

Report

Concept of the Acquisition System for the Networked Electronic Publications

December 9, 2004

Legal Deposit System Council

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Legal Deposit System Council

December 9, 2004

Chief Librarian of the National Diet Library

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Chairperson of the Legal Deposit System Council

Shinkichi Eto

Report—Concept of the Acquisition System for the Networked Electronic Publications—

The Council submits hereby the Report to the Librarian, having reached a conclusion after the deliberation on the terms of reference of the Consultation Document, NDL(AC),No.25, dated March 1, 2002, “whether the Networked Electronic Publications issued within Japan should be incorporated into the Legal Deposit System,” as well as on the question referred to the Council, in relation to the reasons of the consultation, about “to what extent and by what means the Networked Electronic Publications should be collected, if they could not be incorporated into the Legal Deposit System,” by virtue of the provisions of Clause 1, Article 2 of the Legal Deposit System Council Regulation (National Diet Library Regulation, No.1, 1997).

Introduction

(1) Purpose of the Consultation and the Basic Stance of the Council

The Chief Librarian of the National Diet Library consulted the Council about the following question (by the Consultation Document, NDL (AC), No. 25, dated March 1, 2002, hereinafter referred to as “the Consultation”): “Should the Networked Electronic Publications issued within Japan be incorporated into the Legal Deposit System?”

The Chief Librarian also asked the Council for opinions on “to what extent and by what means the Networked Electronic Publications should be collected, if they could not be incorporated into the Legal Deposit System”, in relation to the reasons of the Consultation.

Regarding the incorporation of the networked electronic publications (hereinafter referred to as the “NEPs”) into the Legal Deposit System, the Legal Deposit System Research Council (the former organization of the Council, and hereinafter referred to as the “Research Council”) studied it in detail on the consultation by the then-Chief Librarian made in March 1997. This is, therefore, substantially the second time of consultation.

In the report titled the “Concept of Japan’s Legal Deposit System towards the 21st Century – Mainly for the Electronic Publications” (dated February 22, 1999), the Research Council concluded that it would not be appropriate to incorporate the NEPs into the legal deposit system mainly because the compulsory fixation of the publications made public on the network by the national government might be against the senders’ will and beyond their reasonable anticipation, which might lead to chilling effects on free speech. Based on the conclusion, the Research Council recommended that the NEPs should be selectively collected under contracts, acknowledging their usefulness and necessity in the active collection.

The report also mentioned as follows: “There would be a possibility that the problems of freedom of expression on the Internet, economical efficiency in collection, and others pointed out in this report might be settled by changes in the people’s perception in the near future with unpredictable progress in the NEPs (Networked Electronic Publications). Under such circumstances, the legal deposit of the NEPs should be promptly examined anew.”

The new Consultation mentions that the online information to collect has been drastically expanding since the Research Council made the report. The Council agrees with the recognition of the Consultation. The Council also fully realizes that more and more works have been published only through the network, without any printing or bookbinding process.

As the report of the Research Council mentioned, however, the “circumstances” under which “the legal deposit of the NEPs should be examined anew,” would be mainly affected by changes in people’s awareness. It hardly appears that so remarkable changes by which the problems to arise from incorporation of the NEPs into the Legal Deposit System could be spontaneously resolved, have actually occurred in people’s perception, since the report of the Research Council was submitted.

Nevertheless, the Council understands that the reference to the “legal framework” in the Consultation (in the part of “the Reasons of Consultation”) suggests further consideration from a long-term point of view, including the establishment of a system other than the Legal Deposit System, in order to collect the NEPs efficiently to make them steadily available so that the National Diet Library can fully achieve its functions. The Council thus takes such consideration into account in the deliberation.

Based upon these points of view, the Council has proceeded into the research and discussions on the terms of Consultation.

(2) Process of the Deliberation

For more effective discussions on the Consultation, the Council established two subcommittees: the Networked Electronic Publication Subcommittee (hereinafter referred to as the “First Subcommittee”), and the Subcommittee on Collection of the Networked Electronic Publications (hereinafter referred to as the “Second Subcommittee”).

The First Subcommittee discussed on incorporating the NEPs into the Legal Deposit System, and collecting them by authority of law other than the current legal system. At the 7th Council meeting (on March 13, 2003), the results of the discussions of the First Subcommittee were reported. Among them, the conclusion that it would not be appropriate to incorporate the NEPs into the Legal Deposit System was approved at

the meeting.

Then, the Second Subcommittee was established at the 8th Council meeting, to be assigned to the task to examine from a legal point of view the extent and ways of collecting the NEPs which had been studied by the First Subcommittee. The progress of its discussions was reported at the 11th Council meeting. The results of the discussions were reported and then approved at the 12th Council meeting.

At the meeting, the chairperson proposed a report (draft) integrating the discussions made by both of the First and Second Subcommittees, which was unanimously adopted as the final report of the Council after some deliberations.

The names of the members and special members of the Council and their allocation to the First and Second Subcommittees, as well as the chronology of the deliberation, are found at the end of this Report.

(3) Terminology

The followings are the definitions of particularly basic terms and conceptions used in the Report.

(i) “Networked Electronic Publications”

Publications made public by electromagnetic memory are called electronic publications. Among them, those made public by telecommunication or other media are called “networked electronic publications” (as defined in p.4 of the report of the Research Council).

Since “telecommunication or other media” includes broadcasting in the most extensive meaning, the networked electronic publications include the publications made public through broadcasting.

(ii) “Acquisition by Authority of Law”

This means the collection system that includes some element of legal compulsion.

(iii) “Senders”

“Senders” means the persons who transmit text, sound, image or program data to the public by telecommunication means such as the Internet. This term is used to distinguish such persons from publishers of the conventional publications.

(iv) “Harvesting by the Search Robot”

This means reproduction with the software for reproducing the files on the Internet websites.

(v) “Private Persons”

“Private persons” means individuals or corporations other than the national or local governments, or the independent administrative and other institutions (the corporations which were defined in another report of the Legal Deposit System Council (dated February 13, 2004) as subject to the legal deposit obligation equivalently to the national and local governments. See **3 (4) (ii)**).

(4) Structure of the Report

In **1**, after reexamination of the question of the Consultation “whether the Networked Electronic Publications issued within Japan should be incorporated into the Legal Deposit System,” by taking into account the possibility of acquisition under a system other than the Legal Deposit System, the Council concluded that it would not be appropriate to incorporate the networked electronic publications into the Legal Deposit System.

In **2**, the Council specifies the points to be noted for studying another system, supposing it is needed to collect the NEPs under the system other than the Legal Deposit System.

In **3**, the Council studies the extent of the NEPs to collect, concluding that it would be required to collect them extensively without any selection on the basis of the contents, in accordance with the duties of the Library specified in the National Diet Library Law (the Law No.5 in 1948, and hereinafter referred to as the “Library Law”).

The Council studies what kind of NEPs are to be excluded from collection, examining whether each of the NEPs, for example, the database, falls within such a category.

The Council also studies whether the independent administrative institutions and other corporations established by special laws and affiliated to the national and local governments should be treated as equal to the national and local governments, where collecting the NEPs of the governments comes up for discussion. In addition, the Council also discusses the meaning of the “NEPs issued within Japan” (as mentioned in the Consultation), and the extent of the “network.”

In 4, the Council examines how to collect the NEPs. Since it is needed to establish a system by authority of law lest the collecting should cause “chilling effects on free speech,” the Council points out that there could be respective approaches for the governments and the private persons. Thus, on the discussion, the Council classifies the NEPs into two categories: governmental or private persons’.

Furthermore, the Council discusses on whom the obligation should be imposed in relation to acquisition of the NEPs (or, who could reject the fixation of them) and how often the acquisition should be conducted.

In 5, the Council examines the problems of the copyright and others to occur when the NEPs are acquired (fixed), or the fixed NEPs are provided for use, by the Library.

In 6, the Council contemplates the problems of compensation for the losses arising from the NEPs acquired or provided for use by the Library, particularly focusing on whether they should fall within the losses for which the Constitutional compensation is required.

In 7, the Council studies whether the means for ensuring implementation of the obligation should be needed, having regard to the case where any private person has failed to implement the obligation as required under the acquisition system by authority of law.

In the **“Concluding Comments,”** the points to be regarded are mentioned for smooth legislation and implementation of the basic requirements for acquisition by authority of law described above. Also, the technical problems on preservation of the acquired NEPs and security measures are referred to at the end.

1. Incorporation of the Networked Electronic Publications into the Legal Deposit System

As mentioned in the “Introduction,” the Research Council concluded in its report that it would not be appropriate to incorporate the NEPs into the legal deposit system, upon its full examination in light of the fundamental characters of the Legal Deposit System.

Based on the examination approaches taken by the Research Council, the Council studies the issue again. The Council, however, particularly focuses its concern on how to treat such problems as might have occurred with incorporating the NEPs into the Legal Deposit System, in the light of a system other than the Legal Deposit System.

(1) Meaning of “Incorporation into the Legal Deposit System”

“Incorporation into the legal deposit system” could be regarded as the establishment of a system that substantially holds the fundamental characters of the Legal Deposit System, including delivery obligation on the deposit, exhaustiveness of coverage, and publishers as the persons responsible for legal deposit, regardless of the form of legislation, that is, whether by partial amendments of the existing Library Law or by enactment of another law.

(2) Fundamental Characters of the Legal Deposit System

The meaning of each of the “fundamental characters” of the Legal Deposit System mentioned in (1) is as follows (as specified in pp.9-10 of the report of the Research Council).

(i) “Delivery Obligation”

The “delivery obligation” means actual transfer of publications to the control of the National Diet Library (hereinafter referred to as the “Library”). As a result, the Library smoothly obtains the publications without any collecting activity for itself by getting publication information to receive publications from publishers.

(ii) “Exhaustiveness of Coverage”

“Exhaustiveness of coverage” means that the Library can collect all of the publications issued in Japan without any selection on the basis of their contents, by requiring the

publishers to deposit any publication subject to the Legal Deposit System.

The publications are not to be selected according to their contents, because it is not proper that the national government should sort the contents of the information which has to be handed down to the coming generations.

(iii) “Imposing the Obligation of Legal Deposit on Publishers”

Generally, publishers are the possessors of publications, who actually produce books, through planning, editing, printing and bookbinding, and pay the production costs. Therefore, it is appropriate to regard them as the persons on whom the obligation of delivering (sending) publications should be imposed.

(3) Consideration of the Fundamental Characters of the Legal Deposit System in Relation to the Networked Electronic Publications

Having regard to the fundamental characters of the Legal Deposit System as above, the Council examines whether it is possible for the NEPs to hold such characters in effect.

(i) Delivery Obligation in Legal Deposit

In relation to the NEPs, which are not substantial objects, what is equivalent to the delivery obligation might be imposing the obligation on the sender of the NEPs to fix them for delivery of the information to the national government (or endure the fixation of the NEPs on the recording media by the national government).

Conventional publications are fixed on the media by intention of their publishers. It is objectively and seemingly apparent that the publishers intend that their ownership of the media will be transferred for permanent preservation and use. (Although some publishers might not want them to be preserved or used by changing their mind later, they could be considered as expecting preservation and use at the time of publication.)

Therefore, it is not thought that imposing the obligation of delivering conventional publications to the national government (i.e. the Library) on the publishers or authors should be against their reasonable will, making them withdraw from releasing their opinions through publications so as to avoid the preservation and use by the Library.

On the other hand, the NEPs include the information made public just passingly, even though they are released to the public. In considerable cases, the senders might

not intend that their information would be permanently fixed or used by the national government (the Library). In such cases, compulsory fixation by the national government might bear those who would withhold themselves from releasing information on the network (as pointed out in p.11 of the report of the Research Council).

Where another legal system than the current Legal Deposit System is assumed and the national government is to fix information by force, while having regard to never causing chilling effects on free speech, it would be needed to provide a scheme to pay attention for the will on the fixation.

Such a system would be different from the Legal Deposit System based on delivery of publications to the Library regardless of the will on the fixation.

(ii) Exhaustiveness of Coverage

The principle not to select publications according to their contents is applied both to the conventional publications and the NEPs.

Nevertheless, with regard to collecting the whole released information of the NEPs under the principle of exhaustiveness of coverage, it must be impossible to actually carry out the task, since there is no limitation in the quantity of the information “to be issued” in relation to the NEPs (pp.13-14 of the Report of the Research Council). Furthermore, it is really impossible to faithfully record the information changing from moment to moment.

Consequently, while it is possible to assume collection without selecting the contents, it is difficult to establish the system to collect all of the NEPs, in the light of present level of technologies and resources.

(iii) Imposing Obligation of Deposit on Publishers

The obligation assumable in the system for collecting the NEPs falls into two: the obligation of transmission (which is equivalent to the “delivery obligation” in the conventional publications), and the obligation to endure fixation and provision for use by the Library.

In relation to the obligation of transmission, imposing it on the senders of the NEPs would not cause any legal problem, which appears to be valid in implementation.

On the other hand, the obligation to endure their reproduction and provision for use

by the Library would be incurred not only by the senders but also by the authors.

In this respect, the obligation is different from that under the Legal Deposit System where only publishers are regarded as the responsible persons.

(4) Limitation of the Copyright

As mentioned above, it seems to be difficult to anticipate the system substantially holding the fundamental characters of the Legal Deposit System, on consideration of establishing such system for collecting the NEPs compulsorily. In addition, there is an essential factor of limitation of copyright to be considered for collecting the NEPs, which is not prescribed in the Legal Deposit System.

Under the Legal Deposit System, any publication as an object is just transferred at the time of acquisition, regardless of the copyright of the publication (reproduced work). In the system, nothing is prescribed about the copyright in using the work. (It can be provided for use in compliance with the provisions of the Copyright Law).

However, in relation to collecting the NEPs, it is indispensable for the national government (the Library) to reproduce (fix) the works, unless the copyright holders reproduce them by themselves. Also, in relation to using the reproduced NEPs, it might not be possible to use them in such manner as the conventional publications are used under the provisions of the current Copyright Law.

(5) Conclusion

The considerations above suggest that it is difficult to arrange the fundamental characters of the Legal Deposit System, for the acquisition system of the NEPs by authority of law. In addition, it is indispensable for such system to limit the copyright, which is not provided in the Legal Deposit System.

2. Basic Concept of the New System

Since it has been regarded as difficult to incorporate the NEPs into the Legal Deposit System, the Council studies the possibility of acquisition under another system.

First, the necessity of acquiring the NEPs by authority of law is to be examined on the basis of how they have actually been collected through contracts at the Library.

(1) Necessity of Acquisition by Authority of Law

The Library has been implementing the Web Archiving Project (“WARP”) since July 2002 as a project to collect the NEPs by contract.

The collection of the NEPs in the WARP is comprised of the following processes: selection of the NEPs to be collected, identification of senders of the NEPs, and negotiations about the conditions for collection and use (including permission of the copyright, etc.) in order to reach an agreement in writing or other means. Also, other procedural works occur to be done, if there is any change in terms of the contract or renewal of such contract after the agreement. These procedures are basically done with human power, which means that there might be a limitation of accomplishment of the works under the restriction of tight personnel. According to a research by the Library, one staff member has processed about 3.7 cases a day during the period of 2 years and 3 months since the WARP was launched.

Taking into account how fast the NEPs are increased, it is feared that even the NEPs in importance might fail to be collected through collecting by contract, given no considerable expansion in the personnel responsible in the contract procedural works.

(2) Respected Points during the Consideration of Acquisition by Authority of Law

Followings are the points to which the Council paid attention in considering the extent and way of acquisition of the NEPs.

(i) Coping with the “Possibility of Chilling Effect on Free Speech”

As mentioned in the “Introduction,” the Report of the Research Council concluded that it would not be appropriate to incorporate the NEPs into the legal deposit system. In considering a system other than the Legal Deposit System, it would be one of the

key requirements to pay attention to discourage “the possibility of chilling effect on free speech,” as the Research Council pointed out in its Report.

(ii) Ruling Out of Selection in Defining the NEPs to Collect

Under the acquisition system with legal compulsion, any selection of or exclusion from the subjects to be collected should be ruled out as much as possible, unless clear and reasonable criteria of selection can be indicated.

(iii) Collecting Efficiently

In the light of the reasons for the necessity of acquisition by authority of law, as specified in (1) above, a collecting system should be prepared that could reduce the labor required for each negotiation with a sender, enabling to get the NEPs with less expense and time technologically.

On such occasion, along with the concern for causing chilling effects on free speech, a special attention should be paid on the rights of individual persons so that they may not be violated, unless there appears to be adequately rational reasons. Also a careful consideration should be given to minimize the violation or restriction of the rights, keeping the balance with other systems, in the scope of achievement of the purpose.

(iv) Publications of the National and Local Governments

Conventional publications of the national and local governments are regarded as having special significance under the Library Law. Article 24 and Article 24-2 of the Library Law prescribe that the purposes of legal deposit of the publications issued by national and local governments are “for official use” and “for international exchanges.” “Official use” means making the publications available to support the deliberations of the Diet, which is the very mission of the Library (as the Council referred to in the report dated February 13, 2004).

It would be appropriate to consider a system based upon the Legal Deposit System, in relation to the NEPs of the national and local governments, from the viewpoint of their contents, most of which may be equivalent to those of the conventional publications of such governments.

Regarding the concern for “causing chilling effects on free speech” mentioned in (i), there might be a different approach for the national and local governments in collecting their NEPs, than that for the private persons.

(v) Relations between the Legal System and Changeability in Technology and Distribution Manner

How to collect the NEPs would be considerably influenced by developments or changes of computer and network technologies, as well as by changes in the way of distribution of the NEPs on the network. In that sense, it shall be needed to take into account the forms of the technology and distribution.

It does not mean, however, that any particular technology or distribution system should be directly reflected on the structure or concept of the legal system. And also, it would be actually impossible to revise the legal system whenever a special technological change occurs.

Therefore, it is essential to consider the system on the basis of actual situation of the technology and distribution, to the extent which is needed to achieve the purpose of the system.

3. Scope of the Networked Electronic Publications to Acquire

(1) Basic Concept

Many of the NEPs have the same information as the conventional publications do.

The ultimate purpose of collecting publications under the Legal Deposit System is to accumulate the information stored in the publications (recorded by letters and others) in order to provide it for use as prescribed by the Library Law. It is reasonable to regard the aim of collecting the NEPs as similar to that for the conventional publications.

The two points to be noted in setting the range of collection are as follows:

- What types of NEPs are essential and adequate for achieving the duties of the Library specified in the Library Law?
- It must be avoided to select some NEPs according to their contents to exclude others from the collection based on judgment or discretion under the policy of the Library on the acquisition by authority of law.

(i) In Relation to the Duties of the Library

The main duty of the Library is, by collecting the library materials, to support the members of the Diet in their performance in the deliberations on national political issues, and to provide the collected materials for use of the executive and judicial agencies as well as of general public (Articles 2, 15, and 21 of the Library Law). The information required for these tasks are not limited to specified areas or contents (such as academic information).

Under the Legal Deposit System, any type of works recorded by letters, images, sounds, or programs is subject to deposit regardless of their forms. This principle contributes to accumulation of the library materials (information) required for the functions of the Library.

Also in the NEPs, it is appropriate to collect the works so extensively as to cover any record in letters, images, sounds or programs.

(ii) Ruling Out of Selective Collection on the Basis of the Contents

Under the Legal Deposit System, legal deposit obligation is imposed regardless of the contents or forms of the publications. That is because an institution of the government (the Library) should not determine the contents of the publications to be

handed down to the coming generations as cultural assets.

The principle should be applied to the NEPs.

What is more, if a selection system is to be introduced only to the NEPs, that might lead to an introduction of a similar selection practice even in the Legal Deposit System. That would hurt the fundamental characters of the Legal Deposit System (as pointed out in p.9 and p.14 of the Report of the Research Council).

(2) Coverage of Acquisition

As a result of the consideration above, the NEPs should be widely collected without limitation on the basis of their contents.

However, the principle does not deny such cases where collecting the NEPs is impossible or improper because of technical or other external reasons. Then, the cases to be excluded in collecting the NEPs shall be examined.

(3) Range of the Exclusion in Acquisition of the Networked Electronic Publications

When a means of acquisition including any compulsory element for efficient collection of the NEPs necessary for the duties of the Library should be adopted, it is essential to minimize the room for discretion by the Library as much as possible so as to prevent its arbitrary operation.

Accordingly, the reason for exclusion from the acquisition should not be left to the “policy” based on the circumstances of the Library but should be limited to unavoidable reasons.

“Unavoidable reasons” refers typically to the cases where collecting or preserving the publications is technologically impossible, including: (a) where the publications cannot be reproduced or replicated with the same contents reserved, without infringing the right of integrity prescribed in the Copyright Law; and (b) where the publications cannot be preserved for a long time as the library materials. (In relation to the conventional publications, “simple publications” could be excluded from the acquisition under the Clause 1, Article 24 of the Library Law.)

There are also the cases where exclusion is regarded as “unavoidable” under the public common sense or institution, even though the acquisition itself is technologically

possible. There might be such instances as: (c) the case where it takes too much labor and time to collect or preserve the publication in terms of the public common sense; and (d) the case where it is impossible or meaningless to compensate properly any loss occurred in accordance with the acquisition.

Each of the following publications is to be examined whether it has any qualified reason to be excluded from acquisition.

(i) Variable publications

The variable publications in this context means the publications of which contents are changeable each time they are accessed, and which require some software such as accompanied programs for fixing them. The publications that are to be renewed or changed frequently are sometimes called the dynamic pages, or variable publications. The databases (systems) in which data are frequently added or renewed fall within the cases, as well as home pages on the websites.

It would be regarded as unavoidable for those publications to be excluded from the acquisition if it is technologically impossible to fix or reproduce them. However, in relation to some publications whose fixation and reproduction are technologically possible at a special point of time, without harming their substance, no reason for exclusion might be applied to them.

(ii) Databases

In case of the database, whether the entire database as a system or individual data stored in the database should be collected depends on the nature of the database system. If collecting the entire database system would be essential for effective use after collection, the entire system should be subject to collection. On the other hand, in the case of such database as stores a lot of academic theses, an individual thesis as data could be regarded as subject to collection.

Where the contents of individual data stored in the database is basically not to be renewed, while new data could be added to the entire database, they should be collected like the publications other than databases since the individual data at a special point of time is meaningful.

However, there might be some cases falling within the “unavoidable reasons,” where the proper compensation for the database business would be meaningless or impossible,

whereas the compensation for loss might be required depending on the way of reproducing the database or providing it for use by the Library.

(iii) Broadcasting

Broadcasting is regarded as included in the NEPs in the most extensive meaning. That is because broadcasting is included in “telecommunications” through which the NEPs are made public. The Report of the Research Council defined the NEPs as “the electronic publications (made public by electromagnetic memory) which are transmitted and received by telecommunications.”

It is very difficult to treat the rights for reproduction of the broadcast programs for use because of their copyrights, their neighboring rights, and other contract rights. In relation to the broadcast programs, the Broadcast Law (Law No.132, 1950) prescribes that the Broadcast Programming Center of Japan shall collect them, though voluntarily, to make available for the public (Article 53-2, and Article 53-3).

Taking these matters into account, it would be hard to say that broadcasting should be excluded from acquisition under the “unavoidable reasons.”

However, since the broadcast programs and contents are basic resources for the broadcasting, music and film businesses, it is necessary to carefully examine how far their collection and provision for use by the Library will influence those businesses. There might be the cases where compensative measures (including compensation under the policy) would not work effectively or compensation would not cover the loss properly. In those cases, it would be hard to regard the broadcast programs as subject to the acquisition by authority of law .

(iv) Treatment of the NEPs with Limited or Charged Access

(a) NEPs with Limited Access

In relation to the NEPs accessible only to qualified users with technological means such as passwords, whether the reason for exclusion from the acquisition could be relevant or not depends on the purpose or reason for the limit of qualification.

If a certain limit has been set in order to check the identity of the person who is accessing the information, reproduction or use of the NEPs by the Library would not give any damage to the purpose of the limit.

On the other hand, where it is needed to set any limit on the users due to speciality

of the contents of the NEPs, it is hard for the Library to arrange similar limits on its users. The case would be regarded as having “an unavoidable reason” for exclusion. (In this case, whether it is a “released” NEP or not would be an issue to consider.)

(b) NEPs with Onerous Access

The NEPs that require remuneration (including membership fees and other charges) before or after the access are equivalent to the conventional publications distributed onerously.

Whether this type of NEPs should be acquired by the Library for use or should be excluded from the acquisition must be judged from the aspects of whether the Library would use the NEPs on the private networks competitively, and whether proper compensation would be possible in such competitive use. (If it is impossible to make proper compensation, it might be regarded as one of the unavoidable reasons.)

In relation to the NEPs with onerous access of the national and local governments and independent administrative institutions (mentioned later in (4)), the exclusion should be judged by considering whether the purpose or reason of the onerous access, which might be a part of implementation of their certain policies, could be disturbed by the acquisition and provision for use by the Library.

(4) Publications of the National and Local Governments and Independent Administrative Institutions

(i) Purpose of Collecting Publications of the National and Local Governments

Under the Legal Deposit System, deposit of the publications of the national and local governments is regarded as particularly meaningful (Article 24 and Article 24-2 of the Library Law). Since the ultimate purpose of collecting publications is to accumulate and use the information, it is appropriate to regard the provision of the NEPs collected from the national and local governments for “official use” as the purpose of acquisition, following the Legal Deposit System.

(ii) Treatment of the Independent Administrative Institutions

It would be an issue to study how to treat the independent administrative institutions, which are not agencies of the national or local governments but are established under special laws to achieve their functions subject to involvement of such

governments.

In regard to this issue, the concept of the Legal Deposit System should be based on (as described in “The Legal Deposit Obligation for the Publications of the Independent Administrative and Other Institutions,” the Report of the Council dated February 13, 2004), since any substantial difference is not recognized between the conventional publications and the NEPs in their information contents.

The Report concluded that it would be generally proper to impose the legal deposit obligation equal to that for the national government on the corporations to which the national government shall provide capitals for establishment or whose heads shall be appointed by the national government (actually the Minister in charge). (Responding to the Report, the law to amend a part of the Library Law was promulgated on December 1, 2004.)

(iii) Treatment of the Publications Transmitted for the National and Local Governments and Independent Administrative Institutions

How to treat the NEPs transmitted for the national and local governments and independent administrative institutions is also an issue to consider.

The significance or requirement specified in the provisions of the current Library Law in relation to the publications “issued for” the national government and other administrative institutions is that the publications of which substantial publishers are regarded as the national government and other institutions have greater necessity to be provided for “official use” and “international exchanges,” as studied in the Report above (pp.18-19). For the purpose, such publications would be expected: (a) to include information related to the governmental works and projects of the national government and other administrative institutions, with their involvement to the extent that they should be responsible for the contents of the publications; and (b) to appear that the national government and other administrative institutions are substantial payers of the considerable amount of their production and publishing costs.

There would be very few reasons to distinguish the publications meeting these requirements on the basis of the form of the publications, paper or electronically networked. Thus when they are transmitted for the national and local governments or the independent administrative institutions subject to the equal deposit obligation

with the governments, there should also be an obligation in relation to the acquisition, as well as when the publications are transmitted by them.

(5) Criteria for “the Networked Electronic Publications Issued within Japan”

In the Consultation, the acquisition of “the networked electronic publications issued within Japan” is the subject of terms of reference. Therefore, in which case the NEPs are regarded as “issued within Japan” is to be examined. “Issuing” is equivalent to releasing (transmission) of the data expressed in letters or other means by telecommunications or other media as mentioned in (6) below (p.14 of the Report of the Research Council).

(i) Conventional Publications

The Library Law does not specifically stipulate any standards for whether the legal deposit obligation is applicable to the publications in Japan, or for whether they are issued in Japan. However, it is among the public laws which allow the national government to impose obligations on private persons. Therefore, the extent covered by the Law would be within the territory of Japan, and limited to the publications issued in Japan (territoriality principle).

The case where a part of the acts regarding to “issuing” (distribution or putting in the condition possible to distribute) has been made abroad must be considered.

There might be such problems as follows: whether the legal deposit obligation should be imposed on the “publisher” abroad where “issuing” in Japan has been directed from abroad; whether the legal deposit obligation should be imposed where the publication has been “issued” abroad under a direction from Japan.

(ii) “Issuing” of the Networked Electronic Publications

Even if the applicability of the Law is not stipulated, as the public law, which rules the relations between the national government and private persons, it is applied to the act (“issuing”) within the territory of Japan under the territoriality principle.

The problem is whether the meaning of “issuing” could be interpreted quite the same as under the Legal Deposit System or not.

In relation to the NEPs, since their release is given mostly by interactive transmission, “issuing” should be interpreted as an act to make the NEPs available for

access (i.e. uploading them to the server for interactive transmission).

Another problem may be what should be the standard to determine where the act to make the NEPs accessible has been conducted. While it is possible to regard the domain name or server location as criteria, neither is adequate as the fact to indicate the place of transmission (since transmission by linking the domestic and overseas servers might be possible).

There also might be a problem in which a part of the acts regarding “issuing” has been implemented abroad. When “issuing” within the territory of Japan is directed from abroad, or vice versa, when “issuing” overseas is directed from Japan falls within such case.

(6) Meaning of “Issuing”

As mentioned in (5), “issuing” of the NEPs refers to putting them in the condition possible to transmit to the public in interactive transmission on the Internet. Also in other media, it means to put them in the condition of being made public according to their features. In addition, it is also a matter to consider to what extent of people the transmission should be made in order to be called “issuing.”

It is apparent that the telecommunication between specified persons should be excluded.

The problem is how to treat the transmission and receipt which are made only within the closed network (Intranet, WAN, etc.).

Issuing of the publications under the Legal Deposit System means distribution or putting them in the condition possible to distribute. Even where distribution is made only for members, it is also regarded as distribution (if they are many).

In relation to the NEPs, there might be the same interpretation for “issuing,” though it might also be possible to regard it as one of the manners where access is limited (**3 (3) (iv) (a)** the NEPs with Limited Access).

4. How to Acquire the Networked Electronic Publications

(1) Basic Concept

(i) Manners of Acquisition

The manners of acquisition refer to the means and procedures to fix (reproduce) the NEPs not temporarily but permanently in the memory of the computer managed by the Library.

There are several ways to classify the acquisition means. The followings are major means classified according to network types and main actors of reproduction.

(a) Firstly, there is a means in which the Library reproduces (downloads) a file or whatsoever by making access to the server where the file containing the NEPs is placed (including reproduction by the Library after the measure that limited such access has been removed by the sender, if any).

A typical example of the means of this type is harvesting by the search robot for reproduction of the file placed in interactive transmitter with collection software (as defined in “**Introduction**” (3) (iv)).

(b) Secondly, there is a means in which the sender transmits a file or whatsoever to the Library for reproducing the NEPs in the computer (server) memory of the Library.

(c) In addition, there might be a means in which the sender transmits the NEPs to the Library after storing them in the recording medium (object). (However, this means is evaluated negatively in the Report of the Research Council, since imposing the obligation to fix the NEPs on the object only for acquisition by the Library might be remarkably disadvantageous as compared with the obligation under the current Legal Deposit System.)

(d) Regarding broadcasting, there is a means in which the Library reproduces the broadcast programs (records the sound or picture) received by the Library.

(ii) Selecting Acquisition Means

The acquisition means should be adopted or selected to make sure of reliable and efficient acquisition of the NEPs specified in 3. In this regard, the compatibility with the feature of the NEPs is essential.

In relation to the NEPs which the Library can make access and reproduce prior to the action by the sender, either means of (a) or (b) mentioned above is available. In

such case, the means should be determined by considering mainly the cost paid by the Library (time and labor), the level of the burden taken by people (or the national government and others as the sender), technological security, and so on.

The NEPs that require some action from the sender for reproducing should be transmitted to the library for acquisition.

(iii) Consideration for the Rights and Freedom of the People

To incorporate the means mentioned above into the legal system, there should be some obligations to be imposed on people.

That is, there occurs an obligation to endure the reproduction of the NEPs by the Library (including removal of the measures limiting access to the NEPs). In addition to that obligation, the NEPs must be sent to the Library in files in a prescribed way.

As mentioned before (“**Introduction**” (1), 1 (3) (i), etc.), permanent fixation and use of the NEPs by the national government might be against the will of the senders or others. In such case, some persons might withhold the release of the NEPs, which would cause a chilling effect on free speech.

Therefore, some framework by authority of law would be needed to clear the concern for the possibility of “causing chilling effects on speech.”

(2) How to Acquire the Networked Electronic Publications from the National and Local governments, and Independent Administrative Institutions

It would not be needed to consider the possibility of causing chilling effects on free speech for the NEPs of the national and local governments, and the independent administrative and other institutions (to be treated equal to the national and local governments in relation to the legal deposit obligation, as considered in 3 (4)).

There might be arguments that the transmission (obligation) of the NEPs from the sender to the Library would be more burdensome than the obligation under the current Legal Deposit System (fulfillment of the delivery obligation), and that the server of the Library might be attacked for destruction. However, these arguments might not be applicable to the national governments and other institutions.

In relation to collecting the NEPs of those governments and institutions, it is appropriate to determine whether they should be fixed by the Library or be

transmitted by the sender (under the obligation), by considering the extent of the burden and the features of the publications to be collected, with an advance notification to the relevant governments and institutions.

Although it is not necessary to take the “possibility of chilling effect on speech” into account for the national governments and others unlike for the private persons, rejection or exemption of the fixation by the Library or the transmission obligation should be accepted when fixation of the NEPs might seriously affect the right of the private persons or national interests.

The typical possible cases would include the release by mistake of personal information whose disclosure appears to cause a serious problem, and the release of articles based on misunderstood facts or improper judgments.

The causes for rejection or exemption should be prescribed by the Library in advance for those cases.

(3) How to Acquire the Networked Electronic Publications of the Private Persons

(i) Respect for the Will of Fixation

As the collection means of such NEPs, the most appropriate means should be prepared, whether in reproduction by the Library (including harvesting them by the search robot), reproduction by transmission from the sender, or others.

In collecting the NEPs of the private persons, as stated in (1), it is necessary to arrange a system by authority of law not to cause chilling effects on free speech by fixation against the will.

This should be actualized by respecting the will of the rejecter before and after the fixation.

In this case, it is possible to arrange a way in which the rejecter could express such a will, from the aspects of feasibility and effectiveness. On the contrary, the way in which the acceptor should express the will for fixation, could be nothing else than the confirmation of each will, which would require too much cost to operate as a system.

However, there should be some stipulations by the law, lest such a way of rejecting has the effect to let a person endure the result against his or her will.

What is more, there should be an adequate period enabling to express the will for

rejection, having regard to publicity of the relevant information of how and by when to exercise the right to reject the fixation. And the right to delete the fixed NEPs should be retained even after the fixation, since the will concerning to fixation, based on the personal right, has much to do with the freedom of mind guaranteed by the Constitution.

(ii) Specific Arrangements of the Legal System

The following procedures might be available as the individual arrangements for the collection means to meet the requirements specified in **(i)**.

(a) Public Notice in Advance

The Library shall publicly announce in advance (through the Official Gazette or whatsoever) that it would reproduce the information on the network, and that the rejecter may inform the Library of his or her will of rejection within a certain period, with specifying the reproduction method, time and frequency.

(b) Period to Express the Will for Rejection

An adequate period to express the will for rejection should be guaranteed.

(c) How to Express the Will for Rejection

Simple and certain ways for offering the rejection should be provided (including the rejection on the Internet, by letter, and others).

(d) Effects by Expression of the Will for Rejection

The Library may not fix the NEPs. (Consequently, neither the obligation to endure the reproduction by the national government nor the transmission obligation would occur.)

(e) Right to Delete the NEPs after Fixation

The NEPs of which fixation has not been rejected within a period would be fixed by the Library. However, since the public notice must depend on a legal fiction that everyone would know and understand it through the Official Gazette, it is necessary to reserve the right of the sender or others to delete the NEPs already fixed, having regard to the case where the sender might not acknowledge the notice directly, and the fact that such rejection of fixation is one of the personal rights. In relation to the collection by transmission, the right to reject transmission should be accepted even after the period to express the will for rejection.

The right of deletion means the right for the sender, author or other person having the right to fix the NEPs to demand the Library to delete them (The Library must accept such demand.)

Though the right of deletion (and the right to reject transmission), which does not fall within the property right, would not expire under the extinctive prescription, whether it is possible to limit the period to exercise the right should be considered.

That should be judged by taking into account that it falls within the personal right, and that the NEPs would be used by the Library on the basis of the needs of the public interest.

How long the period to exercise the right should be, and from when the period should be started, if it is possible to limit it, must be determined by considering the circumstances including whether the sender stands in a position to know that the NEPs in question have been fixed.

(iii) Problems Relating to the Procedure for Rejecting Fixation

(a) When the Obligation of Reproduction Arises

With respect for the will related to fixation, it should be considered that the obligation to endure reproduction or the transmission obligation arises when the period of rejection has expired without any indication of the will for rejection.

(b) Relation with the Collection Means

It should be taken into account that the procedure for expressing the rejection of fixation might vary depending on whether the Library would reproduce the NEPs by the search robot or by way of imposing the transmission obligation (in relation to **(ii)** **(c)**).

In the case of harvesting by the search robot, for example, it would be possible for the rejecter to express the will clearly by arranging the measure for rejection of reproduction on the server where the NEPs are placed. On the other hand, in the case of transmission, the will should be expressed by letter or other means.

(4) Persons under the Obligations, etc.

(i) Persons under the Obligations

In collection by authority of law, there are two categories of the obligation imposed

on senders and others. One of them is the obligation to endure the collection by the Library (and the use thereafter), while the other is the transmission obligation. (See **4 (1) (iii).**)

Where the former is applicable, not only the information sender but also the author (including the person who possess the neighboring rights of the copyright, as the case may be, and the same hereinafter) ought to be subject to the obligation. In the latter case, it is the sender who shall undertake the obligation.

In relation to this case, there might be a question whether imposing the fixation and legal deposit obligation on the sender who only plays as an information mediator like an Internet service provider, without regard to the intention of the author, could cause an invasion of the personal right (as mentioned in p.14 of the Report of the Research Council). As referred to in **(ii)** below, the fixation right belongs to the author. The sender undertakes the obligation only when the author does not exercise the right to reject fixation. Consequently, invasion of the personal right would be avoided.

(ii) Possessor of the Rights of Rejection and Deletion

Whomever the obligation should be imposed on, the person who is allowed to exercise the rights of rejection and deletion, if they are given, shall not be the nominal sender but the possessor of the right to determine fixation, that is, the sender or the author who could substantially determine the transmission.

(5) Frequency of Acquisition

It is important to collect the NEPs timely in accordance with how frequently they are “issued” (for exemple, some electronic journals are “issued” monthly).

However, there could be excessive burdens imposed on the publisher and others under the obligation, depending on the frequency of collection set by the Library. It is needed to set a reasonable frequency.

Also, as mentioned in the Report of the Research Council (pp.12-13), imposing the obligation to fix the NEPs in a certain cycle such as semiannually or annually might be a fixation against the will, while the fixation at an optional point of time by the Library could cause a chilling effect on speech.

In order to settle the problem, the Library should specify a reasonable frequency in

the public notice prior to the period for offering the will of rejection.

5. Problems of Copyright, etc.

Many of the publications of the NEPs are under protection of the Copyright Law (Law No.48, 1970). The library services provided to the users through reproduction (fixation) of the NEPs or acquisition of the reproduced NEPs fall within the use of works under protection of the Copyright Law. In the current Legal Deposit System, there are no provisions in relation to the use of works. However, when a system to collect the NEPs would be established, more provisions on the copyright might be required.

Therefore, the copyright and its neighboring rights (hereinafter referred to as the “copyright, etc. ”) in relation to collecting, using and preserving the NEPs as works shall be examined.

(1) Basic Concept

(i) Specifying the Acts Requiring Permission of the Copyright Owner under the Copyright Law

Where an act conflicts with any of the rights protected by the Copyright Law, permission by the possessor of the copyright is required unless the act falls within the exceptional provisions to limit the rights under the Copyright Law. In that case, it is indispensable to distinguish the acts requiring the permission by the copyright owner from other acts not requiring it, while there might be an option of limiting uniformly the rights of the copyright owner by enacting a law, instead of obtaining the permission individually.

(ii) Consideration of the Case Where the Works of a Third Party are Included

When a third party other than the copyright owner of the NEP provides any work on it such as a photograph or drawing, it should be considered how to protect the third party's right.

(iii) Particularity of the Works Under the Control of the National Government Agencies

The copyrights of the works of the national government belong to the national government, and the government agencies should manage them under the National Property Act, etc. It is needed to pay attention that it would be under the provisions of

the National Property Act, not those of the Copyright Law, which apply to the Library use of the NEPs of the government works by reproduction. Therefore, the considerations below are not applicable to the government agencies.

In this connection, the works of the independent administrative institutions which are to be treated as equal to the national and local governments (see **3 (4)**), are subject to protection under the Copyright Law in relation with the Library, since they have the judicial personality independent of those governments.

(2) Problems on Acquisition

How to consider the reproduction right and others varies upon whether the act of collecting (reproducing) is conducted by the Library or by the sender through transmission. Therefore, the problems are to be examined according to the actors of the reproduction and transmission respectively.

(i) Reproduction (Fixation) of the Networked Electronic Publications by the Library

Since the Library might not be allowed to reproduce the NEPs under the provisions about limitation of the rights specified in the current Copyright Law (Art. 31, etc.), reproduction without permission would infringe the reproduction right.

Reproduction of the NEPs for collection would be a fundamental character in their systematic collection. Accordingly, there would be needed the limitation on the reproduction right of the copyright owner under the law.

(ii) Reproduction (Fixation) in the Recording Media of the Library by Transmission from the Sender

When the sender is the possessor of the copyright, neither the reproduction right nor the public transmission right is to be invaded. Even though the sender is not the possessor of the copyright, when the reproduction is permitted by contract or whatsoever, neither the reproduction right nor the public transmission right is to be invaded. However, when the NEPs collected by the Library are transmitted to outsiders, the right of public transmission might be infringed. Therefore, it is necessary to limit the right under the law.

(3) Problems on Provision for Use

The following three anticipated acts (relating to the manners of use) are examined.

In limiting the rights of private persons, it would be needed to take account into the trends in protection of the copyright and the balance with other limitations of the copyright. Regarding the local governments and independent administrative institutions (mentioned before in **3 (4)**), with higher necessity of limiting the rights compared with the private persons, it might be considered that there is actually a rational reason for limitations, in the light of the purpose of transmitting their publications.

(i) Reading by Users

Providing the NEPs for users' reading through stand-alone equipment in the Library (only when it is provided free of charge) is allowed without any permission by virtue of the provision of Clause 1, Article 38 of the Copyright Law.

However, when the transmission is made, even if only within the Library (limited to the transmission to the public for direct receipt), a certain limitation of the right under the Copyright Law would be needed, since the collected NEPs also have the feature of the program work, of which transmission could invade the public transmission right (7-2, Clause 1, Article 2 of the Copyright Law).

(ii) Provision of the Reproductions (printed out) for Users

It should be considered whether the printed out reproductions of the NEPs are covered by 1, Article 31 of the Copyright Law that stipulates the limitation of the reproduction right in relation to reproducing "library materials" in the library. Interpretation of whether the collected NEPs fall within the "library materials" specified in the article above could vary. There is a possibility that the reproduction right could be invaded. Therefore, for smooth operation of this service, a limitation of the right under the law would be needed.

(iii) Transmission to the Public Outside the Library

Since there is no provision in the Copyright Law to limit the public transmission right in relation to the library services, it would be infringement of that right for the Library to make an act of transmission of the collected NEPs (including the act to make them possible to be transmitted), as its service, to outside of the premises of the Library (i.e. where "the same premises" as specified in 7-2, Clause 1, Article 2 of the

Copyright Law are not applicable). (The public transmission right can be limited only when the transmission meets the requirement that it should be referred to the public for direct receipt). It would be needed to limit the right of the owner of the copyright on the basis of the law for providing such service without any permission of individual owner of the copyright.

(4) Problems in Preservation

(i) Preservation

Concerning the application of the provision of 2, Article 31 of the Copyright Law that limits the reproduction right in relation to preservation of “library materials,” the interpretation of whether the collected NEPs are regarded as “library materials” matters. Unlike the preservation of conventional publications based upon the presumption of deterioration of materials of the reproduced works, the preservation of the NEPs would be made mainly by backup (preparing and preserving the copied information for the case of data loss) or migration (transferring data into the different media or system environments for preservation of the contents). That might exceed the conception of “preservation” anticipated in the Copyright Law. At the Library one of whose duties is preservation of information and its succession to the coming generations, a limitation on the reproduction right under the law should be studied.

(ii) Right of Preserving Integrity

In reproduction, use and preservation, there would be the case where the Library must modify the original works of the NEPs. The right of preserving integrity is not regarded as invaded, only when the “unavoidable” case specified in 4, Clause 2, Article 20 of the Copyright Law is applicable. The “unavoidable” case means the case where the work cannot but be modified even by the most advanced technology at that point of time.

(5) Where Works of a Third Party are Included

If the permission is to be obtained individually in relation to the right owned by a third party besides the sender and the main author of the NEPs to collect, the possibility of collection by authority of law would be almost denied. A system where the

sender or the main author is imposed the obligation to obtain permission from third parties in place of the Library might be possible. However, it is uncertain whether the permission could be obtained or not, and that uncertainty might cause an impediment on the fixation of the NEPs. How the fixation of the NEPs by the Library for provision for use would exceed the conventional anticipation might be faced also by the sender and the main author. Therefore, limitation of the copyright under the law should be considered, from an inclusive viewpoint of the copyrights of third parties.

Then, considering the means of acquisition of the NEPs of private persons mentioned in **4 (3)**, the third party ought to be allowed to present its rejection to fixation or given the right of deletion, should the fixation be against its will. Even if the main author does not reject the fixation, rejection or deletion could be claimed based on its own right of rejection and deletion allowed to the third party.

6. Loss Compensation

(1) Necessity and Grounds of Loss Compensation

When the Library reproduces works of the private persons for collection and use of the NEPs, the private persons might incur losses (losses incurred by the national government will be mentioned in (8))

In this case, first, what types of losses should be existed must be studied. Then, the problem to be considered would be whether the losses should be compensated under Clause 3, Article 29 of the Constitution or on the basis of a policy, not being requested under the Constitution.

In addition, the concept for calculating the amount of compensation should be examined.

“Compensation of losses” mentioned hereinafter means the compensation under the Constitution.

(2) Discussions On How to Cope with Compensation of Losses and Economic Disadvantages in the Case of the Packaged Electronic Publications

Here are the concepts of how to cope with economic disadvantages in the Packaged Electronic Publications (hereinafter referred to as the “PEPs”). The Report of the Research Council, to sum up, says as follows.

(i) Loss Compensation

Compensation for losses caused by expropriation of objects is required based on Clause 3, Article 29 of the Constitution (as required for loss compensation for paper publications).

The “proper compensation” actually means compensation for “the producing cost,” which is the amount obtained by dividing the total expenses for the publication process, from editing and planning to printing, bookbinding and selling, by the number of books produced (profit is not included).

(ii) How to Cope with Economic Disadvantages

There is a premise that the PEPs should be used by virtue of the provisions of the Copyright Law.

Now that the losses incurred by the publisher have already been compensated as

mentioned in (i), it is thought that the economic disadvantages caused by use would not be regarded as subject to loss compensation.

Yet, it is mentioned that the Library should study the measures to avoid economic disadvantages of both the authors and publishers such as reduction of the sales amount incurred by them (through, for example, collecting the copyright royalties or consulting on the rules for the use of PEPs), because such disadvantages might cause an influence on “effectiveness of the Legal Deposit System” (e.g. decreasing of the deposit rate by rejection or evasion of the legal deposit), as follows:

(a) Owner of the copyright: Unintended economic disadvantages would not arise to the extent that he or she can exercise the rights under the Copyright Law. However, even where the PEPs are used in accordance with the provisions of the Copyright Law, economic disadvantages could occur (e.g. in the case of provision of digital reproductions). This cannot be overlooked in terms of effectiveness of the Legal Deposit System.

(b) Publisher: In principle, the publisher has no legal ground to claim economic disadvantages in relation to use of the work. However, the publisher might incur economic disadvantages by making the work available for reading outside the Library based on permission of the copyright owner, or by digital reproduction under the provisions limiting the copyright. These disadvantages could not be ignored in terms of effectiveness of the Legal Deposit System.

(iii) Legal Deposit of the Right for Use of the Works

When the concept of legal deposit of a part of the rights for use of the works is adopted, compensation to the owners of the copyright and its neighboring rights would be required.

(3) Losses by Reproduction of the Networked Electronic Publications

(i) Types of Loss

The losses to be incurred by private persons due to reproduction (fixation) of the NEPs by the Library for provision for use would be as follows.

(a) Reproduction Expenses

In relation to reproduction itself, as long as the Library reproduces the NEPs, the

loss due to reproduction would not arise, since the Library pays the expense.

Where the sender is required to transmit the reproduced file of the NEPs to the Library, the expenses for transmission would be the loss.

(b) Economic Disadvantages because of the Act of the Library to Provide the NEPs (reproduced) for Use (through Providing for Reading or Supplying the Reproduced Materials)

As pointed out in the Report of the Research Council, authors and senders might incur economic disadvantages pursuant to the manners of use of the NEPs when they are provided for use just like under the current Legal Deposit System.

(ii) Details of the Loss

The profit to be reduced by providing the NEPs collected by the Library for use, that is the amount equivalent to the charge to be required for access to the works contained in the NEPs would be the loss.

In relation to the case where the publisher of the NEPs changes the distribution manner from free to onerous after the Library collected them, the profit that might have been given to the publisher could not be regarded as the loss to be compensated under the Constitution.

The extent of the loss would be changed according to the manner of use arranged by the Library. For example, the reduction level of the remuneration obtainable varies, depending on whether the Library releases the collected NEPs on the Internet or allows reading in the Library. It would also vary depending on whether or not the Library provides the reproductions of these publications.

(4) Compensation of Loss under the Constitution

It is an issue to be considered whether the loss mentioned in (3) would require the compensation under the Constitution or not. The significance in discussing whether it is the loss to be compensated under the Constitution is as follows:

(a) In the case of compensation under the Constitution, compensation of the loss could be claimed directly based on the Constitution even if no compensation provision is stipulated in the law.

(b) Compensation of loss under the Constitution shall be “proper compensation”

(Clause 3, Article 29 of the Constitution), which is regarded as complete compensation (without any increase or decrease in the property value before and after the expropriation or other acts).

(i) Special Sacrifice

It is commonly accepted that there are no limitations in the types or characters of the property rights subject to loss compensation under the Constitution. On the basis of this conception, examination shall be made.

Having regard to the conception, however, it is generally accepted that all of the properties used for official use could not be compensated but the loss with “special sacrifice” (Note) would require the compensation.

(Note) “Special sacrifice” is explained as follows in the representative theory. (Nobuyoshi Ashibe, *Constitution (3rd. edition)*, Iwanami Shoten, 2002, p.214.)

Deprivation of the property right or invasion to prevent the right from realizing its original effect should be naturally compensated unless the owner of the right has any reason to endure it. Regarding the restrictions below such levels, (i) when restrictions are required to ensure that such a property right exists maintaining harmony with society in community life, compensation is not required since it is the property right’s own internal restrictions (e.g. limitations on architecture based on the Building Standard Law), and (ii) when any restrictions are imposed regardless of its original social effect for other specific public interest, compensation is required (e.g. restrictions for conservation of important cultural assets).

(ii) Standards for Applicability of Loss Compensation

Whether the sender of the NEPs would incur “special sacrifice” due to use by the Library should be determined by considering the level and extent of the loss.

At this point, the examination under comparison with the conventional publications would be relevant. Because both the fixed NEPs and conventional publications are (reproductions of) records of letters, pictures, or other media, and it is anticipated in both cases that the sales amount in the market might be reduced as the result of their use allowed to third parties by the Library.

However, as for the conventional publications, the economic disadvantages related to their using manners such as reading in the Library or availability of printing out are

not regarded as requiring compensation.

The economic disadvantages resulting from them are minor, and they will influence all of the publishers equally.

With regard to the consideration above, “special sacrifice” would not be applicable to the NEPs, as long as they are used in the manners applied to the conventional publications without compensation.

In relation to the manners not applied to the conventional publications (excluding the use under contract) such as use of LAN in the Library, transmission to the outside of the Library, and provision of digital reproductions, whether they are “special sacrifices” or not should be determined by considering the following factors.

That is, whether reproduction would be made frequently or not, consequently, whether the situation where the publications are available widely without deterioration will be created or not, and whether they are the economic disadvantages to be anticipated usually also in paper publications or not, should be considered.

Where any economic disadvantage such as reduction of the sales amount has not been caused by reproduction and use by the Library (e.g. in the NEPs accessible free of charge), no losses have been incurred, and this is not the case of “special sacrifice.” Where the sender is thinking of distributing the publications onerously in the future, which are currently accessible free, a business chance might be lost due to provision for use by the Library. This is not a case that requires compensation under the Constitution, although compensation under the policy should be considered.

(5) Calculation of the Amount of Loss to be Compensated Under the Constitution

When compensation for loss under the Constitution is regarded as necessary, “proper compensation” (Clause 3, Article 29 of the Constitution) is required, and its details should be examined.

(i) Complete Compensation

In relation to what the proper compensation means, it would be an issue whether the “complete compensation” (mentioned before in **(4) (b)**) should be provided, or just an appropriate compensation will do. Under the Legal Deposit System, the complete compensation is regarded as necessary. Since there seems no special reason for taking

another concept for the NEPs because of the type of media, the complete compensation would be required.

(ii) Amount Equivalent to Profits

Then, whether the amount equivalent to profits should be excluded or not in the complete compensation is another issue to consider.

In the case of the PEPs, it is considered that one copy deposited to the Library would have produced no profit since the copy was not expected from the first to be distributed for sale in the market when the publisher manufactured the publication including the copy for the legal deposit (p.23 in the Report of the Research Council).

It would not be appropriate to apply the concept for the PEPs to the NEPs since the compensation for the NEPs shall not be made for the product costs of a separable object. It is possible to think that the compensation shall be fulfilled when a part of the transmission expenses are compensated, on the concept that the sender transmits the NEPs anticipating that they might be subject to collection of the Library.

(iii) Specific Amounts of Compensation

(a) Transmission Costs

The expenses required for fulfillment of the transmission obligation are made up of the personnel and non-personnel expenses needed for implementation of the obligation. There arises a question of whether the amount of the costs should be fixed or determined individually/specifically. It appears reasonable to adopt a fixation of the amount (such as the mailing costs for sending the media where the NEPs are fixed), if it is possible to be done in a general way.

(b) Losses Incurred Due to Reproduction and Use by the Library

Such losses are regarded as worth the amount of the remuneration which should have been obtained if the Library had not used the reproduced NEPs. The calculation would be based on the expenses required for transmission of the NEPs, while it would also be based on the estimate of the number of future accesses in some cases. In other cases, the entire business might be the subject to be compensated (mentioned later in (7) (i)).

(6) Compensation under a Policy and How to Calculate Such Compensation

There might be compensation to be implemented for the effective operation of a

system, even if no Constitutional compensation is regarded as necessary.

There also might be some cases where further compensation is needed to be implemented, than the compensation under the Constitution.

For example, it might be considered that a certain compensation should be implemented in relation to the NEPs, taking into account that there might be no Constitutional compensation depending on the manner of use of, or access to, the information (free or onerous) by the Library (as explained in **(4) (ii)**). In the NEPs, while the cost to fix the information (equivalent to the manufacturing cost in the conventional publications) is negligibly small, the loss due to reproduction or use of the information could be relevant. Under the Legal Deposit System, on the other hand, the compensation for the manufacturing cost of a deposited copy of the publication, which stores information, is regarded as the compensation under the Constitution.

(7) Compensation for the Commercial Enterprise and Other Issues

(i) Compensation for the NEPs as Commercial Enterprise (including the costs recovery enterprise)

There would be no difference between the provision of the database, “electronic journals” and “electronic books” as typical publications of this type for use of the public in the Library, and the provision of the pay database of the PEPs, magazines and books in the Library.

However, to implement a proper compensation for the free transmission of the NEPs in question to the public after fixation by the Library is nothing else than expropriation of the enterprise. It would not be socially accepted that the national government should provide such publications for use at all costs of compensation for the whole commercial enterprise.

Therefore, some NEPs as commercial enterprise could not be collected (for the reason of exclusion from the collection), depending on the expected manner of use by the Library.

(ii) Claimant of the Compensation

The person who can claim compensation is the one who has incurred any loss due to collection and use by the Library. When both the sender and the author should be

compensated, how to calculate each amount of the compensation would be an issue to study.

(iii) Procedure for Calculation of the Amount

The procedure to determine the fair and proper amount of compensation should be studied, taking into account that what the compensation for the NEPs means might be remarkably different from the compensation for conventional publications under the Legal Deposit System, and that some cases would require to consider the individual/specific circumstances just like the compensation for conventional publications does.

(8) Compensation of Loss Incurred by the National and Local Governments and Independent Administrative Institutions

(i) National Government (and Its Agencies)

Compensation of loss shall not be needed, while there could be a problem of treating the national property within the national government, including reproduction and use of the NEPs by the Library to the extent that the compensation for the private persons would be needed.

(ii) Local Governments (and Their Agencies)

Since they are entities different from the national government, compensation for loss might be studied. For the following reason, however, compensation would not be required.

The reason why compensation for legal deposit from local governments has not been required under the Legal Deposit System is that the purpose of issuing publications of local government falls within the purpose of “official use” for legal deposit to the Library. Thus the loss incurred by local governments due to legal deposit does not appear to be “special sacrifice” (p.15 of the Report of the Council dated February 13, 2004).

On the consideration above, in relation to the NEPs too, it is appropriate to study whether or not the use of publications of local governments by the Library imposes “special sacrifice”, in other words, prevents the performance of their primary effects of the publication.

In this regard, it is considered that the NEPs of local governments are prepared and

managed for official purposes, which would not be prevented by the Library in providing the publications for official use. Consequently, this would not be the case of “special sacrifice.”

Regarding the costs to fulfill the transmission obligation to be imposed on local governments, since the loss could be regarded as minor in principle, it is considered that the loss does not fall within “special sacrifice.”

(iii) Independent Administrative Institutions

In relation to the NEPs of such institutions, the problem of compensation for loss could arise like in the local governments. However, as long as their publications are provided for reproduction and use the same as those of the local governments are, “special sacrifice” would not be applicable (see pp.15-16 in the Report cited above).

7. Ensuring Implementation of Obligations

(1) Problems

In the cases where the obligations of private persons to be provided in the system concerning acquisition of the NEPs are not implemented, there needs a consideration whether it is required to establish a system to ensure the implementation, since such obligations are based on the administrative power, unlike the obligations between the private persons with equal status.

(2) Measures to Ensure Implementation of the Administrative Obligations

Some means are provided in the existing laws as follows, though there has not necessarily been established a general system to ensure implementation of the obligations in relation to the administrative laws. Since each means might be accompanied by encroachment of rights, there is needed the legal ground for such means. (Article 1 of The Act for Administrative Execution by Proxy (No. 43, 1948) prescribes, "In relation to ensuring implementation of the administrative obligations, the provisions under this Act shall apply, except for what is prescribed otherwise in the law.")

(i) Means to Ensure Implementation of the Obligations for the Future

Such means as the execution by proxy, direct compulsion, civil penalty, administrative compulsory collection, benefits rejection, disclosure, and surcharge (Note) are included.

(ii) Sanctions on the Acts Done

There are administrative punishment which imposes criminal liability stipulated in the Criminal Code and administrative disciplinary penalty which imposes a fine on the breach of duty which might cause an impediment of the administrative order.

(Note) The followings are the meanings of “execution by proxy,” etc.

Execution by proxy	Procedures by which the government ministries and agencies execute by themselves what someone under an obligation has to do on his/her behalf, or make a disinterested party do it with collecting the expenditures from someone under the obligation, where the obligation that others could implement on behalf of someone has been failed.
Direct compulsion	Process that actualizes the same situation where the obligation might have been implemented, by employing a force directly on the body or property of someone under obligation. (prescribed in the Immigration-Control and Refugee-Recognition Act, the Government Decree on Securement of School Plant, etc.)
Civil Penalty	To persuade someone to perform his/her obligation by notifying that the person under obligation will be imposed a fine due to failure of the obligation including a duty not to act and a duty unsubstutable. The fine will be compulsorily collected in the end. Such penalty is shown only in the existing Sabo (Erosion and Sediment Control) Act.
Administrative Compulsory Collection	Procedure by which the national or local governments compulsorily exact money debts under the public law without any decision of the court.
Benefits Rejection	For example, the request to stop providing water, etc. to someone who breaches a decree under the Pollution Control Ordinance.
Disclosure	To make the fact public that an obligation has not been performed or an administrative direction has not been followed. (prescribed in the Act for Planning the Utilization of the National Land)
Surcharge	Payment to be imposed on and collected from citizens based on the power of the state with exception of taxation. (shown in the Act concerning Prohibition of Private Monopolization and Maintenance of Fair Trade, the Act for Emergency Measure for Stabilization of People’s Life, etc.)

(3) Ensuring Implementation of obligations in Acquisition of the Networked Electronic Publications

(i) Description of Anticipated Obligations of Private Persons

In relation to the collection of the NEPs by authority of law, there could be the following two obligations: (a) an obligation to endure reproduction and use of them by the Library, and (b) an obligation to send files to the Library's server with the prescribed form. (See 4 (1) (iii)). The obligation (a) falls within a duty not to act, as well as a duty unsubstitutable, which means others cannot perform the obligation on behalf of someone under obligation. Therefore, the execution by proxy based on the Act for Administrative Execution by Proxy would not seem applicable to the obligation (a).

On the other hand, the obligation (b) is a duty to act, while in many cases it will also be a duty unsubstitutable, because a special deed such as removing the access limit will be needed when others are to perform the duty.

(ii) Examinations

(a) Comparison with the Legal Deposit System

Under the Legal Deposit System, there is an administrative punishment of a fine, which is an administrative disciplinary penalty imposed on failure that might cause an impediment of the administrative order when implementation of the obligation of legal deposit is failed (Article 25-2, Library Law,). However, there is no means established to ensure the implementation for the future.

In the light of such purpose of the existing system, it is to be studied if there should be some means for administrative penalties and compulsory execution in the system of collecting the NEPs.

First, it is thought that the reason the Legal Deposit System has an administrative disciplinary penalty is that the system depends on publishers' implementation of the obligation of legal deposit, and that if the failure of the obligation remains untouched, the system could not play the function.

The NEPs include similar contents to conventional publications. However, in relation to the NEPs it is considerably possible to collect them without waiting for the action of the senders, which means many of the NEPs are suitable for harvesting by the search robot. Thus, there would be very little relevance in terms of implementation

of the obligation in the system for the NEPs, since the purpose of the system could be achieved if private persons just endure it. Though, there could be a problem for ensuring full performance of the system, if the obligation of sending such publications is not implemented when some publications cannot be harvested by the search robot. Nevertheless, to enforce the implementation indirectly with the administrative disciplinary penalties might conflict with the basic concept of the system, which primarily intends to have respect of the will of fixation of the senders of the NEPs in imposing the obligation.

Thus, there seems not so much necessity for maintaining the administrative order in the collection system of the NEPs as in the existing Legal Deposit System.

(b) Necessity of the Means to Ensure Implementation of Obligations in the Future

Next, whether it is needed to admit especially the means to ensure implementation of the obligations in collecting the NEPs in the future is to be considered.

Under the current laws, such a compulsory means is to be applied if and only if the failure of implementation appears to cause significant violation of public interests (See Article 2 of the Act for Administrative Execution by Proxy). In relation to the NEPs there might not be so much significant violation of public interests as needs to enforce the implementation compulsorily, taking into account the examination in (a) indicating that there appears no needs to enforce indirectly the implementation in order to maintain the administrative order.

(iii) Coping With the Obstruction to Implementation of Obligations, Etc.

Not only the failure of implementation of the obligations, but also the obstructive actions such as interfering the collection of the Library or the transmission by the senders (including manipulating a robot to interfere the automatic harvesting system) might happen. Some of the actions might be subject to the provision of the obstruction of business by use of fraudulent means under the Penal Code (Article 233). And yet there needs a careful consideration in relation to the question whether any means of special sanction should otherwise be introduced.

Concluding Comments

In the deliberation above, the framework of another system under which the Library could collect the NEPs apart from the existing Legal Deposit System has been examined.

It would be needed for the Library to make further studies and evaluations in order to establish and operate an effective system in accordance with the concept shown here.

The Council presents below its opinions in relation to the points to be noted when the Library would establish the system and put it into practice.

The NEPs, which are essential information sources for the Library to perform its functions since many of them contain the contents equivalent to the conventional publications, have the characteristics that they are made public without being fixed. Because of the characteristics, there might occur such legal problems as the chilling effects on free speech if the Library is going to collect them by imposing obligations on the people just as in the conventional publications. A special regard would be required to pay for settling the problems.

The Council has presented a solution of having respect to the will of fixation under a scheme of rejecting fixation, etc., since this issue has so much to do with the freedom of expression guaranteed by the Constitution, as well as the people's perception or view of speech under the circumstances of Internet and other telecommunications.

Thus, where the Library constructs the new system, it would be important to make efforts to keep the system connected to the people's perception or view of speech on the Internet, etc. by explaining how to settle the problem of chilling effects on free speech, prior to, or in the process of implementation of the system.

When the collection under the system is implemented, it requires consequently the provision of resources such as budget, work force and computer memory with a big capacity, and of collection program. It is said that the NEPs has been increasing quantitatively in geometrical progression every year. Since there would be considerable difficulties needed to keep enough resources to collect them, a phased-in

implementation of the system might be taken into account.

Such phased-in implementation of the system should be considered, in the light of the level of the urgency of collection or other elements and the limited resources, maintaining the basic idea of collecting the NEPs extensively to be needed for the Library to perform its functions.

At the end, some technical problems related to the system should be pointed out.

Where the accumulation of the NEPs as cultural assets should be clearly placed in the legal system, it would be essential to improve the technology to preserve the electronic information. At the same time, in order to ensure the access to the information in the collected NEPs permanently, it is needed to guarantee that they could be technologically quite reproducible.

In relation to the preservation technology, there would also be needed the technology concerning the security of files of the NEPs collected or to be collected.

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NDL(AC), No. 25.

March 1, 2002

Mr. Shinkichi Eto

Chairperson of the Legal Deposit System Council

Masao Tobar

Chief Librarian

Consultation Document

By virtue of the provisions of Article 2 (1) of the Legal Deposit System Council Regulation (The Regulation of the National Diet Library No.1, 1997), the following shall be consulted.

(Terms of Reference)

Whether or not the Networked Electronic Publications published within Japan should be incorporated into the Legal Deposit System.

(Reasons of the Consultation)

The relation between the networked electronic publications and the Legal Deposit System was reviewed also in the Legal Deposit System Research Council, the predecessor of this Council. As a result, the Research Council made the Report saying that the networked electronic publications should not be subject to the Legal Deposit System but to the active and selective collection at present, because of the concern for infringing the freedom of expression, the problems related to the timing and obligation of fixing such publications, the difficulty of comprehensive deposit, and the difficulty of identifying who should be under the obligation, and suggesting that this issue should

be reviewed again in accordance with the changes of circumstances. On the basis of the Report, the National Diet Library has been developed a technological study in scope of the selective collection of the networked electronic publications.

However, the rapid improvement of information and telecommunication technology since then has been overwhelmingly expanding the distribution of the networked electronic publications, especially in the digital information via computer networks. The National government needs to undertake the task of preserving the valuable information, a lot of which is disappearing every day without being fixed.

Thus, the National Diet Library is expected to widely collect and permanently preserve the networked electronic publications in Japan and make them available for use, as well as its role played in the conventional publications. At the same time, the legal framework would be required for the Library to collect what appears necessary or useful to the National Diet Library for providing its services.

Consequently, the questions whether the networked electronic publications should be incorporated into the Legal Deposit System, and to what extent and by what means such publications should be collected when they are not subject to the system, are to be referred to the consideration and deliberation of the Council.

Name List of the Members and Special Members of the Legal Deposit System Council
(As of December 9, 2004) (In the Japanese syllabary order)

Chairperson	Shinkichi Eto	Emeritus Professor, University of Tokyo
Vice-Chairperson	Shumpei Kumon	President of the New Institute for Social Knowledge and Collaboration, Tama University; Senior Executive Director of the Center for Global Communications, International University of Japan
Chief of Compensation Division	Hiroshi Shiono	Emeritus Professor, University of Tokyo; Professor of the Multimedia Master's Course of University of East Asia
Members	Atsushi Aiba	Professor of the International Research Center for Japanese Studies
	Kunizo Asakura	President of Japan Book Publishers Association
	Junji Annen	Professor of Seikei Law School, Lawyer
	Harumichi Uchida	Lawyer, Professor of Keio Law School
	Junko Obata	Professor of Sophia Law School
	Mieko Kenjo	Professor of the Department of Sociology, Aomori University; Essayist
	Osamu Sato	President of Recording Industry Association of Japan
	Isao Shimizu	Professor of the Faculty of Informatics of Teikyo Heisei University
	Masaru Shiraishi	President of Japan Magazine Publishers Association
	Mariko Takahashi	Deputy Editor of the Science and Medical News Department of Asahi Shimbun
	Satoru Takeuchi	President of Japan Library Association
	Yoshinobu Tsuruta	President of Japan Publication Wholesalers Association
	Shigemi Murakami	Managing Director of Japan Newspaper Publishers and Editors Association
	Hideru Momozaki	President of the Institute of Administrative Information Systems
	Nobuo Monya	Professor of Seikei Law School

(18 persons)

Special Members	Keisuke Okuzumi	Secretary General of the Database Promotion Center, Japan ; Guest Professor of International Research Center for Japanese Studies
	Shigeo Sugimoto	Professor of the Graduate School of Library, Information and Media Studies, University of Tsukuba
	Takato Natsui	Professor of the School of Law of Meiji University; Lawyer
	Toshihiko Nozue	Assistant Professor of College of Literature of Aoyama Gakuin University

(4 persons)

Members and Special Members who belonged to the Networked Electronic Publications Subcommittee (March 2002 through June 2003)

Members

Chairperson of the Subcommittee	Shumpei Kumon
	Atsushi Aiba
	Harumichi Uchida
	Junko Obata

Special Members	Keisuke Okuzumi
	Hideaki Shirota
	Shigeo Sugimoto
	Shinichi Toda

(8 persons)

Members and Special Members who Belonged to the Subcommittee on Collection of the Networked Electronic Publications (June 2003 through December 2004)

Members

Chairperson of Subcommittee	Shumpei Kumon
	Atsushi Aiba
	Junji Annen
	Harumichi Uchida
	Junko Obata
	Nobuo Monya

Special Members	Keisuke Okuzumi
	Shigeo Sugimoto
	Takato Natsui
	Toshihiko Nozue

(10persons)

Process of Researches and Discussions

1 The Legal Deposit System Council

- (1) The Sixth Plenary Meeting of the Council: March 1, 2002
 - (i) Consultation from the Chief Librarian
 - (ii) Establishment of the Networked Electronic Publications Subcommittee
 - (iii) Appointment of members who belong to the Subcommittee
 - (iv) Appointment of Chairperson of the Subcommittee
- (2) The Seventh Plenary Meeting of the Council: March 13, 2003
 - (i) Report of Researches and Discussions of the Networked Electronic Publications Subcommittee
 - (ii) Acceptance of the conclusion that “it is appropriate not to incorporate the NEPs into the Legal Deposit System” in the report of the Subcommittee
 - (iii) Confirmation of issues to be researched and discussed in the future
- (3) The Eighth Plenary Meeting of the Council: June 25, 2003
 - (i) Reconfirmation of issues to be researched and discussed in the future
 - (ii) Establishment of the Subcommittee on Collection of the Networked Electronic Publications
 - (iii) Appointment of members who belong to the Subcommittee
 - (iv) Appointment of the chairperson of the Subcommittee
 - (v) Abolishment of the Networked Electronic Publications Subcommittee
- (4) The Eleventh Plenary Meeting of the Council: June 2, 2004
Report of process of researches and discussions in the Subcommittee on Collection of the Networked Electronic Publications (The first to third meetings)
- (5) The Twelfth Plenary Meeting of the Council: December 9, 2004
 - (i) Acceptance of the report of process of researches and discussions in the Subcommittee on Collection of Networked Electronic Publications
 - (ii) Decision of Legal Deposit System Council’s Report, “Concept of the Acquisition System for the Networked Electronic Publications”

2 The Networked Electronic Publications Subcommittee

The Subcommittee was established based on the provisions of Article 10 of the Rules for the Proceedings of the Legal Deposit System Council, on the grounds that the issue of incorporating the networked electronic publications published within Japan into the Legal Deposit System needs to be researched and discussed in the light of the expertise

including actual distribution of the digitalized telecommunications and its legal and technical aspects.

1 st Meeting	June 27, 2002	Sorting out the points for discussion concerning the deposit of the networked electronic publications.
2 nd Meeting	October 24, 2002	Discussions for incorporating the networked electronic publications into the existing Legal Deposit System, and for the range to be collected and the way of collection
3 rd Meeting	January 28, 2003	Summarizing the Report

3 The Subcommittee on Collection of the Networked Electronic Publications

The new Subcommittee was established based on the provisions of Article 10 of the Rules for the Proceedings of the Legal Deposit Council for further research and discussions from the professional viewpoint, according to the conclusion of the Seventh Plenary Meeting of the Council and the issues reconfirmed in the Eighth Plenary Meeting suggesting that it would be needed to discuss especially the legal aspects of the problem for the consideration of the acquisition of the networked electronic publications by authority of law.

1 st Meeting	September 25, 2003	Range and ways of collection (1) – Publications of the national and local governments
2 nd Meeting	January 26, 2004	Issues of copyrights
3 rd Meeting	March 30, 2004	Range and ways of collection (2)
4 th Meeting	July 16, 2004	Compensation and ensuring of implementation of the obligations
5 th Meeting	November 1, 2004	Reviews of draft of the report of the Subcommittee