

2 Legal deposit legislation

2.1 *Introduction*

The institution of legal deposit goes back many centuries, with some of the first laws recorded in countries in Europe as early as the 1500s and 1600s (Jasion, 1991; Lariviere, 2000; Lor, 1995: 94). Although the concept and its statutory arrangements have undergone many changes over time, with only a few exceptions, legal deposit is currently governed by some form of national legislation in countries all over the world. Guidelines for the establishment of national legal deposit legislation have also been developed in the last few decades. One of the first influential works in this arena was that of Jean Lunn (Lunn, 1981). A new and enlarged edition of Lunn's work was compiled by Lariviere in 2000 (Lariviere, 2000) and is currently accepted as the benchmark for guidelines and recommendations in this field. Lariviere's work discusses a wide range of jurisdictions covering all aspects of legal deposit, and incorporates new forms of publishing such as electronic publications, with the aim of assisting countries in the development and implementation of new legal deposit legislation or the revision of legislation already in place. Observance to these guidelines is advocated to all countries. In 2004 an investigation by Bazan (2004) which aimed to get to know the general characteristics of different national legal deposit legislations, as well as the extent to which these legislations comply with the previously mentioned international guidelines indicated that South African legislation is "highly tailored to meet the... recommendations" (Bazan, 2004).

This chapter aims to provide an overall picture of legal deposit legislation and the issues contained in legislation as they pertain specifically to South

Africa. Considering the results of Bazan's study, the content and quality of current South African legislation are not debated, but the discussion will concentrate on the elements that provide the needed background against which this study investigates the state of legal deposit and its implementation in South Africa. The concept and purpose of legal deposit has been covered extensively in the literature, as will be demonstrated throughout this study. This chapter therefore commences with only a short summary of the underlying principles and the development of legal deposit before proceeding to the main focus of the discussion, namely the issues covered by legislation. To provide a balanced view of these legislative issues a comparative study of legal deposit legislation in the United Kingdom, Australia, Malaysia and South Africa is undertaken.

Great Britain was one of the first countries to establish legal deposit in the 1600s. In the subsequent centuries a "typical imperialist pattern" (Lor & Geustyn, 2001) was followed according to which the British Copyright Act, incorporating legal deposit requisites, was made applicable to all countries and territories comprising the British Empire (Partridge, 1938: 80; Lor & Geustyn, 2001; Willemse, 1962: 78). These territories included, at some time or another, South Africa, Australia and Malaysia. It was thus a natural decision to use the United Kingdom as one of the countries for comparison in the study. Australia was chosen as a developed country in the southern hemisphere with many historical characteristics resembling those of South Africa. South Africa has a foot in the developed as well as the developing world, so Malaysia, as a less developed, but upcoming, country in the Asia Pacific region was chosen to balance the comparison.

2.2 *Background to legal deposit*

2.2.1 **What is legal deposit?**

For the purposes of this research project which aims to investigate the practical implementation of legal deposit, compliance with legislation and other related issues surrounding the subject, a conceptual point of view had to be found that expresses what legal deposit entails, clearly and adequately enough to be used throughout the research project. Many different authors and institutions have provided various descriptions and interpretations of legal deposit and its functions over the years from which certain core elements relevant to the nature and role of legal deposit can be derived. The four principles that serve as the basic premises for this study are the following:

2.2.1.1 *The statutory/legal nature of the legal deposit arrangement*

Lariviere in his comprehensive guide to legal deposit describes legal deposit as being a “statutory obligation” and stresses the fact that a legal deposit scheme should preferably rest on specific legislation in order to ensure compliance (Lariviere, 2000). Although legal deposit is not always “legal” in the sense of being enforced by a specific law in a country (Lor, 1995: 95), it is nonetheless a statutory obligation in most countries where it is implemented on national level. This principle thus serves as the main point of departure for this research project.

2.2.1.2 *The preservation function of the legal deposit system*

Legal deposit ensures the acquisition of all published materials emanating from and relating to a country, and the preservation of this material is its logical outcome (Hamburg, 2002: 82; Lor, 1997). The aim of preservation is

formulated in many ways, as when Partridge (1938: 6) proclaims that it “...acts as a mirror wherein all the glory of a nation’s literature is faithfully reflected”, to Muir’s more prosaic “... to ensure the preservation of and access to a nation’s intellectual and cultural heritage over time” (Muir, 2001: 652). National cultural identity depends to a great extent on the survival of cultural material, and legal deposit is regarded as the main instrument for building up and preserving national collections of a heritage nature (Council of Europe/EBLIDA, 1998). The preservation function is the most widely acclaimed objective of legal deposit and presumably the primary focus of legal deposit institutions (Cline, 2002: 15; Jasion, 1991: 7; Lariviere, 2000; Rugaas, 1990: 41).

2.2.1.3 Recording the information/creating bibliographies

The acquisition of published material by way of legal deposit is intended to serve as the essential foundation for recording in the form of a comprehensive national bibliography everything that a country produces (Jasion, 1991: 7; Lariviere, 2000; Lor, 1995: 97). National bibliographies give timely information about national publishing, serve as a reference for acquisitions, and offer records that can be re-used in local and international catalogues and directories (Beaudiquez, 2002: 1). If the recorded information is to be effectively shared in this way, it is essential that widely accepted standards are used in compiling the bibliographies, resulting in world-wide bibliographic control (Haddad, 1999). Legal deposit and the subsequent creation of a national bibliography thus ensure compliance with the international IFLA/UNESCO commitment to Universal Bibliographic Control (UBC)¹ (Lariviere, 2000; Lor & Cillie, 1997: 4).

¹ The UBC programme originated under the auspices of IFLA (International Federation of Library Associations). The aim of the programme was to encourage countries to follow an international standard for bibliographic description of publications.

2.2.1.4 Access to and availability of deposited material

An effective legal deposit system ensures access to a country's published material to local and international researchers and citizens (Lariviere, 2000). This access can be provided via shared online cataloguing systems or other national and international networks, and is regarded as a prerequisite of a legal deposit programme and a guaranteed right (Council of Europe/EBLIDA, 1998; Jasion, 1991: 16; Lariviere, 2000; Lor, 1995: 86). Providing access to a publication through loan or copies to any scholar anywhere in the world constitutes observance to another UNESCO/IFLA commitment namely the Universal Availability of Publications (UAP)² (Lariviere, 2000; Lor & Cillie, 1997: 4). Legal deposit is not only the foundation on which UAP rests, but also serves as one of the pillars of freedom of expression and various national law ensuring freedom of information (Lariviere, 2000; Lor, 1995: 96).

2.2.2 Origin of legal deposit

It is generally acknowledged that the principle of the legal deposit of books originated in France under the French king, Francis 1, who was an advocate of learning and the arts (Crews, 1988: 553), and owned an impressive library. It was "from his kingly pride in the literary works of his time" (Partridge, 1938: 2) that the system of legal deposit of books was born. The Montpellier Ordinance of 28 December 1537 decreed that before the sale of any new book, a copy, irrespective of author, subject, cost, size, date or language, had to be sent to the Royal Library at Blois (Crews, 1988: 553; Lariviere, 2000).

Before long other countries followed this example. Legal deposit was established in Great Britain in 1610 when Sir Thomas Bodley made an

² The UAP programme aimed at providing the widest possible availability of published material whenever it was needed and in the format it was preferred.

agreement with the Guild of Stationers, in whose hands the printing, publishing and selling of books lay, whereby the library at Oxford University was to receive free copies of all new books produced by members of the guild (Byford, 2002: 292; Jasion, 1991; Partridge, 1938: 1). Similarly many other European countries also have a long and early history of legal deposit. The Germanic emperor, Ferdinand 11, required in 1624 that one copy of each book published be sent to the library of his court (Lariviere, 2000). The first recorded law relating to legal deposit in Poland was issued in 1645 in the city of Gdansk (Jasion, 1991: 160) and legal deposit systems have been in place in Sweden since 1661, in Denmark since 1697 and in Finland since 1702 (Lariviere, 2000), to mention but a few.

The more recent growth of the legal deposit concept throughout the world is reflected in two twentieth-century surveys. In 1938 the *Institut international de cooperation intellectuelle* in Paris identified 52 countries that had legal deposit systems in place (Lariviere, 2000), and in 1991 Jasion provided a list of 139 countries with statutory legal deposit libraries (Jasion, 1991). Although information regarding the current state of affairs is not readily available, legal deposit has been employed in most countries in the world for at least a century (Caslon Analytics, 2004) and is presently attracting much attention in the literature and in practice, especially with the advent of new technologies and the associated issues and problems surrounding the deposit of electronic publications.

2.2.3 Evolvement of legal deposit

Whilst Francis 1 was the first to implement a system of deposit with the ultimate aim of collecting and preserving material for future generations, his original idea has evolved over the centuries to include various other

objectives and purposes that justify the legalised national acquisition of books.

2.2.3.1 *Legal deposit and censorship*

One of the earliest of these motives was censorship. Legal deposit became inseparably linked with censorship in the early days of printing when lawmakers saw in such depositing an effective means of curbing the printing of blasphemous and seditious literature and thus the spreading of heretic and revolutionary ideas (Lariviere, 2000; Rugaas, 1990: 41; Willemse, 1962: 4). A 1661 Swedish edict for example, stated that "...it seems appropriate... that His Majesty should be informed of all the books and the writings printed in his kingdom" (Crews, 1988: 553), and censorship and supervision were aspects that remained part of legislation in Finland for a long time (Lariviere, 2000). In France Napoleon revised the law in 1810, directing deposits for a time to the ministry of police, so that surveillance of the press was made easier (Crews, 1988: 554). The universities of Oxford and Cambridge were originally chosen as centres for legal deposit in England not only because of their status, but also because they were under the control of the church and so suited to censorship procedures; however, censorship did not sit well with the British and was finally abolished in 1695 (Willemse, 1962: 14).

2.2.3.2 *Obtaining trade privileges*

At the time of the invention of the printing press there was no legislation in place that protected intellectual property. Printers (who were then also publishers) often reprinted existing books as a cheaper product, which resulted in considerable financial loss to both the author and the original printer (Willemse, 1962: 14). Printers thus began to negotiate with the ruler of the state, presenting him with a free copy of the publication in exchange for the sole rights of publishing the product for a certain period

in a specific area. In 1617 for example, this form of deposit became an official prerequisite for obtaining such trade privileges in France (Crews, 1988: 554; Willemse, 1962: 15).

2.2.3.3 *Copyright privileges*

The principle of obtaining approval for the act of rewriting/copying a document was already in place at the time when manuscripts were still being written by hand, and permission was often granted on the condition that an additional copy was made for the original owner of the manuscript. The invention of printing in 1450, however, made the multiplication of copies simpler and thus threatened the existing business of reproduction (Rugaas, 1990: 41; Willemse, 1962: 5). For some time the concept of legal deposit was closely linked with copyright (Ratcliffe, 1999: 77). In Great Britain the Statute of Anne, the Copyright Act of 1709, became the first law that dealt with protecting authors from the piracy of their works. This law required that nine copies of works be distributed to various libraries in order to obtain copyright (Lariviere, 2000). The United States Congress established legal deposit in the Copyright Act of 1790, requiring that all copyrighted materials be deposited at the Department of State (Crews, 1988: 555). In France legal deposit was abolished in the name of liberty, but was reinstated in 1793 as a formality to obtain copyright (Lariviere, 2000). The Berne (copyright) Convention, however, clearly stated that deposit formalities could not be a requirement for copyright, and after the convention's implementation in 1886 most countries modified their legal deposit systems, maintaining legal deposit, but not as a copyright formality (Lariviere, 2000; Lor, 1995: 95).

2.2.3.4 *From personal enrichment to national importance*

The practice of obtaining books by way of legal deposit served for quite a period of time as a means for the ruler of a country to enrich his own

library or a library that he wished to support (Lor, 1995: 95). There was, however, always an underlying assumption that the rulers were also obtaining publications with the aim of preserving the national cultural heritage (Partridge, 1938: 13). As the elements of censorship, privilege and copyright disappeared over time, legal deposit gradually became a more independent practice serving more purely library-related purposes. With new objectives such as establishing a national bibliography, and ensuring the availability of the collection for research purposes appearing during the twentieth century (Lariviere, 2000), legal deposit has evolved to a point where the aim is not to provide “rulers” or libraries with free copies of publications for whatever reasons, but “to collect, store and make available for the present and the future the sum total of the intellectual and cultural heritage of a country” (Rugaas, 1990: 42).

2.3 Legislation

2.3.1 Introduction

Most countries where legal deposit systems are implemented have legislation that deals with the issue, but there are some exceptions. Switzerland, for example, has a different, non-statutory arrangement. After the Swiss National Library was founded in 1894, Swiss publishers approved of the purpose of a national library but were wary of the censorship potential that legal deposit entailed and therefore agreed to a voluntary deposit arrangement (Crews, 1988: 567; Lariviere, 2000). The Netherlands also has no legal deposit system; rather, deposits are carried out on the basis of a voluntary agreement between the *Koninklijke Bibliotheek* and publishers (Lariviere, 2000; Voorbij & Douma, 1997: 155). Although it is accepted that voluntary deposit schemes should not be discouraged if they achieve the same results, the general consensus is that countries should have laws to control legal deposit so as to compel

producers to deposit their publications and ensure comprehensive, non-fragmented collections (Council of Europe/EBLIDA, 1998; Davies, 1998: 165; Lariviere, 2000; Lor & Cillie, 1997: 6).

Legal deposit legislation and the manner in which it is implemented and managed varies from country to country, depending on the legal systems in place and the publishing environment and traditions of the specific country. Legal deposit can be any of the following (Caslon Analytics, 2004; Jasion, 1991: 8; Lariviere, 2000):

- A specific stand-alone legal deposit act: examples of countries with such acts are Belgium, France, Iran, Latvia, South Africa, and Sweden.
- Part of another law, library regulations, or part of a national library act: as in Canada, Japan, Nigeria.
- Part of copyright legislation: for example Australia at federal level, the United States, and New Zealand.
- A government decree or other statutory order on national as well as municipal level: as in the Ivory Coast, Lithuania, and the Philippines.
- An administrative decree instead of a distinct statute or regulation: as in Chile and Cuba.
- Or various other regulations, circulars, rules and policy statements.

It is recommended that a legal deposit scheme should be established at a national level as a national responsibility (Lariviere, 2000). However, where legislative powers are shared by various levels of government, legal deposit can be carried out on both national and regional level.

Canada for example has national and provincial laws and Germany has national and federal laws. Other good examples of countries with a federal structure with more than one law related to legal deposit are Australia, India and the United States of America (Lariviere, 2000; Muir, 2001: 653).

To provide a background for a comparative discussion of issues contained in legal deposit legislation in the rest of the chapter, a short overview of the relevant laws in the United Kingdom, Australia, Malaysia and South Africa is given below.

2.3.2 Legal deposit in the United Kingdom

As mentioned in section 2.2.2, legal deposit had its origin in the United Kingdom in 1610 when Sir Thomas Bodley made an arrangement with the Stationers' Guild whereby they would put a copy of every book registered with them in the library of the University of Oxford, now known as the Bodleian library. By 1662 printers were obliged to deposit copies of books with the libraries of Oxford and Cambridge and with the Royal Library (later named the British Museum, now the British Library). Formal arrangements for the deposit of books were contained in the first Copyright Act of 1709, which included a fourth library, the Advocates' Library in Edinburgh, now the National Library of Scotland. Trinity College in Dublin joined in 1801 and The National Library of Wales was included in 1911 (Cambridge University Library, 2004). According to the 1911 Copyright Act publishers were required to provide a copy of every publication published in the United Kingdom to the British library and to each of the five other designated deposit libraries.

In 1996 the British Library started seeking ways of extending legal deposit to non-print material. This resulted in a 1998 report by a Working Party on Legal Deposit. The report recommends the development of a code of practice for the voluntary deposit of electronic materials to the deposit libraries, the British Film Institute and other repositories as an interim measure, and suggests that statutory deposit will be necessary in the long term (Byford, 2002: 295; British Library, 1998). Legal deposit was formally extended to other media formats including off-line electronic information in the Legal Deposit Libraries Act of 2003, which came into effect in 2004 and supersedes the Copyright Act of 1911. As the British Library is currently reviewing its processes for acquiring categories of materials not covered by previous legislation, the deposit of electronic publication continues under the terms of the voluntary code of practice as an interim arrangement (British Library, 2005b).

The Agency for the Legal Deposit Libraries is maintained by five libraries to make requests and accept legal deposit publications on their behalf (Agency for the ..., 2004). Publishers must submit one copy of each of their publications directly to the British Library, but the Agency claims copies on behalf of the other five deposit libraries within twelve months of the date of publication. These publications are distributed to the libraries by the Agency.

2.3.3 Legal deposit in Australia

On federal level, legal deposit in Australia is contained in Section 201 of the Commonwealth of Australia Copyright Act 1968, according to which one copy of all printed material published in Australia must be delivered to the National Library of Australia (Muir & Oppenheim, 2002; National Library of Australia, 2004). The National Library has for many years been

urging reforms to legislation in order to keep up-to-date with trends in electronic publishing (Haddad, 1999). In 1995 the National Library together with the National Film and Sound Archive made a joint submission to the Copyright Law Review Commission recommending *inter alia* that legal deposit be extended to include all electronic formats (National Library of Australia, 1995). Although the 1968 Copyright Act was updated by the 2000 Digital Agenda Act, the legal deposit provisions contained in the 1968 Act were not altered. In the interim the National Library has implemented a voluntary scheme for electronic publications (Caslon Analytics, 2004; National Library of Australia, 2004).

Australia has legal deposit provision at both federal and state level. Publishers are expected to comply with federal law and deposit copies of their material to the National Library, and with the various legislative prerequisites at state level.

- In New South Wales legal deposit is required under the New South Wales Copyright Act of 1879, sections 5-7. The type of material that is to be deposited is very similar to that stipulated at federal level. (Muir & Oppenheim, 2002; National Library of Australia, 2004).
- Statutory provisions were only very recently introduced in the Northern Territory with the passing of the Publications (Legal Deposit) Bill 2004 in the Northern Territory Legislative Assembly on 25 August 2004. The Act was to commence on 1 March 2005 (Northern Territory, 2004).
- In Queensland under the Queensland Libraries Act 1988, South Australia under section 35 of the South Australian Libraries Act 1982, and Tasmania under section 22 of the Tasmanian Libraries Act 1984, the scope of material to be deposited is much wider than that on

federal level, covering all types of non-print material. The Tasmanian Act has been interpreted as covering physical format electronic publications and web pages (Caslon Analytics, 2004; Muir & Oppenheim, 2002; National Library of Australia, 2004).

- In Victoria, section 49 of the Victorian Libraries Act 1988 covers a wide range of material, but excludes online material (Caslon Analytics, 2004); Muir & Oppenheim, 2002).
- Legal deposit was required under the Western Australia Copyright Act 1895 sections 4, 7-9 for that territory, but this act was repealed in 1994. Replacement legislation is currently before parliament. In the meanwhile a voluntary scheme of legal deposit is operating (National Library of Australia, 2004).

2.3.4 Legal deposit in Malaysia

Malaysia consists of Peninsular Malaysia on the south eastern tip of Asia plus the regions of Sabah and Sarawak on the north coast of the island of Borneo. It consists of 13 states and three federal territories (World Almanac and Book of Facts, 2004: 807). The Legal Deposit of Library Material Act 1986 which replaced the Preservation of Book Act, 1966, requires all publishers to deposit five copies of all print materials and two copies of all non-print material published in Malaysia to the National Library of Malaysia i.e. Perpustakaan Negara Malaysia (Malaysia, 1986). Although the wording of the Act does not specifically mention electronic publications, it is assumed in principle that all publications, including electronic publications of all types, are subject to deposit (Shahrozat & Edzan, 2004: 70). At state level state public libraries are concerned with building up and maintaining collections relating to the particular

individual states (APRCCN, 1998). With regard to legal deposit specifically, the State of Sarawak for example has a legal deposit system in place as stipulated under the Sarawak State Library Ordinance, 1999, according to which publishers are obliged to deposit three copies of their publications at the State Library, Pustaka Negeri Sarawak, and two copies to the regional libraries of Miri and Sibiu. Information with regard to legal deposit legislation or arrangements in other Malaysian states is not readily available.

2.3.5 Legal deposit in South Africa

Legal deposit was introduced in South Africa in 1842 when the British Copyright Act was made applicable to the whole British Empire, according to which a copy of each book published in a colony was to be deposited with the British Museum (Lor & Geustyn, 2001; Willemse, 1962: 78). It was only later in the nineteenth century that libraries in South Africa were designated as deposit libraries: In the Cape, the Public Library in Cape Town and the Grahamstown Public Library according to Act no. 2 of 1873; in Natal according to the Copyright Act no. 9 of 1896 superseded by Act no. 17 of 1897, which stipulated that two copies of various types of material were to be delivered to the Colonial Secretary; and in Transvaal where a law was passed wherein article 22 of the Act or the Regulation of Copyright of 1887 made provision for the deposit of works to the Registrar of the *Volksraad van de Zuid-Afrikaansche Republiek* (Partridge, 1938: 188; Willemse, 1962: 81-92). After the Union of South Africa came about in 1910 the four provinces were placed on an equal footing with the Patents, Designs, Trade Marks and Copyright Act (Act 9 of 1916). Grahamstown lost its legal deposit right, and in 1950 the Copyright Amendment Act (Act 22 of 1950) stipulated that publishers had to deposit an additional copy of their work to the Library of Parliament (Lor &

Geustyn, 2001; Willemse, 1962: 95-100). After the establishment of the Republic of South Africa in 1961 legal deposit entered a new dispensation with section 46 of the Copyright Act (Act 63 of 1965), and the provision of copies of publications to the British Museum was officially discontinued (Lor & Geustyn, 2001; Lor & Cillie, 1997: 4). After further evolution the Legal Deposit of Publications Act, 1982 (Act No. 17 of 1982) was passed.

Revision of the Legal Deposit of Publications Act of 1982 became imperative with the new developments on the local political front i.e. the establishment of a new democratic government in 1994, and the growing importance globally and nationally of audio-visual and electronic media (Lor & Cillie, 1997: 8). After an Information Seminar hosted by the (former) Department of Arts, Culture, Science and Technology³ in conjunction with the Committee of Legal Deposit Libraries in 1996, and the drafting of a Revised Legal Deposit Bill, new legislation came into being with the proclamation of the Legal Deposit Act, 1997 (Act no. 54 of 1997) which commenced on 1st July 1998.

The new Legal Deposit Act of 1997 makes provision for the constitution of a Legal Deposit Committee to oversee the implementation of the new Act. This committee consists of a broad spectrum of role players namely: heads of places of deposit, head of the Government Printing Works, one representative from each of the provincial official publications depositories, two representatives of the publishing industry, and no more than four additional members appointed by the Minister to represent other interested parties, including representatives of library and information services (Report on the first meeting..., 1999: 10; South Africa, 1997).

³ The Department of Arts, Culture Science and Technology (DACST) divided into two separate departments, the Department of Arts and Culture (DAC) and the Department of Science and Technology (DST) on 1 August 2002.

2.4 Issues covered in legal deposit legislation

2.4.1 Introduction

Many different approaches are taken to legal deposit legislation, and the various aspects and issues contained in this legislation differ from country to country. However, there are certain core issues that should ideally be dealt with in all legal deposit legislation. The most recent recommendations regarding the procedures and components for effective national legal deposit systems are provided by Lariviere (2000). The following section provides an overview of the various recommended issues with specific reference to the legal deposit legislation of the four countries selected for discussion.

2.4.2 Objectives of legal deposit

In a worldwide survey of legal deposit conducted by Jasion in 1991, it was found that very few laws actually state what the purpose of legal deposit is (Jasion, 1991: 6). However, in his *Guidelines for legal deposit legislation* Lariviere insists that the three main objectives of legal deposit, namely preservation, (bibliographic) control, and access, should be clearly expressed in legislation to avoid situations where legal deposit institutions may prioritise one objective over another (Lariviere, 2000).

British legislation merely states that the Legal Deposit Libraries Act makes “provision about the use and preservation of material deposited, and for connected purposes” (United Kingdom, 2003), and Australian legal deposit is regarded as fulfilling part of its “national documentary heritage role” (National Library of Australia, 2002). Malaysian legislation expands

more and covers all three of the objectives specifying that the law makes provision “for the collection, conservation, bibliographic control and use of library material published in Malaysia and to provide for matters connected therewith” (Malaysia, 1986).

According to Muir and Oppenheim (2002) South Africa’s Legal Deposit Act is one of the few pieces of such legislation in the world that actually fully sets out the purpose of legal deposit:

To provide for the preservation of the national documentary heritage through legal deposit of published material; to ensure the preservation and cataloguing of, and access to, published documents emanating from, or adapted for, South Africa; to provide access to government information; to provide a Legal Deposit Committee; and to provide for matters connecting therewith (South Africa, 1997).

2.4.3 Origin of the publication

Lariviere regards it as essential that the origin of a publication subject to legal deposit be described in a country’s legislation. He substantiates this argument by pointing out that, as national law cannot be implemented on an extraterritorial basis, a legal deposit law can only apply within the boundaries of a country. Any country that therefore wishes to receive copies of publications from its residents publishing abroad should specify this in its legislation (Lariviere, 2000).

In the United Kingdom, under the new Act of 2003 (United Kingdom, 2003) all items published and distributed in the United Kingdom and Ireland are liable for deposit, as are items published elsewhere but distributed in the United Kingdom and Ireland irrespective of place of publication or printing, the nature and size of imprint, or the extent of

distribution (British Library, 2005b). A comprehensive definition of Australian printed matter is provided by the National Library of Australia where Australian printed materials are defined as

“items published in Australia and its territories, items of Australian authorship (whether author was born in Australia, is a temporary resident of Australia, or is an expatriate but is considered to be Australian), and items relating to Australia and its territories, including material produced overseas of which the subject is wholly or substantially Australian” (National Library of Australia, 2002).

In Malaysia Section 3 of the Deposit of Library Act of Malaysia only defines the duties of the National Depository with regard to “material published in Malaysia” (Malaysia, 1986). South African legislation also quite brusquely refers to documents “emanating from, or adapted for, South Africa” (South Africa, 1997).

2.4.4 Places of deposit

It is often assumed that the national library in a country is the only designated institution for receipt of legal deposit material. This is, however, not necessarily the case, as other types of libraries such as university libraries, private libraries, libraries of parliament, national archives, and other institutions within provincial or state jurisdiction may also be chosen as depositories (Jasion, 1991: 12; Lor, 1995: 99). This diversity is to some extent demonstrated in the examples discussed below.

In the United Kingdom, the British Library and five other libraries namely the Bodleian Library of Oxford University, the University Library of Cambridge, the National Library of Scotland, the National Library of Wales, and the Library of Trinity College in Dublin all receive legal deposit material.

In Australia, copies of material must be delivered to the National Library of Australia as well to the appropriate state library namely the State Library of New South Wales, the Northern Territory Library, the State Library of Queensland, the State Library of South Australia, the State Library of Tasmania, the State Library of Victoria, and the Library and Information Services of Western Australia respectively.

The National Library of Malaysia, which was only established in 1972 (Wijasuriya, 1998: 62), is the national depository for all materials published in Malaysia. The Act makes no specific mention of deposit requirements in any of the other states or territories in the country, but in Sarawak local legislation designates the State Library as a state depository for materials published in Sarawak. Copies of these publications are also sent for preservation to the two regional public libraries in Miri and Sibul (Pustaka Negeri Sarawak, 2005).

In South Africa five libraries are designated as repositories for the depositing of books. They are the National Library of South Africa (Pretoria Campus and Cape Town Campus), Manguang Library Services (Bloemfontein Public Library), Msunduzi Municipal Library (Natal Society Library Pietermaritzburg), and the Library of Parliament in Cape Town. Other places of legal deposit are the National Film, Video and Sound Archives in Pretoria for the depositing of certain categories of non-print documents, as well as one place of legal deposit in each of the nine provinces to serve as an Official Publications Depository.

2.4.5 Number of copies to be deposited

In general, it is recommended that legislation should ensure that the number of printed copies of documents delivered as legal deposit is more

than one. Lariviere suggest a minimum of two copies (Lariviere, 2000). Other guidelines advise that the number should be kept to a “reasonable level, ranging from three to five... according to national needs” (Council of Europe/EBLIDA, 1998). The rationale behind the requirement of more than one copy is because multiple copies not only strengthen a library’s exchange resources, but as material is liable to wear and tear one copy can be kept for preservation purposes and the other(s) for research use (Crews 1988: 583; Jasion, 1991: 12; Lariviere, 2000). Legislation regarding the number of copies that have to be deposited varies considerably. Some countries have strict requirements and in others the law allows places of deposit to choose how many copies they need.

In the United Kingdom, one mandatory copy of a publication must be sent to the British Library and further copies sent to the other five libraries if this is requested in writing within a year of the day of publication. Thus the possible total of six copies. The same basic prerequisites apply to non-print publications, but provision is made in the Act for supplementary regulations where the need may arise (United Kingdom, 2003).

Australia requires the depositing of two copies of all publications; one copy of a work has to be delivered to the National Library and one to the appropriate State Library. In New South Wales, Queensland and South Australia legislation also applies to other libraries designated in the particular state, and a copy must also be deposited with these libraries (National Library of Australia, 2004).

In Malaysia, five copies of printed material and two copies of non-print material has to be deposited in the National Library (Malaysia, 1986).

In South Africa, publishers are expected to deposit one copy of a publication with each of the five legal deposit libraries. Official

publications depositories receive one copy of every official publication in the province that they are situated, but no copies of any other categories of documents. The National Film, Video and Sound Archives, with the assistance of the other places of legal deposit, is mandated to preserve at least one copy of designated audio-visual material (South Africa, 1997).

2.4.6 Costs

The costs of depositing material subject to legal deposit is generally borne by the publishers. Lariviere (2000) regards this free deposit as a matter of principle since the objectives of legal deposit are to serve the public interest. Publishers, however, are often critical of this practice, especially those with smaller print runs (Caslon Analytics, 2004). On national library level the issue is also discussed. At a “round robin” on legal deposit at a meeting of the Standing Committee of the IFLA National Libraries Section, the question of compensation to publishers for legal deposit was raised (IFLA, 2004). In some cases, the state does provide relief, but Lariviere (2000) advises that compensation systems should not form part of legal deposit legislation, but should rather be dealt with according to each situation, depending on the financial circumstances of the legal deposit institution.

In all four of the countries studied, publishers are expected to deliver legal deposit material at their own expense. The revised act of 1986 in Malaysia does include compensation for costly print items and also makes provision for payment for non-print material if such payment is demanded by the publisher (Malaysia, 1986). The South African Legal Deposit Act clearly states that all costs of the supply and furnishing of the documents and the information pertaining to the documents are to be borne by the publisher (South Africa, 1997).

2.4.7 When / how soon after publication should material be deposited?

The timing of the submission of documents varies from country to country and can influence publishers' compliance with legislation and the possible actions taken to enforce the depositing of material.

In the United Kingdom, printed publications have to be deposited within one month of publication to the British Library. Publications that are requested by the other five libraries must be provided within one month of the receipt of the request (British Library, 2005b). Australian publishers are also expected to deposit within one month of publication, with the exception of New South Wales and Western Australia which require that books be deposited within two months of publication (National Library of Australia, 2004). Print material in Malaysia has to be deposited within one month of publication and also non-printed library material if written request is made within one year of their publication (Malaysia, 1986). South African legislation expects publishers to dispatch a document within 14 days of the day on which the document is published (South Africa, 1997).

2.4.8 Who should deposit?

In most countries with a legal deposit system in place, the publisher as the producer of the publication is held responsible for depositing material. However, in countries such as France and Algeria for example, both the printer and the publisher must deposit. In the United States the copyright owner, in many cases the author, is held responsible for depositing (Crews, 1988: 560; Jasion, 1991: 8). It is thus important that terms such as "publisher" or "producer" be defined broadly enough so that commercial,

private or smaller and occasional publishers, as well as producers of non-print material (including tangible and non-tangible electronic material) are included in the legislation (Lariviere, 2000; Lor, 1995: 99).

According to legislation in the United Kingdom, the duty of depositing is placed on the publisher, i.e. anyone who publishes and distributes publications to the public in the United Kingdom (British Library, 2005b). In Australia, the sole responsibility for legal deposit lies with the publisher, whether a commercial publisher, private individual, club, church, society, or organization (National Library of Australia, 2004). The Malaysian Act regards publishers as responsible for depositing, but the Act does not expound on the meaning or interpretation of the term “publisher” (Malaysia, 1986).

In South Africa, the publisher of a document is responsible for depositing those materials subject to legal deposit. The Act describes the term “publisher” as covering any public or private person or body who

- publishes and distributes a document,
- bears the financial risk of the production of a document which is intended to be generally available, or
- imports a document produced abroad for a South African publisher or document adapted for the South African market to make it generally available (South Africa, 1997).

2.4.9 Type and scope of material that must be deposited

2.4.9.1 *General types of material*

The importance of legal deposit legislation in ensuring that, apart from books, the deposit of all kind of published material such as iconoclastic material, maps, music scores, audiovisual and electronic documents, for

example is covered cannot be underestimated (Lariviere, 2000). However, the question as to how such resolutions are to be implemented is not always very easy to answer. A number of aspects need to be taken into consideration.

- One of the first is the question of terminology. Definitions can be critical to the interpretation of an act regarding categories of materials that are subject to legal deposit (Lor, 1995: 99). Most of the more commonly used terms identified with legal deposit material such as “book”, “publication”, “printed matter” and “library material” are based on the concept of print/textual material (Muir, 2001: 655). With many new developments especially on the technological front, it has become imperative that legal deposit legislation cover all types of published material regardless of the format or means by which this material becomes available (Lariviere, 2000; Lor & Cillie, 1997: 7).
- The term ‘publication’ should furthermore be defined not only to cover any format in which something is issued, but also to ensure that information is made generally available. The requirement of the general availability of material to the public whether for sale, hire, or for free is of major importance when drafting legal deposit legislation (Muir, 2001: 653; Lor & Cillie, 1997: 5).
- Comprehensiveness and exhaustiveness are two other important issues in legislation concerning the scope and/or types of documents subject to legal deposit. Libraries are just not able to cope with rapidly increasing collections resulting from the information explosion, and it is therefore suggested that various situational realities should be taken into consideration when drafting legal deposit legislation (Smethurst, 1992: 34). It is recommended that material to be excluded should be clearly stated in the legislation and all else should be included.

Legislation in most countries does in fact specify the type(s) of material that the individual deposit institutions want to collect, depending on specific needs and circumstances. This can depend on a number of factors. Size of print run, confidentiality, availability to the public, changes in the text in further editions, and nationality of content, publisher or author (Jasion, 1991: 11) are some aspects that are taken into consideration. The Council of Europe/EBLIDA (1998) suggests that deluxe or valuable publications should be deposited in a limited number of copies and Davies (1998: 165) believes that consideration must be given to the specific difficulties involved in providing specialist types of material. Considering the ever-increasing number and range of information carriers, deciding what material will be of lasting cultural and research value is thus important (Muir, 2001: 658).

In the United Kingdom under the Copyright Act of 1911, a publication is simply defined as anything which is issued to the public; where or by whom these copies are published, is not relevant (Eden et al., 1999: 273). Before the drafting of new legislation, a study on the definition of terms to help with the structuring and wording of the new legislation was commissioned by the British Library. These definitions were to be “format or medium-independent to make them ‘future-proof’” (Muir, 2001: 656). This is reflected in the new Act of 2003 which refers to print material, specifies what this includes, and provides for publications made available by non-print means (United Kingdom, 2003). The Act also allows for individual libraries to decide on which material to exempt from legal deposit. Exemptions made by the British Library include internal reports, examination papers, local transport timetables, appointment diaries, wall and desk calendars and posters (British Library, 2005b). A few categories of material are deliberately not claimed by the library at Cambridge, such as books in large print (Cambridge University Library, 2004). The libraries of Scotland and Wales give priority to publications about Wales and Celtic

countries (National Library of Wales, 2005) and the National Library of Scotland particularly emphasizes the building and maintaining of collections of material published in or relating to Scotland or the Scots on any subject (National Library of Scotland, 2005).

In Australia, a work is assumed to have been published if reproductions of the work or edition have been made available (whether by sale or otherwise) to the public (National Library of Australia, 2004). The term “library material” that was used under the Copyright Act limited deposit requirement to items in a printed form (books, periodicals, newspapers, pamphlets, sheet music and maps) but it is foreseen that the definition of a publication in the revised Copyright Act will be extended to include the concept of publication by transmission (Gatenby, 2002; National Library of Australia, 1995). Some states have already extended their individual legislation to collect a wider range of materials than allowed for by the current commonwealth legislation (National Library of Australia, 1995). Published Australian materials in all languages are collected and material relating to Aboriginal and Torres Strait Islanders are actively sought in order to reflect Australia’s cultural diversity (National Library of Australia, 2002).

Malaysian legal deposit legislation defines “published” as material which has been produced and made available to the public whether at a price or free of charge. Legislation requires the “best copy of the whole material that is published” to be deposited, and a broad description is given of what this encompasses. The best copy principle also applies to non-print material. New editions of material are also covered in the legislation. The term “library material” is used in the Malaysian Act of 1986, and to prevent ambiguity a comprehensive description of what the term entails is provided. Both print and non-print media are included in the definition of “any form of printed, graphic, audio, electronic or other media, on or in

which information is written, recorded, stored, displayed or produced and categorized” (Malaysia, 1986). No guidelines are provided in the event of a library’s wishing to exempt a publisher from delivering a publication. Section 6, however, makes provision for the disposal of material as authorised by the Director General, provided that a copy is preserved in either original or other practical format (Malaysia, 1986).

The South African Legal Deposit Act of 1997 regards published to mean

“... produced to be generally available in multiple copies or locations to

- any member of the public, whether through purchase, hire, loan, subscription, licence or free distribution; or
- the members of an association or a society, the membership of which is open to any qualifying member of the public” (South Africa, 1997).

The new terminology used in the Act is based on the Norwegian model and does not differentiate between the types of publication subject to legal deposit but provides generic definitions for the terms “document”, “medium” and “published” instead (Lor & Geustyn, 2001). The term “book” used in previous legislation, for example, has in the new Act been replaced by “document”. Document means any object that is intended to store or convey information in a variety of formats (textual, graphic, visual, auditory or other intelligible format) through any medium (i.e. any means of recording or transmitting information intended for reading, listening or viewing) (South Africa, 1997).

The Legal Deposit Act in South Africa also makes provision for individual legal deposit libraries, on recommendation of the Legal Deposit Committee, to grant exemption for particular types of document they do not require, or for publishers to be exempted from supplying documents or granted financial relief under certain circumstances such as “serious financial or other hardship” (South Africa, 1997). In the Regulations

explaining the Act specific information is given concerning exemptions. For example the number of copies to be supplied if less than a certain number is printed, one copy of a luxury edition of a book to be supplied to the National Library, Cape Town Branch only, and reprints of books need to be supplied to the National Library, Pretoria Branch only (DACST, 1998).

2.4.9.2 *Legal deposit of non-print material*

When legal deposit came into being as a term and as a system it centred mainly on printed media, specifically books. It is only fairly recently that paper has begun to be challenged as the dominant information carrier (Caslon Analytics, 2004; Rugaas, 1990: 42). This has led to changes in legal deposit legislation. A survey conducted as early as 1983/84 (Pinion, as cited by Lor, 1995: 103) found that most of the countries surveyed were making attempts to maintain national collections of non-print materials, and quite a number of them reported that legal deposit legislation relating to non-book material such as sound recordings, film and video, was either in progress or already existed.

More recent technological innovations and changes have brought about even newer forms of publications. As discussed in the previous section, recent legal deposit guidelines emphasize the need for countries to change existing or adopt new legislation to provide for the deposit of this material. The complexities of the issues raised by electronic publications represent one of the biggest challenges that legal deposit has ever had to face (Lariviere, 2000). As a support measure, the Conference of Directors of National Libraries (CDNL) issued a document on legal deposit of electronic publications with the main purpose of providing guidelines to countries planning to introduce new legislation (CDNL, 1996). Many countries have or are in the process of adapting their legislation. Some

have tried to cover audio-visual material, others extend their legal deposit legislation by introducing “technology-neutral” provisions (Caslon Analytics, 2005) and in some cases legal deposit legislation incorporates electronic publications specifically (Lariviere, 2000).

The legal deposit legislation concerning non-print publications in the four countries covered in this study has already been touched upon in section 2.3 as part of the discussion of general legislation. A summary is therefore presented here.

In the United Kingdom, it was long felt that legal deposit legislation should be extended to cover non-print material, and so the British Library commissioned a number of studies to look into issues arising from such an extension (Muir & Davies, 2000: 152; Russon, 2001: 84). In 1998 a group drawn from libraries and publishers was asked to develop an interim code of practice for the voluntary depositing of non-print publications. The voluntary scheme was introduced in January 2000 and is administered by the Joint Committee on Voluntary Deposit (Muir & Davies, 2000: 151; Poynder, 2004: 28). Even though the new Legal Deposit Libraries Act of 2003 makes provision for the deposit of all types of material including “printed and similar publications, including on and offline publications” (United Kingdom, 2003), this interim arrangement will continue until all problems associated with the implementation of the Act have been sorted out (British Library, 2005b).

Legislation in some states in Australia provides for the deposit of electronic materials, but due to the narrow definition of ‘library materials’ in the relevant Act, federal legislation does not. The National Library of Australia and the National Film and Sound Archive, in a submission to the Copyright Review Committee, stressed *inter alia*, that the scope of the Copyright Act of 1968 needed to be extended to include non-print

material (National Library of Australia, 1995). In the meanwhile, however, the National Library of Australia, with the permission and cooperation of the publishers concerned, has been collecting significant Australian online publications through voluntary deposit or by purchase since 1996, when the PANDORA project was launched (Gatenby, 2002; National Library of Australia, 2002). The purpose of the PANDORA Archive is

to collect and provide long-term access to selected online publications and websites that are about Australia, are by an Australian author on a subject of social, political, cultural, religious, scientific or economic significance and relevance to Australia, or are by an Australian author of recognized authority and make a contribution to international knowledge (PANDORA Archive, 2004).

In Malaysia, current legislation covers all non-printed library material including cinematograph films, microforms, phonograph records, video and audio recordings and other electronic material (Malaysia, 1986). However, the Act lacks a specific definition of electronic publications, which is regarded as a serious deficiency and it has been suggested that the Act be amended to clearly specify and define both off-line and on-line/networked publications (Shahrozat & Edzan, 2004: 74).

In South Africa, the changing technological environment particularly involving audio-visual and electronic media, and the resulting conviction that a country that collects only printed material will be collecting a steadily declining proportion of its published heritage, were the main considerations that led to the enactment of the new Legal Deposit Act in 1997 (Lor & Cillie, 1997: 6; Lor, Britz & Watermeyer, 2006: 41). Previous South African legislation did not provide for the depositing of audio-visual material and until now the National Film, Video and Sound Archives collected such material on a basis of voluntary agreement (Lor & Cillie, 1997: 7). Regulations dealing with material in the form of discreet

objects such as audio-visual media and also hand-held electronic media have been published in the Government Gazette (DACST, 1998). However, regulations concerning dynamic online electronic publications such as websites for example, have not yet been dealt with (Lor, Britz & Watermeyer, 2006: 41).

Many difficulties arise in implementing the deposit of information in electronic/digital form. Many complex legal and technical problems need to be taken into account, and the costs surrounding the preservation of materials and the satisfactory provision of access to the information also have to be considered (Lor & Cillie 1997: 7; Lor & Geustyn, 2001). South Africa lacked the capacity for addressing all the necessary implementation procedures immediately after the Act was proclaimed. It was consequently decided that legislation would have to be phased in gradually and electronic documents were initially only deposited at the request of the National Library in Pretoria (Letshele & Lor, 2002; Report on the first..., 1999: 11). A strategy for implementing the new legislation was envisaged by the National Library of South Africa and the Legal Deposit Committee that would include *inter alia* undertaking small pilot projects to gain experience of the various media, learning from knowledgeable libraries in America and Western Europe, and accepting offers from colleagues specifically in the Nordic countries to assist in training, systems design and software (Lor & Geustyn, 2001). A project managed by the Foundation for Library and Information Service Development (FLISD) in South Africa on behalf of the National Library is currently under way to plan for the legal deposit of all types of electronic publications, including websites (Lor, Britz & Watermeyer, 2006: 41).

2.4.9.3 *Government publications*

The depositing of government material and access to government information are regarded as crucial aspects of legal deposit (Jasion, 1991: 14; Lor, 2003a: 6). A country's culture includes its political processes (Mabandla, 1997: 5) and not including government publications in a national legal deposit scheme would deprive the nation's cultural heritage of an integral component (Lariviere, 2000). Depending on the type of government structures in place, or by whom government publishing is done, the deposit of government publications form part of the legal deposit systems in most countries, although they may not necessarily be included in main legal deposit legislation (Lariviere, 2000; Jasion, 1991: 14).

In the United Kingdom the term "publisher", as used in the Legal Deposit Libraries Act (United Kingdom, 2003), includes all government departments and agencies that publish print and non-print material, and these publications must be delivered to the six legal deposit libraries as stipulated in the Act. In addition, although it is not a legal deposit institution, the Library of Queen's University in Belfast is regarded as the official deposit library for Northern Ireland official publications (OPSI, 2005).

In Australia the Copyright Act of 1968 does not cover government publications. The National Archives of Australia is responsible for acquiring the records of the Commonwealth Government, and the State Archives or Public Record Offices for acquiring State government records (National Library of Australia, 2002). A great variety of directives and circulars are also issued by State and Territory governments, some of which require their government departments to deposit materials for preservation with the National Library as well as with their State or Territory library (National Library of Australia, 2002).

Malaysian legislation also does not make specific mention of the legal deposit of government publications. It can be argued that the use of the term “library materials” (Malaysia, 1986) in the Act automatically implies the inclusion of government publications, as was shown to be in the case of electronic materials (Sharozat & Edzan, 2004: 65). However, the term, even though it is meant to include the total spectrum of printed and non-printed material published in the country, is an inappropriate choice of term that could be interpreted incorrectly and does not do full justice to the wide range of publications that are subject to legal deposit.

In South Africa, the Legal Deposit Act provides for the establishment of Official Publications Depositories (OPDs) (South Africa, 1997). It is generally acknowledged that the Federal Depository Library Program of the United States, where most Government Publications Depositories are academic and public libraries that serve constituencies of every district in the country (Adler & Lowry, 1998: 387), served as the model which inspired the South African concept of OPDs (Baker, 2004: 4; Lor, 2003a: 6). The Legal Deposit Act defines an official publication as “... a document which is published by an organ of state of national, provincial or local government, a parastatal organization or any other institution listed as a public entity...” (South Africa, 1997). Legislation requires that at least one OPD be established in each of the nine provinces in South Africa. Existing legal deposit libraries, with the exception of the Library of Parliament that is not open to the public, may also be designated as OPDs (Lor, 2003a: 6). The duties of the OPDs are the same as those of the other places of legal deposit.

Problems are being experienced with the designation of OPDs. Reasons for this include the following: i) OPD’s will receive publications of all three tiers of government as well as those of other government bodies; ii)

a lot of preliminary work is required such as adding material to stock, and processing them and making them available to clients will make considerable demands on designated libraries required; and iii) the rapid development of technology has to be taken into account (Lor, 2003a; Ramohlola, 2006). As in the United States, where a paradigm shift towards provision of government information in electronic forms is taking place (Adler & Lowry, 1998: 387; Kumar, 2006: 226), it is not unrealistic to expect that the OPDs will have to be geared more to providing public access to Web-based government publications in South Africa as well (Lor, 2003a: 20). It is, however, anticipated that these depositories will eventually provide systemized structures for the dissemination and promotion of government documents, and accordingly play an important role as agencies through which the public can gain effective access to government information (Baker, 2004: 5; Lor & Van As, 2002: 103; Tuckett, 2003: 31).

2.4.9.4 *Copyright and legal deposit*

Copyright issues are very important when it comes to legal deposit, but the two terms should not be misunderstood or intermixed. Different international conventions allow different uses of the terms. The Universal Copyright Convention, for example, allows signatory states to include procedures such as deposit in their copyright legislation. The Berne Convention, however, requires that copyright protection be available without any other formalities; legal deposit cannot therefore be made compulsory, and parallel schemes then become necessary (Lariviere, 2000). As a result, various scenarios may exist, such as countries where legal deposit is attached to copyright legislation, countries where legal deposit is not attached to copyright legislation, but where the name of the act still says 'copyright', and countries where legal deposit legislation has no connection to copyright at all.

An important issue in the question of legal deposit and copyright is the need for deposit institutions to be able to make copies for preservation purposes and/or future use, as this may conflict with copyright legislation in a specific country. In most cases legislation allows the institution to reproduce a (print) document for purposes such as replacing damaged or lost copies if the work is not available elsewhere (Lariviere, 2000; Scott, 2002). This, however, becomes more complicated in the electronic environment, where permission would need to be granted to download or reproduce whole works, not only for replacement purposes but for deposit purposes as well (Gatenby, 1999; Lariviere, 2000; Seadle, 2001: 310). Another potential problem with electronic material regards access. Exceptions to copyright are required so that copies can be made with the aim of providing the public with reasonable access to the material (Gatenby, 1999; Lariviere, 2000; Scott, 2002: 4)

In the United Kingdom, there has for a long time been no connection between the act of legal deposit and the conferring of copyright, but since legal deposit provisions formed part of the Copyright Act, the term 'copyright library' was and is still widely used (McGowan, 1994: 74). The new act which replaces section 15 of the Copyright Act, is more appropriately named the Legal Deposit Libraries Act. The act makes provision for the reproduction of both printed and electronic material for specific purposes under prescribed circumstances and specifically states that copyright is not infringed by the copying of a work from the Internet by a legal deposit library or a person acting on behalf of such an institution (United Kingdom, 2003).

In Australia, legal deposit falls under the Copyright Act, but is clearly distinguished from copyright. Library records and the legal deposit receipt issued to the publisher by some legal deposit libraries may,

however, be used as copyright evidence of date of issue (National Library of Australia, 2004)

Malaysian and South African legislation make no mention of copyright in the relevant Acts themselves. The assumption can be made that the connection with copyright (as was the situation under previous British legislation) has not been relevant for so long that a reference is regarded as unnecessary.

2.4.9.5 Enforcement of legal deposit legislation

Enforcement is a very important issue with regard to implementing legal deposit. In order to place pressure on a publisher to comply with the law it is generally recommended that legislation should include a penalty for non-compliance (Council of Europe/EBLIDA, 1998; Lariviere, 2000). Although such a fine should be substantial enough to support the legal deposit requirements, it should on the other hand not be so unreasonable as to prompt legal challenge of the law as infringing the principles of freedom of expression (Lariviere, 2000).

If a publisher fails to adhere to legal deposit legislation in the United Kingdom, the library may apply to the county court for an order requiring the publisher to comply with the obligations stated in the Act. If a publisher is unable to comply the court may instead make an order requiring the publisher to pay to the library an amount which is not more than the cost of making good the failure to comply (United Kingdom, 2003).

In Australia, a small penalty of \$100 AD is imposed for non-compliance. The most recent information available in the literature proposes that the

penalties should be increased and expressed in terms of penalty points (National Library of Australia, 1995).

In Malaysia, a publisher who fails to deliver material is liable to a fine not exceeding three thousand ringgit (1Ringgit = 2 ZAR). On conviction the court orders the publisher to deliver the library material in its original form or a reproduction thereof if no longer available. If the publisher concerned fails to do this, it has to pay the cost incurred by the Director General for the reproduction of the material (Malaysia, 1986).

The South African Legal Deposit Act provides for a fine not exceeding R20 000 for failure by a publisher to deposit material. In addition, to remedy the non-compliance, such documents have to be supplied by the publisher to the place(s) of legal deposit within 30 days, or copies may be bought, or if no longer available, reproductions made, by the place(s) of legal deposit, and costs recovered from the publisher. If all these measures fail, the designated officer from the Department of Arts and Culture may, in consultation with the Legal Deposit Committee, institute civil proceedings against the offending publisher (South Africa, 1997).

2.4.10 Comparative summary of legal deposit legislation

The information discussed in this chapter on legal deposit can be effectively presented as a table. The table provides a simplified and easy comparison of the issues covered by legislation in the four countries, and a comparison of this information with the recommendations contained in Lariviere's *Guidelines for legal deposit legislation*. Although the order in which the various issues are discussed in this chapter differs from the order in which they appear in Lariviere's document, the basic principles, issues, and elements covered by his work have, as far as was practical for the purposes of this study, been incorporated in this chapter.

Table 2.1: Comparison of legal deposit legislation in four countries

Lariviere guidelines	United Kingdom	Australia	Malaysia	South Africa
Legislation				
<i>Statutory obligation and national responsibility</i>	Yes	Yes. Federal and state	Yes Also on state level	Yes
<i>Specific law or part of another</i>	Specific Act	Part of Copyright Act	Specific Act	Specific Act
Issues covered in legislation				
<i>Objectives of legal deposit stated</i>	No, only in general terms	No, only in general terms	No, only in general terms	Yes
<i>Origin or place of publication stated</i>	Yes	Yes	Yes	Yes
<i>Depository /place of publication</i>	British Library + 5 other libraries	National Library + state libraries	National Library + state/ public libraries	National Library + 3 other libraries (plus NFVSA + OPDs)
<i>Number of copies</i>	6 copies	2 copies (1 to Nat. Libr. + 1 to relevant state libr.)	5 copies of print material, 2 copies of non-print	5 copies to legal deposit libraries (excl. NFVSA and OPDs)
<i>Costs</i>	Costs borne by publisher	Costs borne by publisher	Costs borne by publisher	Costs borne by publisher
<i>Time of deposit</i>	Within 1 month of publication	Within 1 month of publication	Within 1 month of publication	Within 14 days of publication
<i>Depositor/who should deposit</i>	Publishers	Publishers	Publishers	Publishers
<i>Comprehensiveness/types and scope of publications</i>				
<i>* Definition of terms</i>	New Act specifies print and non-print	Term “ <i>library material</i> ” to be changed in future	Comprehensive description of term “ <i>library material</i> ”	Generic terms used to replace older terms
<i>* Exemptions</i>	Libraries can decide on exemptions	No mention of exemptions	Provision for exemption and disposal of material	Provision for exemption and disposal of material
<i>* Electronic publications</i>	Electronic covered in new Act	Current term of “ <i>library material</i> ” excludes publ. by transmission i.e. electronic not included	Electronic publ. not included in Act but are assumed to be covered by term “ <i>library material</i> ”	All types of material covered in Act incl. electronic
<i>* Government publications</i>	Term “ <i>publication</i> ” also includes gov. publ.	Gov. publ. not included in Act	Gov Publ. not included in Act but are assumed to be covered by term “ <i>library material</i> ”	Specific provision for government publications

<i>Copyright</i>	Historic connection with copyright. Copyright restrictions covered in new Act	Legal deposit falls under Copyright Act but clear statements by libraries not to confuse the issues. General provision for copyright in Digital Amendment Act	No current connections with copyright. No mention of copyright in Act	No current connections with copyright. No mention of copyright in Act
<i>Enforceable with fine structure</i>	Yes	Yes with small penalty	Yes	Yes

2.5 Summary

This chapter provided a short overview of legal deposit legislation in general, with a more detailed discussion, based on the guidelines for legal deposit legislation developed by Lariviere, of the specific elements and issues covered in such legislation. With the aim of contextualising South African legislative issues, a comparative overview of legislation in the United Kingdom, Australia, Malaysia and South Africa was given. The chapter concluded with a comparative table of the legislative and other issues covered in the discussion.

The importance of a system of legal deposit for a country cannot be underestimated. It ensures the acquisition of all published materials emanating from and relating to a country, guarantees the preservation of this material, and provides access to the publications received as legal deposit. South African legislation compares excellently with that of other countries such as the United Kingdom, one of the first countries in the world to establish a legal deposit system, Australia, a country with many similarities with South Africa, and Malaysia, a fellow developing country. In addition, the exposition of the issues contained in legislation clearly underscores the findings of Bazan (2004) that South African legal deposit legislation complies excellently with international recommendations.

Legislation, however, can only be implemented successfully if the necessary activities, procedures, and supporting mechanisms and structures involved in the process of implementing legal deposit, are in place. These issues are discussed in the next chapter to gain insight into the crucial factors that form the basis for this study's investigation into legal deposit as envisaged.