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# National Diet Library Newsletter

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Struggles of the National Diet Library in Collecting Online Publications in Japan  
(Paper presented at IFLA/WLIC 2014, Session 87  
Digital preservation of e-books: Best practice in libraries  
Information Technology with Preservation and Conservation and National Libraries)

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## • 1. Brief history of collecting electronic materials in NDL

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National Diet Library (hereinafter "the NDL") has launched a collection of electronic publications in circulation on the Internet since 2002. Because books and serials are increasingly published only on the Internet or online, the objective of the legal deposit system for "the use and accumulation of cultural national property," one of the NDL's major missions, had become problematic. In 2012, the number of trade e-books circulated on e-bookstores reached about 380,000 titles.<sup>1</sup>

The scope of networked electronic information available online or circulated on the Internet which the NDL collects has steadily expanded by amendments of the NDL Law as follows:

- (1) In 2002, selective collection of Internet materials (websites) with permission of webmasters (public agencies, universities, and organizations of cultural and international events held in Japan) began ("[WARP](#)").
- (2) In 2010, institutionalized collection per the NDL Law of Internet materials<sup>2</sup> produced by national or local public agencies began.
- (3) In 2013, institutionalized collection per the NDL Law of online publications (corresponding to books or serials) in the private sector (except those that are protected by Digital Rights Management (DRM) or priced) began ("[E-legal Deposit](#)"). (For the definition of online publications, see the next chapter.)

At the same time amendments (2) and (3) of the [NDL Law \(Article 25-3, Article 25-4\)](#) defined the legal deposit system, the [Copyright Law \(Article 42-4\)](#) was amended too. Recording of the Internet or online publications by the NDL requires the permission of rights holders, but it is practically impossible for both NDL and legal depositors (publishers) to contract with innumerable rights holders. This amendment of the Copyright

Law allowed reproduction of online publications without any permission for the purpose of accumulating these works in the NDL.

<<Table: History of networked electronic publications collection>>

|           |  |
|-----------|--|
| Nov. 2002 | Acquisition of Internet materials in the form of the Web Archiving Project (WARP) began. The operation was permission-based.   |
| Dec. 2004 | The Legal Deposit System Council reported "Concept of the Acquisition System for the Networked Electronic Publications."   |
| Jul. 2009 | The NDL Law was amended to enable institutionalized acquisition (i.e. no permission required) of Internet materials produced by national and local governments and related institutions. The Law came into force on April 1, 2010. |
| Jun. 2010 | The Legal Deposit System Council reported "Concept of the acquisition system for online publications." The Council also submitted an interim report on a compensation scheme in March 2012.  |
| Jun. 2012 | The NDL Law was amended further. It partially came into force in July 2013 in relation to privately published online publications available free and without DRM.  |
| Jul. 2013 | Acquisition of online publications available free and without DRM. Institutionalized acquisition for priced or with-DRM materials will continue to be examined by the Legal Deposit System Council.                                |
| 2014-     | The experimental project for contract-based temporal deposit of priced or with-DRM materials is expected to start with major commercial publishers.  |

In April 1999, the "[Legal Deposit System Council](#)" (hereinafter "the Council"), an advisory panel of outside experts, was established, following the reorganization of the former Legal Deposit System Research Council. The purpose of the Council is to contribute to the improvement and proper management of the legal deposit system. This council is composed of not more than 20 members, such as university professors of intellectual property rights, administrative Law, cultural studies, and representatives from major associations of authors, publishers and newspaper publishers, music recording industry, etc. relating to the legal deposit system commissioned by the Chief Librarian of the NDL. The Council has been producing some decisive reports to the Chief Librarian for institutionalizing acquisition of electronic materials from packaged digital publications (CDs, DVDs, etc. of books or serials, movies, programs, games) in 2000 to online publications in 2013.

## 2. Definition of online publications in NDL Law

NDL Law Article 25-4: The "online publications" are "*texts, images, sounds, or programs recorded by electronic, magnetic, or any other means not directly open to human perception, made available to the public or transmitted through the Internet and other advanced information and telecommunications networks, and specified by the Chief Librarian as corresponding to books or serials (except confidential matters, blank forms, specimen pages and other simple publications).*"

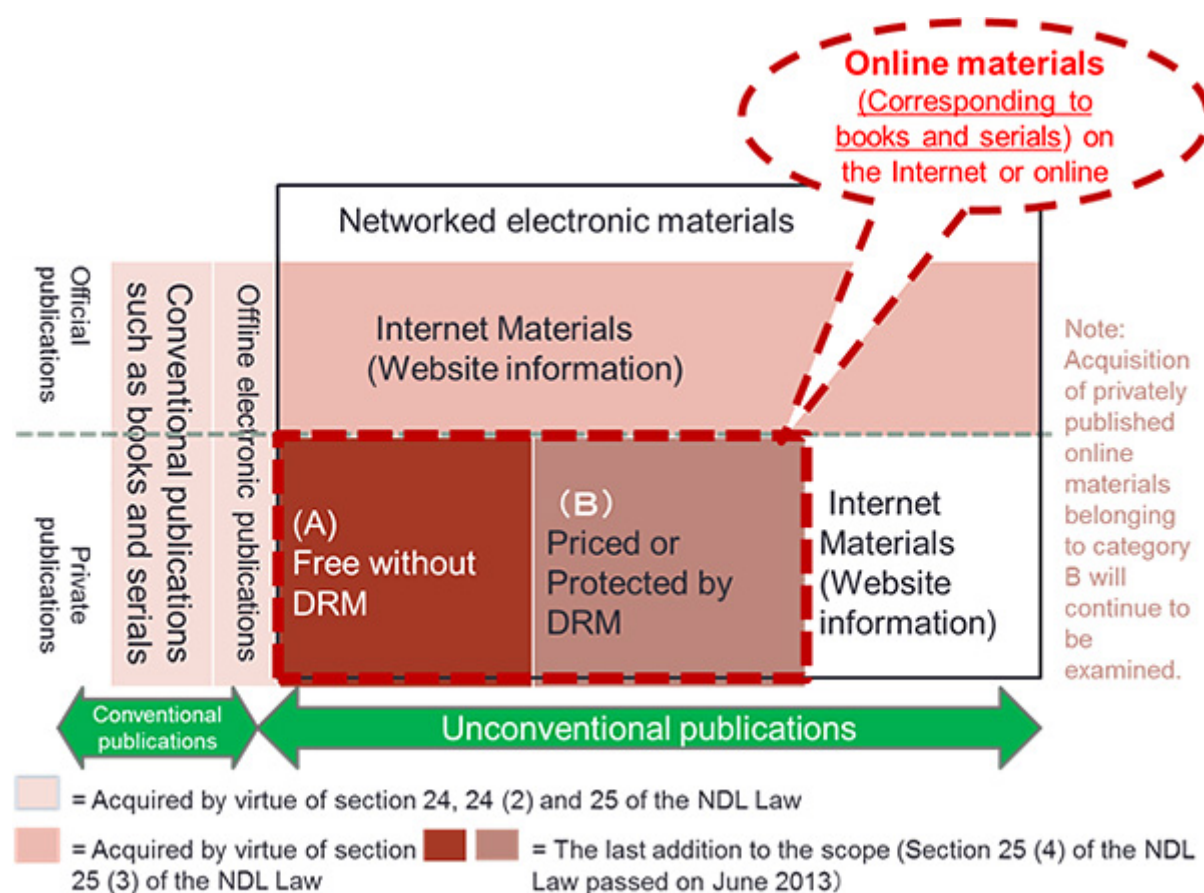
"Corresponding to books or serials" in this definition means that websites in general, private blogs, etc. which are not intended to be fixed or deposited for long-term by any custodian, and broadcasting, digital video/music distribution, are excluded. From a long term perspective, all websites, as national intellectual property, should be

comprehensively recorded by the NDL, but at the present time it is not realistic due to concerns over cost, public fear of mass storage of websites which include individual thoughts and creeds by NDL as a tool of state power, and some technological difficulties.

Provisions of subsidiary rules (the Chief Librarian specifies "as corresponding to books or serials" in Article 25-4) define online publications; online publications have specific (1) *bibliographic codes* (ISBN and ISSN, DOI: Digital Object Identifier) **OR** (2) *file formats* (EPUB and PDF, DAISY: Digital Accessible Information System). However, online publications that are made available on institutional repositories operated by research institutes, universities, etc. and have the same fixed visual layouts as printed publications are excluded from the point of view of avoiding the overlap of investment.

Furthermore, the NDL excludes online publications that are (1) priced or (2) protected by DRM until mutual understanding for e-legal deposit is established among stakeholders, especially between NDL and expected legal depositors (publishers).

The NDL has been collecting free online publications such as annual reports, year books, directories, in-house organs, public relations magazines, bulletins, collections of papers, journal articles, research papers, academic journals, newsletters, collections of abstracts by academic organizations, business reports, technical journals, CSR reports, company histories, statistics and other materials relevant to books or periodicals published after July 1, 2013.



<<Figure.1 Scope of institutionalized acquisition of networked electronic materials>>

### 3. Critical issues for acquisition of priced or DRM protected online publications

In the private sector, an increasing number of comics, literature, and similar materials are being published as online publications, the number of which is expected to reach 1,000,000 titles (about \$133 million market) by the end of 2014 in Japan.

NDL and stakeholders relating to online publications unanimously agree to long-term deposit at the NDL for posterity. But the two most important points of discussion with publishers revolve around compensation for fee-based publications as well as technological difficulties, such as DRM and other issues affecting the formatting of online publications at the time of deposit.

## **(1) Compensation**

Under the present legal deposit system, the NDL gives compensation equivalent to the expenses usually required for the issue and deposit of the publication (i.e. 40% - 60% of market price<sup>3</sup>) to private depositors.

When in 1948 the legal deposit system was launched, (a) this system was recognized by many publishers as a tool for censorship, which was notorious during the pre-war period, and (b) in the dislocated economy just after the end of WWII, there were few incentives to deposit publications to be catalogued in the national bibliography. Thus, the NDL scarcely acquired publications by this system. This situation forced the NDL to change its course. In 1949, the NDL negotiated with private publishers, book wholesalers, etc. and introduced a "carrot and stick" policy; that is, depositors receive the compensation for deposition and those who do not deposit are punished<sup>4</sup> with a fine of up to 5 times the retail price (NDL Law Article 25-2).

In 2010, the report of the Council; "Concept of the acquisition system for online publications" concluded that because there are many differences between online publications and conventional books or serials, it is difficult to adopt the same measure for compensation. Online publications do not have the process of printing and bookbinding, initial number of printings, price for ownership (strictly, price for use), etc. which presumably represent the initial cost of making conventional books (without benefit).

Gratis deposition of online publications has alienated publishers and authors. They insist that online publications are not free of charge, need huge investment, and the situation will be unfair and unacceptable if the same content is published in paper and online, with the former paid and the latter unpaid. From point of view of authors, in Japan, royalty on a book is paid on the basis of the number of first printed copies (not sold copies), while in the case of online publications it is paid in proportion to the number of sold copies. Gratis deposition is unacceptable for many authors.

## **(2) Technical difficulties**

Online publications are having some technical problems as follows.

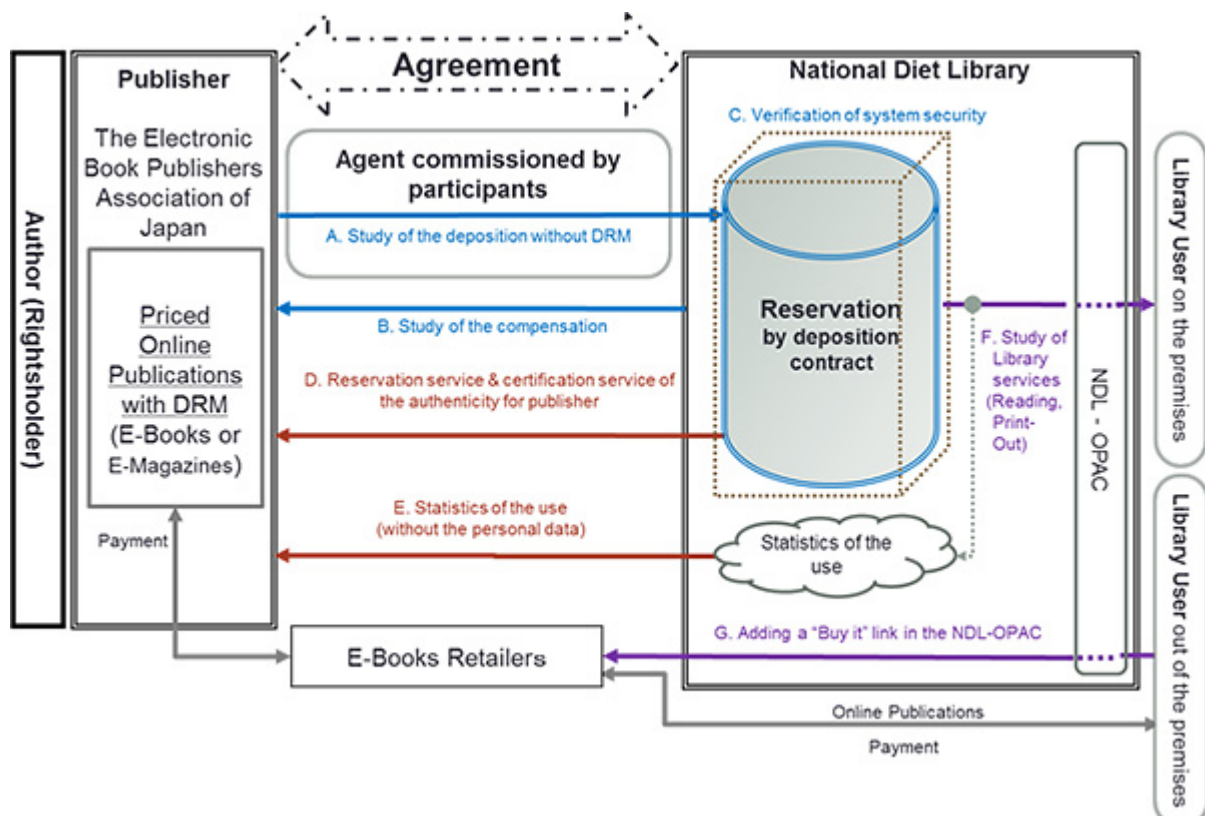
- i. For the purpose of the legal deposit system to accumulate online publications, DRM is a major obstacle.  
Online publications in e-book stores in general are sold in specific format with DRM and can be read only through designated viewer software and hardware. In Japan, there are over 50 e-bookstores, which are not mutually compatible. Each e-bookstore is fiercely competing to secure its customers in its own reading environment. But information technology quickly becomes obsolete, and in the near future, readers who have paid for many publications sold by specific e-bookstores may not be able to read them.
- ii. In addition, authors and editors have great interest in how their works are displayed on liquid crystal which is affected by viewers and devices. Particularly, in Japanese writing, there are columnar writing, and ruby or agate (printing pronunciation letters alongside Chinese characters, etc.), which make the situation more difficult to be solved.

- iii. Many publishers will produce online publications for multiple e-bookstores through electronic printing companies. Therefore publishers as depositors may not own the online publication, a master file of online publications without DRM which NDL needs to preserve, migrate into every current version of format and medium to be handed down to posterity. Some publishers are afraid that NDL might ultimately transmit collected online publications to the public or the public libraries as the [Digitized Contents Transmission Service for Libraries](#) in Japan from NDL launched in January 2014, so publishers in general are hesitant to provide master files for deposit.
- iv. NDL tries to acquire the master files themselves instead of limited access to the contents stored in publishers' servers and technically copy-protected materials. But if this condition of deposition is institutionalized, the NDL Law has to be amended, because information with DRM possibly affecting layout, etc. is not literally information without DRM.

#### 4. Temporal deposit of priced online publications project for legislation

In 2014, the NDL plans, in order to solve these problems with main stakeholders, that some selected online publications be temporarily (for up to 3 years) deposited in NDL: "Temporal Deposit of Priced Online Publications Project." In this project, NDL will cooperate with the [Japan Book Publishers Association](#), the [Japan Magazine Publishers Association](#), the Electronic Book Publishers Association of Japan, and the Digital Comic Association which are consisted of leading publishers of trade books and magazines (fiction, comics, etc.).

NDL and participants have to contract with all right holders of online publications to collect and duplicate their publications for this project.



<<Figure 2. Overview of the experimental project for the temporal deposit of priced online publications (under discussion among stakeholders)>>

(1) Phase 1: Collection and Storage (Figure2. A and B, C.)

What is an online publication with / without DRM in the process of production?



When and how can it be specified?  
Who will be the most adequate depositor?  
How much will it cost for deposition? Will it be necessary to be compensated with money?  
For what purpose will it be compensated, for production cost, handling fee, transfer fee and so on?  
What size of deposition server will NDL have to maintain?  
How will NDL technically protect the master files from any risk of being stolen or destroyed?

(2) Phase 2: Services for Rights holder (Figure2. D and E.)

What will the merit of deposition for authors and publishers be?  
What service is a non-commercial incentive for stakeholders?  
What statics is useful and abiding with user privacy for stakeholders?

(3) Phase 3: Services for the Public (Figure2. F and G.)

What service should NDL provide for the user on the premises?  
How will NDL provide services for the public on the premises?  
Will a "Buy it" button linked to the bibliography in the NDL-OPAC be permissible and useful for the public? And will this button be an incentive for publishers to deposit their publications?

An effective and efficient deposit of online publications needs some agents who, by the commission of numerous would-be legal depositors (publishers), select and gather publications to be deposited instead of direct deposit from the publishers. In the case of depositing printed conventional books, NDL contracts with the Japan Publication Wholesalers Association to deposit them. NDL has paid a handling fee (150 yen) per item to this association since 1951. Both financial compensation for publishers and rights holders and a system of depositing agents have been a very useful mechanism to comprehensively collect publications into the NDL on the unique background where 3,700 publishers published 78,000 new book titles in 2012.<sup>5</sup>

This project will be open to any publishers who are interested in it. The more participants there are, the more interest arises about the "e-Legal Deposit System" in the NDL. This is an additional objective of this project.

Related article on CDNLAO Newsletter:

- [E-legal Deposit of Online Publications in Japan](#) (No. 81, December 2014)

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<sup>1</sup> eBook Marketing Report 2013 by Tokyo-based publisher and research firm Impress Business Media Corp (in Japanese)

<sup>2</sup> NDL Law Article 25-3: They are "texts, images, sounds, or programs recorded by electronic, magnetic, or any other means not directly open to human perception, and made available to the public on the Internet"

<sup>3</sup> In Japan, books, serials, newspapers and music records/CDs are sold with maintenance-price.

<sup>4</sup> There has not been any case of this punishment up to 2014.

<sup>5</sup> See International Committee, Japan Book Publishers Association, [An Introduction to Publishing in Japan 2014-2015](#)