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**Statement by the International Council on Archives/Conseil international des archives on  
Legal Deposit**

Thank you, Mr. Chairman, for the opportunity to speak on behalf of the International Council on Archives, a cultural heritage organization dedicated to the preservation, care and use of the world's archival heritage. I would like to comment on the archival connection with legal deposit.

What does legal deposit have to do with archives? Legal deposit has traditionally supported a nation's desire to build a national collection of every work published in or about the country, and archival holdings consist largely of unpublished materials. Traditionally, publication has involved technologies that result in a tangible object like a book or CD or video, and copyright was not an issue in requiring the publisher to deposit one or two copies. However, works and materials protected by related rights are now disseminated in other ways that bring archives into the picture. Dissemination by communication to the public raises two important issues.

The first is what is a publication? Copyright has traditionally been based on a distinction between published and unpublished material, but the definition of publication becomes increasingly fuzzy in the digital environment. Is a website a publication? A blog? Flickr? Tweets? For example, Canada's legal deposit statute includes "online publications," although it is not specified what is included. Nonetheless, Library and Archives Canada is harvesting a variety of online content. In this gray area, many archives regard websites not necessarily as publications to be retained only by national or depository libraries, but as evidence of the activities of an organization or an individual. The Berne Convention definition of publication is woefully outdated.

The second issue is that acquiring this online content requires copying. This is not a copyright issue for an archives capturing the website or blog entries of its parent organization. It is, however, a copyright matter for archives that acquire the records of private individuals or external organizations. Such archives consider the website of the creator of the records as important evidence of the creator's activities.

In its 20 years of existence, the Internet Archive's Wayback Machine has archived more than 445 billion webpages, but the collection is incomplete, idiosyncratic, and not ready for robust reliable scholarly research. We can't leave something as important as the preservation of the online world to the Wayback Machine. Libraries and archives have established practices for making acquisition and collection decisions, and must take an active role in the preservation of the online world. This primary source material is clearly in the mandate of archives around the world. We need a clear international exception that will permit archives and libraries to capture and preserve this rich online content.