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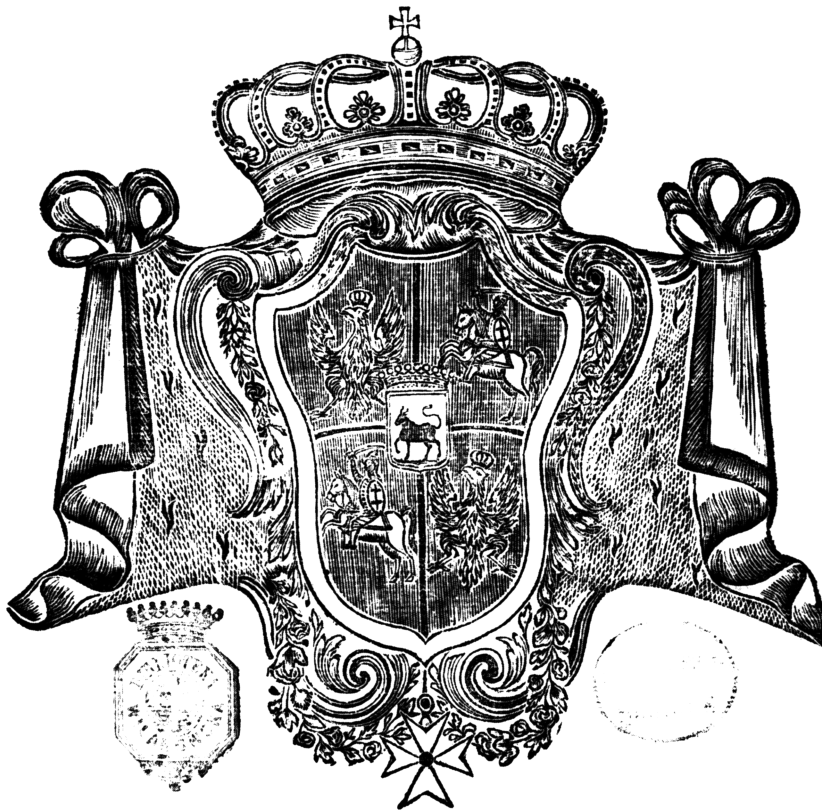
The International Guide to Legal Deposit

Jan T. Jasion



**THE INTERNATIONAL GUIDE
TO LEGAL DEPOSIT**

D Y A R Y U S Z
S E Y M U
WOLNEGO ORDYNARYINEGO
WARSZAWSKIEGO SZESCIO-NIEDZIELNEGO
ROKU PANSKIEGO MDCCLXXX
DNIA 2 MIESIĄCA PAZDZIERNIKA
ODPRAWUJĄCEGO SIE.



W W A R S Z A W I E

w Drukarni Nadwornej Jego Królewskiej Mości.

Title page of Poland's first legal deposit law, 1780.

THE INTERNATIONAL GUIDE TO LEGAL DEPOSIT

Jan T. Jasion

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Contents

Acknowledgements	vii
PART 1	1
Introduction	3
Aspects of legal deposit legislation	7
PART 2	17
World survey of legal deposit	18
World list of statutory legal deposit libraries	33
World list of legal deposit legislation	65
PART 3	109
Algeria	111
Australia	113
Belgium	117
Belize	119
British Virgin Islands	121
Canada	122
Fiji	129
Finland	131
France	133
Guam	136
Hong Kong	138
India	140
Ireland, Republic of	144
Israel	146
Japan	148
Malta	150
New Zealand	152
Nigeria	154
Peru	158
Poland	160
Sierra Leone	166
Singapore	168
South Africa	170

Contents

Switzerland	173
Thailand	176
United Kingdom	177
United States of America	182
Virgin Islands of the United States	194
Bibliography	197
Works consulted	197
Other works	201

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Jan T. Jasion



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Part 1



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Introduction

Today, more so than ever before, there is great concern with the freedom of the press, the end of censorship and absolute government secrecy, and guaranteed public access to information. One of the oldest legal mechanisms to gain this freedom is 'legal deposit', even though in its beginnings and still today in a limited sense it is used as a tool of the censors. Legal deposit, in theory, makes it possible for the citizen to have access to all published material from his or her own country. It is the foundation on which the concept of universal availability of publications (UAP) rests as well as the various national freedom of information laws. Without free access to what has already been published by either the government or private citizens, freedom of information is limited and incomplete.

Legal deposit, erroneously referred to in the UK and several other countries, formerly part of the British Empire, as 'copyright deposit', first began in France in 1537 and has now spread to almost every country in the world. No definition of the idea that covers every situation has yet been established. Even the term 'legal deposit' is questionable. 'Legal' means it is obligatory under law and punishable if contravened. However, many countries have not established sanctions against those who do not abide by it. Furthermore, there are internal departmental memoranda, private contracts, etc. which achieve the same results but without the ability to resort to the courts to enforce them. 'Deposit' also seems not quite correct, since the government sometimes pays all or part of the cost of the publication, and libraries sometimes have to select the publications they wish to receive.

There are four important aspects of legal deposit legislation, if we accept the premise that the underlying purpose, whether stated or not, is the preservation of the nation's cultural heritage. These four aspects are: exhaustiveness, preservation, information and access. Exhaustiveness means that the law or laws provide for the depositing of all information published, regardless of subject, format or producer. Many countries exclude publications in audio-visual format and there are also cases of important types of documents, such as newspapers, patents, annual reports, voters' lists, etc. being excluded. Not all categories of producers, whether printer or publisher, are always included. Govern-

ment publishers are not always included, and sometimes deliberately excluded. In a few countries the central government's writ does not extend equally and completely to all areas. This usually occurs in countries with a federal system of government, for example, Canada, Switzerland, India, the USA, or a quasi-federal one, such as the UK.

Without laws guaranteeing the preservation of the legal deposit material, there is no guarantee of access by the public. Only a few countries embrace the concept of retention and preservation of legal deposit material in their laws. Most rely on custom and tradition to keep everything. However, one country, Poland, goes so far as to state that all legal deposit material is the property of the state and not of the library, and therefore the state can and does make laws concerning the preservation of these copies.

Information about what has been deposited needs to be made available to the public. This is usually done by way of the national bibliography as well as through the depository library's own catalogue. However, few legal deposit laws stipulate that all the deposited material be catalogued, or that this information be made available to the public.

Public access is also a concept which should be protected by law. Most countries have a statement of purpose in the law establishing their national library or national depository by which the public are guaranteed access. However, this is different from having access to the legal deposit collection. There are legal deposit libraries which charge a fee, have a vetting system, or even refuse admittance to the public.

Unfortunately, the legal provisions for the preservation, information and public access of the legal deposit collections, where they do exist, are usually in the act establishing the library or in the library's charter, and therefore outside the scope of this study.

The aim of this book is to take a close look at the laws of a number of countries so that we can find out what others think is important in the realm of legal deposit, and heighten our awareness of its importance for free access to information.

The book is divided into three parts. The first looks at the various aspects of legal deposit and provides examples from many countries.

Part 2 is in many ways the core of the book as it compares in list and table form the legal deposit regulations of countries worldwide. Selected common elements are tabulated in a world survey of legal deposit, supported by full lists of legal deposit libraries and legislation.

Part 3 provides a detailed examination of the laws of 27 countries and a brief sketch of the rest of the countries in order to compare the various national interpretations of legal deposit. The countries chosen for a detailed study were selected on the basis of the differences in their geopolitical make-up and because of some unique aspect of their legal deposit laws. The countries selected are from Latin America, North America, the Caribbean, Western and Eastern Europe, Africa, the Middle East, the Pacific region, South-East, South and North-West

Asia. There are countries with very old traditions of legal deposit (Poland), with very new laws (Belgium), or without any legal deposit laws (Switzerland and Guam), with very complex laws (France) and simple laws (Belize). Several countries with a federal system of government were chosen to show how the type of government can affect legal deposit (Canada). Some of the countries were chosen for their size (USA and Malta). Another important factor was availability of information and language.

An extensive bibliography is provided at the end of the book.

The study of international legal deposit provision is not totally new. Previous studies (in English) have been done by Partridge (1938), Lees (1971), Pomassl (1977), Lunn (1978 and 1981) and the proceedings of a LIBER conference in 1981 in Vienna. However, Partridge limited himself to the British Empire, Lunn's was primarily a work on how to write a model legal deposit law, Pomassl very briefly sketched the laws of most of the countries, but his prime aim was bibliographic control, and Lees's thesis was a general view of legal deposit with a heavy emphasis on the British system and its operation. All these works omitted several vital points in legal deposit legislation, now covered in this book, such as the role of state or provincial laws in a country with a federal system of government, for example, Canada, Australia, West Germany, Switzerland, India, Yugoslavia, Nigeria, the USA. Another area previously not covered concerns internal government regulations for the depositing of government publications at all three levels, central, provincial and local. Partially omitted up to now were private contractual agreements between libraries and publishers' associations, in lieu of a legal deposit law, as is the case in the Netherlands and Switzerland. No other work attempts an international comparative approach.

It is not the purpose of this book to look at the operation of the legal deposit laws in practice, or to assess their achievement or failure, nor to examine the way different countries handle the various legal deposit collections, unless this is reflected in a law or ordinance.

The information included here is as accurate as was possible. Many laws have been passed or abrogated, amended or updated, the knowledge of which has not been brought to light. It is hoped that this international study, a pioneering venture, will lead to further debate, discussion, criticism and research. The author welcomes all comments and criticisms. Information about laws omitted and other omissions will be gratefully received, as will be criticisms on the interpretations provided on those laws in force.



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Aspects of legal deposit legislation

A broad definition of legal deposit which might suffice is that legal deposit is a government provision which compels producers of all types of publications to deposit a certain number of copies of each publication in designated libraries or similar institutions.

The purpose of legal deposit is given today as the preservation of the nation's cultural heritage. However, legal deposit has served and is still serving other purposes, such as copyright protection, censorship, provision of exchange material, bibliographic control, provision of statistical information, provision of library stock, provision of government and legal publications, and provision of universal access to published information. Very few countries state in their laws what the aim of their legal deposit legislation is. The US deposit laws are strictly for copyright protection. In Fiji, Algeria, Poland, Singapore and Hong Kong, preservation of the nation's cultural heritage is mentioned. Legal deposit legislation has many different aspects and these vary from country to country. Despite the obvious differences in the political, legal, social, educational and historical make-up of these countries, there are certain threads of similarity in the warp and woof of their respective legal deposit provisions. It is these areas of similarity that will be explored and compared and examples given from the various countries under scrutiny. The examples will be limited to three countries.

The term 'government provision' as given in the above definition might mean any of the following: acts or laws passed by parliament (the UK, Ireland, and Canada); cabinet decrees and orders; ministerial regulations and directives; government departmental orders, regulations, circulars, rules, policy statements, and so on; library regulations and statutes; municipal ordinances (Poland: Gdansk and Torun in the Middle Ages and currently several cities in the USA); and private contracts (Switzerland).

Very few of these legal measures provide for sanctions in the event of contravention. The types of sanction vary and include a maximum

fine, a fine based on five or ten times the value of the book, a fine plus the book or its equivalent value, the value of the book or the confiscation of the publication, the possibility of seizing the entire print run, and in some countries a prison term is not ruled out. If there is no penalty, or the penalty is very low, then the deposit becomes almost voluntary.

The results or proceedings of at least four court cases upholding legal deposit provision have been published in Canada, Denmark, the USA and the UK.

Usually the cost of legal deposit is borne by the producer. However, there are cases where payment by the state is provided for in the law (Newfoundland: newspapers; Massachusetts: publications of veterans' organizations). Several countries provide for financial relief if the cost of the publication is over a certain amount.

However, France, Malta and Poland state that legal deposit copies can be sent post-free, and Peru has established a small flat postal charge for this purpose.

The agencies which can issue legal deposit legislation or directives are the central government (all the countries under study); provincial or state governments (Australia, Nigeria, Federal Republic of Germany); government departments or ministries (France, Canada, Poland) and institutions of the same rank (Poland). In Canada and Poland there is a growing number of government departments issuing directives on legal deposit for their own internal use. There are probably many more that have not yet been discovered. Private institutions also may have internal legal deposit directives (Israel: Bahá'í World Centre).

It is seldom that legal deposit is the sole subject of a specific piece of legislation, as is the case in Peru, Algeria, and Newfoundland. Clauses dealing with legal deposit can be found in legislation dealing with general library provision (Belize), copyright protection (Ireland, Paraguay, New Zealand and the USA), the press (Sierra Leone, Israel), censorship (none of the countries mention this specifically in their legislation), registration of translations (Poland), or theatres (the UK), and in the legislation establishing a library or other institution (Canada, Japan). It should be noted that in practically all the countries under study the government is empowered by the act or law establishing legal deposit to issue regulations with further instructions, usually listing those items not needed for deposit.

The producer of the publication who is called on to deposit is usually either the printer (Fiji, New Zealand, Madagascar) or publisher (Nigeria, Sierra Leone, Kenya), or occasionally both (France and Algeria). The printer can be further defined or described in the laws as the 'print shop', the 'print shop owner or administrator', or in the case of audio-visual material, as the 'manufacturer'. However, the owner of the copyright (the USA), the funder or sponsor (Poland), the author (Belgium, Quebec and Malta), and the distributor (Quebec and the UK)

have all at one time been listed as responsible for legal deposit. In Peru authors and printers are jointly responsible. Several countries, notably the UK, Canada and France, equate publisher with distributor in their interpretation of the law.

Legal deposit regulations can be very general or very specific in describing the type of material that is required to be deposited. Several countries use the term 'book' and then provide a definition of what is meant (Malawi, New Zealand, Fiji). The term 'publication' or 'printed matter' is also used by several countries. Other countries just state 'book' or 'publication' and do not give any definition. Canada defines book as 'library matter of every kind and description'. This is the broadest definition of any country. Often in the definition of 'book' or 'publication' examples are given. Here is a sample list of the various items mentioned in the legal deposit legislation as needing to be deposited:

- Books (e.g. Malaysia, Hong Kong, New Zealand)
- Letterpress (e.g. the UK, Malta, Fiji)
- Documents (e.g. Japan, Canada, Quebec)
- Reports (Puerto Rico, Singapore)
- Monographs (Malta)
- Papers (Canada)
- Theses (Algeria, Poland)
- Phonograph records (e.g. Poland, Japan, Peru)
- Phonographic works (France, Algeria)
- Videogrammes (France, Spain)
- Audio tapes (Canada)
- Sound recordings (Japan, Canada)
- Educational kits of non-book materials (Canada)
- Multi-media works (France)
- Audio-visual works (France, Algeria)
- Audio-visual forms of communication and their accompanying technology (Virgin Islands)
- Cinematographic films (Sweden, Algeria)
- Slides, published (Spain)
- Cartoon books (Canada)
- Pamphlets (e.g. Venezuela, South Africa, India)
- Leaflets (Poland)
- Musical notes (Japan)
- Sheets of music (e.g. Poland, the UK, Hong Kong)
- Musical works (Algeria)
- Musical scores (Peru)
- Maps (e.g. Spain, Switzerland, Algeria)
- Plans (e.g. Hong Kong, Uganda, Quebec)
- Street maps (Quebec)
- Surveys (Quebec)

- Globes (Quebec)
- Atlases (Montenegro, Poland)
- Plates (Fiji)
- Performance or show programmes (Peru, Portugal)
- Charts (e.g. Philippines, Hong Kong, Thailand)
- Tables and compilations (e.g. Croatia, Hong Kong, Ireland)
- Scripts of new plays (Algeria, the UK)
- Dustjacket, cover or wrapper (Fiji)
- Dramatic works (Nigeria, Algeria)
- Encyclopaedias (Nigeria, Namibia)
- Dictionaries (Nigeria)
- Year books (Nigeria)
- Newspapers (e.g. St Christopher-Nevis, Fiji, Israel)
- Magazines (e.g. Puerto Rico, Manitoba, Hong Kong)
- Journals (Monaco)
- Annual reports (Hong Kong)
- Reviews (Tunisia, Fiji)
- Gazettes (Fiji)
- Periodicals (e.g. Bosnia and Hercegovina, France, Algeria)
- Published documentary records (Nigeria)
- Works written in distinctive parts (Nigeria)
- Every part or division of a work (e.g. Sri Lanka, Uganda)
- Publications in series (Japan)
- Published oral records (Nigeria)
- Printed reproductions of drawings (Peru)
- Drawings or other graphic art forms (Singapore)
- Printed reproductions of paintings (Peru)
- Art prints (Portugal)
- Prints (Macedonia, Singapore)
- Art reproductions (Poland)
- Engravings (France, Algeria)
- Posters (France, Kosovo)
- Postcards (Poland, France)
- Standards (Poland)
- Patents (Poland)
- Braille publications (Poland, USA)
- Government documents (e.g. Philippines, Japan)
- Medals, stamps, coins, banknotes (Algeria)
- Microfilms, microfiche, microcards (South Africa).

The above list shows the wide variety of types of publications which various governments feel necessary to specifically include in the legal deposit programme.

The list of types of document excluded is almost as long and includes many of the same items. Here is a sample list of the types of publi-

cations excluded from legal deposit as listed in the legislature of the various countries under study:

- Trade advertisements (Newfoundland, the UK)
- Trade catalogues (Canada, Hong Kong)
- Trade circulars (Newfoundland)
- Sale catalogues (Newfoundland)
- Price lists (Canada, Newfoundland, Quebec, Hong Kong)
- Commercial business printings (Quebec, Algeria)
- Administrative documents (Poland, Quebec, Algeria)
- Models of documents (Japan, Quebec)
- Business documents (Poland, Quebec, Algeria)
- Registers of voters (the UK)
- Patents (the UK)
- Local passenger transport timetables (the UK)
- Timetables for transportation services (Canada)
- Calendars (the UK, Quebec)
- Blank forms (Canada, Japan, the UK)
- Posters of alphabets and religious tracts (Canada)
- Wall sheets for elementary education (the UK)
- Colouring books (Canada)
- Cartoon books (Canada)
- Newspapers (e.g. Hong Kong, Canada, Sierra Leone)
- Periodicals (Peru)
- Annual reports (Canada)
- Microfilms and other microforms (Canada)
- Motion pictures (Japan)
- Photographic works (Quebec)
- Engravings (Quebec)
- Stamps (Quebec, Poland)
- Negotiable instruments (Algeria, Poland)
- Original artistic prints (Poland)

Exclusion from or inclusion in legal deposit of the above items and other types of publications can depend on a number of factors, such as the size of the print run (i.e. if the print run is very small then the item might be excluded); confidentiality; availability to the public; changes in the text or the accompanying material in second or subsequent editions or printings; nationality of content, publisher or author (i.e. Canada excludes phonograph records which do not have any Canadian content or input); intended readership (i.e., certain categories of religious, educational and children's literature are excluded in Canada); type of publisher (Canadian law excludes publications by municipal and provincial governments); price; and the frequency of the issue of periodicals (Hong Kong).

Another method of excluding certain types of publications is not to

mention them as needing to be deposited and by wording the definition of the words 'publication' or 'book' or 'printed matter' in such a way as to exclude certain items. An example of this is the exclusion of audio-visual material by many countries by defining publications as being 'printed'. Another example is Braille literature. Is it a different format of an already published work, thereby exempt from deposit, or is it in a different language and needed for deposit? Poland demands the deposit of Braille literature, though in fewer numbers, and the US Library of Congress receives copyrighted Braille literature, and that produced by a government-funded printer for the blind. Finland specifically excludes it.

The legislation also states the number of copies of each type of publication required. The numbers vary greatly from one copy in Japan to 16 in Poland. There are maximum requirements in certain cases especially in the UK, Ireland and Manitoba where the law permits the depository libraries to choose the books they need and in Peru and Poland where the size of the print run decides the number to be deposited. In Canada and Quebec the cost of the publication can also affect the number deposited as can the type of publication. In France, Algeria, Poland and Canada the number of copies of audio-visual material required to be deposited is less than printed publications.

It is generally assumed that the national library is the sole beneficiary of legal deposit legislation. However, some countries do not have a national library and therefore it need not be the only depository or the depository at all. Other types of libraries which have the right to collect legal deposit material are libraries of parliament, university libraries, national archives, public libraries, regional or provincial libraries, libraries of government ministries, private libraries and foreign libraries.

Countries which have elected to use the national library as depository are:

- Algeria (Bibliothèque nationale, Algiers)
- Canada (National Library of Canada, Ottawa)
- the UK (British Library, London)
- Peru (Biblioteca Nacional del Perú, Lima)
- Poland (Biblioteka Narodowa, Warszawa)
- Ireland (National Library of Ireland, Dublin)
- France (Bibliothèque nationale, Paris)
- New Zealand (National Library of New Zealand, Wellington)
- Malta (National Library of Malta)
- Singapore (National Library)
- Nigeria (National Library of Nigeria, Lagos).

Countries using their libraries of parliament as depositories are:

- Japan (National Diet Library)