NIGERIAN LEGAL DEPOSIT LEGISLATION AND THE REALITIES OF DIGITAL REVOLUTION

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Abstract

This paper examines the importance of effective implementation of legal deposit legislation which will engendered orderly development of our national memory for posterity. Updating legal deposit legislation to accommodate e-publications is crucial in making it reflective of the realities digital revolution has brought. Today, cultural material are now available in electronic format which makes their use not limited by physical barrier of distance and time. Assessing the compliance level with legal deposit legislation is an important aspect of monitoring and enforcement that enables management to know whether the objectives of the legislation are being achieved or not. The overall objective is improved compliance with legal deposit legislation. The government's interventions aimed at supporting the publishing industry with financial assistance for indigent authors with good manuscripts, is long overdue if the objectives of legal deposit legislation are to be achieved and sustained.

Introduction

The legal deposit legislation is a set of statutory provisions that is intended to regulate the conduct of activities related to collection, provision of access and preservation of intellectual output or cultural material by Nigerians and about Nigeria. It can also be described as a supportive framework that ensures orderly acquisition, management, and preservation of the country's published heritage. It specifically requires individuals and organizations- private or public- to deposit copies of any type of documentation produced in multiple. The number of copies to be deposited varies among countries; in Nigeria three, ten and twenty-five copies are the requirements for individuals, state and federal governments' publications respectively, within one month of publication.

An effective implementation of a legal deposit legislation guarantees access to a country's intellectual and creative output now and in the future. Bibliographic records for the National Bibliography of Nigeria (NBN) production is the major outcome of compliance level with legal deposit legislation. However, for any law to be respected and taken seriously it must be enforceable and punishment for infraction clearly stated. The Nigerian legal deposit legislation is part of the National Library of Nigeria (NLN) Act as in other countries such as Japan, Canada, and Venezuela, while in France, Sweden, South Africa, and Greece, it is a stand-alone Act. Netherlands has no statutory provision; national collection relied on voluntary deposit agreements between the country's national library and publishers.

The practicability of alternative models such as voluntary deposit schemes, incentives-based structures and self-regulation as preferred models to statutory regulation, is still a subject of debate.

However, for developing countries with less developed publishing industry, statutory regulation remains the only practicable option. In developed countries new forms of creation, production, distribution, access and participation have revolutionized industries, such as book publishing, music and film. Most countries depend heavily on legal deposit for building their national collections but a few countries have proceeded to building national cultural heritage through voluntary deposit systems (Landry, 2014).

It is against this background that this paper examines the need to update, revise or enact new legal deposit legislation with the view to highlighting the importance of effective implementation of legal deposit legislation that is reflective of the realities the digital revolution has engendered.

Effective Implementation of Legal Deposit Legislation

Updating legal deposit legislation

It is doubtful whether it is right to say a law is obsolete or outdated when it has not been repealed or expunged just because it does not address or envisage certain challenges. An Act enacted almost 49 years ago which stipulates £50 (N1000) as fine for any infraction of the legal deposit provision is still enforceable but could be said to be ineffective. The deterrence effect of the fine is defeated when its value and the cost to get it imposed are considered. It is now being argued in some quarters that apart from an upward review of the fine, a new provision that will ensure that stipulated fine is slammed on anyone in breach of the legal deposit provision by National Library of Nigeria and anyone who has propensity for litigation can go to court to challenge the fine.

Presently, emphasis is on aggressive sensitization of publishers and would-be publishers to encourage them to discharge their legal deposit obligation within the one month stipulated. The campaign is showing to be effective as available data indicate that the number of titles deposited yearly since inception of the current management in 2016, has been on the increase. It must also be added that inference based on the number of titles deposited says nothing about compliance level, so with effect from September, 2019 data on compliance level with legal deposit legislation in Nigeria will be made available.

Section 4 (7e) of the National Library (1970) Act, a Supplement to Official Gazette No.27. Vol.57, describes book as all forms in which documentary or oral communications are published has been unduly overstretched to imply e-publications and says nothing about their acquisition and preservation. A provision that is unambiguously clear about e-publications, especially, stating whether sound-recording, videos and online publications are included, is needed. Also, as part of effort to provide institutional support to create a platform that will provide opportunities for authors with good manuscript to self-publish and explore online publication, NLN intends to engage stakeholders especially, the Book Development Centre (BDC) and the Association of Nigerian Authors (ANA) on the development of an appropriate legal framework to support the initiative. NLN can rely on Section 5 (3i) to kick-start the process of providing financial assistance to indigent

authors with good manuscripts saving the nation from missing out on their worthy contributions to cultural heritage due to misplaced priority by big-time publishers.

Legal Deposit Legislation in the Digital Age

Advances in technology have made available search engines such as Google, Scopus, and Amazon that now compete with libraries' databases such as OPAC, national bibliographies, and ONUC in the provision of faster access to information. The European Commission's Directorate-General for Communications Networks, Content and Technology (2016) in a progress report 2013- 2015 which is a working document on Implementation of Commission Recommendation on the digitization and online accessibility of cultural material and digital preservation, describes the digital revolution as unprecedented opportunities to access cultural material for leisure, study or work, reaching out to broader audiences, engaging in new user experiences and reusing it to develop learning and educational content, documentaries, tourism applications, games and other innovative applications.

The advent of e-publications on large scale has necessitated the need to extend the deposit obligation to non-print publications. Nigeria, Canada, Finland, France, Germany, and South Africa are examples of countries where audio-visual material (sound recordings, films, and videos) are also subject to legal deposit legislation. The UK Legal Deposit Library Act (2003) empowers the Secretary of State to make regulations extending the deposit obligation to all forms of non-print publication in all media, except works which consist only or primarily of a sound recording or film or both. France and Japan have modified their legislation to include electronic publications, but have specifically excluded on-line electronic publications because of the numerous unsolved technical problems related to the acquisition and preservation of such material. According to Lariviere (2000) many countries such as Canada, Denmark, Finland, France, Japan, Norway and South Africa have in different ways included electronic publications in their legislation.

In recent years, the National Library of Nigeria has consistently pushed for the revision of the legal deposit legislation with the view to addressing the realities raised by electronic publications. These issues especially for online publication principally relate to copyright, content authentication, acquisition and secured management, harvesting technologies, and shared technical infrastructure. Section 4 (7e) already empowers NLN to acquire and preserve sound recording and on-line electronic material at a national level. An ever-increasing number of electronic publications, including e-journals, are now accessible through the website of some national libraries.

Compliance Level, Monitoring, and Enforcement

Attaining 100% compliance level with legal deposit legislation in Nigeria appears a daunting task especially when one considered our capacity to resolve issues- such as un-cooperation attitude of publishers, inadequate funding, copyright, and content authentication - that have militated against successful implementation. In France and United States, between 90 and 100% compliance level is achieved, however, the Swiss National Library with its voluntary system of legal deposit attained nearly full compliance (Iqbal et al.,2015). Another study of compliance was conducted in the Netherlands where the coverage was approximately 95% for books with an ISBN and 70% for non-

ISBN books (Landry, 2014). The capacity to assess the compliance level with legal deposit legislation in Nigeria is what the current NLN's administration is determined to achieve as it has just established a monitoring and evaluation unit saddled with the responsibilities to generate empirical data that will tell us whether the desired level is being met or not.

The cost of enforcement and litigation makes civil remedies- such as negotiation, persuasion, and prohibiting the distribution and sales of published material not deposited-better and efficient options. In many countries what is usually imposed as fine is usually small and its pursuit through litigation is not common as a review of plethora literature reveals that successful prosecution of legal deposit legislation is very limited. According to Byford (2005) the last recorded case that was taken to court in the United Kingdom was in 1920's. In Nigeria there have never been a recorded case of successful litigation on violator, so legal option is seen generally as last resort especially, where the cost of litigation is more than the cost of the item in question. This does not suggest in any way that legal deposit should not be enforceable, as penalty structure or penalty clause for contravention is necessary to put pressure on publishers to comply.

Compliance with legal deposit legislation for electronic publication appears more complex than for print because of many issues relating to copyright, organizational, technical and operational aspects. For example, the problem of copyright issues relating to reproduction of a work (even print) for preservation has not been fully resolved in many countries, especially if the work is orphaned, not available elsewhere or out-of commerce. Lack of sufficient publishers' confidence in the ability of NLN to protect their legitimate commercial and other interest is responsible for non-submission of e-format of published work in print. It is imperative that a clause prohibiting the use of deposited collection by default be included in the revised legal deposit legislation.

In line with global trend for national deposit collection for e-publications plans are underway for voluntary deposit of non-print material on the NLN's website that will soon have portal for easy upload. While effort will be made to see that a clause is inserted in the legal deposit legoislation to make submission of e-format of printed publication obligatory as soon as our intended Digital Deposit Registry takes off.

Impact of Legal Deposit Legislation on NBN and the Publishing Industry

Legal deposit collection is the source of bibliographic records usually listed in the national bibliography (bibliographic control) and it is one of the major objectives of any legal deposit legislation. The comprehensiveness and timeliness of a national bibliography to serve as copycataloguing, selection and reference tools depend on factors such as cooperative attitude of publishers, effective implementation of the legal deposit legislation, and adequate fund for sensitization, research, monitoring and enforcement. NLN is not unmindful of the other platforms that provide faster access to information, as it is determined to ensure that with effectfrom this year NBN production will be timely and comprehensive through implementation of new strategy that ensures that a bibliographic record takes one month to get listed and an average of 10- workday to get a material shelved.

The fact that a statutory provision exists and enforceable makes publishers to comply, irrespective of the strategy deployed in the implementation of the legal deposit legislation. The inference that can be easily drawn from the continued increase in the number of titles collected as legal deposit in the last two years is that more publishers are now complying as the figure jumped from 3,168 in 2017 to 7, 107 in 2018. The Swiss and Dutch experiences have shown that mutual trust between publishers and national library without regulation could also work to ensure bibliographic control and preservation of cultural material. It is, therefore, difficult to attribute current improvement in the compliance level with legal deposit legislation to regulation alone, as the impact of aggressive consultations and rejigged sensitization programme carried out by the current management cannot be ignored.

As part of efforts to make NBN comprehensive and timely, management is investing heavily in the development of ICT infrastructural facilities and capacity-building of staff to enable the National Library function effectively as the national depository for electronic publications. The target is to ensure that non- print material such as CD-ROM, off-line and online publications about Nigeria and by Nigerians are captured in the NBN as much as possible. A revision of the legislation may be required to enable NLN harvest Nigerian material and material about Nigeria directly from the open web for archiving without any prior engagement with publishers. It must be added that though a 'harvester' works in the same way as other web users' computers, NLN will try to ensure that it is programmed with 'politeness settings' which guarantee minimal impact on the website (using a small proportion of the website's bandwidth capacity).

The publishing industry is currently facing problems that range from poor purchasing power, lack of access to finance, copyright infringement, and piracy to declining reading culture among the populace. These problems have negatively impacted on the publishing industry that as at 2010 worth N100 billion and employs over 300,000 people (The Punch, Wednesday, July 7, 2010). The global book publishing industry is worth about \$103 billion and currently, employs about 814,000 people world-wide and it has continued to experience 0 percent annual growth five years running (Linchpin, 2021).

Many good manuscripts are over-delayed before they get published and some never get off publishers' desks and some resort to self-publishing when snubbed by well-established publishers due to economic reason. In the 2014 edition of National Bibliography of Nigeria, self-published work constituted over 38.20% of material listed. Figure below shows the modified Dewey 'subject classification of published work in the NBN 2014 edition. The dominant specialty people write about is Religion (39%), followed by Social sciences (23%), Language, Arts and Literature (15%), and Science and Technology (11%). Authors showed least interest were in Computer Science, General Knowledge, and Philosophy (7%) and Geography and History (5%).

The data shown in the figure, coupled with issues relating to lack of access to finance and the drawbacks of self-publishing indicate the need for government's intervention and where it must be directed in the publishing industry. The cultural heritage the legal deposit legislation aimed to

preserve will be rich and balanced when appropriate intervention measures are implemented with the view to making it reflective of Nigerians' tenacity to excel in all fields of human endeavors.

Figure: a modified Dewey 'subject classification of published work in the NBN 2014 edition

Alternative Models to Regulation

Many alternative models to legal deposit legislation have been explored by developed national libraries especially in Switzerland and Netherland. In the United Kingdom alternative models that include: voluntary deposit schemes for electronic publications; incentive based structures, and self-regulation model were once explored. The workability of these models depends on the commitment of parties to mutual agreement and faith in the conflict resolution' mechanism as court cases and legal disputes are avoided. A joint-committee can be established among NLN, Association of Nigerian Authors (ANA), and other publishing trade association to give advice on technical issues and resolve disputes.

NLN intends to adopt the voluntary deposit scheme to regulate e-publications. This involves twilling upload of non-print publications such as CD-ROM, sound recordings, and other of fline publications by publishers, while online publications are directly harvested and archived by NLN. This model is practicable in that it is not in conflict with any provision of existing legal deposit provision, unlike the incentive- based structures and self-regulation models that their implementation may require total repeal of many provisions in the legal deposit legislation.

Supporting Structures for Implementation Legal Deposit Legislation

International Standard Book Numbers (ISBN), International Standard Serial Number (ISSN) and Cataloguing in Publication (CIP) are the three supporting structures NLN could rely on for legal deposit implementation. The publishers' attitude to collect block of numbers they may never utilize makes the use of ISBNs and ISSNs for tracking of publications subject to legal deposit, unreliable. Happily enough, both (ISSNs and ISBNs) could now be applied for real-time online, thus saving publishers the stress of visiting any NLN's office. CIP is not a compulsory requirement to be included in any publication, but could be very useful in the monitoring and enforcement of compliance with legal deposit legislation.

The Legal Deposit Department is currently working on a proposal that will make CIP inclusion in publications obligatory with the publishers paying a token for the service. This is important for the fact that monitoring will be enhanced as the CIP provides bibliographic information about the book and also the author's bio data. NLN need not wait for a legal provision to implement this proposal as there are already several provisions in the National library Act that allows NLN to formulate policies and set guideline for effective delivery of her services. However, for e-publications the use of Uniform Resource Names (URNs) and Digital Object Identifiers (DOI) will be exploited when the proposed Digital Deposit Registry takes of f.

Conclusion

Implementation of a legal deposit legislation guarantees access to a country's intellectual and creative output. Alternative models such as voluntary deposit schemes, incentives-based structures and self-regulation are preferred models to statutory regulation in some countries.

A revision of the legislation is required to enable NLN harvest Nigerian material and material about Nigeria directly from the open web for archiving without any prior engagement with publishers. The problem of copyright issues relating to reproduction of a published work for preservation is yet unresolved in many countries, especially if the work is orphaned, not available elsewhere or out-of commerce.

Measures such as aggressive sensitization campaign, dedicated legal deposit drive and regular engagement of stakeholders through participation in NLN's programmes have helped to improve compliance level with legal deposit legislation in Nigeria. The need for government' intervention in the publishing industry with financial assistance to publishers is long overdue, if the preservation objectives as contained in the legal deposit legislation are to be achieved. An effective implementation of legal deposit will not only offer free publicity to published work but guarantees the sustainability of the national memory for posterity.

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