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

Dear Minister Humphreys,

The Library of Trinity College Dublin warmly welcome this opportunity to respond to the very timely and urgent questions posed by the Department of Arts, Heritage, Rural, and Regional Affairs.

Trinity College Dublin is a UK Legal Deposit Library with unique experience of digital deposit.

Having worked with the British Library and other UK Legal Deposit Libraries (Oxford University Library, Cambridge University Library, National Library of Wales, National Library of Scotland) for over 15 years on developing legislation for UK legal deposit of digital format and being actively engaged in implementing UK legislation since 2013, the Library of Trinity is uniquely placed to comment on the opportunities and challenges of legislating for the legal deposit of online digital formats.

In addition to its statutory obligations to develop UK digital deposit, Trinity College Dublin has been so alarmed at the loss of digital material for future generations, that it created ‘edepositIreland’, a self-deposit service for electronic publications open to all publishers in Ireland, be they individuals, local groups, publishing houses or organisations, who wish to share their publications with the world (http://edepositireland.ie/).

Trinity College Dublin is very happy to offer its experience and expertise in UK legal deposit and with the voluntary edepositIreland to support the new Irish digital deposit.

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 including online digital formats e.g. websites.

The answer is unequivocally yes. In summary:

- there is a growing hole in Ireland’s national memory
- other countries have legislation for capturing the country’s web domain; no-one is systematically capturing the “.ie” web domain
- this loss of memory will seriously affect the future understanding of Ireland’s contemporary society
- we are a digital economy which makes this situation even more important
- if ‘content is king’, this is all about loss of content
What is a nation without memory of its history, social and cultural heritage? The Internet has enabled an unprecedented era of knowledge sharing, but it has also created new challenges. The diverse range of material that is now exchanged over the World Wide Web poses a challenge to our understanding of what comprises our intellectual, social and cultural heritage.

These are times of historic disruption in the global system of information and publication. This applies not only to websites, but also more traditional publishing formats such as books, journals, conference proceedings and government publications which increasingly only have a digital existence without equivalent in print. The Internet has transformed not only how we communicate and do business but also how we think and engage as social beings. We can only begin to quantify the intellectual, social, economic, political and cultural impact and its influence on shaping the global future. It is not an exaggeration to say the impact of the Internet will be as significant on the course of history as the invention of the printing press if not greater.

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

The ubiquity and immediacy of the Internet disguises the transience of much of the content that appears. It is believed that if something is on the Internet then it is there forever. This is an illusion. It is generally accepted that the average life of a web page is less than 100 days.

Web content is at risk of loss from a variety of factors, including sites (and servers) no longer being maintained, urls being moved, or content being updated or replaced. Reasons for this include neglect (intentional or otherwise), financial, natural disasters, and high-risk situations such as political instability and web wars including hostile take overs. Analysis conducted by the British Library in 2014[i], comparing UK web archive content to the live web, found that:

- Within 1 year, less than half the content captured in the archive could be found in a similar form at its original URL
- Over 10 years, nearly 30% of web resources couldn’t be found in any form as both the URL and web server were no longer available

This matters, as the information that we share online, and the way in which we use the web to communicate, has become a fundamental factor in cultural, social and political life of our nation.

It has particularly serious consequences for current and future research; for research integrity and reusability of research findings. Analysis conducted by Los Alamos Research Library and the School of Informatics and EDINA at the University of Edinburgh, found that[ii]:

- Within 14 days of publication, up to one third of journal articles published by Elsevier or available on PubMed Central had ‘link rot’, that is citations to the content on the Web could not be found on the ‘live web’ nor in web archives around that date of publication.

The Internet, as most people now know it—web-based and commercial—began in the mid-nineties. Almost as soon as it began, it started disappearing. Early scientists of the Web, Tim Berners Lee, Vint Cerf and Brewster Kahle freely agree that in the early days of the Web the objective was to get it to work, its immediacy and ease of use a priority and not digital preservation. As time has passed, they have increasing concerns about this
aspect and the prospect that the late 20th century and early 21st century will become an informational black hole.

There is a lack of clarity about who is responsible for archiving the Internet. Such a landscape is diverse, fragmented, with duplication and massive gaps in what is being collected and preserved for the future. Who can we rely on to preserve our present for the future? This is the consequence of there not being digital legal deposit.

Global Corporations such as Google and Microsoft have obvious interest and expertise in the area and the resources to meet the challenge, but do we as a nation trust global corporations driven by commercial imperative to secure our digital memory? The Internet as we know it is less than 25 years and in a rapidly evolving landscape how many of these corporations will exist in even fifty years’ time? Sites hosted by corporations tend to die with their hosts. When MySpace, GeoCities, and Friendster were reconfigured or sold, millions of accounts vanished. Facebook is 10 years old but will it last forever? Twitter has arranged to archive its files with the US Library of Congress.

Brewster Kahle one of the acknowledged fathers of the Internet has been concerned about this problem of long-term digital preservation and access since the early days. He founded the not-for-profit Internet Archive in 1996 and since then over 400 billion web pages have been archived across the world. The Internet Archive is an invaluable public institution, but it is not a national library, and, because the law of copyright has not kept up with technological change, Kahle has been collecting websites and making them freely available to the public without the full and explicit protection of the law. There are serious concerns about the long-term sustainability of a system reliant on a single provider, which sits outside the international legal framework – Ireland cannot afford to be dependent for the longevity of its digital memory on a not for profit, independent organisation based in the USA.

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

For centuries, archives, libraries, and museums have safeguarded our national and cultural heritage, our collective store of knowledge, as a legal and moral duty. Legal deposit libraries think not in terms of years or decades, but of centuries – thus safeguarding the future. Such libraries are an invaluable resource of knowledge, preserving not just the mainstream but the ephemeral and the rare to provide inspiration to creative and innovative minds as well as providing a record of life, learning, thought, social issues, etc.

The Web is global, but, aside from the Internet Archive, a handful of fledgling commercial enterprises, and a growing number of university Web archives, most archiving is largely dependent on national libraries.

Twenty of the twenty-eight member states[iii] of the European Union have digital legal deposit schemes in place. As a nation we have been slow to address the necessity to secure the protection and continued access to our intellectual, cultural and social digital patrimony.

A national mandated repository ensures that content is collected transparently without bias; processes are documented and published and will provide context for future research. The Web does not exist in a vacuum and such digital content will be used alongside other sources.

For Ireland, consideration of legislation to extend legal deposit to online digital formats is an affirmation of the importance of the country’s digital future. Such legislation would
provide for a continuity of heritage with those printed works held in the care of the National Library of Ireland and other legal deposit libraries, while recognising the national significance and vulnerability of the Ireland’s digital heritage, and so the need to protect it for the enlightenment of generations to come.

The Library of Trinity College Dublin therefore strongly supports the proposal as outlined in the public consultation and urges the Minister of Arts Heritage, Regional, Rural and Gaeltacht Affairs to consider and act on this response.

Yours sincerely,

Helen Shenton
Librarian & College Archivist

[iii] Germany, Italy, Poland, UK, France, Romania, Sweden, Spain, Austria, Hungary, Belgium, Finland, Czech Republic, Lithuania, Belgium, Slovakia, Estonia, Slovenia, Latvia, Denmark

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Coláiste na Tríonóide, Baile Átha Cliath – an ollscoil is fearr in Éirinn agus ceann den 100 ollscoil is fearr ar domhan de réir Rangú QS ar Ollscoilíanna an Domhain