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# Intellectual Property Rights and their Impact on Digital Preservation and Access

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Mags McGinley  
mags.mcginley@ed.ac.uk  
info@dcc.ac.uk



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Digital rights and asset management: access and preservation forum - CILIP/DPC



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## Overview

- The digital debate - potential to open up access to information vs greater opportunity for control of access and use by rightsholders
- The changing face of libraries
- We will look at:
  - relevant legal rights
  - exceptions to those rights
  - creating and providing access to digitised content
  - licensing issues
  - preservation issues
  - risk analysis
  - where DRM comes in
  - relevant projects and initiatives



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# The Rights Involved -1

- Copyright
  - Copyright, Designs and Patents Act 1988 (CDPA)
  - Protects the expression of ideas
  - Incentive to create
  - Balance between interests of rights holders  
access to information for wider society
  - Grants certain monopolistic rights to owner =  
restricted acts for others
  - Relevant to nearly all if not all preservation actions



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## The Rights Involved - 2

- Database right
  - nowadays much info made available via database
  - substantial investment in obtaining, verifying or presenting contents
  - prevent others from extracting or reutilising all or a substantial part of contents of database
  - term 15 years but may be renewed (indefinitely?)
  - NB - Copyright may also exist in a database
- Moral rights
  - these rights stay with author
  - identification
  - derogatory treatment
  - false attribution



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## Exceptions available

- Fair dealing (ss 29-30 CDPA)
  - 'reasonable proportion' for purpose of non-commercial research, private study, criticism or review
  - different for the database right
- Library privileges (ss 38-43)
  - for the purposes of preservation or replacement
  - not as good as it sounds...
- *Recognised by DRM technology?*
- *Can contract override exceptions?*



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*“Only one thing is impossible  
for God: To find any sense in  
any copyright law on the  
planet.”  
~ Mark Twain*

## Other relevant legal considerations

- Anti-circumvention provisions
  - knowingly circumventing a TPM/DRM treated as copyright infringement
- Legal Deposit
  - extending to digital
  - appropriate categories of digital info/what is publishing?
  - a partial solution
- In terms of access – don't forget:
  - Data Protection
  - Freedom of Information
  - Re-Use of Public Sector Information



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## Libraries fear digital lockdown

By Ian Youngs  
BBC News

**Libraries have warned that the rise of digital publishing may make it harder or even impossible to access items in their collections in the future.**

Many publishers put restrictions on how digital books and journals can be used.

Such digital rights management (DRM) controls may block some legitimate uses, the British Library has said.

And there are fears that restricted works may not be safe for future generations if people can no longer unlock them when technology evolves.

The British Library spends £2m of its £16m annual acquisitions budget on digital material, mainly reference books and journals.



Going to the library may not just mean pulling a book off a shelf

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## Creating and providing access to digitised content

- Digitisation constitutes a restricted act
- Ascertaining copyright status – involves time and expense
- Particular difficulties with multiple authorship and orphan works
- To create limited preservation and access opportunities libraries increasingly developing institutional repositories
- Just one part of a developing open access movement
  - aim - to improve access to research outputs
  - drivers – journal costs ↑ library budgets ↓
  - Wellcome Trust grant conditions amended



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## Licensing issues -1

- Access to digital information can be restricted in two main ways:
  - licensing
  - digital rights management
- May impose restrictions that go beyond copyright legislation
- If terms too severe can negotiate or walk away but sometimes provider in monopolistic position
- Issues with subscription to online content. What happens to back issues following termination of subscription?



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## Licensing issues - 2

- Move towards long term access provisions in licence terms but can they be implemented in practice?
- Common Licensing Schemes (Very important. People will not/cannot read a different licence every time):
  - GNU General Public License (GPL)
  - Creative Commons licensing
  - Intrallect study on common licence use within the CIE

# Specific preservation issues -1

- Established preservation methods for traditional media and it can last very long time. With digital media there is more uncertainty and shorter life expectancy
- Digital media requires intermediary layer of technology for access
- Big threat in this regard is hardware and software obsolescence (but is in interest of commercial vendors)
- Digital preservation strategies will involve copying many times
- Strategies involved:
  - migration
  - emulation
  - re-creation

## Specific preservation issues - 2

- Repeated preservation activity - possible objection on ground of moral rights
- In this case libraries would need software to allow new computing platforms to run applications that were originally used to make the information accessible
- Research by CLDP project – of opinion that only type of copying that may be legal is first act of media refreshment or migration to a new format
- Don't forget preservation of associated rights information – added difficulty that this information changes

## Specific preservation issues - 3

- “Data deluge” –what to preserve?
- Web pages – some preservation initiatives. There are difficulties:
  - access restrictions such as passwords can restrict automatic harvesting
  - crawling operations can reduce performance
  - gaining consent on such grand scale
- Further licensing and cooperation vs changes to the law
- Recent European Commission Recommendation



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## Where does DRM come into this?

- APIG report doesn't mention DRM
- Potential for denying use of the exceptions
- Government intervention legislated for in case where this happens – has not yet occurred
- Expiry of copyright period – will the technology be able to recognise this?
- Need clear concept of how, when and where society should be provided with free, easy access to information



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## Risk analysis

- Publishers sympathetic to preservation copying?
- Notice and takedown procedure
- Electronic Commerce Regs 2002 – “act expeditiously to remove or to disable access to the information”
- **But:** AAP v Google
- If going to rely on this **need** system in place



## Relevant Projects and Initiatives (past and present)

- Copyright and Licensing for Digital Preservation <http://www.lboro.ac.uk/departments/ls/disresearch/CLDP/>
- Creative Commons <http://www.creativecommons.org/>
- JISC DRM Study <http://www.intrallect.com/drm-study/>
- Trust DR <http://www.staff.uhi.ac.uk/eo02jc/trustdr/index.php>
- Project RoMEO <http://www.lboro.ac.uk/departments/ls/disresearch/romeo/>
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## In conclusion...

- For you:
  - Have a framework
  - Have an awareness of relevant legal considerations
  - Risk assessment
- For future solutions:
  - Raising awareness
  - Can it be solved through licensing and cooperation or is change in law required?
  - Achieving the appropriate balance – a difficult task!



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Thanks for listening!

Any questions?