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The Case of the National Library of Jamaica in Implementing and Administering the Legal Deposit of Audiovisual and Multimedia Materials

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Abstract

The enactment and promulgation of the Legal Deposit Act (2002) provide the National Library of Jamaica (NLJ) with the legal framework to execute its mandate to collect, promote, preserve and facilitate access to the nation's recorded documentary heritage. This paper highlights the provisions of the Act, especially as it relates to audiovisual and multimedia documents; the challenges encountered in rallying compliance with the Act; the initiatives taken and the suggestions that have been implemented to counter the non-compliance/no-confidence dichotomy. The paper also discusses the strategies that the NLJ will employ in anticipation of the increased inflow of audiovisual and multimedia materials as a result of its on-going public education campaign.

Introduction

Legal Deposit enforces a legal obligation on national publishers to deposit with designated institutions copies of any materials produced for public use, whether for distribution, lease or sale. Among the inherent responsibilities of this legislation is the need to safeguard the cultural heritage in audiovisual recordings. According to the Guidelines¹ developed by the International Association of Sound and Audiovisual Archives (IASA), the purpose of legal deposit is to enable the collection and preservation of all published works of significance to current and future research; to provide continued availability for study; as well as to facilitate the compilation of a national bibliography of published materials.

¹ IASA Policy Guidelines for the Legal Deposit of Sound Recordings <http://www.ccaaa.org/iasapolicy.shtml>

The National Library of Jamaica (NLJ) regards the passage of the Legal Deposit Act (2002) and its attendant Regulations (2004) as the long overdue legal framework needed to facilitate the execution of its mandate to collect, promote, preserve and facilitate access to all users through the development of a comprehensive collection of Jamaica's recorded documentary heritage. Jamaicans' reputed predisposition to orality has contributed to the proliferation of sound and image recordings, which serve to document the information and cultural commentaries on societal issues and national events. These are invaluable sources for research and study and for which the NLJ gets frequent requests.

The Legal Deposit Act, which supersedes the 1887 Books (Preservation and Registration of Copies) Act², identifies the NLJ as the principal legal depository for documents produced by national publishers and published in Jamaica. In piloting the Legal Deposit Bill³, the then State Minister for Education and Culture, the Hon. Fitz Jackson, posited in his presentation to Parliament that:

“effective legal deposit legislation ... guarantees citizens and researchers within the country and abroad access to research collection on the country's cultural heritage ... Jamaica is fortunate in having a vibrant cultural life and published materials in all formats – literary and dramatic works, musical scores, sound recordings, films, tapes, etc. – produced in the country. Much of this material is lost to posterity because there is no legal provision for copies of these works to be deposited in a national institution for consultation by the general public and for permanent preservation. The collection and preservation of all categories of materials are primarily the responsibility of a national library and a legal deposit law is essential if such a library is to operate effectively”⁴.

In this statement, the Minister clearly recognises the importance of preserving the heritage and identifies an institution to assume such responsibilities.

The Regulations of Jamaica's Legal Deposit Act stipulate that two (2) copies of a printed document and one (1) copy of an audiovisual document should be deposited with Jamaica's legal depository, the National Library of Jamaica. The Act outlines the obligation of national publishers to deposit the requisite number of documents in the designated legal depository. Section 4 of this Act explicitly states that “subject to regulations made under Section 8, every national publisher shall, within one month of the publication of any document which he publishes in Jamaica” honour this obligation. Section 5 of the Act further explains that “every national publisher shall, within the first fourteen days of February, May, August and November in each year, furnish each legal depository with a list of the documents which he has published in the preceding three months”. The Law outlines in Section 7, Clause 2 that on conviction by a Resident Magistrate, a fine of up to \$50,000 can be imposed on any national publisher who fails to comply with Section 5. The then Opposition spokesman on Education and Culture objected to the requirement that national publishers should submit a list of documents on a quarterly basis and proposed instead that this should be done annually. He further stated that the fines were excessive. However, these objections did not deter the passage of the Bill.

The Regulations also provide a list of the items that are exempt from the provisions of the Act. These include games, advertisements, Laws of Jamaica, models, newspapers, photographs not published as a collection of works and sound recordings that are only manufactured or distributed in Jamaica and

² A colonial Act to monitor the types of materials printed in the country.

³ *Parliament Approves Bill to Preserve Jamaica's Intellectual, Cultural Output*. **Jamaica Observer**. July 19, 2002

⁴ **Jamaica Observer**, July 23, 2002

have no Jamaican content or major Jamaican contributor, narrator, orchestra, performer, producer or writer.

- Terms Defined in the Act

Document – any library matter of any kind, nature and description and includes any document, paper, record, tape or other thing published by a national publisher or a publisher resident in foreign country, on or in which information is written, recorded, stored or reproduced.

Legal Depository – the National Library of Jamaica and any other library designated by order of the Minister.

Library – includes any Government office or department or other institution approved by the Minister which maintains a collection of documents to which members of the public may have access.

National Publisher - means, subject to subsection (2), any person resident in Jamaica who by himself or in association with others, produces any document and publishes it in Jamaica

Implementing the Act

- Public Sensitisation

The Legal Deposit legislation, beginning with the tabling of Ministry Paper #50 in Parliament in 1988, was the focus of various meetings with stakeholders. The NLJ was instrumental in convening many of these deliberations as it sought to build consensus pertaining to persons' respective responsibilities in ensuring that the Legal Deposit Act receives maximum compliance. Among the concerns articulated were the implications of this statutory requirement on staffing, space and support services at the NLJ to ensure long-term availability of the nation's documentary heritage. Also, there were discussions about the administration of the deposits by the NLJ in relation to the intellectual property rights of those who created these documents. These encounters enabled stakeholders to express their concerns, debate situations and identify strategies for positioning the Act within their purview to facilitate access and preservation. Additionally, the discussions served to sensitise depositors to their legal obligation to the NLJ.

A number of strategies were used to encourage dialogue with persons with vested interest. These included:

- addressing local professional groups, such as the Book Industry Association of Jamaica (BIAJ), the Library and Information Association of Jamaica (LIAJA) and the Jamaica Federation of Musicians (JFM);

- working in conjunction with various indigenous collecting societies, such as the Jamaica Association of Composers, Authors and Composers (JACAP) and the Jamaica Copyright Licensing Agency (JAMCOPY);
- forging links with the Jamaica Intellectual Property Office (JIPO);
- producing and distributing brochures and flyers;
- utilising the National Library's website to communicate relevant information;
- engaging the print and electronic media in the form of letters, articles, advertisements and interviews;
- setting up contacts with the Recording Industry Association of Jamaica (RIAJam) and the Jamaica Association of Vintage Artists (JAVA);
- networking with Librarians, Producers and Records Managers at various public and private institutions.

- Interest Group Meetings

In preparing submissions for the Regulations, the NLJ organised four (4) working groups to represent the interests of the print media, moving images, sound recordings and archives/libraries. Each group was required to examine the clauses in the Act within the context of their interests and then make recommendations about: rights; intellectual control; asset protection; revenue and selection. Arising from these discussions, consensus was reached in the areas of storage space considerations and the need to implement preservation measures. Divergent opinions were expressed in relation to public access to deposited material; compensation to national publishers; as well as the use of terminologies such as *document* and *national publisher*. One interesting interpretation for documents released “for public distribution or for sale” was the inclusion of documents published on web sites. It was then asked if the NLJ had the infrastructure in place to harvest e-publications. Some persons argued that deposits should include unedited moving images that depict aspects of Jamaica's development and history. This suggestion was over-ruled on the grounds that it fell outside the purview of the Act.

As it relates to access, the suggestion was that at the time of deposit, publishers should specify the conditions under which their deposits should be used. The popular view of the participants was that without access there was no need to preserve in perpetuity. It was proposed and accepted that the NLJ should establish the criteria to be used by depositors in defining how the public should gain access to deposited documents for research and private studies; and that the rights extended to libraries and archives under Jamaica's Copyright Law be utilised.

- Internal Sensitisation - Staff Training

As it relates to in-house training, the National Library utilised various mechanisms in the orientation/training of staff to sensitise them to the Library's national responsibility. Background information was communicated to staff at general and departmental meetings. Those meetings that

targetted members of staff who would be directly involved in the management process were conducted at specially organised training programmes and involved intensive sessions.

Administering the Act

○ Financing

The National Library receives budgetary allocations annually in order to implement the compensation aspect of the Act. (To date, the NLJ has received five requests from publishers for compensation for works deposited.) According to the Act, in *Section 6 (3)* :

Where a national publisher makes no request for payment in accordance with subsection (2), he shall be deemed to have waived his entitlement to payment under subsection (1).

The non-request for compensation reinforces the views expressed by some national publishers that the Compensation clause of the Act should be removed. Also, it was suggested by participants at one of the seminars that the sum earmarked for compensation should be used to undertake anticipated activities involving equipment, regular maintenance, storage, as well as the repair and replacement of hardware. These expenses are borne by the NLJ through its centralised administration costs.

○ Access

The Regulations which govern the Legal Deposit Act make provision for members of the public to have access to the materials deposited. In this respect publishers have to sign a form, which states in part that, they:

- (i.) *Permit members of the public access to the document pursuant to sections 61 to 65 of the Copyright Act and the Copyright (Librarians and Archivists) (Copying of Copyright Material) Regulations, 1993.*

At the NLJ, clients can access AV documents on site, for research and educational purposes. However, they are advised to make appointments to be allowed to view or listen to deposited AV items. This is necessary because of space limitations. The number of persons allowed to use the same material at the same time is restricted to a maximum of five persons. A technician is always assigned to the user while the item is being used. This is primarily to operate the equipment and to supervise the handling of the documents; as well as to ensure the physical security of the documents so that no unauthorised duplication of recordings is attempted. Clients are informed about the terms and conditions for use of the documents prior to the provision of access.

○ Preservation

Audiovisual items are fragile and therefore need special treatment for long-term preservation. Additionally, AV items need the appropriate mechanical, electronic or other device for consultation. Mechanisms are needed to ensure that the legal depository is empowered to undertake the necessary

measures to keep the data accessible, without prejudicing the interests of the copyright owner. The Act stipulates the deposit of one copy of AV items and this creates an additional strain on the NLJ's resources in that a user copy has to be generated to protect the original document.

Additionally, the NLJ has sought to facilitate continued use and preservation of AV items by developing a form that must be completed by the national publisher for each donation at the time of deposit. The form includes a declaration permitting the legal depository certain rights.

I hereby grant to the Legal Depository permission to:

(ii.) *Copy (including download), reformat and refresh for preservation and documentation purposes, the document:*

The NLJ remains committed to protecting the integrity of its AV documents and it is developing mechanisms for monitoring and applying *best practices* to prolong the life of the documents.

○ Public Education - Print and Electronic Media

Since 2004, the National Library of Jamaica has had on-going public education campaign to promote and bring compliance with the Act. The more this is done, the more it is realised that there is still much more to be done as there are still many persons, especially in the music industry, who are unaware of the Act. As a result, the NLJ embarked on a special campaign to attract persons in the audiovisual creative industries into its legal deposit collections' net. In executing this campaign, the NLJ engaged the services of both the electronic and print media to convey the message. Radio jingles are aired on a popular station and statements communicated through the electronic media during the time reserved for government broadcasts.

In utilising the resources of the print media, the NLJ through the services of reporters has had articles published. Illustratively, a newspaper reporter opted to interview key persons in the industry and subsequently published in *The Sunday Gleaner* of October 8, 2006 an article entitled *Few Deposits on Music History: Archiving Stalls*. This article focused on the respondents' perceptions of legal deposit. Desmond Young, president of the Jamaica Federation of Musicians (JFM), recalled that he had in fact received a letter from the NLJ with information on legal deposits and subsequently had attended a seminar on *legal deposits*. He reiterated his intention to make sustained contributions in a remark that "anything that enhances the protection for songwriters is very good. JFM is definitely interested and we will encourage our members to participate".

The Recording Industry Association of Jamaica (RIAJam) has made deposits. According to Wayne Wright, Assistant Administrator of the RIAJam, they have donated CDs and vinyl records. Wright explained that originally, they thought legal deposits focused on literature alone. He opined that "Jamaican music is a huge and very important part of our culture and it is imperative that we keep records of its beginning and its growth over the years. Too many times we have held our heads in sorrow saying:

'If only I had ...' How many of us wish we had taken the opportunity to interview, talk to or taken a photo with persons such as Bob Marley, Dennis Brown, Peter Tosh, Garnett Silk, Sir Coxsone Dodd, Culture and the Honourable Louise Bennett-Coverley? The members of the RIAJam believe that it is

very important for us to preserve our musical heritage so future generations can access information on the works that have gone before them”.⁵

For the past two years, the National Library has designated the week of October 11 as **NLJ's Legal Deposit Week** to commemorate the coming into operation of the Act. The week's activities usually receive media coverage. On these occasions the NLJ invites national publishers to formally make their deposits. In 2007, in collaboration with JACAP, a number of well-known artistes who are affiliated to this organisation responded to the invitation to visit the Library to make their deposits. In verbalising their intention to honour this legal obligation, many commended the move, which they saw as their unique way of contributing to nation building. Regrettably, their verbal commitment has not translated into further action and hence only a small number have honoured their pledge to remain compliant. In an attempt to broker this delinquency, it was suggested by one depositor that affiliated bodies make collections on behalf of their membership. An open invitation has also been extended by members of the music fraternity to the legal depository to attend and address their meetings on pertinent issues pertaining to legal deposit.

- Public Education - Networking

The NLJ is the focal point of the national information system and one of its sub-systems, the Audio Visual Information Network (AVIN) is its direct responsibility. The National Library of Jamaica's Audio Visual Department is the focal point of this network. AVIN comprises individuals and media entities in the audiovisual creative and archiving industries. As part of its membership drive, persons are informed about the Legal Deposit Act and their obligations to adhere. AVIN has facilitated various encounters including discussion groups, workshops and seminars to address the needs of its constituents. Invitations are usually sent to a cross section of persons in the industry, ranging from users, producers, distributors, artistes, archivists/librarians, photographers and well-wishers. It is through the on-going communication linkages that more persons are becoming sensitised to the rationale and process of making legal deposits.

In addition to members of AVIN, the NLJ continues to network with other interest groups as part of its public education effort. The seeming resistance which the introduction of legal deposit encountered from some publishers is also being further addressed in one to one informal visits to producers at their business places to discuss the philosophy behind the Act and why their contributions are critical to the collection of a comprehensive representation of Jamaicans' creative output. The signs of attitudinal changes from non-compliance/no confidence dichotomy to awakening interest and even tangible returns are note-worthy. The notion of libraries as being entrenched in a print-dominated context is part of the mindset that has to be eroded. Efforts are being made to illustrate how the NLJ can facilitate nation-building and advance scholarship through the provision of access to its resources.

3 *Few Deposits on Music History – Archiving Stalls* **Sunday Gleaner**. October 8, 2006.

○ Current Status of Deposits

Statistics

Although the NLJ has intensified its efforts to garner support for the legal deposit mechanism and more persons are committing to the cause, the figures seem not to reflect these changes. The national publishers in the print media have made more deposits than those in the audiovisual and multimedia industries. The need to obtain international recognition is propelling national publishers to interact with the NLJ in order to obtain cataloguing in publication (CIP), International Standard Book Number (ISBN) and International Standard Serial Number (ISSN). The NLJ is the national agency with responsibility for allocating ISBN and ISSN to local publishers. Each response to request for ISBN and ISSN is accompanied with information on the Legal Deposit Act as well as the Legal Deposit form which states stakeholders' obligation to comply.

The applicants for international numbers represent a captive audience that has become accustomed to depositing as part of the registration process for acquiring international standard numbers. If there are delinquents, through this process the legal depository has contact information on persons who apply for these numbers. This makes it easier to monitor compliance with the Act. Many persons have fulfilled their obligations, without requesting compensation. Notably, some well-known national book publishers have staff assigned to send books to the NLJ as soon as they become available. (In fact, this was the practice even before the passage of the Act.)

The table below represents legal deposits received by the NLJ between the promulgation of the Legal Deposit Act in October 2004 and the end of March 2008. Some of the CDs/DVDs deposited are not music but multimedia documents, such as educational/training manuals and databases with statistics relating to Jamaica. These are loaded on a CPU and access provided via the computer. Close supervision is provided to protect the intellectual integrity of the document from misuse.

DEPOSITS	Oct. 2004 – Mar. 2005	Apr. 2005 – Mar. 2006	Apr. 2006 – Mar. 2007	Apr. 2007 – Mar. 2008
BOOKS	46	261	316	346
CDs	-	34	18	55
DVDs	-	2	2	10
PHONOGRAPH RECORDS	-	6	-	6
VIDEOS	-	3	-	-

CATEGORIES AND QUANTITIES OF ITEMS DEPOSITED AT THE NLJ: 2004 – 2008

Jamaican cultural industries are proliferating. It has been acknowledged that hundreds of AV titles are generated annually and that there are several state-of-the-art recording studios in Jamaica. The industry tends to operate outside of a cohesive regulatory framework within which the legal depository can obtain data on how many audiovisual and multimedia items are released and by whom, in order to boost its collection of resources. This information is driven mostly by word of mouth contact and goodwill. The problem is further compounded by the number of rights holders associated with audiovisual and multimedia productions. The verbal commitment of collecting societies to assist with compliance needs to be translated into action. Although the Act makes provision for a publisher to be fined for non-compliance, the NLJ has not taken anyone to court. It considers a court action as a last resort. Therefore, it prefers to continue its sensitisation campaign to invoke compliance.

- Reasons Given for Non-Compliance

The Heads of Acquisitions and Legal Deposit Department and the Audio Visual Department often schedule visits to music studios and production houses to discuss the Act and the implications for non-compliance. Some of the reasons aired focused on issues to deal with lack of knowledge, such as ignorance of the passage of the Act; did not consider CDs and DVDs as items for library collections; inability to understand why the NLJ wants to collect audiovisual items; and uncertainty about whose responsibility it is to make deposits. Among those who understood the requirements of the Act there were those who stated that they did not have the time to take the deposits to the NLJ. A few expressed concern that with the library's policy of providing access to all, there may be scope for piracy.

In response to these negative comments, there would be open discussions until there is demonstrated change from non-compliance/no confidence towards absolute compliance. There were situations in which the attempt to establish the quantity of audiovisual items generated in any given period was interpreted as undercover work for government and the whole posture of the persons visited became intimidating. Once it is established that the move was not for taxation purposes, the visit would become more accommodating.

The way forward

In light of the constant discussions and recommendations from stakeholders, thoughts are being given to making submissions for amendments to include the deposit of online publications that meet the requisite criteria defined by the NLJ. For example, any publication chosen must have a specific title, author and date/place of publication. The current Legal Deposit Act does not speak specifically to electronic publications, such as multimedia software and games, web based documents, databases and broadcast materials. Though this medium of publishing has become widespread, given the nature of the digital environment, these documents are at risk of being lost to posterity. Therefore, the NLJ has begun to put measures in place to harvest web documents while they are available. For example, the NLJ attempts to acquire web documents and has convened meetings to formulate policies for web archiving. Additionally, although broadcast materials do not fall within the ambit of the Legal Deposit Act there is a clause in the Copyright Act that provides the NLJ with scope for 'capturing off-air broadcasts' of national relevance for preservation.

In 2002, Jamaica became a signatory to the World Intellectual Property Organisation (WIPO) Copyright Treaty which protects copyrighted materials over digital networks. The Copyright Amendment Bill for Jamaica is being drafted. This amendment has implications for the deposit of online publications. The NLJ will monitor developments closely to make sure that the needs of users are balanced with those of the owners of intellectual property.

As it seeks to intensify its collection of legal deposits, the NLJ will continue to develop guidelines for the collection of electronic publications. In light of the success of the international standard for the numbering of printed documents in getting items deposited, the NLJ is considering the introduction of the International Standard Audiovisual Number (ISAN) system. It will also improve NLJ's storage capacity to accommodate the anticipated inflow of AV documents. Staff training will be facilitated to ensure that the appropriate skills are available to manage the new technologies.

One of the purposes of legal deposit legislation is the promotion of national intellectual output in bibliographic productions. This entails ongoing creation of metadata to facilitate the provision of access. This has implications for staffing and will require dedicated cataloguers to document the resources.

The National Library, in anticipation of increased inflow of legal deposits in its audiovisual collection net, has developed a special database for managing the nation's audiovisual collections. The Audio Visual Information Data Access (AVIDA) system is intended to provide a platform for resource sharing, especially among members of the Audio Visual Information Network (AVIN). The database will contain the descriptions of sound and still and moving image recordings in all media. AVIDA will provide a framework for the compilation of a national bibliography of audiovisual and multimedia documents.

As it relates to finance, the NLJ will request additional funds in its annual budgetary allocation specifically for the preservation and management of its audio visual and multimedia deposits.

Conclusion

Although the NLJ initially encountered a number of challenges in getting the publishers of audiovisual and multimedia documents to comply with the requirements of the Legal Deposit Act and Regulations, there is evidence of improvement in the number of persons who have indicated their willingness to make deposits. The NLJ is encouraged by the attitudinal changes of AV publishers in complying with the provisions of the Act and is now actively engaged in face to face meetings with stakeholders in the industry. The results from the sound power of the narrative performances of these persons are evident in the increased deposits of AV items. In these documents are crucial aspects of national issues which serve to inform national policies and cultural events. They speak to aspects of Jamaican identity that will enable future generations to understand their cultural heritage.

The compilation of the national bibliography of published AV documents is one of the stipulations of the Legal Deposit Act. The Audio Visual Information Network (AVIDA) database provides an avenue for the data collection from audiovisual and multimedia items deposited. Consequently, researchers in Jamaica and overseas, will become aware of the AV works deposited at the NLJ and widen their

options for information resources and to highlight the relevance of audiovisual documents to the advancement of scholarship.

The NLJ continues to improve its management of the legal deposit of audiovisual and multimedia materials through its ongoing public education programme and the strengthening of its infrastructural base. Constant dialogue with colleagues in the industry, coupled with NLJ's initiatives and other network activities will help the NLJ to facilitate access to Jamaica's published heritage.

References

- Daley, Diane and Nicole Foga. "Jamaica: Significant IP Progress – On The Horizon." <http://www.buildingipvalue.com/065_Car/150_153.htm>
- Dunkley, Alicia. "National Library Intensifies Public Education Campaign For Legal Deposits Act." Jamaica Information Service 21 Nov. 2005 <<http://www.jis.gov.jm/tools/printable.asp>>
- Henry, Krista. "Few Deposits On Music History: Archiving Stalls." Sunday Gleaner 08 Oct. 2006 <<http://www.jamaica-gleaner.com/gleaner/20061008.ent5.html>>
- "IASA Policy Guidelines For Legal Deposit Of Sound Recordings" <<http://www.ccaaa.org/iasapolicy.shtml>>
- Jamaica. House of Parliament. The Jamaica Gazette Supplement: Bills and Acts Vol. 125. No. 34 2002 : Legal Deposit Act, 2002
- . The Jamaica Gazette Supplement: Proclamations, Rules and Regulations Vol. CXXVII, No. 70B 10 Sept. 2004: The Legal Deposit Act, 2002
- Jamaica. Ministry of Information and Culture. Ministry Paper No. 50: Legal Deposit 19 Dec. 1988
- Jamaica Information Service. Parliament Approves Bill To Preserve Jamaica's Intellectual Cultural Output. 20 July 2002 <<http://www.jamaicaobserver.com/news/html/20020719>>
- Laws of Jamaica. The Books (Preservation And Registration Of Copies) Act. 1st July 1887
- National Library of Jamaica. Copyright, The Library & You: Regulations, Responsibilities, Requirements. Kingston: National Library of Jamaica, 1994

---. National Library News: Newsletter of The National Library of Jamaica Vol. 2 No. 3, Aug. 2002

Simpson, Lynford. "Senators Approve New Book Preservation Act." Sunday Gleaner 9 June, 2002
<http://www.jamaica-gleaner.com/gleaner/20020609/news3.html>>