

LIBRARY AND ARCHIVES CANADA  
LEGAL DEPOSIT:  
GUIDELINES FOR JOURNAL PUBLISHERS



Canadian Association of Learned Journals  
Association canadienne des revues savantes

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Canada

## INTRODUCTION

*The Library and Archives Act*<sup>1</sup>, which came into force on May 21, 2004, established Library and Archives Canada (LAC) as a federal institution that combined and integrated the collections, services and staff of the former National Library of Canada and National Archives of Canada. The *Act* also updated the regime for legal deposit to include online publications and introduced new powers to enable Library and Archives Canada to preserve the documentary heritage of Canada as found on the Internet.

According to the *Library and Archives Act*, the general objectives of Library and Archives Canada are to acquire and preserve Canada's documentary heritage, to facilitate access to this heritage to Canadians and to anyone with an interest in Canada, and in so doing to contribute to the cultural, social, and economic advancement of Canada. In order to achieve these objectives, Library and Archives Canada has the power to acquire publications and records or to obtain the care, custody or control of them. In addition, Library and Archives Canada has the power to take a representative sample of the documentary material of interest to Canadians that is accessible to the public without restriction through the Internet or any similar medium. Lastly, Library and Archives Canada has the right to take measures to catalogue, classify, identify, preserve and restore publications and records.

## LEGAL DEPOSIT

To ensure that Library and Archives Canada may meet its objectives, the *Library and Archives Canada Act* requires that publishers make available two copies of a published work to LAC within seven days of release. In this way, submitted copies become the property of LAC and are added to its collection. Failure to comply with the *Act* is considered a federal offence liable on summary conviction, with a maximum fine of \$2000 (CAD) for individuals and \$100,000 (CAD) for organizations<sup>2</sup>.

The legal deposit requirements outlined by the *Library and Archives Canada Act* are extended and further specified by the *Legal Deposit of Publications Regulations*<sup>2</sup>, which came into force on January 1, 2007. Together, the *Act* and *Regulations* define key terms such as “publisher” and “publication” as well as specify different classes of publications and procedures that need to be adhered to by publishers.

According to the *Legal Deposit of Publications Regulations*, a publisher is “a person who makes a publication available in Canada that the person is authorized to reproduce or over which the person controls the content. It does not include a person who only distributes a publication.” This definition covers all individuals, associations, trade and periodical publishers, and publishers of audio, video, multimedia, and electronic publications issued in physical formats, as well as on-line publishers<sup>3</sup>.

A publication is defined by the *Library and Archives Act* in equally broad terms as “any library matter that is made available in multiple copies or at multiple locations, whether without charge or otherwise, to the public generally or to qualifying members of the public by subscription or otherwise. Publications may be made available through any medium and may be in any form, including printed material, on-line items or recordings.”

## LEGAL DEPOSIT REGULATIONS

Upon submission of non-paper material (i.e. electronic or online material), the publisher must ensure that the material, including descriptive information about the submitted material, can be accessed by Library and Archives Canada. This includes the removal of encryption or other security mechanisms if they are used, the provision of any special software required to access the material, and the inclusion of descriptive information (metadata) about the submitted material, including title, creator(s), language, date of publication, format, subject, and copyright information<sup>4</sup>.

Although for most materials, two copies must be made available to Library and Archives Canada by the publisher, only one copy needs to be submitted for online publications, musical sound recordings, multimedia publications consisting of two or more physical parts in different formats, publications of which fewer than 100 copies have been produced, or publications produced on demand from a master copy of which fewer than 100 copies have been produced<sup>5</sup>.

Certain types of publications do not need to be submitted to Library and Archives Canada upon publication but do need to be submitted if explicitly requested by LAC. This includes publications of which fewer than four copies have been produced, reissues or portions of publications that are not substantially different from previously deposited copies, public deliberations of online discussion groups, listservs, or emails, and dynamic databases and raw data<sup>6</sup>.

Since a publisher must submit published work at his or her cost, a publisher can deduct as a business expense, the cost of labour and material required to comply with legal deposit. The publisher, cannot, however, deduct the value of the submitted publications for income tax purposes<sup>7</sup>.

## LEGAL DEPOSIT GUIDELINES

As the *Legal Deposit of Publication Regulations* specify, not all online materials need to be submitted. Rather, only those materials that are in a “publication” form. These materials typically include a title, author(s), and a publication date, and are intended for public consumption. This includes online books, online magazines, and online journals, but does not include online forms, online press releases, or email correspondence.

If a journal is published in print as well as online, both forms of the publication must be deposited: two copies of the print version and one copy of the online version. For an online journal, a copy of the complete publication must be submitted, including the table of contents as well as a copy of each published article. If an article is published using multiple formats (e.g., HTML and PDF), both formats must be deposited. For each submitted publication, the publisher must indicate the access level for the publication. If a deposited publication is classified as “open access” anyone can view, download, and print the publication via the Internet. In contrast, if a deposited publication is classified as “restricted access” the publication is only available for viewing via select terminals at Library and Archives Canada<sup>8</sup>.

Since the *Legal Deposit of Publication Regulations* only came into effect on January 1, 2007, online material published since that date must be deposited. A publisher may, however, deposit for archival purposes any and all applicable online material published before this date<sup>9</sup>.

Depending on the number, size, and complexity of the files that need to be submitted, publishers can deposit materials using a variety of methods. In the case of many or larger files, a publisher may transfer the files to a CD-ROM/DVD-ROM and mail the CD/DVD to Library and Archives Canada. Likewise, a publisher may electronically transfer the files to LAC via the File Transfer Protocol (FTP). For fewer or small files, the publisher may send the files to LAC as email attachments or the files may be uploaded individually to LAC’s website<sup>6</sup>. For complex websites, LAC can download content directly from the publisher’s website. In order to deposit material by mail, email, or FTP or to have LAC download content, the publisher needs to make arrangements with LAC’s Legal Deposit Internet Unit<sup>10</sup>.

## JOURNAL AGGREGATORS

If an aggregator scans a print copy of the journal as each issue is published to make it available online as part of its collection, the contract that exists between the journal and the aggregator determines who is considered the online publisher, and consequently, who is responsible for legal deposit. If the contract authorizes the aggregator to reproduce journal content and control its publication in online form, and the aggregator is based in Canada, then the aggregator is responsible for ensuring legal deposit, since the aggregator satisfies the LAC definition of a publisher. Although this will likely cover most cases, there are likely contractual variations between journals and aggregators where responsibility for legal deposit is less clear. In essence, the closer the journal or aggregator comes to retaining authority and control over the digital content the more the shift is toward the journal or aggregator to ensure legal deposit.

For aggregators based outside of Canada, journal publishers are advised to consider legal deposit as part of the contract renewal process and the inclusion of explicit provisions that will require the aggregator to deposit online materials with Library and Archives Canada as each issue is published. If the content requires a subscription to access, Library and Archives Canada can nonetheless mark the deposited content as restricted to ensure that the aggregator's requirements are satisfied while at the same time ensuring that the journal's best interests are served in terms of preservation.

## PREPARING FOR FUTURE DEVELOPMENTS

According to *Library and Archives Canada Plans and Priorities, 2008-2009*<sup>8</sup>, Library and Archives Canada “has reallocated internal resources to support the archiving of federal and provincial government websites and those of elections authorities.” In addition, Library and Archives Canada “will implement a Web Archiving Strategy to guide...expansion of this harvesting to other domains, which will guide a new Web Archiving Program that will begin in 2009-2010.”

In the long-term, Library and Archives Canada plans to expand its infrastructure and methods for collecting, storing, and making available digital material. These initiatives include improved public access to the collection and improved legal deposit tools. As outlined in the LAC’s *Plans and Priorities*, the creation of a network of Trusted Digital Repositories (TDR) “will enable libraries, archives, museums and public institutions across Canada to receive and manage... digital assets, making them easily accessible to all users.” With respect to improved legal deposit tools, termed the Virtual Loading Dock (VLD), Library and Archives Canada reports that the VLD “will provide an automated vehicle through which publishers can comply with [legal deposit] more efficiently for themselves and LAC, regardless of medium or file format and using numerous transfer mechanisms.”

Based on these LAC plans, publishers that are able to make their content available for data harvesting and archiving will likely not need to rely on existing manual legal deposit methods in the future. Although the Virtual Loading Dock harvesting and archiving mechanics are still unknown, publishers that currently support or plan to support the Dublin Core Metadata standard<sup>9</sup> (DC) for online content will not only increase the visibility of their content to search engines and content repositories, but will be able to easily expose their content to LAC in the future when automated harvesting and archiving methods do become available.

Dublin Core is an open standard that is widely used by online publishers, widely supported by content harvesters, and relatively easy to implement. In brief, Dublin Core metadata tags that describe the published content (i.e., title, author(s), publication date, etc.) need to be added to the HTML pages of an online journal. Many online journal publishing platforms—such as Open Journal Systems and HyperJournal<sup>11</sup>—include support for Dublin Core so that Dublin Core metatags are generated automatically as each article is published.

## ADDITIONAL RESOURCES

Library and Archives of Canada Act

<http://laws.justice.gc.ca/en/L-7.7/index.html>

Legal Deposit of Publications Regulations

<http://laws.justice.gc.ca/en/showtdm/cr/SOR-2006-337>

Library and Archives Canada Online Deposit

<http://www.collectionscanada.gc.ca/electroniccollection/003008-220-e.html>

Library and Archives Canada: Legal Deposit Procedures for Online Publications

<http://www.collectionscanada.gc.ca/electroniccollection/003008-1000-e.html>

## ENDNOTES

- <sup>1</sup> Library and Archives of Canada Act. URL: <http://laws.justice.gc.ca/en/L-7.7/index.html> [Jan. 30, 2009].
- <sup>2</sup> Legal Deposit of Publications Regulations. URL: <http://laws.justice.gc.ca/en/showtdm/cr/SOR-2006-337> [Jan. 30, 2009].
- <sup>3</sup> Criminal Code of Canada. URL: <http://laws.justice.gc.ca/en/C-46/> [Jan. 30, 2009].
- <sup>4</sup> Library and Archives Canada: Legal deposit procedures for online publications: general guidelines. URL: <http://www.collectionscanada.gc.ca/electroniccollection/003008-1000-e.html> [Jan. 30, 2009].
- <sup>5</sup> Library and Archives Canada: Additional information – Legal Deposit. URL: <http://www.collectionscanada.gc.ca/legal-deposit/041008-0200-e.html#Compliance> [Jan. 30, 2009].
- <sup>6</sup> Library and Archives Canada Online Deposit. URL: <http://www.collectionscanada.gc.ca/electroniccollection/003008-220-e.html> [Jan. 30, 2009].
- <sup>7</sup> Library and Archives Canada Legal Deposit Internet Unit: [epe@lac-bac.gc.ca](mailto:epe@lac-bac.gc.ca)
- <sup>8</sup> Library and Archives Canada Plans and Priorities, 2008-2009. URL: <http://www.tbs-sct.gc.ca/rpp/2008-2009/inst/bal/baltb-eng.asp> [Jan. 30, 2009].
- <sup>9</sup> Dublin Core Metadata Initiative. URL: <http://dublincore.org/> [Jan. 30, 2009].
- <sup>10</sup> Open Journal Systems. URL: <http://pkp.sfu.ca/ojs/> [Jan. 30, 2009].
- <sup>11</sup> HyperJournal. URL: <http://www.hjournal.org/> [Jan. 30, 2009].