and use of the content).

The larger commercial publishers are likely to have serious concerns about any attempt to collect digital content under the provisions of S.198.

Copyright and Related Rights Act, Section 199

S.199, which has not yet been commenced, provides for the amendment of S.65 and S.66 of the *National Cultural Institutions Act, 1997*. It provides for the further extension of legal deposit privilege to non-print and other media, some of which are defined in the legislation and others not. While this section refers specifically to the National Library of Ireland, 199(7) provides for the application of the provisions, subject to modification or adaptation considered necessary by the Minister [for Arts, Sport and Tourism], in consultation with the Minister for Enterprise, Trade and Employment to any of the institutions or bodies named in S.198.

2. Digitisation of copyright material for preservation and controlled access

The critical role of Libraries in preserving information in all formats and making it accessible has come into particular focus in the digital environment. Many Libraries are creating new means of access through the production of digital surrogates of traditional material. Existing copyright legislation restricts digitisation to out-of-copyright works, but libraries understand the opportunities for learning and research from digital formats and make the case for legislation which permits digitisation of copyright publications within clearly identified parameters.

A mechanism for controlling such use could be the introduction of a central 'clearing house' operating under statutory guidelines, which would have the effect of preserving digital publications, permitting limited access and use and ensuring that rights holders commercial interests are not compromised.

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