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INTRODUCTION

1. The Association of Learned and Professional Society Publishers (ALPSP) is the international organization for non-profit publishers. It has a broad and diverse membership of over 300 organizations in 37 countries who collectively publish over half of the world’s total active journals as well as books, databases and other products. ALPSP’s mission is to connect, train and inform the scholarly and professional publishing community and to play an active part in shaping the future of academic and scholarly communication.

2. ALPSP welcomes the opportunity to respond to the Consultation on Legal Deposit of Non-Print works (May 2012). It is recognised that this follows on from previous consultations and work carried out by the Joint Committee on Legal Deposit (JCLD).

3. The consultations have clearly carefully considered the needs of all stakeholders and we recognise the efforts that have gone in to achieving this goal.

4. With further consideration to some areas, requesting log in access (paragraphs 10-15), the timescale for subsequent compliance (paragraphs 13 and 15), the need for deposit libraries to duplicate existing preservation initiatives (paragraph 23), and definition of the premises for legal deposit (paragraphs 44-46), ALPSP would be pleased to see these regulations come into force in April 2013.

CONSULTATION QUESTIONS

Qu1 Consultees

Are you responding on behalf of:
A micro business (<10 employees); a business with less than 20 employees; A small business (< 50 employees); A medium business (<250 employees); a large business (250+ employees); a legal deposit library; Other

5. ALPSP is a trade association primarily representing the interests of international not-for-profit scholarly and professional society publishers of all sizes.

Non-print works within scope

Qu2 Regulation 17

The types of non-print works within scope of the regulations have been clarified. The regulations, and therefore the obligation to deliver under the 2003 Act, will potentially apply to all off line work and all on line work (that is published in the UK).

The type of off line and on line work excluded from the regulations has also been clarified. This is content on a closed intranet and content containing personal data on social network-type sites1.

Please comment on whether you think any issues will arise with this approach. Please provide reasons and, where appropriate, evidence for your answers.

6. It was relatively simple to categorise print works. They have been around for a considerable length of time, enough to reach a plateau of identifiable products. Non-

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1 In addition, under section 1(5) of the 2003 Act, the regulations do not apply to content which is exclusively or predominantly film or music.
print works, however, are likely to continue to evolve for some time, making it much more difficult to define the scope for inclusion in the regulations. It is useful to be clear of specific exclusions under 17(2), though we would have expected sound recordings and film to be explicit in their exclusion.

7. Even though it is very challenging to provide anything like an exhaustive list of online works that may be included in the regulations, it is likely that any disputes regarding the definition of a work will more easily be handled by discussion between the concerned parties, with disagreements arbitrated by the JCLD.

Delivery of online work

Qu3 Regulation 20

The obligation to deliver an online work will no longer only apply to the first deposit library to make the request. In theory, each deposit library will be entitled to request the same work. In practice, however, it is unlikely that individual deposit libraries will request exactly the same work, as this will require individual libraries to make requests by web harvester at approximately the same time (depending on how frequently the content of the website changed).

In addition, the deposit libraries will operate a co-ordinated collections policy which will avoid duplicated collection of online content.

Please comment on whether you think any issues will arise with this approach. Please provide reasons and, where appropriate, evidence for your answers.

8. The co-ordinated actions of the deposit libraries should result in an efficient, cost-effective harvesting process for both the libraries and those providing deposit.

9. The issue of security will be key for the transfer of works between deposit libraries. ALPSP is very supportive of the British Library’s initiative to seek support from industry experts in this area.

Qu4 Regulation 20

Where no agreed alternative method of delivery is in place, if a deposit library wishes to request an online work, the request must be made by web harvester to the IP address from which the work is made available.

Delivery of online work requested by web harvester must be made by way of automated response to the web harvester.

A request made to a webpage which contains a login facility is deemed to be a request for the content behind that login facility.

Deposit libraries are required to provide publishers with at least 14 days’ written notice of a request to site with a login facility in respect of work behind that facility. This will give the publisher the opportunity to provide login details to the deposit library so that, once the request is made, the publisher will be able to meet its obligation to deliver the work by automated response to the web harvester. The enforcement provisions in section 3 of the 2003 Act will apply in circumstances where a publisher fails to deliver online work in response to a request. Deposit libraries will be required to use the login details provided by publishers.
The purpose of this regulation is to allow deposit libraries to collect both freely available and access-restricted online work by web harvesting, at nil or minimal cost or inconvenience to the publisher.

Please comment on whether you think any issues will arise with this approach. Please provide reasons and, where appropriate, evidence for your answers.

10. A web harvester request to access content behind a log in facility does not appear to be the most efficient way of doing things. It would mean that publishers have to monitor their turn-aways to identify such requests on a daily basis, on the off-chance that a deposit library has made a request, and that they could easily identify such a request.

11. It would be more sensible for the deposit libraries to use the appearance of a log in requirement as an identifier of the need to contact a publisher for access. We are not clear how the deposit libraries will be aware of the need to request access without a high degree of manual intervention otherwise.

12. It is also unclear how libraries will be able to identify micro-businesses and prevent a web-harvester making a log-in request to them.

13. Publishers should be given up to 30 days from receipt of a written (letter or email) application for access, to comply with the request to provide the necessary access for the deposit libraries to harvest content. This would be in line with the existing regulations for print deposit.

14. It should be noted that the harvesting of content that is not behind a firewall will still have implications for many publishers and this is not recognised in the regulations. Publishers do not routinely allow access to any and all crawlers that attempt to access online information and have specific protocols in place to allow access by agreed crawlers (such as search engines). The deposit libraries will need to make arrangements with publishers to ensure that they are indeed permitted access to harvest content not behind firewalls.

15. Many smaller publishers outsource the hosting of their online content. The extended timescale for complying with a request from a deposit library will be required to ensure that appropriate agreements are in place with hosting providers.

Qu4 Regulation 21

Where a publisher and a deposit library, as an alternative to web harvesting, have agreed between themselves another method of delivery for online work, delivery to the deposit library must be within 14 days of a written request for that work.

Please comment on whether you think any issues will arise with this approach. Please provide reasons and, where appropriate, evidence for your answers.

16. In this instance, it would seem sensible for the timescale for delivery to be agreed between the deposit library and publisher, while discussing the alternative to web harvesting. The publisher may be making specific arrangements for delivery that may take longer than 14 days.

Published in the United Kingdom

Qu5 Regulation 23

An online work will be treated as published in the United Kingdom if:
(a) it is made available to the public from a website with a domain name which relates to the United Kingdom or to a place within the United Kingdom; or

(b) it is made available to the public by a person and any of that person’s activities in relation to the creation or publication of the work take place within the United Kingdom.

Any online work which is not accessible from within the United Kingdom, will be excluded from this definition.

Please comment on whether you think any issues will arise with this approach. Please provide reasons and, where appropriate, evidence for your answers.

17. It is hoped that this will not be too vague and open a definition. However, as with the definition of a work, it is likely that any disputes in this area will be handled by discussion between the concerned parties, with disagreements arbitrated by the JCLD.

Use etc. of relevant material by deposit libraries

Qu7 Regulation 24

Permitted activities have been extended to provide for deposit libraries to transfer or lend deposited material to any other deposit library. This will allow the deposit libraries to store and manage non-print work on a secure, linked network.

Please comment on whether you think any issues will arise with this approach. Please provide reasons and, where appropriate, evidence for your answers.

18. This approach allows the previously referred to co-ordination of harvesting across all the deposit libraries. The libraries are well-aware of the requirement for security of such transfer networks, the consequences of a breach and have produced their own guidelines for security. We are pleased to note the British Library’s willingness to work with industry experts on the issue of security of content.

Qu8 Regulation 25

The deposit libraries will be allowed to use deposited material for the purposes of reviewing and maintaining the material, and for the purpose of the deposit libraries’ own research and study.

Please comment on whether you think any issues will arise with this approach. Please provide reasons and, where appropriate, evidence for your answers.

19. We are happy with that this type usage is appropriate for such legal deposit information.

Qu9 Regulations 26 and 27

The National Library of Scotland will be permitted permanently to transfer the offline legal publications it receives to the Faculty of Advocates, in the same manner that the National Library of Scotland currently transfers printed legal publications to the Faculty of Advocates.

The National Library of Scotland will also be permitted to transfer or lend online legal publications with the Faculty of Advocates.
The Faculty of Advocates will be bound by the restrictions on the use of offline and online material in the same way as the deposit libraries.

Please comment on whether you think any issues will arise with this approach. Please provide reasons and, where appropriate, evidence for your answers.

20. The only issues here are issues of security of the information, but as already noted, the deposit libraries are aware of the issues surrounding any breach of the legally-deposited information they store.

Research and private study

Qu10 Regulation 32

In addition to providing a copy of deposited material for non-commercial research and private study, a deposit library will be permitted to provide a copy for the purposes of parliamentary or judicial proceedings, or a Royal Commission or statutory inquiry.

Please comment on whether you think any issues will arise with this approach. Please provide reasons and, where appropriate, evidence for your answers.

21. As this mirrors the current use of print materials, we don’t foresee issues surrounding this approach. We understand that copies will be available in print format, unless there is an explicit agreement with the publisher to provide electronic copies.

Adapting relevant material for preservation purposes

Qu11 Regulation 35

In addition to adapting a computer program or database for the purposes of preservation, the deposit libraries will be permitted to adapt any offline or online work for the purposes of preservation.

Please comment on whether you think any issues will arise with this approach. Please provide reasons and, where appropriate, evidence for your answers.

22. One concern we have is how the ‘adapted’ data will be checked to ensure integrity with the original? Who will be responsible for this?

23. Another question is whether the deposit libraries will be working with the existing preservation initiatives that publishers are already engaged with? Particularly at a time when the public purse is under such pressure, it would not be efficient or economical if the deposit libraries were duplicating existing preservation activities.

Disposing of copies of deposited works

Qu12 Regulation 36

This regulation clarifies that a deposit library may dispose of any deposited work, or copy or adaptation of any deposited work, provided that the deposit library retains at least one version of the work. The retained version must be the most suitable for preservation purposes.

Please comment on whether you think any issues will arise with this approach. Please provide reasons and, where appropriate, evidence for your answers.
24. It is assumed that the definition of the version most suitable for preservation purposes would include the need to ensure it was the most up to date version and that it would not just be format that was taken into consideration.

**Copying work from the internet**

**Qu13 Regulation 17(3) and 23(3)**

The combination of these regulations will permit the deposit libraries to copy work from the internet, in addition to the ability to request delivery of such online work under other parts of the regulations (regulation 20). Copied work will be subject to the same permitted use restrictions, and the same exemptions in relation to copyright, database right and defamation as work which is delivered.

Please comment on whether you think any issues will arise with this approach. Please provide reasons and, where appropriate, evidence for your answers.

25. We are pleased to see that non-print works are being treated in the same manner as print works.

**Impact Assessments**

**Impact on publishers: micro-businesses and start-ups**

**Qu14 In accordance with the moratorium policy, we propose to exempt micro-businesses and start-ups from the draft regulations, except for the following measures:**

- **regulation 18(1)** allowing publishers, if they wish, to switch from providing a deposit library with a print version (the current obligation) to providing a non-print version of the same work
- **regulation 21** allowing publishers, if they wish, to choose to send their web-based content to a deposit library
- **regulations 17 (3) and 23(3)** allowing deposit libraries simply to copy freely available online work from the internet, which will lead to no cost or obligation on publishers

Do you agree that the above regulations would place no mandatory burden on micro-businesses and start-ups? If applicable, please provide evidence and a breakdown of your calculations.

26. We are very pleased to see that consideration is being given to micro-businesses with regards the costs of legal deposit. There should be little problem with the exceptions and requirements for such businesses outlined in the regulations, although we do refer to paragraph (14) with regards permitting access to crawlers for works not behind a log in.

27. There may be a large proportion of publishers who would fall into the micro-business category. Many will require that their work is available behind a log in facility in order to allow monetisation of their content for them to continue in business. The deposit libraries may consider such content particularly valuable in terms of preserving the UK’s published heritage.

28. However, we also recognise that such businesses might not be able to easily facilitate access to restricted content in the time scales suggested in the regulations.
29. There does not appear to be anything that would prevent the deposit libraries contacting such publishers, whether directly or with the assistance of appropriate trade bodies, to explore how such content might be harvested with minimum impact on the publisher. Assuming that time for response regulations are not enforced in such cases, this would appear to be a sensible approach.

Impact on publishers: general

Q15 If you are a publisher, for how long do you believe works will continue to be produced in print and non-print formats?

30. ALPSP publishes one journal and a number of research reports. We have no agreed timescale to make the shift from both print and non-print format to non-print only.

31. There will be varying degrees of responses from individual publishers, ranging from those wishing to remove print altogether in a short timeframe, to those who have no firm plans to move to online only. Where print is still demanded by end-users and where it is still viable to continue supplying that demand, print will continue.

32. Individual publisher members will be able to provide their own detail on this question.

Qu16 If you are a publisher of works in print format, how much does it currently cost you to deposit these works in that format? Please provide a breakdown of your calculations, including the average number of works deposited per year.

33. ALPSP outsources its despatch and we are unable to obtain a cost for the individual despatch to deposit libraries.

34. Individual ALPSP members may be able to provide their own details with regards their own costs.

Qu17 In relation to question 16, if you are a publisher of works in print format, do you consider there will be savings in the medium to long term by being able to deposit these works in non-print format, in relation to otherwise having to deposit in print format? Please provide your calculations.

35. It is very difficult to state whether there would be any savings and if so, to what degree. Online hosting of content does not happen at ‘no cost’ as some would believe.

36. If just the actual ‘deposit’ is taken in to consideration, the comparison will be between postage costs and the setting up and maintaining of access for the deposit library web-harvester to appropriate content. For straightforward web access, the latter is likely to be more cost-effective.

37. However, where the situation is more complex and publishers need to manage both print and non-print deposit across the range of their publications, the situation will not be as clear-cut.

Qu18 Alternative editions

If you are a publisher who publishes the same works in print and non-print format, would you seek an agreement with a deposit library to deliver these works in the non-print format rather than the print format as currently required? What do you estimate the savings to be from depositing in non-print format? Please also provide an estimate of the initial set up costs for depositing non-print works, and an estimate of average annual costs
(including cost per work deposited) in the medium to long term once the system has been established. Please provide a breakdown of your calculations.

38. ALPSP outsources both its print fulfilment and its online hosting. We are unable to provide a breakdown of the calculations at the time.

**Qu19 Delivery of offline works**

If you are a publisher of offline non-print works, how much would it cost you to deliver these works to a deposit library? Are you already a participant in a voluntary scheme for depositing offline non-print works and if so how would the cost of depositing differ under the regulations? Please provide a breakdown of your calculations, including the average cost per work deposited.

39. ALPSP member publishers who produce offline content will provide their own responses to this question.

**Qu20 Delivery of online works by web harvester**

If you are a publisher of online works with access restrictions, please estimate the administrative costs for providing relevant login details to allow web harvesting by a deposit library. Please estimate any other relevant set up costs, and the ongoing costs (if any) of depositing through online harvesting in the medium to long term.

40. This would be handled by our hosting partner and we are unable to provide costs for provision of individual access requests.

41. Individual ALPSP members who host their own content may be able to provide further details.

**Qu21 Delivery of online works by agreed alternative method**

If you are a publisher of online works, would you seek to negotiate with a deposit library an alternative method of delivery to web harvesting? If so, please estimate costs of the initial set up and an estimate of average annual costs in the medium to long term once the system has been established, including the cost per work deposited via this method.

42. ALPSP would not be likely to seek an alternative method of delivery, but it is possible that some of our publisher members may wish to do so. They will provide detail on this question as appropriate.

**Impact on deposit libraries**

**Qu22 Do you agree that our description of the impact on the Deposit Libraries, as set out in the impact assessments is accurate? If not why not? Please provide evidence and a breakdown of your calculations.**

43. Not relevant to ALPSP members.

**Other**

**Qu23 Do you have any other comments, issues, concerns or questions? If so please can you clearly label what it is and then set it out, providing any relevant evidence.**
Premises

44. There has been little mention in the consultation questions regarding the premises for storage and access to legal deposit material. It would be impractical for this a definition of the exact premises of each of the deposit libraries to be included in the legislation and locations may indeed change over time as storage facilities are upgraded and relocated.

45. It is also not defined in the act whether the premises for access are the same place as for storage (servers etc).

46. However, one option has been overlooked. There is no reason why the deposit libraries could not register premise location(s) with the JCLD. This could be easily updated and anyone wishing to query the locations (of access and storage, whether the same of different) would have one easily identifiable committee to approach.