Digital Preservation: Legal Issues

Chinese National Academy of Sciences
July04

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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
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 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, e.g., for Internet Archive or digital art.
IPR and BBC Doomsday

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
• Fundemental 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)
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)

- 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
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
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

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