

ACCESS TO INFORMATION THROUGH LEGAL DEPOSIT LIBRARIES IN SOUTH AFRICA: SOME ISSUES OF CONCERN

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Received: 20 October 2010

Revised: 25 January 2011

Accepted: 1 October 2011

Abstract

Legal depositories in South Africa are intended to ensure that the sources of the country's heritage are collected, controlled bibliographically, preserved and made accessible for present and future generations. The guarantee of access to legal deposit materials depends on a number of factors affecting legal deposit libraries in South Africa. These factors include implementation of the Legal Deposit Act, other legislation affecting access to legal deposit, collection and preservation of materials and methods of accessing the materials. Access has changed as a result of opportunities for access motivated by human rights and freedom of information considerations. In a democratic South Africa, the South African Bill of Rights Act 108 of 1996 gives everyone the right of access to information placing more demands on records in whatever form and their curators. However, the range of freedom of access to information symbolic of liberation from apartheid is under threat with the draft of the current Protection of Information Bill that has been put before parliament. Technological developments are examined including how they affected operational practices and procedures associated with collecting, preserving and accessing cultural heritage, however South Africa like many other countries is hindering access to many electronic documents since online documents are not currently being collected and preserved.

Keywords: Legal Deposit, Access, Preservation, South Africa

Introduction

Legal deposit is the requirement, enforceable by law, to deposit with a specified institution a specific number of copies of publications produced within the limits of the jurisdiction and is applicable to all forms and media of publications (Lunn 1978:1; Jaison 1991:7; Bazan 2003:227). In South Africa legal deposit is stand alone legislation and was first introduced in South Africa in 1842. The Legal Deposit Act No. 54 of 1997 is the current act in South Africa (Tuckett 2003; Library Association 2001).

The South African Legal Deposit Act No 54 of 1997 states that all publishers in the country must deposit free copies of their publications in selected legal depositories. In South Africa these legal depositories include the National Library (in both Pretoria and Cape Town), the Mangaung Library Services (formerly Bloemfontein Public Library), the Library of Parliament in Cape Town, Msunduzi Municipal Library (formerly the Natal Society Library) in Pietermaritzburg and the National Film, Video and Sounds Archives in Pretoria (Tuckett 2003; Butterworth's 2007:224; Fourie and Burger 2007:3). In addition to legal depositories, official publications depositories (OPDs) were introduced in order to foster freedom of access to information and expression and democracy more widely (Lor 1999; Butterworth's 2007:225). The Act made provision for at least the establishment of one OPD in each South African province (Lor 1999). These OPDs are entitled to receive every official government publication including any parastatal or public body publications and provide access to government databases (Lor 1999). According to Tuckett (2003) "the existing places of legal deposit may also serve as OPDs."

There are three official publications depositories namely the Constitutional Court Library (Braamfontein), R J R Masiea Public Library (Phuthaditjhaba) in the Free State which was officially launched on the 11 March 2006 (Jordan 2006) and the North West Provincial Library Services (from 1 January 2009). The Nelspruit Public Library is in the process of becoming an official depository soon (Naidoo 2010). Legal depositories in South Africa are intended to ensure that the sources of the country's heritage are collected, controlled bibliographically, preserved and made accessible for present and future generations (Behrens 2000:132; Penzhorn 2005).

Provision of universal access to published information is one of the main objectives of legal deposit (Lunn 1978:1; Lor 1995:96; Lariviere 2000:10; IFLA 2000a). However, access to information is a global problem and not one characteristic to less developed countries only (Stilwell 2007:88).

Definition of terms and concepts

In the context of this article:

- I. Legal deposit is the requirement, enforceable by law, to deposit with a specified institution a specific number of copies of publications produced within the limits of the jurisdiction (Lunn 1978:1; Bazan 2003:227). Legal deposit is applicable to all forms and media of publications (Lunn 1978:1). According to Jaison (1991:7), legal deposit is “a government provision which compels producers of all types of publication to deposit a certain number of copies of each publication in designated libraries or similar institutions”.
- II. Legal deposit materials refer to printed and electronic materials including books, periodicals, newspapers, microform, maps, brochures, pamphlets including official government publications.
- III. Access refers to the right to obtain or use materials including the way a document may be found. According to the *Online Dictionary for Library and Information Science* by Joan Reitz (2009) access is:

The right of entry to a library or its collections. All public libraries and most academic libraries in the United States are open to the general public, but access to certain areas such as closed stacks, rare books and special collections may be restricted. In a more general sense, the right or opportunity to use a resource that may not be openly and freely available to everyone.

In this article, access will refer to access for posterity, that is use in the future or long term.
- IV. Preservation

Preservation refers to prolonging the existence of library materials by maintaining them in a condition suitable for use, either in their original format or in a form more durable, through

retention under proper environmental conditions or actions taken after a book or collection has been damaged to prevent further deterioration (Reitz 2009).

This article will examine the challenges facing legal deposit libraries in South Africa by reviewing the relevant literature and studies conduct in this area. This will include a discussion of legislation, funding, access and preservation of print and electronic materials.

Literature review

The effectiveness of legal deposit is important to provide access to information which empowers people. Regardless of the importance of legal deposit according to Lor (2005:66) it is ineffective in the majority of African countries. This is due to the fact that legislation does not automatically assure compliance, preservation activities, adequate funding, skilled staff and access to the collections. However, not much has been written about the preservation and access problems that legal deposit libraries face in South Africa and how they are tackled. A study by Nsibirwa (2007) showed clearly that they do have problems and various constraints on action. Also, Penzhorn, Snyman and Snyman (2008:119) in their investigation on the implementation and managing legal deposit identified many weaknesses and problem areas in legal deposit. They presented a clear picture of the current state of legal deposit and made recommendations to address uncertain interpretations of the Legal Deposit Act by publishers and libraries. They state, however, that the current Legal Deposit Act does not solve all the problems.

The state of materials collected is a factor that will determine whether materials will be accessible or not. The Victorian Electronic Records Strategy of Australia (2007) states that “we know the past by records people have left us”. Feather (2004:1) emphasizes that “everything we have inherited from the past has come down to us because it has been preserved”. Without preservation, people will not be able to access the publications for posterity and therefore future generations will lose parts of their national heritage. These issues and challenges have not been properly addressed in South Africa (Ngulube 2002:18). Ngulube (2009:335) found that:

for South Africa to overcome the impending preservation crisis there is need for adequate funding, staff training,

environmental control in records storage places, standards for preservation and access, research and development, and preservation planning.

Many libraries are not functioning properly in Africa; they are faced with challenges due to lack of: finance; support from the government; and proper training of library staff (Rosenberg 2001:13; Ngoepe and Makhura 2008:113; Nsibirwa 2007:43). Lack of funding in South Africa is a result of political, social and economic factors. A study by Ngulube (2009:284) found that preservation and access to archives were highly unsatisfactory in South Africa due to extremely underdeveloped preservation activities. Another study by Nsibirwa (2007:97) revealed that funding from provincial libraries had dwindled over the years; 12.5% of a public library's budget was allocated to legal deposit and only covered staff salaries. Funding, lack of trained and dedicated staff were cited as some of the key factors that inhibited the success of preservation activities in South Africa (Ngulube 2009:287; Nsibirwa 2007:110). Nsibirwa (2007:113) found that none of the staff at a depository had any training in preservation management. Preservation of records and archives have not received the treatment they deserve as a consequence leading to inadequate access.

Akussah (2005:295) states that "there is no doubt that any country that is plagued with deficiencies in preservation training and awareness may not be able to discharge its responsibility towards safeguarding its documentary heritage". A study by Ngoepe and Makhura (2008:113) found that there is a need to raise consciousness amongst small publishers with regard to legal deposit issues. Due to the fact that non-compliance to legal deposit means materials are not deposited and therefore not preserved and will not be accessible.

The primary purpose of legal deposit collections is to provide access to materials published and produced years ago; these materials were deposited and need to be properly preserved for future generations. Fenn and Muir (2003:205) state that "the purpose of a collection is a determining factor in its preservation needs". Feather (2004:1) states that "inheritance is the essence of heritage, but its custodians must concern themselves with what the future will inherit from the present as well as with what the present has inherited from the past". To do

this a preservation strategy would be required which includes adequate disaster planning. However, Nsibirwa (2007:3) found that this was not done at Msunduzi Municipal Library although the library had been faced with a number of disasters over the years. All materials are prone to disasters, Ngulube and Magazi (2006:185) say that disasters are difficult to envisage or avoid except through disaster preparedness which is one of the components of a preservation strategy.

Access issues in the mid 1990s appeared to be straightforward in that those wishing to access materials had to visit the repository and were offered assistance as and when necessary, the preservation of tangible materials was simple (Forde 2005:193). The greatest change has come as a result of opportunities for access motivated by human rights and freedom of information considerations. In the democratic South Africa the Bill of Rights Act 108 of 1996 gives everyone the right of access to information putting more demands on records in whatever form and their curators. Preservation thus becomes very important in order to access.

Mason (2007:201) emphasizes that “social change resulting from the emergence of digital culture is affecting the operational practices and procedures associated with collecting and preserving cultural heritage...” The National Library of Australia (2003) emphasizes that “legal deposit legislation in many countries predates the current information age and requires a new legal framework in order to encompass digital publications”. Legal deposit was introduced in the mid 19th century in South Africa and the current Legal Deposit Act of 1997 includes the collection of electronic materials. Legal deposit preserves a nation’s cultural heritage and an important aspect of cultural heritage is that it is dynamic and is never complete but continuously growing and changing. This brings a variety of fresh challenges some of a legal nature and others purely technical ones. Rapidly changing and developing technology offers many new opportunities in this digital environment. The National Archives of Australia (2006:5) state:

Among these (opportunities) are easier access to records online and the creation of multiple copies of records for back-up and recovery in case of disaster. But with these opportunities

comes risk: digital records are more vulnerable than records created in more traditional ways.

The main problem of digital preservation is the rapid development of technology resulting in the obsolescence of both equipment and also software (National Archives of Australia 2006:5; Gorman 2006:6; Webb 2004:35). Unlike the preservation of print materials that was generally passive, preservation of digital materials needs to begin soon after they have been created because digital materials can be deleted, replaced or attacked by viruses at times before the preservationist gets to them (Besek 2008). Webb (2004:35) emphasizes that “access to digital information depends on all components of an access system working together”. The volume of records created daily is another problem plus the different formats they consist of. Even if the information carriers change, the need to preserve and make available the content of the materials deposited remains, whether in the digital or printed environment (IFLA 2000b).

It is important to have systems in place and resources made available to collect these digital records. There are many issues and problems with regard to digital preservation including the inability to easily differentiate what digital records are of value, millions of digital resources are not catalogued, the expense of creating digital archives and the volatility/fragility of the digital documents (Gorman 2006:6). According to IFLA (2000a) “the advent of new information technologies and more specifically of the digital environment, the feasibility of maintaining legal deposit schemes has come into question”. However, the Legal Deposit Act (South Africa) states that there is a need to preserve the national documentary heritage and for access to this heritage including government publications. Besek (2008) emphasizes that “the problem in that any contact with digital work – cataloging, maintenance, migrating the works to new formats – involves making copies”. Also, the South African Copyright Act No. 98 of 1978 has been amended from time to time since 1978 but has not kept pace with the revolutionary technological changes that are affecting the whole world (Shuttleworth Foundation 2008:5; Nicholson 2008).

The legal framework surrounding intangible cultural heritage is copyright which is the same structure for the print world except the

print world conducts its affairs with less enforcement than companies controlling music, films, radio and television (Ivey 2004:38). Webb (2004:49) stresses that society struggles with the right to reasonable access to information and protection of lawfully enforceable rights such as copyright especially with electronic materials. Copyright influences how digital information can be collected, what can be done with it and how it can be used (Webb 2004:49). Is South Africa ready to store and manage electronic documents while it is still having problems with the storage and management of traditional ones?

Legislation affecting the access of legal deposit materials

The current legal deposit act became essential for South Africa when major government structures changed in 1994 to create a democratic and non-racial country (Lor 2003). As a result, in 1996 a new constitution came into being and a range of legislative acts were formulated and passed to protect human rights aiming at enforcing preservation of, and access to information. The South African Legal Deposit Act No 54 of 1997 covers all print materials, audiovisual materials and electronic publications.

Before 1994, the government could refuse to give you information you requested. However, today one of the basic rights is 'access to information' (Section 32 of the Constitution):

1. Everyone has the right of access to -
 - (a) any information held by the state; and
 - (b) any information that is held by another person and that is required for the exercise or protection of any rights.
2. National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.

Kekana (1999) states that:

Ever since the installation of democratic order in South Africa, government implemented numerous steps in law and practice that lend themselves to greater openness and transparency and allows citizens greater access to information.

The Bill of Rights seeks to counter the effects of the pre-1994 era whereby the right of access to information was not for all the different

racial groups (Fourie 2007:26; Anderson, Dodd and Roos 2003:45). These rights are supported by the African Charter of Human Rights and other international organisations including the International Federation of Library Associations and Institutions (IFLA) as a result of violation of free expression and the flow of information leading to libraries not being able to serve the needs and interests of their users (Kekana 1999; IFLA-FAIFE 1998). Lor and Van As (2002:102) emphasize that “democracy cannot be guaranteed by a paper constitution alone (but) it has to be nurtured and vigorously defended”.

The two pillars of a democratic system are freedom of expression and freedom of access to information including access to government information. The right of access to information includes the right to receive and impart information. There is a need to address this and according to IFLA-FAIFE (1998) this is a result of censorship effects that flow from inadequate access to means of receiving information. Fourie (2007:40) states that although the post-1994 era of South Africa has been marked by efforts to improve access for all there are still many grey areas of responsibility, including inadequate recognition of the role of libraries in some educational contexts and inadequate funding in the library and information service structure. The most daunting yet diffused challenge is to ensure access to information is a right practiced by all (IFLA-FAIFE, 1998). Without access to information people cannot play a part realistically in democratic decision-making and empowering themselves (Lor and Van As 2002:102).

Apart from the Bill of Rights the Promotion of Access to Information Act (PAIA), 2000 (Act No 2) arises from the constitutional right outlined above, and provides more detail with regard to the access of information (National Library of South Africa 2004). The purpose of PAIA Act No 2, 2000 is:

To give effect to the constitutional right of access to any information held by the State and any information that is held by another person and that is required for the exercise or protection of any rights; and to provide for matters connected herewith.

The impact of the PAIA Act no 2, 2000 is that all other legislation providing access provisions is subordinate to it but access can still be managed in terms of other laws as long as it does not conflict with the PAIA (Harris 2000:25). For legal deposit this means unrestricted access to all materials even though the Legal Deposit Act no. 54 of 1997 section 7(5) (d) states that “the head of a place of legal deposit may, on the recommendation of the Committee impose restrictions on certain categories of documents ...”. However, the Constitutional Court of South Africa says that the South African Human Rights Commission (HRC) can help anyone to assert their rights to access to information and the HRC is to make people aware of their rights to use this information. Yet, Lor and Snyman (2005) state that unlike other laws the PAIA does not enforce any specific obligation to preserve records for the holding institutions. However, Lor and Snyman (2005: Legal reasons) stress that “concealing, destroying, altering or falsifying records with intent to deny a right of access is an offence ((PAIA) section 90) but being unable to find a record is not”. Lor (2003) states that “the two pillars of democracy are freedom of expression and freedom of access to information including, crucially, access to government information”. This recognition should help to foster the access to government and other records which are essential to develop a democracy. However, the range of freedom of access to information symbolic of liberation from apartheid is under threat with the draft of the current Protection of Information Bill that has been put before parliament (Library Association of South Africa (LIASA) 2010; Steward 2010:9).

In a statement about the Protection of Information Bill, LIASA (2010) emphasizes that “this ‘draconian’ bill will have a major effect on media freedom and the democratic values of accountability (and) transparency” with regard to access of government information. LIASA (2010: Our association hereby...) states that “excessive secrecy, classification and censorship of information are inherently anti-democratic” as a result deny citizens to exercise their basic human right and thwart the aim of PAIA 2000. Amongst the other issues with regard to the Protection of Information Bill, LIASA (2010) state that government documents are part of our cultural heritage and the danger of the Bill could lead to strict classification or secret destruction of documents and thus permanently removing important information from public access.

As already mentioned earlier the Legal Deposit Act of 1997 makes for provision of OPDs as set out in section 7(4):

An official publications depository shall-

- (a) serve as a center for promoting public awareness of, and access to, official publications and information held by the government and the institutions listed in terms of section 3 of the Reporting by Public Entities Act, (1992) (Act No. 93 of 1992); and
- (b) provide public access to databases and other information sources to which the public may gain access under any law.

This means that OPDs are not just scaled down depositories that receive official publications but are required to be actively promoting awareness of the different types of these publications and promote access to them. Lor and Van As (2002:115) stress that “OPDs should serve as centers which will assist the public to find their way through the bureaucratic maze to gain access to information” including online databases, the web sites of government departments and public entities. Lor and van As (2002:110) state that changes include initiatives regarding reorganizing government printing, restructuring the government’s public information services, making government information accessible on the Internet, and extending Internet access and telephony to poor communities. However, for South Africa there is rapid development in information technology but in general telecommunication costs are high compared to other countries although costs are slowly decreasing this factor hinders many from online access.

According to the current legal deposit act ‘The Minister’ will designate at least one OPD in each of the nine South African provinces. So far there are three OPDs namely the Constitutional Court Library (Gauteng), R J R Masiea Public Library (Free State) and the North West Provincial Library Services (North West), although legal depositories can also receive government materials. The slow development of OPDs can be due to lack of funding and backing with the necessary resources to promote and guide their development. The slow development affects accessibility of government information to people in certain provinces especially those affected by the digital divide.

Publishing done by government departments is a source of major problems. Lor and van As (2002:116) say that individual departments do not always follow the procedure of notifying the Government Printer and do not always deliver legal deposit copies due to high costs, other factors affecting access to government information include (Lor and van As 2002:116-117):

- Irregular publishing of serials;
- Inadequate print runs for significant reports;
- Difficulties in obtaining missing copies from the departments;
- Incomplete Government Printer's monthly lists of official publications;
- Inadequate promotion and marketing of documents; and
- Inefficient distribution of publications by departments.

Access to legal deposit

As noted earlier one of the major aims of a legal deposit system is to ensure availability and access to a country's published heritage (Lor 1995:97; IFLA 2000c; Lariviere 2000). This implies according to Lor (1995:96) that:

Legal deposit is not merely a question of preserving heritage so that some unknown scholars may gain access to it in the future.

It also has to be made available in the present.

An effective system guarantees society access to a research collection of a country's published material (IFLA 2000c). It is an element of a country's cultural policy and is considered as the foundation of freedom of expression and access to information (IFLA 2000c).

Access refers to the way a document may be found and can be looked at in a number of ways. First of all, there is access to the material itself which is the physical access. Physical access is affected by the opening hours of the library, the availability of the material for consultation and physical accessibility for the less mobile. The availability of the material for consultation is also governed by factors of preservation and whether the publishers have deposited the item in question. One of the impediments to the use of legal deposit is due to processing backlogs of materials (Nsibirwa

2007:79). Unprocessed materials are not easy to locate since they will not appear in the catalogue or bibliographic lists and are most probably sitting in a box in a storeroom. Harvey and Howell (2004:3) state that “access to documentary heritage raises awareness, not only of its existence, but also its worth, and assists us to identify deteriorating heritage in need of protection”.

Another aspect is the access to records with the help of a catalogue, finding aids, online catalogue, national or international networks and bibliographic list and not the direct access to the material. Although, bibliographic control is one of the main functions of legal deposit today, it stretches way back when traditional bookstores housed collections (5th-15th centuries) grew and lists became important (Behrens 2000:62). A bibliographic list provides a list of information sources in a systematic manner to enable people to be aware of what information is available and where it can be located. To accomplish this, reference sources are compiled and these help to identify and locate the resources required. In South Africa bibliographic services are dependent on the National Library and the South African Bibliographic and Information Network (SABINET) (Behrens 1996:3). South Africa has a rich history of bibliographic control but still experiences a number of shortcomings and problems (Fourie and Burger 2007b:95). Many libraries today have moved from using the traditional card catalogue and are using computerized catalogues including web online public access catalogues which on one hand increases access to materials yet on the other hand restricts access to those affected by the digital divide who do not have access to technology.

Legal deposit ensures accessibility if works produced are deposited and become part of well maintained legal deposit collections that are made available to society. Forde (2005:195) emphasizes that there is a need to facilitate access to museums, libraries and archives through developing the workforce and by disseminating good practice. Access to legal deposit is about access for posterity that is use in the future or long term. Smith (2004:60) stresses that “use drives access, which in turn drives preservation”. Legal deposit materials are preserved with the intention to provide access for future use (Lor 1995:97; Lariviere 2000).

However, Smith (2004:56) emphasizes that "...without the promise of near term access, preservation will not find the widespread public support – financial, regulatory, and otherwise – that it needs". With no preservation there is no access, for example, one cannot access a newspaper if it was not preserved properly due to various factors that can cause it to deteriorate badly causing it to crumble into pieces when handled. According to de Stefano (2000:317) preservation and access have a correlative relationship and affect each other. In that, the need for access to information necessitates the need for preserving materials, making the two reciprocal. Smith (2004:57) stresses that "greater access can drive increased use". The balance between preservation and access has always been uncertain in those items that rely on the stability of the carrier be it printed on vellum, emulsion on wood-pulp paper or grooves on acetate disks (Smith 1999). According to Forde (2005:199) "preservation still has to precede and support access but because there is a change in the way in which developing access is opening up avenues for preservation". There is a need in practice for a balance to be made between preservation for the future and availability for current use (Feather 2004:8).

The advent of information technology brings a different aspect of access. The demand for access to these resources has risen greatly including the means to deliver them. Smith (2004:56) argues that the increased demand comes with the clear preference for direct access that is unmediated both physically and intellectually. Forde (2005:194) states that "online access to documents has much to do with this explosion of interest, both for the able bodied and those less able to travel to an archive". Though, Forde (2005:194) argues that it is not only the delivery of information that has changed but physical access to publicly funded archives for the less mobile has improved a lot. As the nature of some materials change some are no longer printed but made available on networks were some require paid subscriptions to access materials (IFLA 2000a). IFLA (2000a) argues that:

Most legal deposit schemes have been able to integrate off-line electronic publications without any major problem, mainly because of their physical support and the fact that their handling is quite similar to that of print material. But the on-line environment, and more particularly the case of dynamic

electronic publications is creating serious legal deposit problems.

Electronic documents can have many versions over time unlike print materials, basing decisions on what to select and preserve on the old model of fixing information to an archival medium can be confusing (Smith: 2004:60). For example, should those wishing to preserve and maintain access to constantly changing web publication decide on a sampling strategy to best reflect this site or should the different versions be preserved?

As the ability to make more information accessible, the corresponding need to expand the scale and scope of processes to preserve it has increased but the capacity to produce information has surpassed the capacity to preserve it (Lavoie 2004:46). This relates to information being updated in real time constantly therefore access to these documents will be lost and not preserved for future generations. Lor and Snyman (2005) state that though the digital age has barely begun, we have already lost tremendous amounts of data including electronic documents stored in COBOL, D-Base, Ms Dos to name a few which have become inaccessible to most computer users. Information stored on floppy disks has also been lost due to lack of hardware to view this information. The rapid development of technology has caused many countries to re-examine their legal deposit laws and revise them to include electronic and different forms of publications as well as print materials (Muir 2001). Although the current Legal Deposit Act No. 54 of 1997 was amongst the first few acts that made provision for the deposit of electronic material it still has its main focus on printed materials (Penzhorn Snyman and Snyman 2008:113). South Africa is losing a tremendous amount of electronic materials like a number of other countries. The online electronic documents are not currently being collected due to their complex nature which creates problems of acquisition, preservation, bibliographic control and access.

One of the other issues to do with the digital environment is related to copyright (IFLA 2000b; Lariviere 2000:17; Penzhorn: 2007:85; Besek 2008). With the off-line electronic materials procedures to deposit are similar to print material but with on-line material the publisher may send direct to the depository or the depository will have to download

causing serious copyright questions since downloading is reproduction (IFLA 2000). IFLA (2000b: Before legal deposit...) insists that “with copyright legislation, legal deposit legislation within the electronic environment should be the result of a compromise based on the balance of rights between citizens and publishers”. However, Lariviere (2000:17) states that before the compromise of rights is done, there is a need to verify the main copyright instruments (Berne Convention or the Universal Copyright Convention) that a country is signatory to. The Berne Convention entails copyright protection with no rules and regulations and therefore deposit of copies cannot be enforced (IFLA 2000d; Lariviere 2000:17). Lunn (1978) clarifies that there is no reason why legal deposit should be linked to copyright as long as legal deposit is not linked to obtaining copyright. Unlike the United States of America and Ireland the South African Legal Deposit Act is not part of the country’s Copyright Act. Copyright law, however, has not changed as quickly as the radical technological changes of recent decades (Shuttleworth Foundation 2008:5). As noted earlier the South African Copyright Act No. 98 of 1978 has been amended from time to time but section 13 that makes provisions for libraries and education has not been amended to date (Nicholson, 2008; Shuttleworth Foundation, 2008:28). Nicholson (2008) states that:

The Act and its regulations are outdated and they do not address the digital environment nor do they take advantage of appropriate limitations and exceptions ("legal flexibilities") allowed in international intellectual property agreements.

According to the Shuttleworth Foundation (2008:5) “the difference in pace of change generates uncertainties about creativity using new media and copyright”. There are no specific provisions in South African copyright law to address libraries/archives and if copying takes place in terms of section 12(1) of the Copyright Act it must be in accordance with undefined “fair dealing” (Shuttleworth Foundation 2008:28). With the new issues that the digital environment has brought along, Smith (2004:68) argues that “access will be driving preservation, and to succeed in their preservation mission, libraries must therefore stake out a public right of access”.

Conclusion

An effective system guarantees society access to a research collection of a country's published material. The post-1994 era of South Africa has been marked by efforts to improve access for all through legislation but there are still many grey areas of responsibility. Legislation does not assure compliance and implementation. Preservation is still affecting access as a result of lack of funds, trained staff, environmental control in records storage places. This article has highlighted that in South Africa there are no standards for preservation and access; research and development; and preservation planning. From the literature reviewed it has been suggested that the following strategies could be utilized to overcome these challenges:

- Recognising the role of legal depositories in South Africa and providing adequate funding and support for the implementation of the legal deposit act in that without collection and preservation there will be no access.
- Improving access to government materials by improving systems of publishing in government departments and the development of more OPDs.
- Developing websites for all legal depositories and OPDs with links connecting each depository to others.
- Learning to collect online electronic documents by networking with some of the developed countries, training staff and funding the infrastructure for the collection of online electronic documents.

If legal deposit libraries do not address these challenges the right to access of information is infringed.

References

- Akussah, H. 2006. The state of document deterioration in the National Archives of Ghana. *African Journal of Library, Archives and Information Science* 16(1): 1-8.
- Anderson, M. A., Dodd, A. and M. C. Roos. 2003. *Everyone's guide to South African Law*. Cape Town: Zebra Press.
- Bazan, C. 2003. Legal deposit and the collection of national publications in Argentina. *IFLA Journal* 29(3):227 – 229.

- Behrens, S. J. 1996. National bibliographic services in South Africa: Final report for the Committee for Bibliographic Control of the South Africa Institute for Librarianship and Information Science, Pretoria.
- Behrens, S. J. 2000. *Bibliographic control and information sources*. 3rd ed. Pretoria: UNISA.
- Besek, J. M. 2008. Digital preservation and copyright. *WIPO Magazine* 5.
- Butterworth's. 2007. *Statutes of South Africa*. Pretoria: Butterworth.
- Constitutional Court of South Africa. 2007. Your rights. [Online]. Available WWW: <http://www.constitutionalcourt.org.za/site/yourrights/knowyourrights-accesstoinformation> (Accessed 11 May 2007).
- De Stefano, P. 2000. Digitisation for preservation and access. In: Banks, P. N and Pilette, R. (eds). *Preservation: issues and planning*. Chicago: American Library Association, pp. 307-322.
- Feather, J (ed.). 2004. *Managing preservation for libraries and archives: current and future practice development*. Hants: Ashgate.
- Fenn, K. and Muir, A. 2003. Preservation management in private subscription libraries in the United Kingdom. *Library Management* 24(4/5): 204 – 215.
- Forde, H. 2005. Access and preservation in the 21st century: what has changed? *Journal of the Society of Archivists* 26 (2): 193-200.
- Fourie, I. 2007. Library and information service structure in South Africa. In Bothma, T., Underwood, P. and P. Ngulube. (eds) *Libraries for the future: progress and development of South African libraries*. Pretoria: Library and Information Association of South Africa/ IFLA, pp. 25-42.
- Fourie, I. and Burger, M. 2007. Bibliographic control in South Africa. Paper read at the 73rd IFLA Council and General Conference. Durban, South Africa. 19 -23 August 2007.
- Fourie, I. and Burger, M. 2007b. History of bibliographic control in South Africa. *Mousaion* 25(2): 95-119.
- Gorman, M. 2006. The wrong path and right path: the role of libraries in access to, and preservation of cultural heritage. Keynote speech read at the Globalization, Digitization, Access, and Preservation of Cultural Heritage conference. Sofia, Bulgaria, 8 November 2006.

- Harris, V. 2000. *Exploring archives: an introduction to archival ideas and practice in South Africa*. 2nd ed. Pretoria: National Archives of South Africa.
- Harvey, R. and A. Howell. 2004. Preserving the memory of Australia. [Online]. Available WWW: <http://conferences.alia.org.au/alia2004/pdfs/harvey.r.paper.pdf> (Accessed 18 October 2008).
- International Federation of Library Association and Institutions (IFLA). 2000a. Nature and role of legal deposit. [Online] Available WWW: <http://www.ifla.org/VII/s1/chap1.htm> (Accessed 30 July 2007).
- International Federation of Library Association and Institutions (IFLA). 2000b. History of legal deposit. [Online] Available WWW: <http://www.ifla.org/VII/s1/chap2.htm> (Accessed 30 July 2007).
- International Federation of Library Association and Institutions (IFLA). 2000c. Nature and role of legal deposit. [Online]. Available WWW: <http://www.ifla.org/VII/s1/chap1.htm> (Accessed 30 July 2007).
- International Federation of Library Association and Institutions (IFLA). 2000d. Legal issues related to legal deposit. [Online]. Available WWW: <http://www.ifla.org/VII/s1/chap3.htm> (Accessed 30 July 2007).
- International Federation of Library Association and Institutions (IFLA) - Freedom of Access to Information Freedom of Expression (FAIFE). 1998. World Report: Libraries and Intellectual Freedom: South Africa. [Online]. Available WWW: http://archive.ifla.org/faife/report/south_africa.htm (Accessed 10 August 2010).
- Ivey, B. 2004. Issues in intangible cultural heritage. *Access in the future tense*. Washington: Council on Library and Information Resources. [Online]. Available WWW: <http://www.clir.org> (Accessed 27 February 2010).
- Jasion, J.T. 1991. *The international guide to legal deposit*. Hants: Ashgate.
- Jordan, P. 2006. Opening address by Dr. Z Pallo Jordan, Minister of Arts and Culture at the inaugural meeting of the reconstituted Legal Deposit Committee 25 July 2006. [Online]. Available WWW: <http://www.dac.gov.za/speeches/minister/Speech25Jul06.htm> 24 (Accessed March 2007).

- Kekana, A. P. 1999. The state of free access to information and freedom of expression trends in South Africa and internationally. Paper for Gauteng and Environs Library Consortium (GAELIC) Copyright workshop at Technikon South Africa, Johannesburg, 7 October 1999. [Online]. Available WWW: <http://www.ifla.org/faife/papers/others/kekana.htm> (Accessed 2 June 2007).
- Lariviere, J. 2000. Guidelines for legal deposit. [Online]. Available WWW: <http://unesdoc.unesco.org/images/0012/001214/121413Eo.pdf> (Accessed 15 June 2007).
- Lavoie, B. 2004. Of mice and memory: economically sustainable preservation for the twenty-first century. *Access in the future tense*. Washington: Council on Library and Information Resources. [Online]. Available WWW: <http://www.clir.org> (Accessed 27 February 2010).
- Library Association. 2001. Report on developments world-wide on national information preservation: legal deposit. [Online]. Available WWW: http://www.la-hq.org.uk/directory/prof_issues/nip/legal.htm (Accessed 15 June 2007).
- Library Association of South Africa (LIASA). 2010. Statement on the Protection of Information Bill. [Online]. Available WWW: <http://www.liasa.org.za> (Accessed 27 August 2010).
- Lor, P. J. 1995. Legal deposit: some issues in the international scene. *Mousaion* 13(1/2):94-111.
- Lor, P. 1999. Official publications depositories: new arsenals for South Africa's democracy. [Online]. Available WWW: <http://home.imaginnet.co.za/liasa/papers/lor.html> 26 March 2007
- Lor, P. J. 2003. Official publications depositories: work in progress. *Mousaion* 21(1): 6-26.
- Lor, P. J. 2005. Preserving African digital resources: is there a role for repository libraries. *Library Management* 26(1/2): 63-72.
- Lor, P. J. and A. Van As. 2002. Work in progress: developing policies for access to government information in the new South Africa. *Government Information Quarterly* 19:101-121.
- Lor, P. J. and M. M. M. Snyman. 2005. Preservation of electronic documents in the private sector: business imperative and heritage responsibility. *South African Journal of Information*

- Management* 7(1). [Online]. Available WWW: http://journals.sabinet.co.za/WebZ/images/ejour/info/info_nl_a5.html?sessionid=01-38666-9300969338+Format=F (Accessed 28 November 2009).
- Lunn, J. 1978. Study on a model for legal deposit. UNESCO and IFLA for International Congress on National Bibliographies, Paris, 12- 15 September 1977.
- Mason, I. 2007. Virtual preservation: how has digital culture influenced our ideas about permanence? Changing practice in a national legal deposit library. *Library Trends* 56(1): 198-215.
- Muir, A. 2001. Legal Deposit of Digital Publications: a review of research and development activity. In: *First ACM/IEEE-CS Joint Conference on Digital Libraries (JCDL'01)*, pp. 165–173.
- Naidoo, K. 2010. Personal communication 7 January.
- National Archives of Australia. 2006. Digital preservation: illuminating the past, guiding the future. [Online]. Available WWW: http://www.naa.gov.au/images/xena-brochure%5B1%5D_tcm2-918.pdf (Accessed 10 September 2009).
- National Library of Australia. 2003. Preserving access to digital information – legal deposit. [Online]. Available WWW: <http://www.nla.gov.au/padi/topics/67a.html> (Accessed 30 November 2009).
- National Library of South Africa. 2004. Official publications depository manual. ([Online]. Available WWW: <http://www.nlsa.ac.za/NLSA/docs/opdmanual.pdf> (Accessed 10 April 2007).
- Ngoepe, M and M. Makhura. 2008. Assessing the level of compliance with regard to the Legal Deposit Act: implications on access to South Africa's published heritage. *Mousaion* 26(2): 98–114.
- Ngulube, P. 2002. Challenges to preservation of our archival heritage. *South African Archives Journal* 27(42): 27- 36.
- Ngulube, P. 2009. *Preservation and access to public records and archives in South Africa*. Saarbrücken: Lambert Academic Publishing AG and Co.KG.
- Ngulube, P. and L. Magazi. 2006. Protecting documents against disasters and theft: the challenge before the public libraries in KwaZulu-Natal, South Africa. *South African Journal of Libraries and Information Science* 72(3): 185–197.

- Nicholson, D. 2008. Why is it necessary for the South African Copyright Act to be amended? The African Copyright and Access to Knowledge Project (ACA2K). ([Online]. Available WWW: <http://www.aca2k.org> (Accessed 13 March 2010).
- Nsibirwa, Z. 2007. Preservation of, and access to legal deposit materials at the Msunduzi Municipal Library, Pietermaritzburg. MIS. Thesis. Pietermaritzburg: University of KwaZulu-Natal.
- Penzhorn, C. 2005. Preserving our cultural heritage through legal deposit: are we doing it right? [Online]. Available WWW [http://www.liasa.org.za/conferences/conference2005/papers/Penzhorn Legal Deposit LIASA 2005.ppt](http://www.liasa.org.za/conferences/conference2005/papers/Penzhorn%20Legal%20Deposit%20LIASA%202005.ppt) (Accessed 23 May 2007).
- Penzhorn, C. 2007. Implementing and managing legal deposit in South Africa. Ph. D. thesis. Pretoria: University of Pretoria.
- Penzhorn, C., Snyman, R. and Snyman, M. 2008. Implementing and managing legal deposit in South Africa: challenges and recommendations. *The International Information & Library Review* 40:112-120.
- Reitz, J. 2009. Online dictionary for library and information science. [Online]. Available WWW: <http://lu.com/odlis> (Accessed 24 November 2009).
- Rosenberg, D. 2001. The sustainability of libraries and resource centres in Africa. In Stilwell, C., A. Leach and S. Burton (eds). *Knowledge, information and development: an African perspective*. [Online]. Available WWW: <http://www.hs.unp.ac.za/infos/kiad/02rosen.doc> (Accessed 9 March 2007).
- Shuttleworth foundation. 2008. Report on the South African Open Copyright Review. [Online]. Available WWW: <http://www.shuttleworthfoundation.org> (Accessed 13 March 2010).
- Smith, A. 1999. *The future of the past: preservation in American research libraries*. [Online]. Available WWW: <http://www.clir.org/pubs/reports/pub82/pub82text.html> (Accessed 9 June 2007).
- Smith, A. 2004. In support of long-term access. *Access in the future tense*. Washington: Council on Library and Information

- Resources. [Online]. Available WWW: <http://www.clir.org> (Accessed 27 February 2010).
- Steward, D. 2010. SA's Orwellian Information Bill. *The Witness*. 19 July: 9.
- Stilwell, C. 2007. Library and information services in South Africa: an overview. *IFLA Journal* 33(2):87-108.
- Tuckett, N. 2003. What is legal deposit and OPDS? [Online]. Available WWW: <http://www.fs.gov.za/departments/sac/apr-jun2003-legal-deposit-andopds.html> (Accessed 19 March 2007).
- Victorian Electronic Record Strategy (VERS). 2007. Keeping electronic records forever. [Online]. Available WWW: <http://www.prov.vic.gov.au/vers> 30 June 2010.
- Webb, C. 2004. The malleability of fire: preserving digital information. In Feather, J (ed.). *Managing preservation for libraries and archives: current and future practice development*. Hants: Ashgate, pp 27-52.