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Access to electronic publications in TEL: a common interest of national libraries and publishers

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The theme of this open session is how legal deposit and copyright laws meet the national libraries' mission. There is no one single mission of national libraries worldwide. But in all the possible missions, there is one common denominator and that is the safeguarding of the national cultural heritage. Legal deposit is clearly instrumental to this mission: building deposit collections (on a legal or voluntary basis) enables the national library to operate as one of the most important national heritage institutions in a country. Building collections makes only sense when these collections are in some way available to the public. Therefore, the mission implies giving access to deposit collections, now or in the future. Giving access means that one have to be aware of copyright.

The omnipresence of electronic information gave rise to new copyright regulations, which have implications for depositing practices. I am not an expert on copyright, but I had many discussions about deposit policy with publishers and publisher organisations in the Netherlands, and in Europe. What I do know is that publishers who support deposit policy as such, are on the alert when conditions of access are being discussed. In the past this was not a major point. In each country only one or a few libraries had deposit collections and users had to go to the deposit library to have access to the collections. The user group was limited and the conditions for access were clear. Commercial document delivery caused some conflict, but on the whole current library practises did not really harm the commercial interest of publishers. At the same time libraries fulfilled a task which publishers could not or did not

want to fulfil: storing publications for the long term and safeguarding availability in the future.

Electronic publications have changed the situation. For the library community it is evident that electronic publications are part of the national cultural heritage and that national libraries should collect electronic publications to carry out their mission as a deposit library. We are now preparing to handle the new situation. In Europe we try to convince our government to invest into the technical infrastructure for storage and retrieval of very large quantities of digital information (hundreds of Terabytes). Also the publishing industry has to be convinced that it is important and also into its own interest to co-operate with national libraries in building and maintaining deposit collections of electronic publications.

In the Project TEL (The European Library) the relation with publishers is the first of six work packages. I will share with you the information we have gathered so far about current depositing practices in Europe and about the view of the national libraries and a number of publishers, especially on the conditions for access. I will conclude with suggestions for future co-operation based on common interests.

Introduction to TEL

For those who are not yet familiar with TEL: the project aims to lay the groundwork for a system for the discovery of and access to the collections, products and services of European national libraries. TEL would offer an integrated discovery tool and a single point of access to European distributed content (digital and non-digital). The present website of Europe's national libraries, Gabriel, will function as TEL portal. Gabriel already contains information on 41 national libraries in Europe and their collections. There are also links to the services. Eight national libraries are partners in TEL: the national libraries from the UK, Germany, Italy (Florence), Finland, The Netherlands, Portugal, Slovenia and Switzerland. Three other partners are: CENL (umbrella organisation of the national libraries in Europe), the ICCU (Central Union Catalogue Institute (Italy) and the University of Northumbria (main subcontractor). The original partners form the basis of the consortium, which will be open to all European national libraries.

The work in the project is focused on reaching agreements on standards and processes, testing inter-operability, scalability and multilingual features etc. Although some technical work is being done, the aim is essentially consensus building and not to develop any operational system. The TEL consortium works with significant publishers of electronic materials and publisher organisations on business, licensing and copyright matters. However, it should be emphasised that it is not an objective to reach any binding resolutions concerning these issues.

Code of practice

In TEL we are building upon the work that has been done in a joint committee of CENL and the Federation of European Publishers (FEP). The committee prepared a statement on the development and establishment of codes of practice for the voluntary deposit of electronic publications. Both CENL and FEP have officially endorsed the statement, which draws extensively on the provision already agreed in the UK, Germany and The Netherlands. It was recommended that each national library should establish a joint working group with representatives from publishers in their own country. The working groups should review the

statement, adopt it as appropriate to national circumstances, set up and monitor a programme, and engage jointly with their governments in discussion on a legal code. In the statement a minimum level of access has been established.

The minimum level allowed will be to a single user at a time within the holding deposit library, across a secure intranet at designated terminals within an area only accessible to authorised users of the deposit library concerned. At the time of deposit publishers are requested to specify, via a standard form, which levels of access they agree to:

- a. the minimum level just described (this is the default)
- b. networked access across a secure network; single user at a time (in case of multi-site libraries or in any country where there is more than one deposit library)
- c. free access to the publication via direct access to a server at the publishers' location, but only for users seated in the reading rooms of the national library; in that case the national library stores a copy, but provides not direct access to it.

Another option would be single user access within the holding deposit library at a standalone workstation. This is not recommended on grounds of preservation, because of the extra handling involved, and of security, because of the greater risk of loss or damage.

All wider access or use for document supply and ILL, are only permitted under explicit licence from the publisher. However, the guideline states that restrictions would not be harsher for electronic publications than they are for printed publications.

Copying for preservation purposes should be allowed. The statement says: "It will be assumed that the holding deposit library may copy a publication onto other media as and when technology developments are seen to require such a measure, for preservation purposes only, subject to the preservation of the individual publication's identity and integrity."

The levels of access formulated are to my opinion rather conservative and reflect the state of affairs in the UK in 2000, when the BL and the Publishers' Association agreed on a voluntary code of practice. In 1999 the KB and the Dutch Publishers Association had already agreed on a more liberal arrangement. It allows concurrent use, downloading according to the term of delivery of the publisher (which does not need to be contractual licensing) and printing of a small part of the work or some articles for one's own use. However, also in The Netherlands remote access is ruled out.

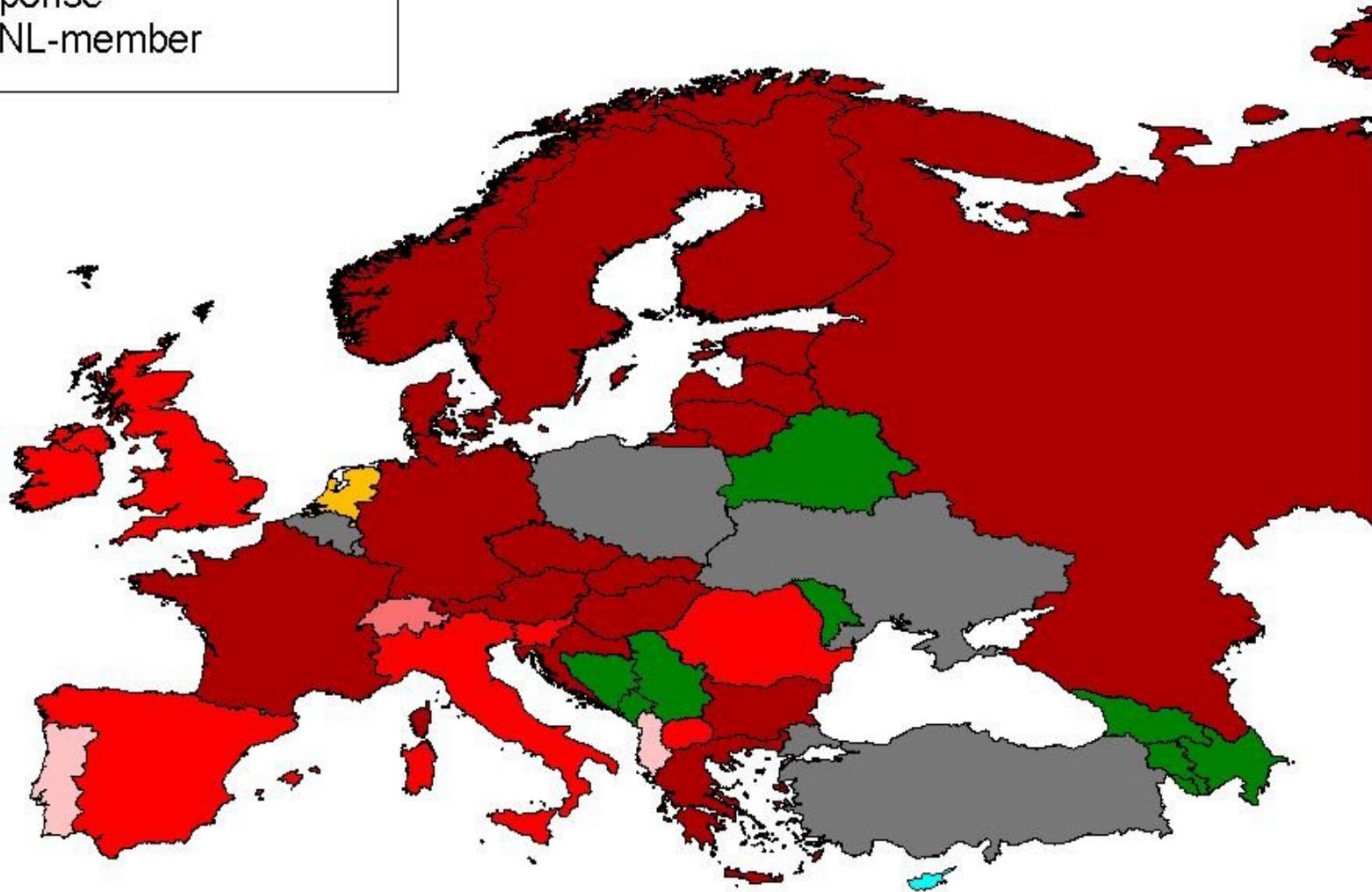
Current practice

As part of the TEL project all 41 CENL members received a questionnaire with the aim of reviewing current practices. The response was excellent with 32 completed questionnaires. It was surprising to learn that only a few indicated to have used or were planning to use the CENL/FEP statement in negotiations. Of course, in some countries contracts or arrangements had already been agreed upon before the issue of the statement as in the UK, Germany, The Netherlands and Sweden. But another reason for not using the statement could be that the deposit law already applies to electronic publications. This proved to be the case in more than 50% of the countries in the survey! On the slide (next page) these 17 countries are dark red coloured. In most of these countries, however, the law does not apply to online publications, like e-journals, databases, internet resources, but only to handheld media, such as cdrom and dvd. In 13 countries voluntary agreements are in place, sometimes (5 libraries) in addition to the digital deposit law. These voluntary agreements focus mostly on online publications. There is no common approach. Some libraries use standard contracts, some use different contracts for individual publishers and some have no contracts at all.

8 countries (bright red) have plans to adjust the law to include digital publications. That leaves only 5 countries that do not and will not have a deposit law that covers digital material in the near future.

Digital deposit in Europe

- Dark red: Digital deposit covered by law
- Red: Deposit law to be changed
- Light red: (Digital) deposit law pending
- Very light red: No plans to change law
- Yellow: Voluntary deposit
- Cyan: No deposit
- Grey: Non response
- Green: Non CENL-member



Access to electronic publications

The minimum level of access in the CENL-FEP statement is one single (authorised) user at a time. How is the actual situation in European libraries? How many libraries provide only this limited level of access?

Simultaneous access	
Practice in libraries (25 with user access)	
single user	13 (52%)
more users	12 (48%)
Acceptable to publishers (answered by 27)	
only single user	9 (33%)
only more users	7 (26%)
both acceptable	10 (37%)
no access	1 (4%)

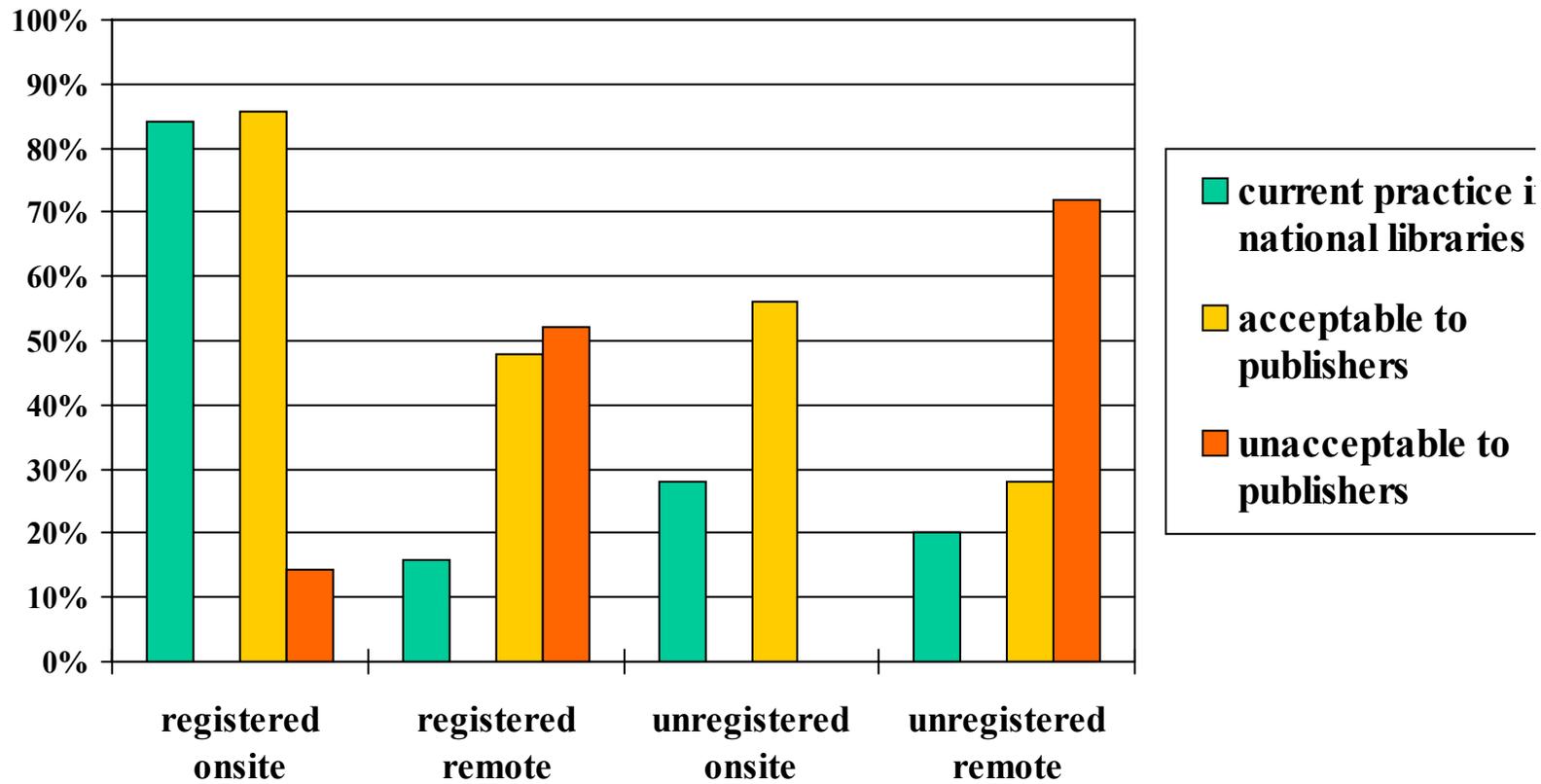
It proves that about half of the national libraries (48%) allow access to more users at time, which to my opinion should be the default.

How do publishers feel about this? We have some indication. Before I talk about that, I have to tell you about this other survey in TEL: with the help of the CENL libraries, we sent also a questionnaire to publishers in Europe. The target group consisted of publishers which deposited digital publications at the national library already, as indicated by the national library itself. It proved to be very difficult to motivate these publishers to respond. We received some 30 reactions, unevenly distributed over Europe. Reminders didn't help. I guess that the issue of depositing digital publications is very new for publishers. They have just started thinking about it. I feel that they cannot answer questions on depositing policy because they don't have a policy yet. Anyway, the questionnaire made publishers aware of the issue! So you must bear in mind that the information we got from the survey is not representative for European publishers.

As can be seen in the table above, the responses indicate that most publishers would accept simultaneous access.

Another question is who would be authorised to access the deposited publications. We defined four categories: registered users both on site and remote, and unregistered users, both onsite (walk-in users) and remote (general internet user).

There will be no commercial publisher, who would allow remote access to the unregistered user. On site access by the registered user is however generally accepted by the publisher and this is in fact the general practice. Some copyright owners would allow remote users as well (see the next graph).



Common interest of national libraries and publishers

Clearly, many publishers have a positive attitude towards depositing practices. But as the issue is very new, national libraries have to explain why this is important. Not only because it is the national libraries' mission, but also because it is in the interest of the publishers. This morning we witnessed the recognition of this when Elsevier Science announced that the Koninklijke Bibliotheek, national library of The Netherlands, will become the first official digital archive for all 1,500 Elsevier journals. Elsevier Science said that it is essential for them to be able to guarantee both authors and researchers that the electronic files will be permanently available. What does the agreement say about access? The agreement itself is confidential, as usual, but in the press release it was revealed that the KB will provide access on a current basis to all who come to the library and are permitted access to the library's collections. In addition, should there be a catastrophic disaster and that the ScienceDirect system would be inoperable for a long period of time, then the KB would be part of the interim service system. Finally, should Elsevier cease to make these journals available on a commercial basis, the KB could open access to all on a remote basis (in addition to walk-in). So the first interest for the publisher is to have a reliable digital archive, a function which the national library could perform.

There are a few other functions and now TEL is coming into view. As I said before, TEL will offer a single access point to the holdings of national libraries. That could be interesting for publishers who would appreciate an additional distribution channel. Very large, well-known international publishers do not need such an additional channel, perhaps, but smaller publishers could benefit from it. At least one medium-sized publisher expressed the wish to co-operate under the condition that access is provided to a well-defined user group within TEL. Other areas of common interest are the joint production and use of metadata. Finally, it can be assumed that publishers could benefit from incorporation of electronic publications in the national bibliography. Our survey, however, shows that publishers are not yet convinced of the advantages.

It is evident that the deposit of electronic publications is a new area for which new policies and practices have to be developed. Designing new laws or adapting existing laws is only one aspect of this. A continuing dialogue with publishers is needed to find solutions for technical problems that still exist and to reach consensus on issues like level of access and rights management. National libraries should participate in this dialogue on the basis of a clear view on its mission and, in the case of TEL, a clear business plan. In the next phase of the project the partner libraries will pay one-to-one visits to publishers to continue or to start this dialogue. I am convinced that both national libraries and publishers are in a position to add value to the information chain, without being in competition.