Annex B: Post Implementation Review: Publishers’ submission

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# Introducing the Publishers’ response to the Libraries submission

1. The UK Publishing industry is a large UK employer generating significant revenue and nurturing creativity, expertise, experimentation and innovation. This has particularly been the case in recent years in digital publishing. Ensuring that the digital publishing sector remains strong and can support future growth and skills development is an important part of developing a world-leading digital economy and promoting this internationally. The following summaries highlight the importance of the newspaper, magazine and publishing sectors to the UK, but digital publishing encompasses a much broader range of services and capabilities beyond these.

2. The British book and journal publishing industry generates up to £7.8bn gross value added (GVA) for the wider UK economy and supports more than 70,000 jobs in direct, indirect and induced impact. The industry is also a strong export success story, with 57% of total publishing turnover (£29bn) coming from export revenues. The UK is the largest exporter of physical books in the world, and generates a £1.1bn trade surplus annually, reducing the UK’s trade deficit by 2.2%.

3. Publishing is central to the UK Government’s digital agenda, whether this is by developing new analytical tools to better facilitate text and data mining, developing new innovations to help enhance the levels of assessment in schools, or by working to seamlessly integrate books with other formats such as audio, film and music. With digital sales making up 35% of the industry’s revenues, rising to 90% for journal sales, the publishing industry has embraced the digital revolution and is an exemplar of UK innovation.

4. Magazine media touches the lives of millions of people across the UK, reaching over 70% of adults. Trusted brands loved by generations of readers are reaching new audiences through digital content and live events. Print as a solid foundation of magazine media is increasingly complimented by new and exciting offerings across multiple platforms. Platforms that see magazines driving growth, investing in talent, spearheading innovation, powering global trade and improving literacy. With over 20 million magazines sold every week in the UK, the sector is worth in excess of £4bn to the UK economy, employing 114,000 people.

5. Acknowledging the news media industry’s significant contribution to the digital environment is an essential part of driving forward a successful digital agenda in the UK. Not only does the industry make a significant investment in digital skills and development (£100 million in 2015 alone, according to a Deloitte study), but through the distribution of high quality journalism online, local and national news media provide significant benefits to civic society. It is widely acknowledged that the internet is awash with false and misleading information which can have damaging consequences for democracy. News media publishers counteract this by contributing accurate and trusted information, available via well-recognised brand names, to the online environment. Growing recognition of this critical role online has contributed to a sharp rise in trust in traditional media, such as publishers and broadcasters, over the past year, illustrated most recently by the findings of the Edelman Trust Barometer 2018.

6. Implementation of NPLD is ongoing and will continue to evolve as digital publishing evolves. Therefore the evidence presented in the PIR represents a snapshot in time. Both Libraries and Publishers believe that the broad policy objectives as set out in the FIA are being achieved.

7. Major publishers have engaged with the deposit of non-print material since the 2013 Regulations were passed. Once the infrastructure was in place, secure and operational, a significant volume of standard journal articles and book chapters have been deposited.

8. The national archiving of UK-published content provides reassurance to Publishers and to their readers, and Publishers are pleased to see the good progress made in establishing such an archive. Extension of this process to encompass the long-tail of smaller publishers will be welcomed.

9. The Publishers are also supportive of the process for NPLD starting to deal with the more complex publications recognised as such during the preparation of the 2013 Regulations. These cover consumer and business online magazine publications, newspapers and maps and, non-text materials such as sound, media, data and code to the extent relevant under the 2013 Regulations.

10. Since 2013, there has been (and will continue to be) rapid development in digital publishing. The ability to create an archive that reflects this is a significant challenge and has a significant cost. Publishers are continually experimenting and innovating to find ways to support the publication of non-print content and welcome the provision of an archive that reflects the new output being created. The preservation of such material is an enterprise the Publishers fully support. However, the use of materials for purposes other than preservation is seen by the Publishers as falling outside the scope of the legal deposit legislation.

11. Copyright rules must be applied for provisions concerning uses which may directly compete with potential publisher exploitation of works in which they have invested and which they have enabled to be published.

# Background and Areas of Concern

12. The Joint Committee on Legal Deposit (JCLD), with representatives from the six Legal Deposit Libraries (LDLs) and the commercial publishing trade associations, has worked very collaboratively to develop agreed implementation strategies for the first phase of NPLD collecting. This strong partnership approach continues to shape the planning for the future phases of collecting.

13. However, within JCLD there is disagreement on the overall scope of the objectives of legal deposit legislation. Publishers believe that the principal objective of the Legal Deposit Libraries (Non-Print Works) Regulations 2013 (‘the 2013 Regulations’) is to allow the preservation of non-print publications for future generations.

14. The Publishers believe that the purpose of the Legal Deposit legislation is very specific: it is to secure the UK’s intellectual and cultural record for posterity, not to provide an alternative route of general non-prescribed access for users or a commercial opportunity for the libraries. It would unreasonably prejudice rightsholders’ legitimate interest to require statutory deposit and then to allow commercial exploitation of the resulting digital archive in direct competition with publishers.

15. The Publishers argue that the copyright exception in Section 44A Copyright, Designs and Patents Act 1988 expressly refers to the copying of a work from the internet by a deposit library or person acting on its behalf by cross reference to the Legal Deposit Act 2003.

16. The 2003 Legal Deposit Act states as its purpose:

* the deposit of printed and similar publications, including on and off line publications;
* to make provision about the use and preservation of material deposited; and
* for connected purpose.

17. ‘Use’ is prescribed as use by a deposit library or a person acting on its behalf (Section 44A CDPA). Libraries consider the scope to be more extensive, including questions of access. Publishers are strongly of the view that questions of access are outside the scope of the PIR and should be looked at comprehensively in a formal consultation process.

18. In operation, the practical system established under the 2013 Regulations is delivering the objective of the Regulations, specifically allowing the preservation of non-print publications for future generations. The Publishers note that as of today the technological processes for full scale delivery and ingest of digital publications for the preservation for specific works, for instance magazines and journals are still being developed in cooperation between Publishers and Libraries.

19. Consequentially, it is too early to provide comprehensive authoritative data on the impact of the 2013 Regulations at this stage. Publishers would welcome the opportunity to engage with an ongoing review of the varieties of published content types as they are deposited.

20. Some publishers have been depositing digital copies in accordance with the 2013 Regulations; however, because of technological challenges and prioritisation by Legal Deposit Libraries, digital deposit of electronic versions is not yet occurring comprehensively. Legal deposit of physical copies of works ensures libraries continue to be able to preserve works. As far as the UK Web Archive is concerned we welcome the considerable technological efforts in particular by the British Library.

21. At the moment only anecdotal and limited survey evidence on the costs and benefits of the 2013 Regulations from a subset of publishers is available. This may not be representative of the whole publishing industry which consists of a diverse range of book, journal, magazine, and newspaper publishers, of various sizes which all have different requirements.

22. In the Publishers’ view, more evidence on the impact of the 2013 Regulations can only be provided at a later stage, i.e. when fully operational systems are in place for the acceptance and ingest of digital and online publications of all types. At the moment this is not the case, because the (technological) implementation of the 2013 Regulations is still work in progress, and the LDLs have focused on the collection and ingest of publications by different sectors of the publishing industry at different rates.

23. The Publishers note that some publishers have made initial investments to set-up a deposit system in compliance with the 2013 Regulations; the actual impact on the costs of depositing will only be fully understood in the course of time. Individual deposit arrangements with some sectors, such as magazines, have not yet been pursued by the Legal Deposit Libraries.

24. Larger publishers have broadly absorbed any additional costs for legal deposit within the operation of the business without specifically isolating and identifying those costs. For them, complying with the additional provisions of the 2013 Regulations is simply part of the operational business costs. There is not yet sufficient evidence on additional costs and benefits of depositing more complex materials than just text equivalents under the 2013 Regulations. The Publishers note that there have not been any complaints about the implementation of the 2013 Regulations and consequentially, it seems fair to assume that the costs are not prohibitive for publishers. However, we do not yet have more solid commercial evidence from smaller publishers for whom legal deposit is a tangential business requirement.

25. In answer to the question ‘*How could the Regulations increase the extent to which the Original policy objectives are achieved?’* the Publishers would like to see a higher percentage of formally published content archived, particularly non-text materials such as code, data and other media. Therefore in this document, the Publishers recommend that the JCLD oversee the continued preservation of the national published output and that the increasing challenges presented by ever more sophisticated forms of content should be the focus of future work.

The Libraries believe the FIA demonstrated an intended policy outcome that is broader than simply collecting and preserving. In the Libraries submission (Annex A) paragraph 3 the Libraries state:

* *The Libraries believe the deposit and provision of limited non-commercial access to materials supports the spirit of the original policy objectives, in particular the notion of ‘balancing the needs of libraries and researchers with the interests of publishers and rightsholders’.*
* *Legal deposit is a public service with great social value; we therefore believe that user experience and value for money have to be considered alongside ingest and preservation figures in order to really understand the impact of NPLD.*

26. The two areas where the Libraries feel the regulations should be amended as disclosed in paragraph 8 of the Libraries submission (Annex A) are:

* *Open access to the Legal Deposit Web Archive: Permitting the Libraries to make ‘open web’ content openly available on the open web, outside the premises of the Legal Deposit Libraries as an archival service on the open web.*
* *Re-establishing the automatic links to changes in Copyright legislation, including educational exemptions.*

27. These recommendations are addressed in detail below.

28. Digital technologies have transformed the ways in which people with a wide range of physical and neurological impairments can access and use information. Both Publishers and Libraries support the use of legal deposit materials to match the disabilities provision in copyright law.

# Responding to the Libraries’ reasons for change

29. The Legal Deposit Libraries, given their public, research and educational purposes, consider current access to, and use of, the deposited materials as a primary objective alongside preservation, and believe that the service improvements anticipated in the FIA support this.

30. The Libraries state at paragraph 16 in the Libraries submission (Annex A) that *‘The rapid development in the methodologies employed within digital scholarship over the past five years means that user expectations of how they might use, analyse and extract results from large collections of digital content have evolved considerably since 2013. This is most apparent in the increasing use of large datasets as a means of research. This change is already recognised and reflected elsewhere in UK legislation’.*

31. Publishers do not accept that ‘user expectations’ should necessarily be the driver for use of another party’s digital content. If they are to inform any review of the Regulations then it will be necessary to have a quantitative and qualitative analysis of those expectations. An assessment of the cost and benefits of change would also be required.

32. The Libraries’ submission purports that researchers and research institutions who wish to work with legal deposit materials feel their needs have not been adequately taken into account in the regulations and should be considered in this review.

33. Publishers believe that the needs of researchers and research institutions are largely met under non-legal deposit arrangements of library provision, individual sale, text and data mining agreements, and sharing. New opportunities around analysis and content extraction are areas that Publishers or other parties may be interested in pursuing. The Publishers believe that there are many opportunities for text and data mining in the current marketplace and users do not need to use legally deposited material for this purpose. Therefore the access restriction for legal deposit content does not create ‘significant barriers to research’ as claimed.

34. Publishers required to deposit works are essentially giving up part of their prerogative under copyright to exploit works and benefit from the investment they have made. It was in recognition of this, and to minimise this loss, that access to all archived works was limited to the physical premises of the LDLs and to a certain number of people at any one time.

35. In 2013 DCMS made a commitment to undertake a further impact assessment and public consultation if any changes to the 2013 Regulations were to be proposed.

# Specific responses to library concerns

## Access

36. The Publishers note that according to paragraph 21 of the Libraries submission (Annex A) the ‘*Libraries are seeking change* ***only*** *in relation to access to websites harvested from the open web. Access to all other NPLD collections such as eBooks, eJournals, digital maps and sheet music, as well as access to web content harvested from behind paywalls, would remain restricted to the premises of the Legal Deposit Libraries*’.

37. Publishers observe that some content currently behind a paywall may become apparently free to users over time but may still have potential value. Free at the point of access does not necessarily mean that the material does not have commercial value. Online traffic is a commercial activity that can be monetised; there is economic value in knowing the number of visitors to a site, the way they use the site and the duration of their visit.

38. In the 2013 Telegraph article the then Legal Deposit Libraries’ manager, Richard Gibby, added that making an archive of the internet available online could undermine a lot of companies’ business models which rely on advertising, so it is necessary to restrict access.

39. ‘While there were some discussions into the possibility that the 2003 Act might be changed in future so that the archived copies of websites might be made available via the web, it was noted that freely accessible web content can be part of a commercial business model, e.g. to support advertising and ‘click-through’ traffic to the rights owner’s website’, Gibby told The Telegraph.

40. ‘Making archived copies of material available online, and also allowing it to be indexed by search engines, could potentially affect the volume of web user traffic to the rights owner’s live website and harm their business model’. [[1]](#footnote-1)

41. Furthermore, there are issues around the uncontrolled copying and dissemination of material and concomitant damage to publishers’ commercial interests, which can be mitigated by access via computer terminals at designated sites. The limitation of the beneficiary of deposited material to a clearly defined ‘reader’ in the Legal Deposit Act 2003 provides clarity and certainty for users and Libraries, as well as reassurance for publishers that the works they make available under the legal deposit scheme do not prejudice their commercial interests. Reproduction which conflicts with normal exploitation of the work would be an infringement of the ‘Three-Step Test’ established in the Berne Convention.

42, The Publishers feel that the conditions on web harvesting provided in the 2013 Regulations ensure that legal deposit for preservation does not prejudice the commercial interests of publishers, and that the 2013 Regulations remain within the scope of the internationally binding Three-Step Test.

43. Therefore the Publishers feel that a clear definition around harvested materials and the free web would be a helpful part of more detailed consultation.

44. The policy objectives in the FIA anticipate that the Legal Deposit Libraries will take advantage of digital depositing to offer improved access and discovery benefits to researchers.

45. *‘Non-print depositing also enables Legal Deposit Libraries potentially to offer an improved service to researchers. For example, electronic indexing and searching methods may allow quicker access to deposited works (which would no longer need to be physically retrieved from an archive) and an increased ability to find relevant material without the need to sift through less useful information. Potentially metadata can be interrogated across a large number of documents to allow research that would not be realistically possible on paper; for example it may be possible to search the archive to establish when a new phrase or word became more established in the English language.’ FIA 2012 p.19, para.89.*

46. The Publishers support activities that improve the service to readers within the context of reasonable use of legal deposit materials. Indexing and search capabilities to improve retrieval could improve user experience within the libraries. However the Publishers would not support the re-presentation or re-use of such enrichment more generally where this could impact on the publishers business.

47. *Similarly researchers are unable to conduct analysis to reveal trends and patterns within the archive over time, as this is also not allowed within the current Regulations.*

48. The Publishers note that the activity of research for trends and patterns across time will seldom be limited to UK based research and there are alternative approaches to such activity. For UK focused research it is possible that sufficient access is already available. Broad user engagement within libraries is already possible via non-legal deposit, permission-based, supply of works. By way of example, via the Access to Research project publishers offer free, walk-in access to research output. Researchers and the general public have access to a wide range of academic articles and research not only in LDLs but in all public libraries across the UK. Access to Research is based on a two- year pilot (2014–2016) and provides a market-based offer for researchers. The availability of material at libraries is guaranteed. Should there be evidence of user demand for further dealings with legally deposited works beyond what is currently possible under UK copyright law, it is essential that there is a separate public consultation on any proposed changes.

49. The Publishers therefore believe that extension for this purpose should be subject to review and consultation to ascertain if this is the best way to achieve this and what safeguards would be needed to protect the interests of the content creators.

50. As shown in paragraph 9 of the Libraries submission (Annex A) the libraries believe that the *‘The wider public policy context provides further rationale for the proposed changes to the regulations which the Libraries are seeking. There has been rapid and significant social and technological change in the period since 2013 and this has created a very different policy environment for the operation of NPLD. The Government has set out high aspirations for digital culture and data/innovation, which the Libraries feel should apply to legal deposit content, with all normal protections for rightsholders retained. The Libraries’ recommendations for improvements to the regulations are fully in line with the policy objectives of the current Government, notably:*

* *Culture White Paper (2016) – which has a strong focus on increasing access to culture, and a recurring theme of ‘digital culture’, and includes a commitment ‘to make the UK one of the world’s leading countries for digitised public collections content’.*
* *UK Digital Strategy (2017) – in particular key commitments that public services should be world leading in serving citizens online, and to unlock the power of data in the UK economy and improve public confidence in its use.*
* *Industrial Strategy Green Paper (2017) – with its similar focus on opening up data so that it can drive innovation and knowledge, seeking an ‘economy in which open data drives growth, efficiency and innovation.’*
* *‘Culture is Digital’ initiative currently being undertaken by DCMS, with a focus on themes pertinent to this PIR, such as growing the reach of digital cultural content in the UK, and developing the use of such content to drive innovation.’*

51. The Publishers support all of these initiatives but do not believe that the opening of access to the Legal Deposit material is necessarily the best way to serve them. The provision of material to ensure their preservation for posterity is a major effort in support of these initiatives but the provision of free access might threaten the very creative and innovative approaches that publishers continually explore and which have resulted in such large parts of published output of the UK moving to digital over recent years.

52. In paragraph 22 of the Libraries submission (Annex A) it presents *‘The Legal Deposit UK Web Archive collection is the largest shared collection across the Legal Deposit Libraries and a research collection of national and international importance.*

*53. ‘It is an extremely valuable public record; all the more so in the context of ‘alternative facts’ debates and concerns around ‘fake news’, given the impermanence of information published on the web. One example is the removal by the official Leave campaign in the 2016 EU Referendum campaign of almost its entire website, shortly after the vote. The Legal Deposit UK Web Archive has statutory underpinning, is independent of Government, and aims to collect a comprehensive annual snapshot of the UK web domain. These characteristics make it a unique and vital tool with which to challenge false narratives, but this can only happen if it is properly accessible. In the interests of transparency and accountability, the right to use the UK Web Archive for this purpose should not be restricted to a relatively small and predominantly academic audience.’*

54. The Publishers are unclear on how the UK Web Archive might act as a resource to challenge fake news. It may be ‘independent of government’ and ‘comprehensive’, but why does this necessarily make it a repository of genuine news? The best defence against fake news is genuine news. Publishers must be enabled to continue their vital work of investigative journalism, reporting and fact-checking. This requires ensuring the sustainability of trusted news media outlets, which in turn requires opportunities for commercial benefit.

55. The Publishers also note that the use of the UK Web Archive is open to all those who are prepared to visit the LDLs, and is not ‘restricted to a relatively small and predominantly academic audience’.

56. *The Libraries state, in paragraph 28 (i) of the* Libraries submission (Annex A) *that ‘Current value for public money. The Legal Deposit UK Web Archive costs around £530,000k per year, but restrictions on use meant there were less fewer than 2,500 uses in the year April 2016- to March 2017.’*

57. As in commercial publishing, the value of usage metrics needs careful scrutiny. How much use should be made of a legal deposit archive?

58. In paragraph 28 (ii) of the Libraries submission (Annex A) it also states that *‘Integrity of the collection. The current low rate of use reduces the exposure of the collection to users. This in turn seriously limits the identification and resolution of harvesting errors within it. Public feedback has been identified by The National Archives as a key component in their successful management of the openly available UK Government Web Archive. This was also cited as an issue in the Digital Preservation Coalition report on the current status of NPLD digital preservation.’*

*59.* The cost of quality assurance is something publishers provide as part of their service in creating content (see paragraph 54 above on ‘genuine news’). It is certainly an area of cost but Publishers do not agree that crowdsourcing error detection at the expense of publisher rights is equitable. We also feel that the integrity of the collection is threatened more by its lack of coverage than by individual content errors.

60. Credibility is also discussed in paragraph 28 (iii) of the Libraries submission (Annex A)*. ‘This is a national collection of the nation’s most contemporary cultural heritage, containing a wealth of potential that could be tapped by users across the UK. Following the implementation of the NPLD Regulations, the restrictions on access attracted negative press coverage’.*

61. Publishers feel that the collective understanding of the benefits of legal deposit and its communication is an important responsibility of the JCLD and its sponsor, DCMS.

## Proposed Protection of Publishers’ Interests

62. In paragraph 33 of the Libraries submission (Annex A), *‘The Libraries are aware that this change in access policy needs to be carefully scoped and managed to protect the commercial interests of all website owners, including the UK publishing industry.’ And go on to* explain in paragraph 36 of their submission how they propose to achieve this via *‘four levels of protection for commercial content.*

1. *Open access would only be possible for web content which was openly available at the time it was harvested. Content from behind commercial pay-walls or which requires registration to access would be excluded from the open archive.*
2. *The Libraries would operate an automatic exclusion for specific publishers as agreed by JCLD e.g. members of the commercial trade publishing associations, news media* *industry etc., unless permission has been explicitly given to open their harvested web content.*
3. *To further maintain a balance with the interests of publishers and rightsholders, there should be a voluntary opt out system in operation for other website publishers so they can request that their complete sites are excluded from being opened up.*
4. *In addition, the Libraries would offer a rapid notice and takedown service for specific pages/content. This would be covered by clear policy guidelines which would also incorporate general data protection regulations.’*

63. Publishers point out that even where websites content is open, there is often commercial value to the website owner, largely driven by advertising and volume of traffic/usage to individual sites. The Legal Deposit UK Web Archive is not intended to be used as a ‘live’ site, as the majority of the content is an annual snapshot, without the full functionality and active links of the ‘live’ web. The Publishers would propose therefore to ensure that users of an open Legal Deposit UK Web Archive are aware of the limitations of the archive and that they are directed back to the live web for contemporary information.

64. The Libraries’ submission (Annex A), paragraph 36 sets forth ‘*Publishers are also concerned about the potential lack of control in an open, online access regime compared with the tight control afforded when access is restricted to the premises of the Library. The Libraries would therefore also propose to introduce a robust registration system that would enable users to access the Legal Deposit UK Web Archive remotely, while protecting content owners from unauthorised access*.’

65. Whilst paragraph 38 of the Libraries submission (Annex A) explains *‘The Libraries believe the proposed change to open access for the Legal Deposit UK Web Archive would ensure the UK has a national web archiving service which greatly improves the standard of user experience while incorporating proportionate protections for publishers and website owners. The Libraries believe this balance will ensure the long-term success of the Legal Deposit UK Web Archive*.’

66. The Publishers welcome the proposal for ‘four levels of protection for commercial content’ and agree that this could provide the genesis of a way forward. However, the proposal does not mention statutory underpinning, which is an essential prerequisite from the Publishers’ perspective.

67. The Publishers also note that the percentage of content referenced in paragraph 35 of the Libraries submission (Annex A) is potentially misleading and that, for example, a comparison of number of ‘web pages’ with published pages online would produce a different percentage.

68. From a Publisher perspective, the way in which the Digital Preservation Coalition have expressed what they call “Emergent Challenges” needs some context. The DPC argues that ‘the severe restrictions on user access to NPLD content impacts directly on digital preservation by limiting usage and user feedback on any problematic content’. Validation of quality of ingest is a primary function of an archive creator and should be the responsibility of the preserver. Extension of access to provide crowdsourcing should not be the means of quality control. The Publishers note that provisions exist to allow for transfers to new formats to prevent loss of preserved archives and support the LDL’s engagement in such work.

## Re-establishing automatic links to evolving Copyright legislation and regulations

69. The Libraries propose that Legal Deposit legislation and regulations are re-linked to evolving Copyright legislation and regulations so that the beneficial balance between rightsholders and the public is maintained.

70. The Libraries are concerned in paragraph 40 of the Libraries submission (Annex A) ‘that users of NPLD content should benefit from the normal balance of rights enshrined in international and UK copyright legislation, particularly with regard to:

1. eventual expiry of copyright in born-digital materials
2. educational and public good exemptions’

71. Outlined in paragraph 43 of the Libraries submission (Annex A), *‘The Libraries believe that it is both more just and more efficient to maintain the normal balance of rights which copyright law is intended to maintain. As international and UK copyright law evolves in response to a fast-changing digital landscape, Publishers, Libraries and users of digital content will face many new challenges and opportunities in creating and using content. Re-aligning legal deposit law to copyright law seems the most effective way to safeguard the balance of rights for the long term.’*

*72.* According to the Libraries in paragraph 47 of the Libraries submission (Annex A), both *‘the Berne Convention and the Term Directive clearly create a period of exclusive rights, followed by the expiration of those rights under copyright law. The current UK legal deposit regulations envisage the works deposited with the UK Legal Deposit Libraries never entering the public domain. To the best of the Libraries’ knowledge, the UK is the only country that has separated legal deposit law from copyright law in the way that it has. This has created a legal grey area in terms of compliance with international copyright law, given that the Regulations relate to the use of copyright works which are regulated by international treaties.’*

73. The Publishers note that, as mentioned in the useful IPA summary of digital legal deposit[[2]](#footnote-2), copyright was disassociated from Legal Deposit under the Berne Convention in 1886.

74. See also the FEP and CENL joint statement on deposit schemes,[[3]](#footnote-3) which begins with the statement that 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.

75. As presented in paragraphs 43 and 44 of the Libraries submission (Annex A) the Libraries believe that the legal deposit regulations would also be improved by re-aligning them with the Copyright Act, to ensure greater consistency in the application of provisions and exemptions. It would also remove the requirement upon Government to update the legal deposit regulations in parallel with copyright law each time it is amended. The current separation creates inconsistency in access terms and conditions to library collections, with which users must comply. It places an ongoing burden on the Libraries to request regular updates to legal deposit regulations to ensure they remain concurrent with rights afforded to Library users in other regulations such as Equality and Copyright regulations.

76. The Regulations prohibit the sale of deposited non-print material once copyright expires. The LDLs assert in the Libraries submission (Annex A) paragraph 41, that the perpetual copyright clause will result in administrative difficulties in years to come, as identifying whether an item is in or out of copyright will be determined by its acquisition method rather than the standard in-copyright period. This will also put the Libraries at a disadvantage as the material may be out of copyright in other Libraries or collections around the UK and Ireland but not in the Legal Deposit Libraries.

77. The Publishers feel it is unclear what ‘administrative difficulties’ would arise if the acquisition method is properly recorded. The commercial ‘disadvantages’ are not pertinent. Legal deposit has a specific, narrow purpose; the LDLs’ role is not to serve the public in the way that public lending libraries do. The Library copy is there to secure the UK's intellectual and cultural record for posterity, to stop items vanishing from the world and to help those who need it to find information when all else fails.[[4]](#footnote-4)

78. Legal deposit collections are not intended to be an alternative to publishers’ own supply channels. It would unreasonably prejudice rightsholders’ legitimate interests to require statutory deposit and then to allow commercial exploitation of the resulting digital archive in direct competition with publishers. The Publishers are prepared to engage in a review of safeguards that might be put in place to prevent commercial exploitation across the range of deposited material.

79. The serious concerns around the use and access of Legal Deposit material are not addressed in the current Copyright Act. Publishers feel that the need to align the legislation should be considered in the context of amending the Copyright Act to protect publisher interests around the use of Legal Deposit works.

## Educational and non-commercial research exemptions

80. Publishers believe that supporting the encouragement of enterprise, innovation and product development of content, with appropriate protection of the rightsholders; will enable the most efficient support of the UK’s educational needs. The reasons for this have been outlined in the Publishers’ submission.

# Publishers’ Recommendations:

81. The Publishers recommend that the JCLD oversee the continued preservation of the national published output and that the increasing challenges presented by ever more sophisticated forms of content should be the focus of future work.

82. Any proposed change to access provision for Legal Deposit material and any harmonisation with copyright should be subject to a formal consultation process (Impact Assessment and public consultation) as was agreed with the DCMS in 2013.

83. A review of the correct alignment of legal deposit and copyright legislation could also be undertaken in such a consultation.

84. Sufficient resources have to be made available to Libraries to preserve the cultural heritage.

86. Sufficient protection of rights is needed to encourage non-print publishing and innovation.

# Conclusion to the Publishers’ submission

87. It is the Publishers’ belief that satisfactory progress has been made on the implementation of regulations around legal deposit. The Publishers and Libraries have worked well together to support this progress and, under the supervision of the JCLD, have not encountered any insurmountable challenges. This review has revealed the major areas where there are differences of perspective. We hope that these differences can be viewed in the context of the creation and dissemination of content the addition of value, and the innovation needed to best do this in an increasingly digital world while still preserving our digital heritage for future generations.

88. In noting these differences it is nevertheless recognised that the digital landscape is continually evolving. Therefore provisions in the Regulations for preservation of our digital heritage may also need further review when significant changes to this landscape occur.

1. http://www.telegraph.co.uk/technology/internet/10526357/No-online-access-for-British-internet-archive.html, 19 December 2013 [↑](#footnote-ref-1)
2. https://www.internationalpublishers.org/images/news/2014/digital-legal-deposit-2014.pdf [↑](#footnote-ref-2)
3. http://www.fep-fee.eu/FEP-and-CENL-adopt-joint-statement [↑](#footnote-ref-3)
4. UNESCO Guidelines for Legal Deposit Legislation, Paris 2000. http://unesdoc.unesco.org/images/0012/001214/121413eo.pdf [↑](#footnote-ref-4)