

4 Role players in the legal deposit process

4.1 Introduction

The implementation of legal deposit and the enforcement of the relevant legislation in a country is not a simple process that happens as a matter of course. Appropriate legislation and fully functioning processes, as discussed in the previous two chapters, form a firm foundation for a legal deposit system, but goodwill and trust and a working consensus between role players are also crucial if the arrangement is to be successfully implemented. The various stakeholders in the legal deposit process therefore have to be identified, and their role and interests taken into consideration, as the different people and institutions involved in the process directly impact on the effective and efficient management of the system, as well as the extent to which legislation is adhered to.

It stands to reason that the places of legal deposit together form one of the main role players in a legal deposit scheme. They are held responsible for actually implementing legal deposit legislation and for promoting awareness and support for legal deposit as a means of preserving and appreciating a nation's cultural heritage (Lor, 2003b: 147). Depository institutions generally agree that maintaining an archive of a nation's published output is essential and that the cultural and long-term research values endorse the significance of legal deposit (Byford, 2002: 6; Ratcliffe, 1999: 75).

Publishers are another main role player, as they are primarily held responsible for delivering their material for legal deposit in most countries where legal deposit is implemented (Lariviere, 2000). From the publishers'

point of view, national deposit collections are one of the greatest legacies of a country, and the principle of preserving the nations' cultural heritage in a stable and organised environment, elicits little opposition. (Davies, 1998: 160; Whitaker, 2002: 23). Often, however, in the practical execution of the various processes of implementing legal deposit legislation, depository institutions and publishers may have diverging opinions.

The state, as an additional role player, has far-reaching functions as creator and overseer of the system. As the ownership of legal deposit material remains with the state (Jasion, 1991: 14), the government of a country is responsible for establishing the laws and regulations that govern the implementation of legal deposit and associated practices.

Statutory bodies, professional associations and other similar types of organisation are further examples of groups that play a supporting role in the practical execution of legal deposit.

Unless these various role players and the parts they play in the legal deposit system are clearly understood, an investigation into the practical implementation of the process and its accompanying problems cannot be conducted successfully. This chapter therefore presents a picture of the persons and organisations that have a stake in both the general legal deposit arena and in South Africa specifically. It furthermore looks at the ways in which these role players fulfil their individual functions or otherwise influence the execution and accomplishment of legal deposit in their various capacities.

4.2 Depository institutions as role players in legal deposit

4.2.1 Introduction

Various libraries and/or organisations such as national libraries, regional libraries, university libraries, national archives, and so forth can be designated as national legal deposit institutions (Jasion, 1991: 12; Lariviere, 2000). As such, these institutions will be governed, with some exceptions, by specific legal deposit legislation enacted by the national legislature, with associated responsibilities relating to the implementation of legal deposit in that specific country.

National libraries have played diverse roles in various countries (Brophy, 2001: 15; De Beer, 2003: 69) but have always stood as national symbols of the written published culture of a nation (Feather, 2003: 175; Lor, 1997). Legal deposit forms the basis for acquiring a national collection of material and in most countries with a system of legal deposit it is largely national libraries, some with histories stretching back for a number of centuries, that are ultimately concerned with the implementation of legal deposit (De Beer, 2003: 69; Feather, 2003: 175; Rugaas, 1990: 41). It is within this context that the role of the national library as an exemplary example of a legal depository institution will be discussed.

4.2.2 The national library as a depository institution

The national library is a “cultural institution which is shaped by the society which needs and nurtures it” (Lor, 1997). The development of national libraries followed diverse patterns in different countries, but most of these institutions originated with the basic functions of collecting,

preserving and making available publications, and only much later of creating records of these publications i.e. national bibliographies (Brophy, 2001: 16; Line, 1995: 1; Matheson, 1997: 16). National libraries have also relied to a large extent on some form of legislation to ensure the preservation and the sharing of the national published history and culture.

In his seminal work, *Guidelines for national library legislation* Lor (1997) proposes that national library legislation should, *inter alia*, include the following functions:

- i. “to build up as complete a collection of material emanating from or relating to a country as appropriate”
- ii. “to render bibliographic services and serve as the national bibliographic agency”
- iii. “to provide access to its collections of material ...”

These three recommended functions of national libraries correspond directly with the three core objectives of the legal deposit system and practice, namely preservation, control and access (Jasion, 1991: 7, 16; Lariviere, 2000; Lor, 1995: 96, 97) as discussed in chapter 2, section 2.2.

4.2.2.1 Preservation

Preservation and storage of material is the main and continuous theme of legal deposit (Jasion, 1991: 7; Lor, 1995: 97). Legal deposit is regarded as the main instrument for building up and preserving a nation’s intellectual and cultural heritage (Council of Europe/EBLIDA, 1998) and even where legislation does not necessarily specify that legal deposit material should be preserved in perpetuity, it is often seen as a “moral responsibility” to do so (Lor, 1995: 97).

Preservation is also the one aim and function of a national library that has remained constant over time (Brophy, 2001: 19; De Beer, 2003: 74; Line, 1995: 2). National libraries have to deal with many difficulties to be successful in acquiring the material subject to legal deposit, and face with enormous preservation challenges, especially with the advent of electronic publication (Lariviere, 2000; Lor, Britz & Watermeyer, 2006: 43; Muir, 2001: 661). However, the endeavour is of critical value (Scott, 2002). National cultural identity depends to a great extent on the survival of cultural material and without this, not only would there be gaps in the “fabric of the nation’s history” (Ratcliffe, 1999: 75), but also the works of literature and scholarship that are the “abiding hallmark of our civilisation” (Davies, 1998: 160) would be lost.

4.2.2.2 Control

Acquiring published material by means of legal deposit is the basis for producing a record of a nation’s published heritage in the form of a comprehensive national bibliography (Haddad, 1999; Lariviere, 2000; Lor & Geustyn, 2001). National bibliographies provide information on the current state of publishing within a country, and their records are made available locally as well as internationally in various catalogues, databases and directories (Beaudiquez, 2002; Lor, 1995: 96).

The creation of a national bibliography thus conforms to and supports the objectives of Universal Bibliographic Control (UBC). UBC, a programme that was started in the early 1970s under the auspices of the International Federation of Library Associations and Institutions (IFLA), was practically implemented by requiring firstly that each country participating in the programme identify and describe its own publications, and secondly, that all countries follow an international standard for bibliographic description of those publications to facilitate the exchange of information (Parent,

2004: 70). The success of the UBC programme has been seen in the growth of national bibliographies due to a large extent to the development of various International Standard Bibliographic Descriptions (ISBDs) for all formats of material and their use in many countries as the basis for national cataloguing codes (Law, 1998: 296; Parent, 2004: 70, 71).

Lor (1997) in his *Guidelines for legislation for national library services* suggests that the comprehensive bibliographic recording of publications of a country should be one of the functions of a national library. Although the compilation of the national bibliography is not a function solely of the national library in all countries (Knutsen, 2006: 6), and although some authors believe that this function may decline in the electronic environment (Phillips, 1997: 48), in the majority of countries discussed in the literature the creation of official national bibliographies of current materials and their role as an instrument for achieving bibliographic control are integrated into the mission of national libraries (Beaudiquez, 2001; De Beer, 2003: 79; Madsen, 1999). It is a mission that is “assigned to them by legal deposit” (Beaudiquez, 2001) and legal deposit is universally acknowledged as being essential for the success of the creation of a national bibliography (Bourne, 1993: 100; Crews, 1988: 575; Lor & Geustyn, 2003).

4.2.2.3 Access

Providing access to published material is one of the fundamental prerequisites of a legal deposit system (Lariviere, 2000; Lor, 1995: 97). Access can be provided in many ways, ranging from shared online catalogues, national and international networks and access through loan or copies of publications to any scholar or researcher worldwide (Council of Europe/EBLIDA, 1998; Lariviere, 2000). This universal access is in

accord with the principles of the Universal Availability of Publications (UAP) programme.

The UAP programme was a particularly British-led activity, created in 1980 under the leadership of Maurice Line through the British Library's interlending and document supply activities, with successive Directors-General of the British Library's Lending Division following suit (Law, 1998: 297; Parent, 2004: 72). Parent (2004: 71) contends that the success of the UBC programme (see 4.2.2.3) contributed to the development of the UAP programme. UBC provided users with the means of identifying material throughout the world, but this created frustration at the inability of obtaining copies of items. The concept behind universal access is to provide "the widest possible availability of published material, wherever a user needs it and in the format preferred" (Parent, 2004: 70).

National libraries are encouraged to make specific provision in their legislation for aims and functions that include making available for use their national collection of resources and facilitating access to these resources within the specific country and abroad (Lor, 1997). The success of the UAP programme depends to a great extent on the cooperation of the national bibliographic agencies around the world (Parent, 2004: 72) and it is in this capacity as bibliographic agencies that national libraries are directly concerned with access to material. Legal deposit legislation is needed to ensure that copies of national publications are preserved, which in turn means that, for the purposes of this discussion, national libraries take responsibility for providing access to these publications through the creation of bibliographies and/or catalogues and for supplying them by loan or copying to whomever may need them locally or internationally (Cornish, 1998c: 481).

4.3 Publishers as role players in legal deposit

4.3.1 Introduction

Publishers acknowledge that establishing a national archive, where publications deposited with the designated institutions are preserved in a stable and organised environment for the benefit of future generations, is a valuable concept (Davies, 1998: 160; Graham, 1994: 153; Muir, 2001: 661), and therefore on the whole they support the “aspirational ideals” behind legal deposit (Byford, 2002: 7) . However, many factors such as the costs and benefits of various publishing endeavours, and the types, amount and value of publications, all impact on publishers’ approaches to the delivery of material subject to legal deposit, and the closer publishers are consulted regarding all matters affecting legal deposit, the more effective the system is likely to be (Davies, 1998: 165). This study involves an investigation into the legal deposit of books. It is therefore necessary to provide background information on the world of book publishers as crucial role players in legal deposit, with the aim of acquiring an overall picture of the context within which this study is being conducted.

4.3.2 Books and book publishing

There is general agreement in the industry that book publishing is not, and has never been, a conventional business; it is both an industry and a vocation, with a vision of fulfilling a social responsibility within the culture and community of which it is a part (Epstein, 2001:4; Stassen, 2002). Legal deposit as a means of ensuring a nation’s published heritage, although based in legal statute, can appropriately be considered a form of such a social responsibility.

For many centuries, books have formed the core of civilised life (Shi, 2002). Books and other printed media were until recently the most important communicators of our cultural memory, our knowledge, and of our feelings (Shi, 2002; Stassen, 2002). In spite of the proliferation of electronic publishing, the production of print material shows no sign of decreasing (Merril, 2000: 21), or the book of “nearing the end of its life cycle” (Watson, A.F., 2002: 26). All role players in the book trade acknowledge that the book business is faced with the realities of comprehensive transformation and competition, but the general opinion is that it can and should engage in the many opportunities for improvement and innovation that are afforded within this environment (Epstein, 2001: 2; Freeman, 2005: 17; Merrill, 2000: 4; Shi, 2002).

Many major developments have influenced the book publishing business over the years. Three of the most significant are the advent of new technologies, the emergence of large conglomerates and the (contrasting) development of smaller publishing concerns.

4.3.2.1 *New technology*

With the advent of the Internet and the World Wide Web, publishers reacted much the same as other industries; they were ‘dazzled’ by technology (Lichtenberg, 2002: 25) but also used it in many ways. More and more material is being placed online. Text may be scanned, digitised and stored so that copies are available on demand. Archival material is published in digital form, for example the Digital Vault Initiative of Bell and Howell which includes books, periodicals and newspapers (Hane, 2001). Online versions of scholarly journals have become a common phenomenon. Trade publishers are increasingly publishing reference and other material online, and e-book publishing and digital reading are becoming widespread activities (Mantell, 2002: 34; Reid, 2002: 12).

In addition, there are many examples of (online) partnerships and alliances between businesses, publishers, libraries and academic institutions. NetLibrary, which was the pioneer in providing access to full text eBooks in a library's eBook collection (Merril 2000: 15), and the latest Google initiative of digitally scanning the book collections of large libraries (Milliot & Albanese, 2004: 7) are two good examples of such cooperation concerning books specifically.

Many countries have updated or are in the process of updating their legal deposit legislation to include electronic publications, and issues surrounding the deposit and preservation of electronic materials is a major topic of discussion (Beagrie, 2003; CDNL, 1996; Muir, 2001; UNESCO, 2003). One of the main issues of concern to both depository institutions and publishers is that of copyright. The protection of copyright is at the core of the publisher's livelihood (Davies, 2001: 33) and various legislative as well as practical/economic means have to be found to address this difficult question in the electronic legal deposit environment (Bury, 2003:12; Ceeney, 2003: 274; Scott, 2002).⁵

4.3.2.2 Emergence of large companies

Large media conglomerates have over the years become an imposing factor in the publishing world as the consolidation of publishing houses has increasingly been taking place, especially in the area of fiction, where the majority of titles are produced by divisions of giant corporations (Rose, 2002: 42). Many large conglomerates have been selling off their reference, professional and educational divisions in order to concentrate on (consumer) publishing. This trend is arguably a threat to the future of scholarly publishing, but the opposite is also true, as large companies are

⁵ See further discussion on copyright in general under section 4.4.4 of this chapter.

being formed with a specific focus on publishing reference and other similar educational media (Merril, 2000: 7).

The literature studied yielded no references to legal deposit and associated problems or issues specifically from the point of view of large publishing houses. However, the costs associated with delivering multiple copies of publications to depositories can realistically be assumed to be absorbed by general promotion or marketing overheads within large concerns. Although publishers generally agree on the benefits of preserving the published heritage (Davies, 1998: 160), as mentioned above, many individuals in the publishing business do have a problem with the principle of providing multiple free copies of publications to various legal deposit institutions in a country, as this is felt to be an unfair taxation/financial imposition and an outdated practice (Graham, 1994: 131; Whitaker, 2002: 25).

4.3.2.3 Growth of independent publishing

The emergence of alternative publishing models is another trend that is currently appearing in the book-publishing world. Decision-making processes are often slow in large organisations, and so smaller publishing houses, which have a different approach to the publishing process, thus have definitive advantages (Kean, 2002: 26). Smaller publishers do not harbour preconceived ideas about what the markets want and because of their size can react to markets more quickly (Kean, 2002; 27; Wittenberg, 2001: 3); they develop close ties with authors, have a clear focus on the needs and preferences of their clients, and very often let authors have a say in marketing plans, tours, interviews, book design and so forth (Rose, 2002: 43; Wittenberg, 2001: 3); they often dispense with aspects such as advances against royalties and rather put money into marketing and promotion which attracts authors. This lower cost base means that smaller

publishers can carve out a presence in niche markets (Kean, 2002: 27; Rose, 2002: 41).

However, the costs associated with depositing books to more than one depository institution become a practical issue for smaller publishers with smaller print runs, and may realistically influence their willingness to support the practice of legal deposit even if it is based on enforceable legislation (Davies, 1998: 165; Hattingh & Hamman, 1998: 113; Whitaker, 2002: 25).

4.3.3 The role of printers in the publishing industry and in legal deposit

“Without printers there are no books” (McDowell, 1997: 35). Publishers depend on printers for advice concerning many aspects of the production of books such as format, paper quality, binding and so forth, all of which may affect the price of a book. Reliability in terms of quality and timeliness are also important issues (IPG, 2005). A good relationship is thus crucial for the book publisher. Printer/publisher relationships should ideally be seen as partnerships in which both parties are mindful of their dependence on each other for their success in business.

Printers can play an important role in implementing legal deposit, as they handle the books even before publishing. In the case of smaller, private concerns especially, well-informed printers could be a source of information for these publishers regarding their legal deposit obligations. Printers can also be held responsible for depositing books themselves as is demonstrated by countries such as Fiji and Madagascar, where legislation compels printers to supply copies of publications as legal deposit (Jasion,

1991: 8), and France, where both publishers and printers are liable to deposit (Jasion, 1991: 8; Lariviere, 2000).

4.4 The state as role player in legal deposit

4.4.1 Introduction

Preserving the cultural and intellectual heritage of a country by means of legal deposit is a matter of public interest, but it is also a responsibility of the state (Jasion, 1991: 14; Russon, 1999). It is firstly of utmost importance that national libraries and other depository institutions receive the recognition they deserve from the state for this service so that adequate governmental funding and (political) support are supplied in for libraries to adequately perform the mandate assigned to them.

The state is furthermore responsible for producing the laws and other official programmes of a country. Many of the issues pertaining to legal deposit are dealt with in specific legislation such as National Libraries Acts and Legal Deposit legislation. However, many other laws, regulations and/or policies may primarily function for non-library or non-legal deposit purposes but have an important effect on the ways in which the legal deposit functions of depository institutions are implemented. Some of the more significant areas where state decisions and/or involvement influence the manner in which the legal deposit responsibilities of a country are executed will now be discussed.

4.4.2 The Constitution

The constitution of a country is the supreme law of that country and can thus be regarded as the set of rules by which the country is governed

(Ebrahim, 1998: 258). When looking at legislation concerning legal deposit specifically, the constitution has the most significant influence as it doubtlessly contains clauses that will have a direct effect on the issues contained in legislation and the implementation thereof (Council of Europe/EBLIDA, 1998). As a form of written law, the constitution expresses the will of the state and the state is thus compelled to use its vested constitutional powers to enforce compliance with legal deposit legislation when the situation arises (Lariviere, 2000).

4.4.3 Freedom of expression and free access to information

Article 19 of the Universal Declaration of Human Rights gives everyone “the right to freedom of expression” including “the right to seek, receive and impart information and ideas through any media regardless of frontiers” (United Nations, 1948). The protection of these rights by means of legislation in a country has implications for both libraries and publishers. The assumption that libraries are created for the benefit of their use to communities so as to “further their rights of access to information and ideas” (Council of Europe/EBLIDA, 1998) is a generally accepted principle. The actualisation of the right to speech (i.e. expression) and (the use of) information also presupposes the existence of an extensive and diversified publishing industry within a country (Oliphant, 2000: 109).

Freedom of expression and free access to information, are two related areas of legislation that have direct connection with legal deposit (Lariviere, 2000; Lor, 1995: 96). Legal deposit legislation ensures the preservation of a country’s publishing output, guarantees researchers and citizens of a country access to the information, and thus presupposes the free use of this information. In doing so it recommits itself to the

particular exposition on this issue contained in the Declaration of Human Rights (Lariviere, 2000).

4.4.4 Intellectual property rights and copyright

Copyright is the intellectual property right that grants its holder(s), for a specific period of time, the sole legal right to regulate the use and copying of their original work(s) and is controlled by law (Oppenheim, 1999: 56, 59). For publishers and authors, the illegal copying of their work and the subsequent possible commercial losses that this may entail, are therefore of crucial concern. Library and information professionals play a unique role when it comes to copyright, as they are placed between the copyright owners on the one hand and the need for users to access the works on the other (Pedley, 2000: 9). Most copyright legislation takes this into account, allowing for 'fair use/fair dealing', whereby users may make copies for the purposes of research or private study in a manner that will not unfairly deprive the copyright owner of any income from the work. 'Library privilege' is another system that provides libraries protection against copyright infringement under specific circumstances (Pedley, 2000: 16,17,19).

Intellectual property rights and copyright legislation is changing rapidly in order to keep up with technological change (Pedley, 2000: 1). Two recent international treaties, for example, that concern equality of access to information, and thus affect library services, are the GATS 1994⁶ and the TRIPS 1995⁷ agreements of the World Trade Organisation (WTO)

⁶ GATS (General Agreement on Trade in Services) is concerned with the trading of services and the liberalisation of such trade - *inter alia* to establish a minimum set of international standards for the protection of digital material.

⁷ TRIPS (Trade Related Aspects of Intellectual Property Rights) is concerned with the trading of intellectual property rights. Copyright is included in Part 11 of the TRIPS agreement.

(Rikowski, 2005: 35, 187). The European Union Copyright Directive attempts to harmonise copyright legislation across Europe, specifically pertaining to electronic publications. Some of the directives, entailing exemptions involving the fair dealing privilege and accessibility and communication of information to the public, have direct implications for libraries with regard to document delivery and availability of (especially electronic) publications (Cornish, 1998(a); Holman, 2001: 8; Prowse, 2004: 103).

Material received on legal deposit remains subject to copyright. Copyright and the adherence of a country to the relevant international intellectual property rights conventions such as those mentioned above, are therefore some of the most important issues involved in the general execution of the duties of depository institutions (Council of Europe/EBLIDA, 1998; Lor, 1997; Scott, 2002). Issues similar to those experienced in libraries in general are encountered in the legal deposit environment. Physical and remote access to publications for users and the need to make copies for preservation purposes and for future use are the two main current issues in the print environment, and are exacerbated in the electronic publication setting (Cornish, 1998a; Lariviere, 2000). Copyright legislation in most countries provides legal deposit agencies with specific exemptions pertaining to their need to preserve deposited material and to provide access to the material, but it remains a challenge for legal deposit institutions to ensure that the necessary exceptions for their specific circumstances are consistently included in such legislation (Lariviere, 2000; Scott, 2002).

4.4.5 Creation of National Information Policies

National information policy is: "a series of decisions by a national government designed to encourage better information infrastructure" (Oppenheim, 1994: 133). Such policies are still comparatively new and underdeveloped in many countries, but the general consensus is that the establishment of a well-developed national information infrastructure by means of an information policy is desirable for any country, as it ensures the effective implementation of information services, systems and resources (Lor, 1997; Oppenheim, 1998: 46, 65).

National libraries and other legal deposit institutions form part of the greater information arena within a country and are dependent on government decisions and (financial) support (Oppenheim, 2002: 2). Therefore, although legal deposit is the main mechanism by which a country's national published heritage is built up, it is only part of, and cannot take the place of, national information policies (Council of Europe/EBLIDA, 1998).

4.4.6 Creation of National Book Policies

Legal deposit structures can also not take the place of a national book policy (Council of Europe/EBLIDA, 1998). A national book policy is a "political commitment to consider books as part of a cultural economical strategically sector" (UNESCO, 2003). The aim of a national book policy is to develop and maintain a healthy book industry within a country with the consensus and active participation of both the state and the private sector. Books form a considerable segment of the published cultural heritage of a country and need to be preserved by means of legal deposit, and so an effective system of managing the world of books will contribute

to achieving this aim. A specific legal framework incorporating all measures concerning books is thus needed, and the support of the government in facilitating and establishing a national book policy is therefore essential (Momoh, 1997; UNESCO, 2003; Wafawarowa, 2001: 11).

4.5 *Role players in South Africa*

Role players in legal deposit schemes over the world show many similarities, but differ according to the particular legislative, social, economic, political and other factors affecting individual countries. The next section discusses the roles played by the various stakeholders within the specific South African legal deposit context.

4.5.1 South African depository institutions as role players

The Legal Deposit Act, Act No. 54 of 1997, as discussed, provides for a number of depository institutions in South Africa. Five libraries have been designated as repositories for books and other material, namely the National Library of South Africa (Pretoria Campus and Cape Town Campus), Manguang Library Services (formerly Bloemfontein Public Library), Msunduzi Municipal Library (formerly Natal Society Library Pietermaritzburg), and the Library of Parliament in Cape Town. The National Film, Video and Sound Archives in Pretoria is designated for certain categories of non-print materials, and one place in each of the nine provinces will serve as an Official Publications Depository.

4.5.1.1 *National Library of South Africa (NLSA)*

Until 1999, for historical reasons, South Africa had two national libraries, namely the South African Library in Cape Town and the State Library in

Pretoria. On 1 November 1999 these two libraries were amalgamated to form a dual-site (Cape Town and Pretoria) national library known as the National Library of South Africa (NLSA, 2006).

i. *National Library of South Africa: Cape Town Campus*

The South African Library was founded in 1881 and is the oldest library in South Africa. According to the (British) Copyright Act no. 2 of 1873, and affirmed by the Books Registry Act, Act no. 4 of 1888 the South African Public Library in Cape Town was designated as the legal deposit library for the Cape Colony (Partridge, 1938: 188; Willemse, 1962: 87). From 1916 its extended legal deposit status entitled it to receive, together with three other libraries, all printed items published in the country according to the Patents, Designs, Trade Marks and Copyright Act (Act 9 of 1916) (Willemse, 1962: 99).⁸

ii. *National Library of South Africa: Pretoria Campus*

The *Staats-Bibliotheek der Zuid-Afrikaansche Republiek* (State Library of the South African Republic) was constituted in 1887. In 1893 a public library was founded under the wing of the *Staats-Bibliotheek* and from then until 1964 the State Library performed a dual role as public library and national library (NLSA, 2005). Legal deposit has operated since 1887 in the (then) Transvaal when a law was passed which provided for the deposit of works to the Registrar of the *Volksraad van die Zuid-Afrikaansche Republiek* (Partridge, 1938: 188; Willemse, 1962: 92).). After 1916 the State Library/Public Library was designated as a legal deposit library according to the Patents, Designs, Trade Marks and Copyright Act (Act 9 of 1916) (Willemse, 1962: 99).

⁸ For an overview of legal deposit legislation and the current status of legal deposit in South Africa, refer to Chapter 2, section 2.3.5.

4.5.1.2 *Manguang Library Services, Bloemfontein*

The Bloemfontein Public Library is the main library of the Manguang Local Municipal Library Service and was founded in 1875. A free library service to the public was established in 1946 and in 1973 the library became part of the Provincial Library Service of the (then) Orange Free State (Bloemfontein Online, 2006). It was granted the status of a legal deposit library in 1916 under the Patents, Designs, Trade Marks and Copyright Act (Act 9 of 1916) (Willemse, 1962: 99).

4.5.1.3 *Msunduzi Municipal Library, Pietermaritzburg*

The Natal Society Library (Msunduzi Municipal Library) was founded in 1851 and has provided a public library service ever since. It became a free, rate supported library in 1967 (National Archives and Records Service of South Africa, 1999). Legal deposit was first implemented in Natal under the (British) Copyright Act no. 9 of 1896 superseded by Act no. 17 of 1897, which stipulate that two copies of various types of material were to be delivered to the Colonial Secretary. This situation continued until after the establishment of the Union of South Africa in 1910. In 1916 legal deposit privileges were granted to the Public Library in Pietermaritzburg by the Patents, Designs, Trade Marks and Copyright Act (Act 9 of 1916) (Willemse, 1962: 99).

4.5.1.4 *Library of Parliament*

The Library of Parliament provides a library and information service to members of parliament, its committees and all other parliamentary structures (Parliament of South Africa, 2006). Its history can be traced back to 1854, when the Legislative Council and the Legislative Assembly each had its own small library. These two libraries were merged to form a joint library, the Library of Parliament, in 1885 (Spotlight on libraries, 2004). Legal deposit privileges were granted to the Library of Parliament

in 1950 under the Copyright Amendment Act (Act 22 of 1950) (Willemse, 1962: 100).

4.5.1.5 National Film, Video and Sound Archives

International guidelines regarding the preparation and establishment of legal deposit legislation specifically mention the importance of including audio-visual material in the legislation (Lariviere, 2000). In South Africa the Legal Deposit Act provides for incorporating all types of publications including audio-visual material for legal deposit, by using the generic term “document” throughout the Act. “Document” is defined as “any object which is intended to store or convey information...” in any format and through any medium (South Africa, 1997). The Act designates the National Film, Video and Sound Archives (NFVSA) as a place of deposit for audio-visual material.

NFVSA is a sub-directorate of the National Archives and Records Service of South Africa, and is the only national institution of its kind in South Africa. It is also one of only a few of its kind internationally which preserves all three formats, film, video and sound material (National Archives and Records Service of South Africa, 2005). In keeping with the overarching purposes of legal deposit, the aims of the NFVSA pertaining to legal deposit are the following (National Archives and Records Service of South Africa, 2005):

- i. to collect audio-visual and related material that was made in or about South Africa
- ii. to preserve the audio-visual heritage of South Africa, and
- iii. to make the audio-visual heritage accessible to all South Africans.

4.5.1.6 *Official Publications Depositories (OPDs)*

Government publications are an important and essential source of current information in a country (Carpenter, 2003: 54). It is therefore widely acknowledged that government publications should be included in national legal deposit legislation in order to achieve the legal deposit aims of comprehensiveness and exhaustiveness (see discussion under section 2.4.9.3 of chapter 2), and to guard against depriving a nation of an important component of its cultural heritage (Jasion, 1991: 14; Lariviere, 2000). Within the South African context especially, with its political “history” of suppression of information, access to government information is crucial for democratic decision-making (Baker, 2004: 4; Lor & van As, 2002: 102). By introducing Official Publications Depositories (OPDs) legal deposit legislation provides for the preservation of and access to government publications in South Africa (South Africa, 1997).

The idea of establishing OPDs in South Africa was influenced by the American Federal Depository Library Program (Baker, 2004: 4; Lor, 2003a: 6). This programme covers all publications of the federal government excepting state and local governments, and federal depository libraries are open to the public free of charge (Lor, 2003a: 6). The practical execution of this idea in South Africa was facilitated to a great extent by the constitutional changes of 1994 which brought about many paradigm shifts in government attitudes towards the way in which government information is organised and made available to the public (Lor & Van As, 2002: 102). Two of the most significant factors within this context that gave rise to the establishment of OPDs are (Lor & Van As, 2002: 103; Baker, 2004: 4):

- i. The Constitution itself which a) makes provision for nine provinces with wide legislative and executive authority and b) ensures that access to information, including information held by the state, is a

right provided for in the Bill of Rights in Chapter 2 of the Constitution (South Africa, 1996); and

- ii. Changes in the style of government decision-making towards greater transparency and public participation, demonstrated by the Promotion of Access to Information Amendment Act (South Africa, 2002b); although OPDs are not specifically mentioned in the Act, if it is read in conjunction with the Legal Deposit Act, it is clear that OPDs play an important part in ensuring the practical execution of access to government information (Baker, 2004: 5).

The Legal Deposit Act makes provision for the establishment of at least one OPD in each of the nine provinces, which entitles the appointed depository to receive a copy of every official publication. There is no limit on the number of OPDs that may be established and existing places of legal deposit may also be designated as OPDs without losing their right to receive materials other than official publications (Baker, 2004: 5; Letshebe & Lor, 2002; Lor & Van As, 2002: 115). An “official publication” is defined in section 1(vi) of the Legal Deposit Act as “a document published by an organ of national, provincial or local government, a parastatal organisation or any other institution listed as a public entity in terms of section 3 of the Reporting by Public Entities Act 1992 (Act 93 of 1992)” (South Africa, 1997). The general duties of OPDs are the same as those of other depositories as set out in section 7 of the Act, namely to receive, accession, retain and preserve; to catalogue; and to ensure freedom of access to documents.

4.5.2 Publishers as role players in legal deposit in South Africa

4.5.2.1 Introduction

In South Africa, the Legal Deposit Act dictates that the publisher, as “the person or body, whether public or private, which publishes and distributes a document” (South Africa, 1997), is responsible for depositing publications subject to legal deposit. An investigation into the legal deposit system and its implementation in South Africa therefore requires an understanding of the current publishing scenario in the country, to ascertain what types of publisher are the potential depositors of legal deposit material, and to try and understand the context and the practical realities within which these publishers function. As this study concerns the legal deposit of books specifically, the following section accordingly provides a condensed view of what the South African book-publishing scene looks like.

4.5.2.2 Book publishing in South Africa

The history of book publishing in South Africa is inextricably linked to politics, particularly the influence of colonialism, the power and role of apartheid, and the transition to democracy (Galloway, 2002: 204; Mpe & Seeber, 2000: 15). All these influences can be seen in an allegiance to empire in much of colonial English literature, the loyalty to language and Afrikaner nationalism in Afrikaans writing, the effect of religious conversion and “colonial domestication” (Oliphant, 2000: 110) that featured strongly in indigenous literature, and the post-apartheid South African transformation that has resulted in new reading markets and a publishing industry characterized by a wide variety of publishers (Hendrikz, 2002: 75).

Like its international counterparts, the South African book publishing industry is currently contending with the problems posed by new technologies, as well as with the mergers and acquisitions that took place especially during the 1990s and completely changed the face of the industry (Galloway, 2002: 12; Mpe & Seeber, 2000: 30,31). In addition, it suffers constraints such as a small reader market, multi-lingualism, and overseas competition, as well as the after effects of the challenging post-apartheid transition (Galloway, 2002: 216; Niewoudt, 2002: 3). In spite of these potentially unfavourable factors, the South African publishing industry is nevertheless still regarded as a powerful “institutional apparatus’ (Oliphant, 2002: 107), an indispensable component of democratic life in our society (Wafaworowa, 2001), and a key industry in the South African economy (Hendrikz, 2002: 75).

South Africa has a sophisticated and competent book industry that produces books of high quality covering a wide range of subjects (Hendrikz, 2002: 75; Jacobson, 2006: 18; Perold, Chupty & Jordaan, 1997: 7). Although not all publishing houses concentrate on publishing only one type/category of material and many overlaps occur, book publishing in South Africa can be divided broadly into the following categories:

- i. *General book/trade publishing*: General publishers publish a wide spectrum of books rather than books for one particular segment of the market. This represents a relatively small sector in the publishing field and includes fiction, non-fiction, reference works, literary publishing, children’s literature as well as poetry, plays, and short stories (Van Rooyen, 1996: 5,6). General trade publishing is dominated by imports; only around 20-25% of the books sold in South Africa are by local publishers and very few trade books are published in the indigenous languages (Faasen, 2003).

- ii. *Academic/Tertiary publishing*: Foreign publishers have a 60% share of the tertiary book market. Most books in this category are still imported from the United States and Britain and South African authors often have to publish with, or buy rights from international publishers (Galloway, 2002: 211; Van Rooyen, 1996: 5).
- iii. *Educational/School publishing*: Publishing for schools makes up the bulk of publishing activity in South Africa (Faasen 2003; Van Rooyen, 1996: 5). The range of educational material being published also crosses over into material published for non-institutional, non-formal and informal sectors for example literacy material, adult education material and so forth (McCallum, 1996: 55).
- iv. *Independent publishing*: Echoing the international trend (see section 4.3.2.4 of this chapter), upcoming smaller, independent publishers which are more in touch with the needs of their reading market and are capturing niche markets, are becoming more and more of a feature on the South African publishing scene (Stassen, 2002). Afrikaans book publishing occupies a special niche as a strong indigenous accomplishment (Galloway, 2002: 208; Stassen, 2002). One of the biggest areas to improve on (both in general trade publishing and smaller operations) is publishing in the indigenous African languages. This is one of the largest potential markets in South Africa and more and more black writers who formerly wrote in English are developing an interest in writing in their own languages (Jacobson, 2006: 18; Ntshangase, 1996: 48).

4.5.3 The state as role player in legal deposit in South Africa

The state in the broader sense and the current ruling government on a narrower level have a major role to play in creating the framework in which legal deposit is practically administered (see also section 4.4.1 of this chapter). In spite of many new legal and other structures recently established in South Africa, the country still has to contend with the realities of a society with an inheritance of severe deprivation with regard to information work and information provision for the broader spectrum of its people. Inadequate information and communications structures and lack of financial resources are areas of critical concern that severely constrain the capacity of the South African government to provide information to the people (GCIS, 2000). In many areas, however, admirable progress has been made to lay foundations for future effective information provision and other relevant services. Legal deposit is part of the information infrastructure of a country, and in this context is directly affected by such developments. Some examples of how and where the state directly or indirectly influences the implementation of legal deposit in South Africa will now be discussed.

4.5.3.1 *The Constitution*

South Africa's first democratic constitution came into force on 4 February 1997. As a political agreement on what the most basic law in the land should be, the South African Constitution is regarded as one of the most advanced in the world (Ebrahim, 1998: 3). The Constitution describes the framework in which library and information services, and by implication legal deposit, in South Africa can be managed (Hendrikz, 2002: 73). The sections of the Constitution that pertain directly to legal deposit (and to publishers as providers of legal deposit material), are section 16 concerning Freedom of Expression, and section 32, concerning Access to

Information (South Africa, 1996). In addition, the Constitution created the nine provinces of South Africa, which prompted the provision in the Legal Deposit Act for an OPD in each province.

4.5.3.2 Access to information

The Promotion of Access to Information Act No. 2 of 2000 (as amended by the Promotion of Access to Information Act No. 54 of 2002) gives effect to the constitutional right of access to information held by the state and information held by any other person that may be required for the exercise or protection of any rights (South Africa, 2002b). Without free access to documents published by either the government or private citizens in a country, freedom of information is limited and incomplete (Lor, 1995: 96). The significance of the Promotion of Access to Information Act should therefore not be underestimated. Departing from the pre-1994 dispensation, the Act represents a significant phase of the new democracy namely empowering the people by providing them with a statutory mechanism to be used in order to access crucial information (De Lange, 2005). Legal deposit ensures that South Africa's publishing output is preserved, and, in accordance with the above Act, section 7.1(c) of the Legal Deposit Act guarantees freedom of access to the documents supplied and the information contained in the documents (South Africa, 1997).

4.5.3.3 Intellectual property rights

Copyright in South Africa is controlled by the Copyright Act, Act no. 98 of 1972 with a recent amendment to the Act that provides for "the nature of copyright in sound recordings and to provide for matters connected therewith" (South Africa, 2002a). Copyright and the unauthorised copying of material not only affects publishers in South Africa but is also a concern for libraries that provide the material to their clients for use. International

trade agreements such as GATS and TRIPS, as discussed in section 4.4.4 of this chapter, impact on the South African library and publishing sectors as well. South Africa has as yet not committed its library services to the GATS agreement, but is in the process of preparing to enact legislation to implement this (Rikowski, 2005: 84). It is already a signatory of the TRIPS Agreement (Nicholson, 2003). Legal deposit institutions, with their responsibility of providing access to their collections as stipulated in legal deposit legislation, encounter problems similar to those experienced in the general library environment.

The Copyright Act in South Africa provides for exemptions from copyright under the principle of fair dealing and various other exceptions (Klopper & Van der Spuy, 2005: 51-53). Sections 12 and 13 refer specifically to reproduction by libraries and archives (Nicholson, 2003), which includes the legal deposit libraries and other depository institutions. Those concerned with legal deposit in South Africa, if they are to effectively execute their national mandate in the long term, must stay vigilant to ensure that their specific circumstances are provided for in any changes in future copyright legislation.

4.5.3.4 *National Information Policy*

The rewards of establishing and successfully implementing a national information policy are potentially high, such as new economic activity and new job opportunities (Oppenheim, 1994: 133). South Africa has a fairly well developed infrastructure and information industry and a wealth of information resources. A national information policy that exploits this would boost the economy, improve social conditions and empower the country's historically disadvantaged population (Cillie & Roos, 1996: 11; Wild & MnCube, 1996: 192). Various sections within South Africa such as the (former) Reconstruction and Development Programme

(RDP), the Ministry of Posts, Telecommunications and Broadcasting, the Department of Arts and Culture and the Library and Information Services sector have been working on information policy issues for a number of years (Cillie & Roos, 1996: 13-14; Wild & MnCube, 1996: 187-189). From these and other similar endeavours, many valuable reports have emanated, but as yet the government has not been able to create a national information policy (GCIS, 2000). Legal deposit cannot be separated from an overall policy concerned with the library and information sectors. As an integral part of the information industry of the nation (Cillie & Roos, 1996: 13) legal deposit and legal deposit institutions in South Africa are dependent on the strategies and decisions surrounding national information policy that impact on information infrastructure issues in the country.

4.5.3.5 National Book Policy

The South African book sector urgently needs national book policies to coordinate and legislate book development (Kuhl, 2005: 3; Perold, Chupty & Jordaan, 1997: 8; Wafaworowa, 2001: 10). Such a policy would serve as a strong legal instrument to guide activities in the book and publishing industry (DAC, 2005), give incentives for printers and publishers producing “home-grown literature” (Kuhl, 2005: 3) and promote access to books for the previously disadvantaged majority (Seeber, 2000: 280). The current activities surrounding the development of a national book policy for South Africa follow on a study done at the request of the Department of Arts and Culture by the Print Industries Cluster Council (PICC) on intellectual property rights in the print industries sector as part of an initiative to identify policy and development needs in the cultural industries⁹ (DAC, 2005; Kuhl, 2005: 3). As was discussed in section 4.4.6 of

⁹ “Cultural Industries” is a term used to describe a wide variety of cultural activities that all have commercial organisation as their prime motivating force, and thus includes the publishing industry.

this chapter, legal deposit functions cannot take the place of national book policies. Any actions taken regarding book policies will therefore have direct repercussions for legal deposit when it comes to the comprehensive acquisition and preservation of books as an integral part of the country's published heritage.

4.5.3.6 DAC (*Department of Arts and Culture*)

The publishing sector as part of the cultural industries, and the legal deposit institutions as part of the library and information services sector, both fall under the auspices of the Department of Arts and Culture. Within the broader information infrastructure arena, the DAC therefore has a significant influence on issues that directly impact on the practical implementation of legal deposit in the country.

4.5.4 Other supporting role players in legal deposit in South Africa

Apart from the three major role players discussed above, various other institutions and organisations play significant supporting roles in the implementation of legal deposit in South Africa. These include chiefly statutory bodies and professional organisations or institutions.

4.5.4.1 *Statutory bodies*

i. *The Legal Deposit Committee*

Section 8 of the Legal Deposit Act of 1997 provides for the establishment of a Legal Deposit Committee of which the main purpose is the co-ordination and promotion of the implementation of the Act (South Africa, 1997). The Committee is also mandated to play a key role in the

development of regulations for the OPDs and electronic publications (Commencement of the Legal Deposit Act, 1997: 2).

ii. *National Council for Library and Information Services*

Created under the National Council for Library and Information Services Act, No. 2 of 2001, the National Council for Library and Information Services advises the Minister of Arts and Culture and the Minister of Education on matters relating to library and information services (South Africa, 2001). One of the areas in which a formal structure of this kind can play a role is in the formulation and implementation of a national information policy (Lor, 1997). Legal deposit institutions form part of the library and information services structure in South Africa and therefore fall directly under the auspices of the Council. This direct involvement is supported by the fact that the National Librarian of South Africa is one of the representatives on the Council.

4.5.4.2 Professional and other associations/bodies

i. *PASA (Publishers' Association of South Africa)*

PASA is the official body representing the South African publishing industry. Its members include commercial organisations, university presses, non governmental organisations (NGOs), small privately owned publishers and importers and distributors. The PASA publishers' directory is published in an online version which is updated on a monthly basis, as well as a print version which is updated once a year (PASA, 2006). PASA can deliver direct input into matters relating to legal deposit as it has permanent representation on the Legal Deposit Committee (South Africa, 1997).

ii. *PICC (Print Industries Cluster Council)*

The Print Industries Cluster Council was formed in 1999 to represent the book value chain. It is an industry-led, non-profit organisation that serves as a vehicle uniting all the separate industry associations. Members include PAMSA (Paper Manufacturer's Association of South Africa), PIFSA (Print Industries Federation of South Africa), PASA (Publishers' Association of South Africa) and SABA (South African Book Association). The Council is made up of representatives of these associations and from the Departments of Arts and Culture, of Education and of Trade and Industry (PICC, 2005). The PICC is responsible for drafting a national book policy, of which the relevance for legal deposit has already been mentioned in section 4.5.3.6 of this chapter. The PICC is also part of a broad initiative to examine policy and other development needs in the cultural industries, of which copyright formed a major component (PASA Copyright Committee, 2004). These associations of the PICC with PASA and DAC all provide further indirect links with legal deposit.

iii. *SABA (South African Booksellers Association)*

SABA is the organisation that officially represents the retail book industry in South Africa (SABA, 2000). SABA and PASA have recently formed a committee to work together with BookData/SAPnet on various initiatives such as the electronic ordering of books (BookData/SAPnet, 2005). In this co-ordinating and liaising capacity with the general book trade, SABA can thus be a potentially significant partner in legal deposit in the country.

iv. *Sabinet Online*

The South African Bibliographic and Information Network (SABINET) was established in 1983 incorporating all the existing union catalogues of South African material, as well as the holdings of many other southern African libraries (Lor & Geustyn, 2001). A new company, Sabinet Online (Pty) Ltd., was created in 1996. Sabinet Online provides a wide range of

services to libraries, companies and government departments, and comprises a number of products, one of which is SACat, a national database of most of the library stock in Southern Africa (Sabinet Online, 2006). Sabinet Online furthermore provides access to a variety of other products such as ISAP (Index to South African Periodicals), South Africa legal information such as NetLaw (updated acts/statutes and regulations), SA Gazettes (full-text government and provincial gazettes), and SA e-publications (a comprehensive collection of full-text electronic South African journals) to name but a few (Sabinet Online, 2006). These can all be potentially useful in the administration of legal deposit, for example as resources against which legal deposit material can be checked.

4.6 Summary

In this chapter legal deposit institutions and publishers were identified as the main role players in the legal deposit process, with the state and other professional associations and/or bodies as additional role players. The various responsibilities and roles of these stakeholders in a system of legal deposit were discussed in general, as was their potential effect on the practical execution of legislation in a country. The roles of the legal deposit institutions in South Africa, South African book publishers and the individual sectors and areas of decision making within the government pertaining to legal deposit in South Africa were highlighted.

The next chapter deals with the practical investigation that forms the heart of this research project. The information acquired in the preceding chapter is essential for conducting the research, as it provides the necessary background to understand the context within which the two main role players execute their legal deposit responsibilities and thus the context within which the practical research project was executed.