

**ANNUAL CONFERENCE OF EUROPEAN NATIONAL LIBRARIANS, Luxembourg,
September 2005**

Statement on the Development and Establishment of Voluntary Deposit Schemes for Electronic Publications

1 The CENL/FEP Committee has completed the revision of the Statement on the Development and Establishment of Voluntary Deposit Schemes for Electronic Publications and **recommends** that CENL endorse the revision.

2 The Statement is a revision of an earlier statement, issued in 2000, on the development and establishment of codes of practice for the voluntary deposit of electronic publications. The earlier statement was drawn up by a Committee of representatives from the Conference of European National Librarians (CENL) and the Federation of European Publishers (FEP). The two bodies also agreed to revise the statement once national libraries and publishers gained greater experience in processing electronic publications. CENL and FEP set in motion the revision with the formation of a Committee which has carried out extensive work over the years 2003-2005.

3 The title change, eliminating the words "codes of practice", reflects the Committee's view that the old title might prejudice the implementation of subsequent legislation.

4 The revised Statement reflects the progress made by national libraries in the acquisition of, and provision of access to, electronic publications since publication of the Statement in 2000. The revision also reflects the increased level of co-operation between national libraries and publishers and an appreciation of the need to share the experiences of those countries which have either a) legislation or b) developed voluntary deposit schemes.

5 The Committee also **recommends** that it be given a new mandate to act as a transnational steering group, under the existing CENL/FEP collaboration, to:

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

6 The Committee also **recommends** that each member library of CENL:

- Advise the committee of any local modifications that are made so that these might, if appropriate, be incorporated into the Statement
- Establish a joint working group with representatives from publishers to review the Statement, adopt it as appropriate to national circumstances, set up and monitor a local programme, and engage jointly with the government in discussion on a code.
- When a code is adopted in a specific country: monitor the use of electronic publications and make a report which would enable publishers and national libraries to understand how researchers and other library users are making use of these works.

CENL/FEP Committee
August 2005

STATEMENT ON THE DEVELOPMENT AND ESTABLISHMENT OF VOLUNTARY DEPOSIT SCHEMES FOR ELECTRONIC PUBLICATIONS

Introduction

1. This Statement is a revision of an earlier statement, issued in 2000, on the development and establishment of codes of practice for the voluntary deposit of electronic publications. The earlier statement was drawn up by a Committee of representatives from the Conference of European National Librarians (CENL) and the Federation of European Publishers (FEP). The two bodies also agreed to revise the statement once national libraries and publishers gained greater experience in processing electronic publications. CENL and FEP set in motion the revision with the formation of a Committee which has carried out extensive work over the years 2003-2005.

2. In addition to the objective of improvement in co-operation between Europe's national libraries and the publishing community, in some cases where legislation already exists, the Statement seeks to assist countries which do not yet have voluntary schemes and have had less experience in acquiring, making available and providing access to, electronic publications.

[For inclusion subsequent to approval: At the respective annual meetings of CENL and FEP in Autumn 2005 both bodies endorsed the objectives of this work and the Statement.]

3. The purpose of deposit in any country is to preserve and give access for the long term to the cultural and national heritage of that country produced and distributed in different formats and editions. Legal deposit history teaches us that each new technology is assimilated into the national regulation, thus broadening the scope. Legislation invariably lags behind the introduction of new technologies and national libraries have a responsibility to ensure that gaps do not appear in their collections. In some countries legislation does not exist for a variety of reasons and national libraries work closely with the publishing community to ensure voluntary deposit arrangements are in place. The Committee has continued to investigate acceptable methods of working together to meet societal needs in ways which are acceptable to both publishers and national libraries.

4. Legislation, or effective voluntary agreements as in the Netherlands, is the answer to resolving the problem of gaps in national published archives. An agreed voluntary scheme could be used as a pilot phase during which matters of definition, procedure and control can be agreed and monitored, allowing for review and refinement in the light of experience, in order to assist in the process of drafting effective and workable legislation. This Statement is therefore not intended as, nor should it be seen by individual national governments to be, a blueprint for legislation. The proposed scheme is to be voluntary. However, publishers are requested and encouraged to deposit their non-print publications with their national library following the guidelines below.

5. From the outset it has been acknowledged that the concerns of the national libraries relate mainly to maintaining the completeness of their collections in the interests of best facilitating future research and learning. In requesting the voluntary deposit of electronic publications the libraries do not wish to harm the legitimate interests of the publishers. The efforts of the committee have been directed towards finding a working solution which will enable the material to be held in the national libraries whilst at the same time controlling access to the documents in such a way as to preserve the legitimate interests of the publishers. The publishers will gain the facility for preserving an archive of their output, and where the publications are listed in national bibliographies and national library catalogues the existence of the publications will be made known to a wider audience. CENL and FEP see the

Statement as a convergence exercise between the interests of publishers and national libraries.

6. The best technical solutions for long term digital preservation are the subject of much current research and debate and it is recognised that this question will have to be addressed as the realm of electronic publication moves steadily towards the state where online publication becomes the norm. There is recognition of the importance of ensuring that the content of electronic publications is archived and preserved for long term use beyond their commercial lifespan, and agreement that the national libraries are likely to be the institutions best suited to undertake this role.

7. It will be important to carry out pilot projects which address the problems and technical issues relating to publications of a range of types and formats, both those which are relatively straightforward and some which are more complex. (The above is separate from activities and negotiations between individual deposit libraries and publishers on subscription to and licensing of online publications for the libraries' normal service needs.)

8. The Statement is the result of extensive discussions within the Committee over a two year period. The wording of the Statement is not prescriptive. It is intended to be a model to encourage and facilitate the drawing up of locally-agreed statements. This means that countries adopting the principles of this Statement are free to amend the wording where local circumstances impose special considerations which cannot be accommodated within the wording suggested here. Local variances of this Statement are expected (including such fundamental issues as the definition of what is a publication and what is a publisher). The Committee will be happy to help and advise where possible, and welcomes any feedback or suggestions. In particular, the Statement would like to be advised of any local modifications that are made so that these might, if appropriate, be incorporated into this Statement.

9. This Statement draws on the provisions agreed in the United Kingdom, the Netherlands, Germany and France. Legislation or voluntary arrangements are in place in a number of other countries. It is recommended that this Statement be adopted as a model for use in the remaining member countries of CENL and FEP. For the future it is recommended that each national library should, at the earliest convenience, establish a joint working group with representatives from publishers in their own country to review this Statement, to adopt it as appropriate to national circumstances, to set up and monitor a local programme, and to engage jointly with its Government in discussion on a code. It is also recommended that the Committee continue as a transnational steering group, under existing CENL/FEP collaboration. It would also be useful if, when a code is adopted in a specific country, the national library were to monitor the use of electronic publications and make a report which would enable publishers and national libraries to understand how researchers and other library users are making use of these works.

10. Due acknowledgement is made of the work of the previous Committee and the several and various documents issued by the national libraries in the UK, Netherlands, Germany and France.

THE STATEMENT

1. Place of publication There are well-understood traditions with regard to defining place of publication for print, and these same traditions should be applied to electronic publications. However, it is accepted that there are some implications here with regard to online publications which are not yet fully agreed or understood. The place of publication is obvious for physical media, but special agreements may need to be negotiated in the case of online publications.

1.1 It is requested that all publications made available in [x, where x is the name of the country] publications should be deposited with the [x] national library provided that [x] is the country where the publications have their national origins or their most natural connection. The word '**publisher**' is defined as 'one who issues or makes available publications to the public'. Thus publications originally published abroad, but made available in [x] may be liable for deposit in the national library, as well as those first published in [x], but only where the above criteria are satisfied, and where deposit would contribute to preservation of the national heritage. Where there is a dispute over territoriality of publication, this will be determined by the location of the publisher, and the above criteria. '**Country**' in the context of deposit means in most cases a nation state with independent deposit – so that, for example in the UK, Wales and Scotland have no separate deposit entitlement but are part of the UK scheme. (In some countries, e.g. France and Denmark, the country of domain registrar might be relevant.)

What is for the benefit of the national heritage should normally be determined by the national library, Librarians should also bear in mind that in some cases (e.g. France) the deposit requirement may extend beyond publishers to include in some cases importers. (Where there is more than one location the same rules will apply as for printed publications.)

1.2 '**Publication**' means either (1) information, data, intellectual output or other content which is issued or made available to the public in [x], or (2) the act of issuing or making available such material to the public, where that material has not previously been published in [x] in the same or another medium.

All published material (e.g. with ISBN/ISSN), with a substantial connection to [x] may be considered publications liable to national deposit in [x] if deposit would contribute to preservation of the national heritage. The place of publication of websites should be the country where the website was hosted, unless the content is actively targeted at another country. In consequence, research findings and any other such material made available, with the consent of the right holder, over the Internet or other media may be a publication that is liable to deposit; material on Intranets or other private or internal media are not considered to be publications. Local agreements may be necessary to decide whether, for example, pre-prints made available via open access are required for legal deposit.

1.3 The purpose of deposit is to preserve the completeness of the collected archive of the country's published output.

2. Medium of publication

2.1 The Statement covers the deposit of non-print publications in all electronic media. Electronic publications are publications issued in an online format or on discrete physical digital media such as magnetic tapes, magnetic disks or, more commonly, optical disks of some kind, such as CD-ROM or DVD.

2.2 Continuously updated publications present particular difficulties with regard to large-scale collection and archiving. It is recommended that the publishers and deposit libraries should acknowledge the importance of ensuring that the content of online publications is archived and preserved for long-term use beyond their commercial lifespan and that the libraries and publishers should work together to explore issues, and to test deposit and archiving procedures.

2.3 It is recognised that deposit of electronic publications which require separately licensed software for their operation may present particular problems; it is recommended that, where possible, the publisher should obtain or arrange the granting of the necessary licence on behalf of the deposit library. Under the voluntary scheme the publisher is under no obligation to deposit if they are unable or unwilling to do this, particularly if it involves unreasonable cost or expense. In some countries realistic cost assessments (in the UK called Regulatory Impact Assessments) will be an important element of any government consultation prior to deposit legislation.

3. Content-based publications to be deposited

3.1 The Statement does not cover film, sound, or digital mapping products, which are in many countries already subject to separate voluntary and/or legal schemes. Account should be taken of any separate archiving arrangements, and local agreements should be amended in order to include whichever of these media are not covered by other arrangements.

3.2 Subject to the definitions and exclusions identified elsewhere in the Statement, deposit is requested of all electronic publications which are primarily content-based or which are intended as information rather than entertainment products. In those countries where it is agreed the national library may collect entertainment products (including electronic products (and in some countries computer games) it is requested that any such products published locally (according to the criteria set out in section 1) should be included in this Statement.

3.3 These arrangements apply to all publications whether free or priced.

4. Exclusions from deposit

4.1 Deposit in any given national library [x] should not be expected:

(1) of a publication which does not have its national origins in, or most natural connection with [x];

(2) where deposit would not contribute to preservation of the national heritage of [x];

(3) if a publication substantially duplicates the content of a print publication from the same publisher already deposited (but see the special circumstances with regard to functionality identified in 4.2 below);

(4) if a publication is published only for private internal use within an organisation;

(5) if it is in a category of publications specified by the legal deposit libraries as not being required for deposit - e.g. computer software, computer games.

4.2 Publications which appear with substantially identical content in more than one medium may need only to be deposited in one medium. However, it is recognised that there may be circumstances in which the use of the publication may be substantially different between one medium and another and in such cases the library may request the deposit of both, or all, formats of the publication particularly where the work itself is significantly altered, or there are original new software elements. This arrangement may vary according to special local circumstances.

5. Formats to be deposited

Electronic publications should normally be deposited in the form in which they are made available to the public, together with any associated software, manuals and material which are also made available to the public to enable them to be used, if this is feasible. Separate agreements should be made between the libraries and the publishers where there is a choice of delivery format, bearing in mind preservation requirements (e.g. in pdf or xml.).

6. Point at which publications should be deposited

It is recommended that the date or stage by which electronic publications should be deposited should be governed by the same terms that apply locally for the legal deposit of print publications. It is acknowledged that there may be special cases where for commercial, economic or technical reasons it may be necessary to negotiate a later date, or a different basis, for deposit.

7. Number of copies to be deposited

As a minimum, one copy of all offline electronic publications should be deposited, normally to the national library provided that the concept of "copy" is meaningful in the context of the electronic work concerned. In the context of online works such as a website or a dynamic database, for example, special arrangements may need to be made, e.g. for annual deposit of a CD-ROM version of the content on that date. If there are any further deposit arrangements in place due to the existence of more than one deposit library, or special arrangements for the deposit/archiving of any specific categories of print publications, these arrangements should be extended to also include electronic publications if feasible.

8. Access arrangements for deposited publications

8.1 For all electronic publications the minimum level of access allowed will be to a single authorised user at a time within the holding deposit library, across a secure intranet at designated terminals within an area only accessible to authorised users of the deposit library concerned. If not otherwise specified by publishers this level of access will be assumed to be the default.

8.2 At the time of deposit publishers are requested to specify, via a standard form, which of the following levels of access they agree to for the publications concerned (see 9 for further restrictions which may be agreed):

- a) single authorised user access within the holding deposit library via a secure intranet to a single authorised user at a time at designated terminals;
- b) in the case of multi-site libraries or in any country where there is more than one deposit library, networked access across a secure network between the sites or deposit libraries, at designated terminals in each library, either i) to a single authorised user at a time across the whole network or ii) to a single authorised user at a time in each library;

8.3 All wider access to deposit copies within or between individual libraries, or use for such purposes as document supply and inter-library loan, are only permitted under explicit licence from the publisher and with the payment of fees and/or royalties set by the publisher.

8.4 Access will be restricted in a way that does not prejudice the legitimate interests of the rights-holders. This would clearly exclude any further networking outside of specific contractual agreements between both parties. In order to ensure that only one single authorised user at a time can access the work, technical measures will have to be implemented. It will be the responsibility of the national library to demonstrate, on request, that such measures are in place.

9. Further restrictions on access to deposited publications

For certain categories of publication, in exceptional circumstances the deposit libraries may be willing to agree restrictions or embargoes on access for a specified period of time. A mechanism will be put in place to allow for such arrangements to be negotiated where a special need for this can be satisfactorily shown.

10. Producing hard copies from deposited electronic publications

10.1 Printing out is to be permitted only up to the same maximum limits as are applied for photocopying from printed publications.

10.2 Note: For certain types of publications such as databases the agreed maximum limit that applies may be regarded by publishers as excessive. In such cases a maximum limit for the amount that may be printed out from such publications be agreed. These arrangements will be subject to the same principles as apply in national legislation with regard to "fair dealing". The restrictions will not be harsher for electronic publications than they are for printed publications.

11. Downloading and saving from deposited publications

Electronic downloading, saving or any further use of the works covered in this Statement will be subject to contractual licensing. The restrictions will not be harsher for electronic publications than they are for printed publications

12. Copying for preservation purposes

12.1 The long-term accessibility and usability of electronic media cannot at present be assured. The deposit libraries therefore need to be able to copy the contents of deposited off and online publications to other media for preservation purposes and for purposes of migration to new technology platforms. It will be assumed that the holding deposit library may copy a publication onto other media as and when technology developments are seen to require such a measure, for preservation purposes only, subject to the preservation of the individual publication's identity and integrity. The deposit copy must be free of any hindrances that would prevent such a copy from being made.

12.2 The copied version may be used to provide access under agreed conditions; practice in European countries will vary significantly and local agreements may have been, or will be, reached which cannot be assumed to act as precedents in other countries. When access is permitted to an item that has been copied, use of the copy should be specified.

12.3 In the case of publications which have an embedded protection device, such as an expiry date after which the publication is rendered unreadable, any such devices should be disabled in the deposit copy (i.e. for the national library, but not for access by end-users) so as to allow permanent and unhindered access to the document. In many cases the "expired" version is replaced by an updated version but it is required that an archive of all versions should be preserved.

13. Operative date for deposit

This Statement applies to new publications published in [x] after [insert agreed starting date]. Given the significant gaps that exist in the national published archive because of the earlier absence of deposit arrangements for non-print publications, and which continue to be a matter for concern; publishers are encouraged also to deposit any electronic publications which were published before this date, under the same terms that are laid out in this Statement.

August 22nd 2005