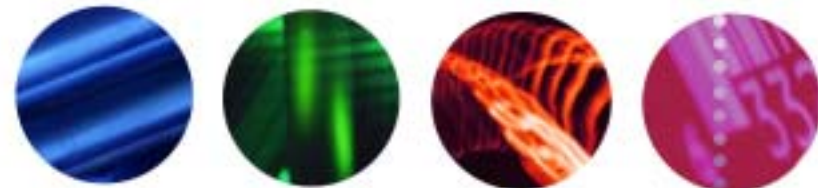


Digital Preservation: Legal Issues

**Chinese National Academy of Sciences
July04**

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Supporting further and higher education

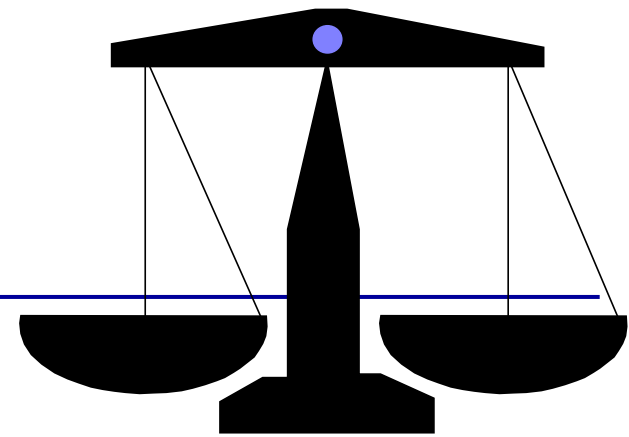
Warnings!

- This does not constitute legal advice
 - I am not a lawyer – you must seek specific legal advice for your needs
 - Legislation varies from country to country – examples provided are mostly from UK law
 - Complex area -I will simplify but provide references to more detailed studies
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Overview

- **Copyright, IPR, and technical protection measures**
- **licensing and contract law**
- **Deposit legislation for e-publications**
- **Other legal issues**
- **Conclusions**
- **Further Information**



Copyright + IPR(1)

copyright a right protects against the unauthorised copying of a work

- effective upon creation of the work
- registration is not required
- property:
 - it may be bought, sold or passed on by the owner

What can be copyrighted?

- original literary, musical or dramatic work
 - sound recordings, broadcasts etc
 - typographical arrangements
 - computer programs
 - databases
-



Copyright + IPR(2)

- Copyright may have specific exemptions eg fair use, rights for archive copy
 - Exemptions are often complex
 - Intellectual property rights (IPR) are copyright plus other rights including:
 - “Moral Rights” rights to protect acknowledgement of authors, protect against derogatory treatment etc
 - “Performance rights” rights of performers in a work, etc
-



Copyright + IPR(3)

- Copyright and other intellectual property rights (IPR) such as moral rights have a substantial impact on digital preservation
 - preservation of digital materials is dependent on a range of strategies, which has implications for IPR in those materials
 - Consideration may need to be given not only to content but to any associated software.
 - can infringe IPR unless statutory exemptions exist or specific permissions have been obtained from rights holders
 - Specific permissions may be very challenging eg for Internet Archive or digital art
-



IPR and BBC Domesday

DISK produced in 1986
Over 1m contributors

Preserved via emulation

?preservation copy or new work

?express permission needed from 1m contributors

42.-(1) *The librarian or archivist of a prescribed library or archive may, if the prescribed conditions are complied with, make a copy from any item in the permanent collection of the library or archive-*

- access may be provided to BBC Domesday via emulation if:
- The original discs are owned by the provider
- Only one use at a time is made per original set of Domesday discs
- BBC Domesday running under emulation on a modern computer constitutes a *copy* not a *new version* of BBC Domesday.



IPR protection software and law

- US Digital Millenium Copyright Act ("DMCA") and similar EU legislation Directive 2001/29/EC
 - if the digital resource is protected by a technology that controls access, you cannot legally bypass the access control mechanism
 - Usually some degree of exemption for archiving but no general provision
-



Licensing and contract law

- Licences based on contract law
 - Can over-ride statutory provisions eg fair use
 - Usually based on licensing remote access to a resource not physical ownership
 - Fundamental challenge to digital preservation in this business model
 - read any licensing agreements you or your institution has signed before making preservation copies
 - Build archiving provisions into licences
-



UK National Electronic Site Licensing Initiative

- model licence - incorporated clauses for perpetual access and archiving of back issues
 - continuing archival access is subject to the terms and conditions of use of the Licence
 - structures for enabling this examined in JISC study (see other presentation)
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Issues

- past agreements with institutions- not modified for collaborative archiving
 - How to enforce archiving rights
 - Access to authorised users- subscription rights each year for institutions and versions of licences
 - must retain archive of licences and subscriptions data
 - limitations of licensing with publishers - interpretation of rights - 3rd party content e.g. images, and society/publisher contracts
-



British Library and legal deposit

- UK Legal Deposit Libraries
 - British Library and 5 other deposit libraries (Cambridge, Oxford, National libraries of Scotland , & Wales, Dublin)
 - development legal deposit for e publications
-



THE LEGAL DEPOSIT LIBRARIES ACT 2003 (1)

•The
challenge

•The Legal
Deposit
Libraries
Act 2003

- Electronic material not covered by 1911 act.
 - > 60,000 non-print items published last year. This will increase by a factor of 4 or 5 by 2005
 - Legislation was the outcome of joint lobbying by the BL, other legal deposit libraries and publishers
 - A significant step forward – UK the largest nation in the world to have legislation covering this range of formats
 - Electronic material is now covered
-



THE LEGAL DEPOSIT LIBRARIES ACT 2003 (2)

•Next steps

- Act provides enabling legislation. Specific regulations will be agreed by all parties for specific categories of digital publications
 - New Joint Committee on Legal Deposit established
 - Membership includes representatives from publishers and trade associations, and from legal deposit libraries
 - JCLD will be responsible for agreeing priorities and timescales for extending legal deposit
-



Issues

- What will be covered by legal deposit
 - How much is served from within the uk
 - Strategy
 - The national publication archive
 - How are roles/responsibilities shared
 - Web archiving – UKWAC
 - Development of electronic deposit systems
 - International collaboration
 - other international repositories
 - levels of redundancy
 - ~~Access restrictions~~
-



Other Legal Issues

- A number of other legal issues impact on digital preservation particularly access to archives:
 - Data Protection
 - Human Rights Act
 - Freedom of Information
 - Defamation
 - Access for Disabilities
-



Conclusions

- Complex area– you must seek specific legal advice for your needs
 - Digital preservation often a legal grey area not understood or considered by legislators
 - lack of legal certainty should not prevent digital preservation actions
 - Usually some specific exemptions and fair use provision
 - Take action to manage risks
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Further Information

"Legal issues arising from the work aiming to preserve elements of the interactive multimedia work entitled The BBC Domesday Project".

<http://www.si.umich.edu/CAMILEON/reports/IPRreport.doc>

The Right to Preserve: The Rights Issues of Digital Preservation

<http://www.dlib.org/dlib/march04/ayre/03ayre.html>

Digital Preservation and Copyright

http://fairuse.stanford.edu/commentary_and_analysis/2003_11_hirtle.html

Legal issues relating to the archiving of Internet resources in the UK, EU, US and Australia

http://www.jisc.ac.uk/uploaded_documents/archiving_legal.pdf

