

Explanatory memorandum

A. General preliminary remarks

1. Function and history of Die Deutsche Bibliothek as a federal institution

Die Deutsche Bibliothek ("the Library") is the central archival library and national bibliographic information centre of the Federal Republic of Germany. The combined library, which bears the name "Die Deutsche Bibliothek", was established in 1990 by the Unification Treaty, which merged the institutions in Leipzig (Deutsche Bücherei, founded 1912) and Frankfurt am Main (Deutsche Bibliothek, founded 1947), as well as the Deutsches Musikarchiv in Berlin (part of the Deutsche Bibliothek since 1970). It has the function, unique in Germany, of collecting without exception all German publications, German-language publications, publications translated from German and publications about Germany issued from 1913 on, archiving them permanently, documenting them comprehensively, making them accessible on site and providing national bibliographic services.

Originally established as a result of an initiative that came from publishers and booksellers, it preserves the cultural heritage of modern literature and scholarship in the German-speaking countries as a complete literary continuum. Die Deutsche Bibliothek complements the decentrally organised provision of literature by Germany's academic libraries in an ideal fashion. It is the indispensable producer of a diverse range of services for libraries, library networks, publishing houses and the book trade, academic institutions and foreign national bibliographic centres. The Library cultivates co-operative external relations at national and international levels. For instance, it is the leading partner in the work being done on rules and standardisation in Germany and plays a significant role in the development of international standards.

The Library has the right to receive deposit copies of works published throughout Germany, which means every publisher is required by law to deposit two copies of their new publications. German-language publications from abroad, translations from German and foreign-language Germanica are obtained as gratis courtesy copies or acquired by means of purchase and exchange. This literature is processed on the basis of a strict division of labour between the different locations. Fully functioning libraries are available and used very heavily

by the public both in Leipzig and in Frankfurt am Main. Unlimited use of the holdings is possible in the reading rooms. The Library's function as a reference library ensures that there is excellent availability of literature and holdings are well protected.

As well as the co-operation between the different locations, they are allocated priorities that are oriented towards the specific characteristics they have evolved. As a result, each of the locations has its own unmistakable profile. In Leipzig, the Deutsches Buch- und Schriftmuseum is being further developed into a documentation centre for book culture. The Anne-Frank-Shoah-Bibliothek is a specialist international library for the documentation of the persecution and extermination of the Jews. Frankfurt am Main is responsible for the development of the Library's communications and information infrastructure, the production, marketing and distribution of national bibliographic services and the administration of the Deutsches Exilarchiv 1933 – 1945. The Deutsches Musikarchiv has the task of processing and indexing all sheet music and sound recordings.

Today, with total holdings at the end of 2004 of almost 20 million items (Deutsche Bücherei: 10.8 million; Deutsche Bibliothek, including the Deutsches Musikarchiv: 9 million), as well as 2 million items such as patent specifications, paper samples, watermarks and other special materials, the combined Library is the largest universal library in Germany. It is responsible both for the permanent safeguarding of cultural goods and for the development of state-of-the-art technologies for this purpose.

1.1 Deutsche Bücherei in Leipzig

The Deutsche Bücherei was founded in 1912 following a decision of the Börsenverein der Deutschen Buchhändler zu Leipzig (German Booksellers' Association at Leipzig) taken in response to an initiative from booksellers and publishers. It was given the function of collecting the entirety of German and foreign-language literature published in Germany and German-language literature published abroad from 1 January 1913 on, indexing its holdings bibliographically and making them available for use free of charge.

The Börsenverein secured the support it required to build up and maintain the Deutsche Bücherei through an agreement concluded with the City of Leipzig and the Kingdom of Saxony on 3 October 1912. The classicist library building, which is protected today as a historic monument, was inaugurated on 2 September 1916. In 1921, the German Reich

assumed an obligation to pay the running costs of the Deutsche Bücherei. With the Law regarding the Deutsche Bücherei in Leipzig of 18 April 1940 enacted by the Minister for People's Education and Propaganda, the Deutsche Bücherei was removed from the custodianship of the Börsenverein and transformed into an incorporated institution with legal capacity under public law. All its institutional assets, which had been owned by the Börsenverein until then, were made the property of the Deutsche Bücherei. An air raid on 4 December 1943 wrecked parts of the Library, destroying almost 50,000 periodical volumes and the catalogue of publishers and institutions (which was reconstructed in the post-War period). The Bücherei was closed for use between January 1944 and November 1945 and opened again on 24 November 1945.

In 1884, the Zentralverein für das gesamte Buchgewerbe (Central Association for the Whole Book Trade), which subsequently became the Deutscher Buchgewerbeverein (German Book Trade Association), founded the Deutsches Buch- und Schriftmuseum, which was incorporated into the Deutsche Bücherei as a department of the Library on 2 December 1950. It is the oldest institution of its kind in the world and also the most significant museum in this field in terms of the scope and quality of its holdings.

After the initially voluntary commitment made by publishers and booksellers in 1913 and the Order of 20 September 1935 on the Deposit of Printed Texts with the Deutsche Bücherei in Leipzig, various pieces of legislation put in place by the GDR government, in particular on the mandatory deposit of printed products, formed the basis for the collection and archiving mandate of the Deutsche Bücherei until the entry into force of the Unification Treaty. Under the last Order on the Submission of Deposit Copies, which entered into force on 1 October 1987, the Deutsche Bücherei was entitled to receive three copies of each work issued by the GDR's publishing houses. The Deutsche Bücherei's field of collection included publications that appeared in the German Reich between 1913 and 1945 and publications that appeared on the territories of the GDR, the Federal Republic of Germany and (West) Berlin from 8 May 1945 on, including sheet music and sound recordings, German-language texts published abroad from 1 January 1913 on and translations from German and foreign-language Germanica published from 1941 on.

1.2 Deutsche Bibliothek in Frankfurt am Main, Deutsches Musikarchiv in Berlin

In 1945, the Deutsche Bücherei ceased to be the national library for the whole of Germany.

The organisational reconstruction of the central book trade and library institutions in the West of Germany was concentrated in Frankfurt am Main as early as 1945. On 16/17 February 1946, the representatives of the book trade from the different Länder in the American Zone agreed to deposit two copies of every work issued by their publishing houses from 8 May 1945 on with the City and University Library, which would hold them in trust – one for the Deutsche Bücherei in Leipzig and one for the future “Deutsche Bücherei of the West” in Frankfurt am Main. With special support from the City of Frankfurt am Main, the Deutsche Bibliothek – as it was officially known as of 4 November 1946 – was able to commence its work in the autumn of 1946. The Statutes of the Library were adopted in February 1947 by the Buchhändler-Vereinigung GmbH, a subsidiary of what was then the Börsenverein deutscher Verleger und Buchhändlerverbände e.V. (Association of German Publishers and Booksellers’ Organisations), now the Börsenverein des Deutschen Buchhandels e.V. The agreement establishing the Deutsche Bibliothek was concluded between the City of Frankfurt am Main and the Buchhändler-Vereinigung on 15 May 1947.

In the first two years while the Library was being set up, the Börsenverein paid all its costs. The City of Frankfurt am Main and the Land of Hessen began to contribute funds in 1949. On 31 July 1952, the Land of Hessen and the City of Frankfurt am Main jointly established the Deutsche Bibliothek as a foundation with legal capacity under public law. Under the instrument of foundation of 31 July 1952, the Federal Minister of the Interior, who was then responsible for cultural affairs at federal level, and the Börsenverein des Deutschen Buchhandels e.V. also agreed to donate funds to the foundation. Both undertook to pay running subsidies to the Deutsche Bibliothek in addition to those from the Land of Hessen and the City of Frankfurt am Main. Apart from this, the Börsenverein transferred its title over the Library’s books and fixtures to the foundation. Until the end of 1955, the foundation’s budget was funded equally by the four partners. From 1956 on, the Börsenverein only contributed a set sum that ultimately amounted to DM 200,000/year to the budget. From 1958 on, the formula distributing responsibilities between the public funding providers required the Federal Minister of the Interior to contribute 50 percent of the budget, and the Land of Hessen and the City of Frankfurt am Main 25 percent each. After receiving the consent of the Bundesrat on 7 March 1969, the Law regarding the Deutsche Bibliothek entered into force on 31 March 1969 (*BGBI. I* p. 265). This transformed the Deutsche Bibliothek into a directly administered federal institution under public law with its seat in Frankfurt am Main. Its principle responsibilities were to collect all German and German-language printed works, sheet music and sound recordings issued from 1945 on, inventory

them, catalogue them bibliographically and make them available for use on site. In order to ensure the performance of its responsibilities, publishers and manufacturers of sound recordings within the territories covered by the Law were required to submit a mandatory copy of each publication to the Deutsche Bibliothek.

In accordance with the commitment made in the law, the Deutsches Musikarchiv was established in Berlin in 1970 as a department of the Deutsche Bibliothek. Initially, until 1973, the Archive continued the work of its predecessor, the Deutsche Musik-Phonothek (German Phonographic Music Library), whose staff and archive holdings it had inherited. Further foundations for the work of the Deutsches Musikarchiv were laid in the Ordinance on the Legal Deposit of Music of 6 June 1973.

1.3 “Die Deutsche Bibliothek” as a federal institution

According to the Unification Treaty of 31 August 1990 in combination with Article 1 Law Approving the Unification Treaty of 23 September 1990 (*BGBI. II* pp. 885, 913), the Deutsche Bücherei and the Deutsche Bibliothek, including the Deutsches Musikarchiv in Berlin as a department of the Deutsche Bibliothek, were merged, while keeping their separate locations, to form a directly administered federal institution under public law. On the basis of the power granted to him in the Unification Treaty and the recommendations of the bodies of the combined institution, the Federal Minister of the Interior, who was responsible for the Library at that time, determined on 11 December 1990 that the united institution Deutsche Bibliothek/Deutsche Bücherei should be named “Die Deutsche Bibliothek” and that Frankfurt am Main should be the seat of its Director General. Until the unification of the two German states, each of the two institutions had performed the function of a national library separately.

The merger of the Deutsche Bücherei and the Deutsche Bibliothek to form the federal institution “Die Deutsche Bibliothek” is a successful example of cultural institutions growing together in a united Germany. The Unification Treaty provided the stable planning environment needed in order to implement their integration gradually in precise phases. The Budget Committee and Committee on Internal Affairs of the German Bundestag were informed about the merger concept in May 1991. At its meeting on 15 May 1991, the Committee on Internal Affairs stated that it ascribed great importance to the merger concept and the work of Die Deutsche Bibliothek.

2. Purpose and necessity of the Law

The Library's current statutory mandate does not cover the collection of media works distributed in immaterial form (online publications). As long ago as 1996, state and publishing industry bodies therefore felt that it would be necessary to extend the Library's collection mandate to digital publications not bound to a specific medium. In September 2001, by agreement with the Börsenverein des Deutschen Buchhandels, the Library introduced a voluntary deposit procedure for these publications. This procedure covers academic publications from major publishing houses. However, non-commercial publications, which are known as "Graue Literatur", and the catalogues of smaller publishing houses cannot be recorded in this way with any hope of building an essentially complete collection. Limiting the mandate to voluntary deposits would therefore be detrimental to the purpose of a national library collection from the perspectives of literature, scholarship and practical activities. The fundamental objective of this Law is therefore the inclusion of immaterial forms of publication in the Library's collection mandate.

The literary, academic and practical need for the preservation of different nations' cultural heritage of immaterial forms of publication, including publications on the Internet, has become a matter of urgency and is also recognised internationally. On 3 November 2001, in response to a European initiative, the General Conference of UNESCO adopted a resolution on the preservation of the digital heritage. In other countries, such as Australia and Canada, efforts are also underway that are intended to create a set of instruments for the preservation of the cultural heritage documented in immaterial forms. In the United Kingdom, the new Legal Deposit Libraries Act 2003, which also regulates the deposit of non-print forms of publication, received Royal Assent on 30 October 2003.

In addition to the inclusion of immaterial media works in the collection mandate, the intention is to update and streamline the present law. The term "mandatory copy" (*Pflichtstück*) is abandoned (§ 18[1], §§ 20, 21, 24 and 25 of the current law). Apart from a devolution of provisions to lower levels of legislation and the clearer organisation of the current law, the following amendments and additions are foreseen in particular:

1. Clarification of the Library's function as a national library in the Law (title of the Law and name in § 1[1]).
2. Designation of Frankfurt am Main as the seat of the authority (§ 1[2]).

3. Extension of the collection mandate to media works in immaterial form (§ 2[1], § 3[3]).
4. Amendment of the objects collected from “published or produced printed materials” to “published media works”, including a definition of the term (§§ 2, 3[1] to [3]).
5. More precise statement of the functions of the Library (final clauses of § 2[1]).
6. Extension of the statutory mandate to the traditional special collections, including those of the Deutsche Bücherei (§ 2[2]).
7. Clarification that works exclusively transmitted by broadcasting services are exempted from the collection mandate (§ 3[4]).
8. Authorisation to adopt a Schedule of Fees (§ 4[3]).
9. Allocation of a seat on the Administrative Council to the City of Leipzig and increase in the number of representatives of the German Federation from the current four to five, thus expanding the Administrative Council from eleven to thirteen members (§ 6[1]).
10. Authorisation for the Administrative Council to transfer particular powers it holds to the Director General (fourth sentence of § 6[4]).
11. Extension of the housing support benefits of the German Federation to the Library (§ 12).
12. Exemption of the Library from the payment of the bankruptcy allowance levy (§ 11[2]).
13. Unanimous voting by the representatives of the German Federal Government on the Administrative Council when decisions are taken concerning budgetary matters (second sentence of § 13[2]).
14. Extension of the mandatory deposit requirement to foreign publications licensed from Germany (§ 14[2]).
15. Introduction of the mandatory deposit requirement for media works in immaterial form (§ 14[3]).
16. Introduction of substitute performance by the Library when depositors neglect to perform their duties (§ 14[4]).
17. New definition of depositors (§ 15).
18. Introduction of a duty to provide information on the part of depositors (§ 17).
19. Restrictions on subsidies for media works subject to the mandatory deposit requirement when this represents an unacceptable burden on production run costs (§ 18).
20. Introduction of definitions of administrative offences (§ 19).

3. Provisions of the current law that will cease to apply

The following provisions, in particular those dating from the phase when the Library was established as a federal institution, are outdated or do not need to be regulated in this Law and may therefore be omitted:

1. Authorisation to determine the name of the Library (second sentence of § 1).
2. Status of the Library's civil servants (§ 11[1]).
3. Transfer of the staff of the Deutsche Bibliothek Foundation (§ 15).
4. Transfer of claims against the foundation to the new federal institution (§ 16).
5. Provisions amending the federal pay scheme (§ 17).
6. Commencement of the mandatory deposit requirement for sheet music and music recordings (§ 18[2]).
7. Exemption of official publications from the mandatory deposit requirement (§ 18[3]).
8. Lists of printed works to be submitted by depositors (§ 23).

4. Legislative competence

The legislative competence of the German Federation has already been scrutinised and affirmed in the parliamentary decision-making process leading to the adoption of the Law regarding the Deutsche Bibliothek of 31 March 1969 (*BGBI. I* p. 265). It is based on Article 74(1)(13) German Basic Law (promotion of academic research) and – in so far as the assignment of new functions to the Library is under discussion – on the first sentence of Article 87(3) German Basic Law. With regard to the material new provisions being introduced, the mandatory deposit requirement for foreign publications licensed from Germany and the duty to deposit immaterial media works, the Law is also required in accordance with the purpose of Article 72(2) German Basic Law. Such publications are not just indispensable tools for academic research, but also subjects of research in many individual fields: Both immaterial media works and foreign publications licensed from Germany document intellectual life in Germany in the same way as the printed works hitherto subject to the mandatory deposit requirement. They reflect Germany's cultural development and consequently form important records for every kind of scholarly activity that would otherwise be unobtainable. The Library therefore has a double function: It is a national collection and a national bibliographic centre where – in response to technical developments and publishing practice – immaterial works too are now comprehensively collected, inventoried and bibliographically indexed as well as printed works. It is the central point of contact for foreign national libraries. This promotion of academic research cannot be achieved with the regulations on mandatory deposit adopted by the Länder because the

Länder do not collect throughout the Federal Republic of Germany, but only within their Land territories. The establishment of a central national bibliographic body administered by the Länder and responsible for immaterial works and foreign publications licensed from Germany is therefore inconceivable and there are no plans for the establishment of a central body that would integrate the institutions of the Länder. With regard to the Internet, collection at federal level is necessary because there are no Länder-specific Internet domains, but only the “.de” top-level domain, which stands for Germany, can be classified descriptively and allows searches for German websites. The collection of the Internet can be national or international, but not local or regional.

As a central collecting body and, above all, as a national bibliographic centre also concerned with immaterial works and foreign publications licensed from Germany, the Deutsche Nationalbibliothek is available to academic researchers from all the Länder. It ensures that intellectual documents are not just collected and available in one Land or another, but throughout the Federal Republic of Germany. It is indispensable as the central point of contact for the academic community and researchers in Germany and abroad.

5. Costs

According to a cost estimate drawn up by Kienbaum Management Consultants GmbH in 2004, the German Federation will incur the following additional costs due to the extension of the Library’s collection mandate to immaterial media works, beginning with its introduction as envisaged in 2007:

Costs	2007	2008	2009	2010	2011
Without administrative expenses	€ 900,000	€ 1,900,000	€ 1,700,000	€ 1,700,000	€ 1,600,000
Administrative expenses	€ 1,000,000	€ 1,200,000	€ 1,200,000	€ 1,200,000	€ 1,300,000
Total	€ 1,900,000	€ 3,100,000	€ 2,900,000	€ 2,900,000	€ 2,900,000
Posts	21	26	26	27	28

The budgetary outgoings without administrative expenses result from the provision of the requisite data processing infrastructure for the extended collection mandate. The Library assumes that the external data processing platform (hardware and software) for the

archiving of online publications will be available by 2007. This is currently being developed as part of the KOPAL (Co-operative Development of a Long-Term Digital Information Archive) project funded by the Federal Ministry of Education and Research. The use of this data processing platform by the Library will demand investments in its ongoing expansion and maintenance that are taken into consideration in this forecast.

The administrative expenses result essentially from the extension of the collection mandate to immaterial media works (online publications). The additional quantity of publications to be dealt with that should be expected as a result will primarily have an impact on the Library's organisational units responsible for acquisition, descriptive cataloguing and subject cataloguing in the form of personnel spending on the additional posts required. Falls in outgoings due to the reduction of spending on subsidies for media works subject to the mandatory deposit requirement and the discontinuation of spending on licensed publications abroad are taken into consideration in this forecast.

No costs will arise for the Länder and municipalities as a result of the Law. Other costs, in particular for business, and effects on pricing levels, are not to be expected.

B. On the individual provisions

Title of law, structure

The title of the Law includes the name "Deutsche Nationalbibliothek" (German National Library), which is to be introduced to reflect the function of the federal institution. With its capitalised definite article "Die", the present name, "Die Deutsche Bibliothek", which was determined for the united institution made up of the Deutsche Bücherei and the Deutsche Bibliothek in the course of German reunification in 1990 by the Federal Minister of the Interior, who was responsible at that time in accordance with the power granted to him in § 1(2) of the present law, has never found easy acceptance.

In order to provide a better overview, titles have been given to the individual sections instead of the different parts of the Law. The short name "the Library", which is used throughout instead of the full name of the federal institution stipulated in § 1(1) of this Law, serves to simplify the wording of the Law. The term "supreme federal authority responsible for culture and the media" also adopted in this Law instead of the term used in the present law, "Federal

Government Commissioner for Culture and Media”, is intended to preclude the necessity of consequential amendments to this Law when organisational changes take place within the German Federal Government in future.

On § 1 (Legal status, seat)

On paragraph 1

This provision essentially corresponds to § 1 of the present law. Reflecting the actual function of the Library, paragraph 1 amends its previous name, “Die Deutsche Bibliothek”, to “Deutsche Nationalbibliothek”, which has been taken over into the Law from § 1 of the Library’s current Statutes. According to the UNESCO definition, the core functions of a national library are the collection and bibliographic listing of a nation’s literature in its entirety. The Library has been performing these functions since 1913.

On paragraph 2

This provision essentially corresponds to § 1 of the present law. The reference to the Deutsches Musikarchiv, which was established in 1970 as a department of the Deutsche Bibliothek in Berlin, corresponds to § 2(2) of the present law. The seat of the federal institution as a public authority and also in the sense of § 17(1) Code of Civil Procedure is Frankfurt am Main (as hitherto in accordance with the second sentence of § 11[2] of the present law in combination with the decision on the seat of the institution taken by the Federal Minister of the Interior on 11 December 1990). In order to avoid the confusion inherent in the present law from the perspective of civil procedural terminology (seats in Frankfurt am Main and Leipzig) and the appearance that there are separate local institutions in a legal sense, the old designation “seat” is therefore not used when reference is made to the locations in Frankfurt am Main and Leipzig.

On § 2 (Functions, powers)

On indent 1

This provision essentially corresponds to § 2(1) of the present law and determines the basic functions of the Library with the following specific amendments:

The collection mandate of the Library in the present law is amended from published (*verlegte*) or produced (*hergestellte*) printed works to published (*veröffentlichte*) media works. This means that, as a matter of principle, immaterial media works (online publications) that are made accessible to the public will also be included in the Library's collection mandate in future. The term used hitherto, "printed works", no longer accurately describes the expanded range of information to be dealt with. The Library's present statutory collection mandate assumes material media works in text, image and sound. However, information and knowledge have not been disseminated exclusively via representations bound to a specific medium for a long time but also, apart from conventional broadcasting services, in immaterial form on the Internet or in other networks. The expectation of a national library that, as the "memory of the nation", it will record the nation's output of publications, collect them and ensure they can continue to be used, must extend to the new forms of publication of an immaterial kind. Even today, after a comparatively short period of electronic publishing, many fields of literature, scholarship and practical activity would be cut off from essential sources without the Internet and comparable networks. The constant updating of this public domain requires an approach to archiving that will record information history at time intervals if it is not to be lost.

In the print media sector, the overwhelmingly majority of publications are issued by publishing houses and academic and cultural institutions. A large proportion of the Library's existing collection therefore consists of such publications. In addition to this, online publications issued by the above-mentioned bodies are already collected on a voluntary basis by the Library today. This is placed on a statutory footing with the extension of the Library's collection mandate to these forms of publication. This accommodates the technological development of this form of publication, which is evolving and increasing in significance.

By contrast, the modern development of online publications has seen very strong growth in the numbers of publications in the non-commercial and non-institutional fields. For economic reasons, the plethora of individual digital objects being created as a result cannot be collected by means of targeted selection. Rather, in this field of collection, automatic search and storage methods should be deployed for the comprehensive collection of Internet pages (web harvesting). When this is done, the contents of certain fields (e.g., all websites with ".de" domain names) are gathered automatically. However, it is not possible to secure and

catalogue every piece of information at each point in time. Instead, for example, cross-sections through this particular area of the Internet should be taken at particular moments twice a year. This would make it possible to document and archive what information was available on the Internet at a specific point in time. There should be no intellectual cataloguing of these documents. Details will be regulated in an ordinance as provided for by § 20 of this Law.

Apart from the growth in immaterial publications in the Library's traditional fields of collection referred to above, the non-commercial academic and popular areas, in particular, are being affected by the rapidly rising number of immaterial publications. These publications dominate an expanding sector of Germany's culture. The publications placed on the Internet relate to all areas of knowledge and display differing levels of quality. It is indispensable for a cultured nation to secure their permanent availability – as has been done for works in material form since the present law entered into force. Otherwise, it would be impossible to describe developments, exploit them and analyse their causes and effects in future. Making the material for these activities available is the internationally recognised responsibility of a national library.

The quantity of new digital publications constantly being placed on the Internet (it is estimated that in 2004 there were more than seven million websites with “.de” top-level domain names alone as well as large numbers of individual publications appearing on them) rules out the use of conventional methods and tools to collect them, archive them and make them available to the public. Regular, continuous searching, identification, intellectual cataloguing and classification by significance are impossible, in particular for financial reasons. The publications that have to be collected need to be identified and selected according to “machine-readable” criteria. Only then will it be possible to ensure the economic efficiency of the performance of the Library's functions within the framework of the budgetary funds available.

Consequently, it is possible to identify two “pillars” in the collection of electronic publications: firstly, the targeted collection of works issued by publishing houses and academic, institutional and cultural publications, with their intrinsic quality references, using specially granted access rights to websites or special deposit procedures; secondly, the random collection of Internet sources by means of the harvesting procedure.

In order to include non-commercial publications, what are known as “Graue Literatur”, in the collection mandate more clearly than the wording of the current law, this Law (like the Swiss legislation of 18 December 1992) is comprehensively geared towards “published” (*veröffentlichte*) media works. The terms used in § 2(1) of the present law, “published” (*verlegt*) and “produced” (*hergestellt*), required their own definitions in § 19(2) of the present law, which also, for example, mentioned non-commercial self-publishers separately in order not to be misunderstood as setting out criteria solely aimed at commercial businesses.

Indent 1a defines the collection mandate for published media works within the territories covered by the Law, indent 1b for published media works outside its territorial coverage. The collection mandate derives from the fundamental purpose of the Library and is the precondition for all further functions. The fact that the collection starts in 1913 can be traced back to the founding of the Deutsche Bücherei in Leipzig as an archive of German literature in 1912. Due to the merger of the institutions in Leipzig and Frankfurt am Main as a consequence of German reunification, their fundamentally identical collection functions were coordinated and standardised so that today their holdings are developed and cataloguing work undertaken according to jointly drafted guidelines on the basis of a division of labour between the locations. These guidelines are subject to constant amendments intended to refine them, make them more specific and so do justice to changes in the publishing sector and users’ needs.

The inclusion of translations of German-speaking authors into foreign languages and publications about Germany and individuals from the German-speaking countries corresponds to § 2(1)(2) of the present law. This provision gives regard to the aspect of gathering evidence about the reception of the German language and German culture abroad. It contributes to the intellectual dialogue between peoples at a time when cultures are becoming ever more closely interlinked.

On indent 1, final clauses

This provision specifies and elaborates more precisely than the present law the Library’s further responsibilities arising in connection with its collection mandate. It is made clear that media works are only to be collected in their original published form and not as reproductions. As hitherto, the media works collected will have to be catalogued according to academic principles, kept ready for public use, safeguarded permanently and prepared for

use by the general public. For reasons connected with the preservation of holdings, media works in a material form are only to be made available for use in the premises of the Library.

The Library must make copies in order to perform its functions, in particular when electronic data are being collected from the Internet or converted into other formats in order to ensure they continue to be accessible with up-to-date technologies. The Library's power under copyright law to create these copies derives from indent 2 of the first sentence in combination with indent 3 of the second sentence of § 53(2) Copyright Law and therefore does not need to be regulated again in this Law. Large quantities of data in an electronic form – for instance, from the Internet, but also from internal databases – can only be copied in automated procedures. In this respect, the Library is obliged to only deploy procedures in which no distortion of the works in question is to be expected. However, since it is impossible, for technical reasons, to guarantee that software and hardware will function completely faultlessly and it is practically never possible to be absolutely certain that data formats will be compatible, the occurrence of unexpected results during copying processes of this kind is ultimately unavoidable in individual cases. This does not prevent the Library from also deploying high-volume procedures for the copying of data with the great care that is appropriate, but nor does it indemnify the Library against justified claims by originators due to interference in their works.

As core functions of the Library, the central library and national bibliographic services hitherto provided by the Library are now listed specially in the Law in order to make clear the comprehensiveness to which a national library must aspire. These services also include the descriptive and subject cataloguing of the nation's literature. The data obtained in this way are disseminated through the national bibliographic services and make the Library the most important supplier of descriptive and subject cataloguing data in Germany's decentrally organised national library system. The Library's function as a data supplier conditions its function as an institution that develops and maintains rules, authority files, bibliographic standards and data formats as well as collaborating on the drafting of conventions concerning the permanent preservation of holdings.

On indent 2

The collections of the Library listed in this indent are the historically evolved holdings of the locations in Frankfurt am Main and Leipzig. The continued administration of the Deutsches

Exilarchiv 1933 – 1945 corresponds to § 2(1)(3) of the present law. The materials in this archive, the Leipziger Exilsammlung and the collection of the Anne-Frank-Shoah-Bibliothek form essential foundations for the study of the past, in particular the National Socialist policy of terror and the persecution of the Jews, as well as the democratic, humanist achievements of Germans in exile as an important precondition for reconciliation and a future shared in a spirit of mutual tolerance.

The development of book culture is documented in a comprehensive and internationally exemplary fashion by the Deutsches Buch- und Schriftmuseum, which was founded in 1884 and incorporated into the Deutsche Bücherei in 1950.

On indent 3

In principle, this provision corresponds to § 2(1)(4) of the present law. By way of clarification, the Library's collaboration in national specialist institutions is listed in addition to its collaboration in international specialist institutions as provided for in the present law. Cooperation with institutions in related fields helps the Library to perform its function as a national centre for the communication of information, including the performance of this role in international scholarly networks.

On § 2(2) of the present law

This provision is redundant. The Deutsches Musikarchiv, with its own premises in Berlin, and the sheet music collection of the Deutsche Bücherei are organisational components of the two institutions the Deutsche Bibliothek (Deutsches Musikarchiv) and the Deutsche Bücherei (sheet music collection). The assignment of functions to the Library under § 2(1) of this draft bill therefore also includes the assignment of responsibilities for sheet music and music recordings to the Deutsches Musikarchiv and the sheet music collection, as provided for by § 2(2) of the present law.

On § 3 (Media works)

On paragraphs 1 to 3

These provisions contain definitions of terms. In principle, the term "media works", which

replaces the previous term, “printed works”, denotes all media works in text, image and sound without limitation to a certain type of production or form of reproduction. This makes the current special provision on sound recordings in § 2(1) of the present law redundant. The term used hitherto, “printed works”, no longer accurately describes the extended range of information to be dealt with. The Library’s present statutory mandate assumes the collection and archiving of material media works in text, image and sound. The definition of media works draws on the provisions in the Copyright Law that are of significance for the distribution of media works and measures to make them accessible to the public in the sense of §§ 17 and 19a Copyright Law under § 3(1) of this Law. Accordingly, distributed media works include works that are only made available or printed on request (e.g. publishing or printing on demand) or that are made accessible in immaterial form.

The limitation of the definition of immaterial media works to representations in “public” networks merely follows from § 2(1)(a) and (b) of this Law, according to which only published media works are subject to the collection mandate and the mandatory deposit requirement under §§ 14 and 15 of this Law. This means that, for example, documents on an intranet, such as corporate documents, will not be collected by the Library.

On paragraph 4

This provision corresponds to § 3(2) of the present law with the clarification that works exclusively transmitted by broadcasting services are not subject to the Library’s collection mandate and, in view of the modern development towards music videos, with the addition that cinematic works should only be collected if they are overwhelmingly concerned with music. Developments in the recording industry show that both music videos and audio CDs are increasingly being replaced by DVDs and what were once purely audio forms of presentation are increasingly having multimedia content added to them. There is a tendency to link sound and images. If it did not collect these multimedia data media, which primarily carry music and are already deposited with the Library on a voluntary basis today, the Library would no longer be able to do justice to the expectations of a national library in the field of the collection of sound recordings in future. The special mention of moving pictures contained in the present law is historically outdated and may therefore be omitted. The remaining need for provisions on audio slide shows and single photographs will, like other exemptions from the collection mandate of the Library regulated in the present law, be dealt with in an ordinance as provided for by § 20 of this Law.

On § 4 (Statutes, use, mandatory fees)**On paragraph 1**

This provision corresponds to § 5 of the present law. The requirement of official approval for, and the duty to publish, amendments to the Statutes (§ 5[2] of the present law) are no longer specially mentioned in this Law since they are self-explanatory.

On paragraph 2

This provision essentially corresponds to § 4 of the present law. The intention is to regulate the stipulation it contains, that the holdings of the Library may only be made available “on site”, in future in the Regulations for Users provided for by § 4(2) of this Law, which are to be adopted by the Administrative Council of the Library in conformance with the bounds of copyright law. The full range of restrictions on the use of material media works also continues to be necessary on grounds of the protection of holdings. In the case of commercial publications, restrictions on the use of immaterial media works are also necessary for legal reasons. Furthermore, access to free online publications is often technically possible for users from any location and does not presuppose a visit to the Library. This opens up possibilities for the Library’s user services, which will have to be designed conveniently for end users yet in harmony with the copyright powers of rightholders. To this end, separate agreements with rightholders are to be concluded where the Copyright Law does not permit works to be used. The Library aspires to make available the archived versions of at least those online publications that are provided by depositors free of charge online, and to do so without access limitations. In principle, the parties entitled to exploit works have the right to limit use to on-site access in the premises of the Library.

On paragraph 3

The reimbursement of costs (fees and expenses) for the use of the Library and its services has hitherto been regulated in the Library’s Regulations for Users and Schedule of Fees. The details of use, including the charging of fees and the reimbursement of expenses, do not require statutory regulation. In line with provisions in other laws (e.g. § 6 of the Federal Archives Law) and in view of the cost-relevant range of services provided by the Library,

which will also change in future in particular due to the new media, statutory authorisation for the adoption of the Schedule of Fees by the Administrative Council is necessary. When rates are set for the Library's services, it is important to ensure that these rates do not have disadvantageous effects on the exercise of Library users' academic and information rights. The Federal Administrative Costs Law (in future: Law on Administrative Charges and Expenses of the German Federation) is to be applied.

On § 5 (Organs)

This provision corresponds to § 6 of the present law.

On § 6 (Administrative Council)

On paragraph 1

This provision essentially corresponds to § 7(1) of the present law. The restructured first sentence expands the Administrative Council, adding one further representative of the German Federation, who may be delegated by the supreme federal authority responsible for the Library, increasing the number of representatives of the German Federation from hitherto four to five, and for the first time allocates a seat on the Administrative Council to a representative of the City of Leipzig, increasing the total number of members from eleven to thirteen. The seat reserved hitherto for the City of Frankfurt am Main alone was historically justified because the city was a provider of funding to the foundation until the end of 1967, paying 25 percent of the Deutsche Bibliothek's budget. The seat with voting rights on the Administrative Council for the City of Leipzig for which provision is now made acknowledges in an appropriate fashion the importance of the Deutsche Bücherei to the City of Leipzig and its significant role in the establishment of the Deutsche Bücherei in 1912. Since the merger of the two libraries in 1990, a representative of the City of Leipzig has regularly attended the meetings of the Administrative Council without holding voting rights. The precise identification of the delegate from Frankfurt am Main as representing the city's municipal executive (*Magistrat*) had no function. It has also been omitted because, under the Saxon Municipal Statute, different local government structures are in place in Leipzig.

The increase in the number of members of the Administrative Council to be delegated by the German Federation by one to five ensures that, as the Library's sole funding provider, the

German Federation cannot be outvoted when relevant decisions are taken by the Administrative Council, for example on the determination of the Library's budget as provided for by § 13(2) of this Law. The position of the German Federation, with a veto minority on all significant decisions of one third of the members of the Administrative Council, the chair of the Administrative Council, the casting vote of the Chairperson, her or his function as the Library's supreme authority and the supervision it exercises over the legality of the Library's administrative actions ensures it an influence over supervisory and executive decisions that is appropriate in view of its comprehensive funding of the Library. The provision on the delegation of representatives by the supreme federal authority responsible for culture and the media set out in paragraph 1(1) with the words "up to" is intended to facilitate the flexible representation of the German Federal Government on the Administrative Council.

The second sentence includes a provision on the appointment of substitute members of the Administrative Council that has hitherto been contained as an optional provision in § 4 of the Library's Statutes. This provision is intended to help ensure that the Administrative Council is always quorate.

On paragraph 2

This provision corresponds to the first half of the second sentence of § 7(1) of the present law. The second half of this sentence has been included in paragraph 3 of this section as its third sentence. As hitherto, the Chairperson of the Administrative Council will be appointed by the supreme federal authority responsible for culture and the media.

On paragraph 3

Due to its significance, the first sentence of this paragraph has been taken over from the Statutes. As a consequence of the increase in the members of the Administrative Council from the previous eleven to thirteen, the current number of members required for a quorum under the Statutes has been increased from more than six to more than seven. The second sentence is clarificatory, the third sentence corresponds to the second half of the second sentence of § 7(1) of the present law.

On paragraph 4

The first sentence of this paragraph essentially corresponds to § 7(2) of the present law. The Administrative Council's competence to determine deviations within an approved budget still provided for in its second sentence is redundant. More flexible budgeting and the easier budgetary management it involves mean that deviations exceeding the provisions of budgetary law are no longer necessary. Furthermore, no case of this kind has occurred since the entry into force of the present law in 1969.

The second and third sentences serve the need for stronger involvement of the Administrative Council in decisions on matters of special significance and planned ordinances as provided by § 20 of this law. The Administrative Council's mandate to monitor the performance of the Library's functions is clarified in line with comparable regulations in other laws.

The fourth sentence grants the Administrative Council the option of transferring decision-making about particular powers it holds to the Director General of the Library. This is intended to strengthen the decision-making powers of the Library's executive management and shorten decision-making channels, where necessary with targets set by the Administrative Council.

On paragraph 5

This provision corresponds to § 7(3) of the present law.

On paragraph 6

The first sentence of this paragraph corresponds to § 12 of the present law. The second sentence facilitates the granting of delegable powers under civil service law for which no separate provision is made, with the resultant shortening of decision-making channels (cf. also § 83[1] and § 33[5], § 34[2], § 42[1] and § 84 of the Federal Disciplinary Law).

On § 7 (Director General)

On paragraph 1

The subordination of the executive management to the decisions of the Administrative

Council and the stipulations of the Statutes set out in § 8(1) of the present law is self-explanatory and therefore no longer needs to be regulated by law in the first sentence of this paragraph. Instead, the clear delimitation of competencies relating to § 6(4) and (6) of this Law in the second sentence is useful.

On paragraph 2

The first sentence of this paragraph corresponds to § 8(2) of the present law. Due to its special weight, the substantive content of the second sentence has been taken over from the Statutes of the Library (§ 13).

On § 8 (Advisory Committees)

On paragraph 1

This provision corresponds to § 9(1) of the present law.

On paragraph 2

This provision corresponds to § 9(2) of the present law with the following amendment: the omission of the words “from the library profession and the book trade” is intended to ensure that, as well as experts from these fields, who should continue to be represented on the Advisory Committee, specialists in, for example, the digital media too are able to contribute to the body that advises the Administrative Council. The decision not to include a statutory specification of particular fields from which the Administrative Council should call on experts allows greater flexibility to respond to future developments by appointing individuals with appropriate competencies to the Advisory Committee.

On paragraph 3

This provision regulates a flexibilisation of the selection of experts for the Advisory Committee for the Deutsches Musikarchiv Berlin appropriate to the Committee’s area of expertise, as explained in the comments on paragraph 2 of this section.

On paragraph 4

This provision corresponds to § 9(4) of the present law.

On § 9 (Supervision over the legality of administrative actions)

This provision corresponds to § 10 of the present law. The clarification now given of the term “supervision”, which is used in the present law, as “supervision over the legality of administrative actions”, makes § 10(2) of the present law redundant.

On § 10 (Civil servants)

On paragraph 1

This provision confers the right to have civil servants employed by the Library. By contrast, the provision contained in § 11(1) of the present law is redundant because the status of the Library’s civil servants derives directly from the Federal Civil Service Law.

On paragraph 2

This provision corresponds to § 11(2) of the present law. Due to its significance, the requirement of a qualified majority for the proposal concerning the appointment of the Director General and her or his permanent representatives has been taken over from the Statutes (§ 9[1]).

The power to determine the seat of the Director General granted in the second sentence of § 11(2) of the present law is now found as the stipulation of the seat of the authority in the second sentence of § 1(2).

On paragraph 3

The previous provision in § 11(3) of the present law, according to which the civil servants of the Library below the executive level are appointed by the Chairperson of the Administrative Council with the consent of the Administrative Council, created an expensive administrative procedure without any significant control function. By analogy to the arrangements adopted more recently at other institutions (cf. e.g. § 12[3] Law on the Creation of a Jewish Museum

Berlin Foundation) the function of appointing civil servants is therefore assigned to the Chairperson of the Administrative Council without any requirement for the consent of the Administrative Council, while it is possible to transfer the right to appoint these civil servants to the Director General by means of provisions in the Statutes.

On § 11 (Employees)

The first sentence of this section fundamentally corresponds to § 14(1) of the present law. The requirement that the Administrative Council consent to the appointment of salaried employees in salary grade IIb BAT and higher contained in § 14(2) of the present law is omitted in line with the provisions applying to the Library's civil servants. The second sentence is required in order to exempt the Library from the duty to pay insolvency benefit levy in future. According to § 186c(2) of the Employment Promotion Law, this exemption only comes into force if, among other things, the German Federation secures the institution's solvency by law.

On § 12 (Housing support)

This provision extends the housing support benefits the German Federation grants to its staff and those of other directly administered special federal institutions to persons in the service of the directly administered federal institution. It is necessary because the bodies of the German Federation responsible for estate management do not automatically grant the housing support of the German Federation to institutional funding recipients and the persons in their service (indirect federal civil servants). Reference is made to the comparable regulation in § 29(2) of the Bundesbank Law.

The provision on the Library's Oberste Dienstbehörde (supreme administrative authority) in § 12 of the present law is now included in the first sentence of § 6(6).

On § 13 (Budget, audit of accounts)

On paragraph 1

This provision corresponds to § 13(1) of the present law.

On paragraph 2

The first sentence of this paragraph corresponds to § 13(3) of the present law. With the omission of the Administrative Council's power to approve "deviations in the budget" in the second sentence of § 6(4) of this Law, the consequential regulation requiring a qualified majority when the Administrative Council takes decisions on matters of this kind ceases to apply.

The second sentence takes into consideration the circumstance that 100 percent of the Library's funding comes from the federal budget. The five representatives of the German Federation on the Administrative Council should therefore cast their votes unanimously on budgetary matters.

On paragraph 3

This provision corresponds to § 13(4) of the present law.

On paragraph 4

This provision is clarificatory.

On §§ 15 to 17 of the present law

The provisions on the transfer of civil servants under civil service law set out in §§ 15 to 17 of the present law have become inapplicable as a result of their execution.

On § 14 (Mandatory deposit requirement)

As also in the present law (§ 18), this provision regulates the performance of part of the Library's collection mandate through the mandatory deposit of media works by the parties entitled to distribute them. This duty relates to domestic media works in material form (paragraph 1), material and immaterial foreign publications with German rightholders (paragraph 2) and domestic media works in immaterial form (paragraph 3).

In principle, it is intended that all publications that fall within the collection mandate and on

which it is possible to impose the mandatory deposit requirement will be covered. The mandatory deposit requirement will therefore also apply to licensed works if the holders of the original distribution rights are domiciled in Germany. The mandatory deposit requirement may be imposed on licensing, as a form of the exploitation of distribution rights, even if the rightholder themselves does not publish the media work. Where the license agreements concluded by the parties liable do not allow the deposit of works with the Library, the duty to perform a non-monetary obligation will be replaced by the corresponding duty to perform a monetary obligation due to the breach of duty involved in the failure to deposit the works in question (paragraph 4).

On paragraph 1

The compulsory collection of two copies of media works in material form corresponds to § 18 of the present law. As hitherto, the locations also mentioned in § 18, with which works are to be deposited, and the detailed restrictions on the mandatory deposit requirement should be set out in an ordinance as provided for by § 20 of this law and the Library's Guidelines on Collection.

On paragraph 2

This provision regulates for the first time the mandatory deposit requirement for media works defined by § 2(1)(b) of this Law (foreign publications) when they have been licensed from Germany. Hitherto, these publications had to be purchased by the Library in order for it to perform its collection mandate. As material media works, they are only collected at the Deutsche Bücherei in Leipzig, which is why just one copy is required. Their deposit is to be expected of licensors since mandatory deposit may be made a part of a licensing agreement, just as is usually the case with the right to courtesy copies. As domestic rightholders, these depositors are therefore equated to other parties that exploit distribution rights and the right to make works accessible themselves instead of through the granting of licenses. Like other provisions under public law, the reference to the legal domicile, business premises or principle residence of one – or even several – of the rightholders is oriented towards §§ 8, 11 and 12 German Tax Code. If a number of rightholders are subject to the mandatory deposit requirement, it is necessary to select between several depositors according to general principles of proportionality, necessity and acceptability.

The provision in § 18(2) of the present law on the specific features of the mandatory deposit requirement while the Deutsches Musikarchiv Berlin was being established is outdated. The inclusion of the mandatory deposit requirement for the publications that dominate the German music market in the general mandatory deposit requirement for media works replaces the current provision.

On paragraph 3

This provision regulates the number of copies of media works in immaterial form (online publications) to be deposited. Today, they are a medium of information and communication, just as books and periodicals have been since Gutenberg. They open up the exchange of information and spread knowledge further. It is this to which a library's claim to preserve cultural goods relates. Under its general collection mandate, the Library should also assume responsibility for the collection, indexing and long-term preservation of online publications. It can only do this adequately if reproductions of digital objects are transferred into its possession, where these objects can be archived under controlled and protected conditions and kept in a condition that allows their permanent use. The compulsory collection of one copy is the logical extension of the mandatory deposit requirement by analogy to the treatment of media works in material form under paragraph 1. The compulsory collection of two copies is unnecessary because online publications are stored in the Library's central electronic archive system.

On paragraph 4

As a precondition for the early performance of the Library's functions that is a prerequisite if they are to be carried out effectively in qualitative terms, media works should be sent to the Library at the moment when they start to be distributed. Many years of experience have shown that depositors frequently neglect to deposit the publications distributed by them immediately. In order to avoid serious gaps in the collection, a high level of spending has to be committed to warnings and enforcement measures, which take up a great deal of working capacity. In addition to this, the topicality of the cataloguing data – and therefore its quality and usefulness for literature, scholarship and practical activities in Germany – suffers considerably from the delayed receipt of publications by the Library. The possibility of substitute performance should help to prevent unnecessary failures to deposit works.

The week deadline in the present Legal Deposit Ordinance has been supplemented with a warning period of three weeks. It is possible to comply with these deadlines, as should be evident from the fact that even distribution organisations hived off from publishing houses succeed in dispatching individual review copies of media works to be promoted in good time. The deadlines are necessary from a professional point of view in order to ensure prompt analysis by librarians and the high-quality indexing and cataloguing of the media works on this basis. Only when new publications are catalogued rapidly does the Library enable its clients to use bibliographic data and the latest advances in scholarship promptly.

On § 18(3) of the present law

The exemption of official publications from the mandatory deposit requirement is omitted. This will not result in a significant expansion of the collection because the German Federation and almost all the Länder (except Saxony and Mecklenburg-Western Pomerania) have regulated a mandatory deposit requirement for their official publications on the basis of special ministerial orders, and federal and Land bodies already deposit them with the Library. Restrictions on the mandatory deposit requirement, for instance for publications with purely official content issued by municipalities and associations of municipalities, will be regulated by an ordinance as provided for by § 20 of this draft law.

On § 15 (Depositors)

This provision regulates who is subject to the mandatory deposit requirement. This is no longer associated with a party's status as a publisher or producer, but geared towards the legal power to distribute a work or make it accessible to the public and therefore also covers distribution companies licensed in Germany, in particular in the sound recording sector. Since the legislation is now generally geared towards these powers, a special reference to self-publishers and vanity publishers like that in § 19(2) of the present law is no longer required. In the rare cases in which several holders of the right to distribute a work or make it accessible in Germany may be required to deposit a work concurrently, the Library has to select between them according to general principles for the determination of the party liable when the deposit of a work is still outstanding. As in tax law and the law of administrative procedure, the geographical centre of a person's vital interests is regarded as their principle residence.

On § 16 (Deposit procedure)

This provision elaborates the current regulation in § 20 of the present law. Due to their special significance, two requirements made of the specific characteristics of the media works subject to mandatory deposit have been taken over into the new provision from the present Legal Deposit Ordinance (§ 1[1]): the work's "complete" and "perfect" condition. With a view to the online publications and electronic data media to be collected, the requirements placed on the characteristics of media works are supplemented by the requirements of the absence of time restrictions on their use and their suitability for permanent archiving. This is intended, in particular, to exclude time limits on use that are imposed by technical features and make subsequent use impossible, copy protection features and similar security features that obstruct the working steps necessary for archiving for the statutory purposes of the Library. The requirements put in place can be fulfilled because company archives keep basic versions of works in order to prevent evidential and legal disadvantages, at least during the 70-year copyright period. This regulation corresponds to the powers granted by Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (Official Journal L 167, p. 10; in particular Article 5[2][c], p. 16).

Due to the special significance that prompt deposit following publication has for the performance of the Library's functions under § 2 of this Law, the concrete deadline for mandatory deposit is taken over unchanged from the present Legal Deposit Ordinance (§ 6[1]). It is calculated from the beginning of distribution and therefore the point in time that has been chosen for wholesale delivery to third parties. It should be acceptable for works to be deposited with the Library at the same point in time. Since the stipulation of the specific body with which media works should be deposited primarily follows considerations of expediency, it will be regulated in an ordinance as provided for by § 20 of this Law.

The option of making media works in immaterial form available for machine-supported retrieval is based on the feasibility of technical procedures that make it possible for the Library to "gather" publications using software robots (web harvesters) without special activity on the part of depositors. Provided the technical attributes of online publications allow the deployment of procedures of this kind, the expense of making delivery for depositors and the expense of taking delivery for the Library are considerably reduced. The decision on the application of one or several acceptance methods is taken by the Library on a case-by-case

basis, as the methods “delivery” and “making available for retrieval” are deployed in different work processes.

On § 21 of the present law

The duties to safeguard and index works are substantively included in the specification of the Library’s functions in § 2(1) and are therefore no longer to be regulated in this section.

On § 17 (Duty to provide information)

This provision is introduced for the first time. In order to perform its functions under § 2 of this Law, particularly with regard to electronic publications, the Library also requires data that cannot be ascertained from the deposit copies themselves or that can only be extracted from them at very great expense. This provision is intended to ensure that it is possible to request the data necessary for the performance of the Library’s functions. In the case of electronic publications, for example, it is necessary to acquire the technical metadata that are required for the ongoing operation of procedures that maintain their long-term availability by the Library. These are data that are generated during the process of producing a media work and can only be determined subsequently at great expense. In accordance with § 95d(1) Copyright Law, works and other protected objects that are secured by technical features should have clearly visible labels with information on the attributes of these technical features. However, this regulation does not automatically cover the relevant data elements it is necessary to know for the purposes of archiving and making available to the public. The Library is therefore empowered to stipulate the data to be supplied to the extent necessary and acceptable to the parties required to provide this information. The power to undertake substitute performance is intended to ensure that, where necessary, indispensable information can be obtained in order to facilitate the performance of the Library’s statutory mandate.

On § 18 (Subsidies)

A subsidy towards the costs for the deposit of material media works is granted as a matter of principle if deposit free of charge is unacceptable in the individual case because, for instance, high production costs cannot be passed on for economic reasons due to the small size of an edition. With regard to the assessment of the level of subsidy, the provision on

subsidies is no longer geared towards the reference values “retail price” and “edition size”, but towards the production costs of the copies to be deposited themselves. The provisions applying in Hessen (second sentence of § 9[1] Hessen Press Law 1982 in combination with § 6 of the Ordinance on the Deposit of Printed Works), which have been adjusted to comply with the directions of the German Federal Constitutional Court (decision of 14 July 1981, 1 BvL 24/ 78, E 58, 137, Deposit Copy Ruling on § 9 Hessen Press Law 1958), also relate to these marginal costs. This is justified by the argument that, due to modern printing techniques, which allow the reproduction of further copies and therefore the gradual enlargement of an edition or the production of ever more small new editions as a way of responding flexibly to sales performance, a figure for the size of an edition does not represent a firm criterion for the assessment of the burden imposed by the mandatory deposit requirement. The same also applies, for instance, in the case of expensively produced or decorated works, for which it is not the sum required to cover overheads, but the expenditure associated with the individual item that constitutes the burden. This special expense is to be mitigated with a subsidy if a very small edition rules out spreading the costs for the copies to be deposited to the other copies in the edition on economic grounds.

Thanks to the new provision, the media work subject to the mandatory deposit requirement itself becomes the yardstick for the economic burden and not the expected break-even point and the coverage of overheads associated with it, an approach that is justifiable in business terms and in view of the moderate intervention made into the fundamental right to property (constitutional requirement that the use of property serves the common weal). The acceptability of deposit without reimbursement of expenses due to the great economic expense associated with it in the sense of the ruling of the German Federal Constitutional Court quoted above does not depend on a break-even rate, but on the specific burden, including the costs incurred additionally due to the production of the media works to be deposited. These marginal costs or production run costs do not, as a rule, increase or decrease when production overheads change. The cases observed in the past in which publications only made commercial sense in the first place due to the subsidy for deposit copies or shares of overheads were subsidised several times over by flat rate payments from various deposit libraries will cease to occur with the adjustment of the reference value to the economically appropriate approach to the matter. Accordingly, there will also continue to be no entitlement to subsidies in cases where license holders have to pay license fees only without being burdened with production costs.

Since, typically, no appreciable additional costs are incurred for the production of the copies of media works in immaterial form to be deposited, the provision on subsidies is to be limited to media works in material form.

Details shall be regulated by an ordinance as provided for by § 20 of this Law.

On § 23 of the present law

The compulsory collection of lists of printed works from depositors has proved to be inexpedient because the lists from publishing houses or producers are often useless due to their delayed and incomplete compilation. This provision is therefore omitted.

On § 19 (Provisions on administrative fines)

It is necessary to adopt a provision on administrative offences into the Law in order to be able to take action against depositors when frequent breaches of duty occur (§ 15). Some deposit copy regulations in the Länder (e.g. § 21a[1][6] Hessen Press Law) contain corresponding provisions. The level of the administrative fine is to be set on a case-by-case basis according to the degree of culpability, how permanent the breach of duty has been and the ability of the party liable to pay (see also §§ 2, 10 to 13 and 17 Law on Administrative Offences). Commercially active depositors, from whom specialist knowledge must also be expected with regard to their obligations, commit an administrative offence if they negligently fail to comply with their duty to deposit works or duty to provide information, or fail to comply with these duties in good time.

On § 20 (Delegated legislation)

The provision on delegated legislation relating to the mandatory deposit requirement has been reorganised and also assigns the regulation of the preconditions and procedures for the granting of subsidies to the Legal Deposit Ordinance, which is to be revised accordingly. It is also possible to stipulate the parameters for administrative regulations of the Administrative Council – the current Guidelines on Collection – in the Legal Deposit Ordinance.

Indent 1 of this section now relates the restriction of the mandatory deposit requirement to

the details of the Library's mandate under § 2(1) and also allows for a limitation of its duty to collect media works that may prove to be of practical significance, in particular with regard to the collection of online publications.

Indent 2 is more precisely drafted since various versions of media works are also specified.

Indent 3 may omit the authorisation to determine when works should be deposited set out in the present provision because, due to its significance, this stipulation is now found in this Law (§§ 16 and 17).

Indent 4 makes the provision on subsidies substantively laid down in § 18 a matter for the Legal Deposit Ordinance.

On § 21 (Regulations under Land law)

This provision corresponds to § 25 of the present law.

On § 22 (Entry into force, expiry)

This provision regulates the entry into force of this Law and the expiry of the present law.