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IPRs and Digital Preservation: The Nature of the Problem

Digital Preservation Coalition

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Everyone likes digital preservation…

- Well, almost – if you ignore the possible implications of the EU's current thinking on the 'right to be forgotten'.

- But otherwise digital preservation tends to be viewed in a positive light.

- There seems to be no significant opposition to the idea of preserving digital material for future research etc.

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…but it's caught in an IPR squeeze…

- As rightsholders seek greater legal protection for works, it's not just 'pirates', 'freeloaders', and infringers that get squeezed.

- If the legal system doesn't provide 'room' for digital preservation, then it's potential is diminished.

- Legal acknowledgement - clarity, certainty - not having to operate in the 'gaps'.
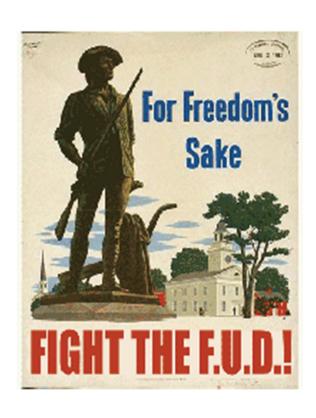
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…and it's hard to get people to listen.

- The benefits of digital preservation are perceived as long term/in the future.

- There is limited incentive for policy makers to act now, even when invited to do so, e.g. Hargreaves.

- Legal acknowledgement has thus been slow and limited in scope compared to other jurisdictions.

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FUD

For Freedom's Sake

FIGHT THE F.U.D.!

- Fear, uncertainty and doubt
  - What can I legally preserve, in what ways can I legally preserve it?
  - With whom can I legally share it, and when?
  - If I get the law wrong, what will happen?
- FUD hampers innovation, denies valuable information to potential users, or limits what they can usefully do with it.

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Key problems 1

- The IPR 'knowledge gap' - depositors, archivists, consumers
  - e.g. what rights are needed for material to be achieved/re-used – multiple ownerships
  - e.g. current CDPA preservation exception and its limitations – no. of preservation copies.
  - e.g. different application of IPRs to non-digital and digital works in data life cycle management - practical impacts - backup, integrity checking, disaster recovery solutions.
  - e.g. avoiding risk of creating artificial silos for non-digital and digital works
  - e.g. accessibility of preserved works (esp. born digital?)
  - e.g. permissibility of format migration

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Key problems 2

- Limitations of the law
  - e.g. preservation exemption (such as unpublished artistic works)
  - e.g. impact of TPM/DRM on accession and use, legality of unlocking/breaking TPM/DRM mechanisms in order to utilize digital works, practicability of petitioning SoS for right to copy (s.296ZE CDPA)
  - e.g. restrictive nature of the Legal Deposit Libraries (non-print) publications Regulations (expected 2012?)
  - e.g. issue of IPRs in 'non-content' works, such as software, hardware, or file formats.
  - e.g. 2 definitions of 'public records' –in the CDPA and in the Public Record (Scotland) Act 2011.

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Key problems 3

- Administration of IPRs
  - e.g. responsibilities of depositors, archivists, consumers
  - e.g. future size of digital collections and implications for practical compliance with, and enforcement of, IPRs.
  - e.g. perceived need for highly granular metadata about IPR – how to obtain it and ensure such metadata 'sticks'.
  - e.g. dissemination of example file formats for testing purposes in order to investigate methods of automatically identifying and/or migrating and preserving them – legal?
- Whose law?
  - e.g. impact of, and knowledge about, EU legislation and laws of other states.

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Issues to consider

- Practical issues arising from accession of materials, preservation activities and public access
    - Education of depositors and end-users
    - Good practice use of IPR consent forms and licensing for both deposit and access
    - IPR metadata – creation, collection and use, evaluation of PREMIS/OASIS
    - Developing practices in IPR mitigation, e.g. notice and takedown
    - Technical innovations in handling IPRs.
    - IPRs and practical reuse of preserved digital datasets, e.g. text mining
    - Critical evaluation of existing IPR guidance on digital preservation in the light of practical experience

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Discussion points

- Key knowledge gaps amongst the digital preservation community

- Key risks posed by IPR to digital preservation outcomes and practices

- Key developments and areas of good practice that should be given wider attention

- Key political and policy developments likely to impact the relationship between IPRs and digital preservation

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