Consultation on the Legal Deposit of published digital material in the 21st century in the context of Copyright legislation.

Background
Legal deposit legislation is an important instrument in national cultural policy. In most countries, it is relied upon to ensure that the published output of the nation is collected and preserved by one or more prescribed institutions so that citizens and researchers, within the country and abroad, are guaranteed permanent access to the intellectual and cultural memory of the nation.

There are 13 prescribed institutions that are legal deposit libraries under current legislation, the Copyright and Related Rights Act, 2000, of which the National Library of Ireland is one. The remainder include the main Irish university libraries such as Trinity College Dublin and University of Limerick for example, and UK based libraries such as the British Library, and the National Libraries of Wales and Scotland.

Many countries have already amended legal deposit legislation to incorporate deposit of the published digital output of that country e.g. websites and electronic publications. This is digital legal deposit. Of the 28 members of the European Union with legal deposit legislation, approximately 60% of countries already have digital legal deposit legislation in place. This includes long established member countries such as the United Kingdom, France, Germany, Spain, Sweden and Denmark, and newer members such as Latvia, Lithuania and Estonia.

In Ireland, section 198 of the Copyright and Related Rights Act, 2000 deals only in the legal deposit of physical objects like books and newspapers. It is not currently suitable for dealing with the deposit of published digital material.

Why is digital legal deposit important?
Within a year of publication, 50% of web resources are gone or unrecognizable. This means government publications, online newspapers and websites documenting all aspects of life in the 21st Century will be lost to future researchers.

This problem is compounded in Ireland because we don’t have appropriate legislation. The longer this goes on, the harder it will be for Irish people to access, free of charge, the total
published output of the nation. The balance between digital and physical material will shift, and eventually there will be more digital material produced than physical.

Issue
The Department of Jobs, Enterprise and Innovation (DJEI) is in the process of preparing amendments to the Copyright Act. In 2011, at the start of the review of the Act, using the National Library’s statutory mandate to collect ‘for the benefit of the public’, the Library initiated a thematic based voluntary web archiving programme. This was done in recognition of the importance of collecting, preserving and making available online digital content, despite the absence of legislation. This programme has been operating on a permissions basis ever since, with a total of over 1200 websites collected and made publicly available to date, with free and unrestricted online access at http://collection.europarchive.org/nli/.

There is no provision in legislation for the deposit of online digital content e.g. websites. This could impact on the ability of the National Library to continue to collect, preserve and make available this material for future generations. To consider this issue the Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs, on behalf of the National Library of Ireland, is now engaging in a public consultation process to gather stakeholder views with regard to the articulation of policy in relation to digital legal deposit before the necessary amendments to the Copyright Act can be made.

Objective of this Consultation
This consultation is aimed at gathering stakeholder views in regard to whether or not the policy in relation to Legal Deposit should include the collecting, preserving and making available of all contemporary publication formats, including online digital formats such as websites. The Department, on behalf of the National Library of Ireland, is seeking views from stakeholders in the library and archives community, publishers and members of the public in the context of the review of the Copyright and Related Rights Act.

Proposed Solution
If it is generally accepted that this policy of collecting, preserving and making available the published output of the Nation in contemporary form by one or more prescribed institutions is appropriate, then the proposed solution is to draft appropriate legislative provisions that are fit for purpose in the 21st century. These provisions would be in the form of amendments that enable digital legal deposit, and would be submitted as part of the legislative process already underway to amend the Copyright and Related Rights Act. The Minister for Arts, Heritage, Regional, Rural and Gaeltacht Affairs will consider submissions made as a result of this public
consultation process and if required make appropriate recommendations to the Department of Jobs, Enterprise and Innovation for its consideration.

Submissions
The Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs, on behalf of the National Library of Ireland, welcomes submissions in relation to the questions below:

1. Should the policy of collecting, preserving and making available the published output of the nation for the benefit of the public be extended to include all contemporary publication formats of Irish interest including online digital formats e.g., .ie websites?

2. What issues arise if a policy extension on digital legal deposit is not provided for?

3. What are the benefits if a policy extension on digital legal deposit is provided for?

Respondents are requested to make their submission in writing by email to digimaterial@ahg.gov.ie. The closing date is Thursday 11th May 2017. Any queries regarding the consultation should be emailed to tadhg.oshea@ahg.gov.ie.

Freedom of Information Act
Under the Freedom of Information Act, 2014, details contained in applications and supporting documents may, on request, be released to third parties. If there is information contained in your application which is sensitive, please identify it and provide an explanation as to why it should not be disclosed. If a request to release sensitive information under the legislation is received, you will be consulted before a decision is made whether or not to release the information. However, in the absence of the identification of particular information as sensitive, it could be disclosed without any consultation with you.
Appendix 1 - Public consultation FAQ

What can the National Library of Ireland achieve if the policy of collecting, preserving and making available the published output of the nation is extended to include all contemporary publication formats of Irish interest including online digital formats e.g., .ie websites?

**Websites:** There are currently approx. 220,000 websites published in the .ie domain. There are also other websites of Irish interest available under other domains e.g. .com, .eu which the National Library of Ireland would want to collect in accordance with the NLI collection development policy. The NLI would be able to collect all these sites (a “full domain crawl”) at points in time e.g. annually.

Note: Since 2011 the NLI has carried out selective themed crawls of websites e.g. General Elections/referendums on a voluntary basis.

**Electronic publications:** Under existing legal deposit legislation, the NLI is entitled to collect physical publications published in the State including government publications, newspapers, and periodicals. If the policy was extended to include online digital formats, the NLI could collect publications in electronic form also, including the increasing number of publications which are published in **electronic form only**.

Note: The NLI has already captured a large number of e-Publications as part of its selective web crawls but further work needs to be done in order to preserve and make the individual publications available.

**E-Books:** Under existing legislation, the NLI is entitled to a copy of every physical book published in the State. If the policy was extended to include online digital formats the National Library could collect all books, including those published in electronic form.

**How are websites collected?**

Web archiving is the activity whereby a snapshot of a website at a particular point in time is collected and preserved for access in the future. This has become a standard activity in national libraries worldwide, not least because of the transitory nature of websites. Websites are usually collected by a ‘web crawler’ which is an automated software process designed to capture websites at a particular point in time. These captured sites then undergo a rigorous QA process before they are made available for research long after the original site has disappeared. Many websites such as the websites of Government departments and other State bodies, contain important publications that only appear in digital form and are lost forever when the website content changes. These websites are of particular interest for national libraries, in their responsibility to collect the published record of a country.