A layman’s guide to EC law on digital preservation

Intellectual Property Rights and Digital Preservation

Wills Hall, Bristol
21st November 2011

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Background

Memory Organisations:

Commercial Organisations:

Game Developers:

University:

Legal Consultants:
Background

The KEEP project undertook legal studies to ensure:

- Our understanding of the law as it applies to digital preservation:
  - Generally
  - Media Transfer
  - Multimedia Works
  - Legal Deposit
- The tools and services we produce fall *clearly within* the law

The Legal Studies were/are not an end in itself, but a means to an end
- The law is *very complex* but.....
  - the overall message is *relatively clear*
Health Warning!

This is a **LAYMAN’S GUIDE** to the law

- To the best of our knowledge the report is legally accurate but.....
- The conclusions presented are **not** as subtle or nuanced as the advice which a lawyer would give
- Courts (not researchers) determine how the law is **actually** to be interpreted
- Our findings are **not legally definitive**
A Complicated Legal Landscape

National Law
Community Law
International Law
Trade and other conventions
The Legal Corpus: A problem of scale

Legislation at the **National** Level (United Kingdom):

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The EC Legal Corpus

Key Legislation at the Community Level includes:

The Information Society Directive

The Computer Programs Directive

The Database Directive
Directive 96/9/EC of 11 March 1996 on the legal protection of databases

(Collectively referred to as the “Community Framework”)
The EC Legal Corpus

Key Legislation at the Community Level also includes:

**Resale Rights Directive**


**The Rental Directive**

- Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property”)
The following rights are protected by European Union law:

- Reproduction
- Communication to the public
- Distribution
- Fixation
- Rental / lending
The three-step test

Exemptions to Copyright Protection will.....

- be confined to certain special cases
- not conflict with a normal exploitation of the work
- not unreasonably prejudice the legitimate interests of the rights holder
Exceptions provided by the Information Society Directive

The Information Society Directive provides just one limitation to copyright protection:

- **Temporary** acts of reproduction which are *transient* or *incidental* [and] an *integral* and *essential* part of a technological process and whose sole purpose is to enable:
  - a transmission in a network between third parties by an intermediary, or
  - a lawful use of a work or other subject-matter to be made, and which have no independent economic significance

Often regarded by the academic community as a *victory for copyright-owning interests* (publishing, film, music and major software companies) over content users' interests
Exceptions provided by the Information Society Directive

The Information Society Directive allows Member states to make exceptions in 20 cases, of which 4 are relevant for KEEP

- **specific** acts of reproduction made by memory organisations, which are not for direct or indirect economic or commercial advantage
- **incidental** inclusion of a work in other material
- use in connection with the demonstration or repair of *equipment*
- making available, for research or private study, to *individual* members of the public by *dedicated terminals* on the premises of establishments

*All* are subject to the Berne ‘*three-step test*’
Information Society Directive
Legal Study Conclusions

- Important that Member States have no power to introduce new limitations not already included in the Directive.
- Media transfer should primarily be assessed under the Computer Programs Directive and the Database Directive.
Exceptions provided by the Computer Programs Directive

The Computer Programs Directive provides three limitations to copyright protection:

- create any copies *necessary* to use the program and to alter the program within its *intended purpose* (e.g. for error correction)
- make a back-up copy for *personal* use
- decompile the program if this is *necessary* to ensure it operates with another program or device, but *not for any other purpose*. 
None of the exceptions set out in the Directive serves the purposes of the KEEP project.

Directive does not provide for legal deposit requirements.

Directive does not provide for scientific, study or education purposes.

Reproduction of computer programs carried out by memory organisations even when authorized under national laws, is in conflict with the Directive.
Exceptions provided by the Database Directive

The Database Directive permits Member States to provide limitations to copyright protection:

- in the case of reproduction for *private* purposes of a *non-electronic* database
- for the sole purpose of *illustration* for *teaching* or *scientific research*
- for the purposes of *public security*
- for the purposes of an *administrative or judicial procedure*
Conclusions on Multimedia Works

The term ‘multimedia work’ has no clear legal definition.

Multimedia works are generally seen as ‘complex’ works.

A distributive, fragmented approach is adopted: each component part of a multimedia work must be considered separately.

In practice: The work as a whole enjoys the same protection as the best protected of its parts.

Little scope for economy of scale - each work must be considered on its own individual merits.
Technical Measures of Protection (TMP)

Germany: Circumvention of TMP is illegal. Tools designed to circumvent TMP may be destroyed.

France: Circumvention of TMP is a criminal act in general and it is not possible to bypass TMP on Multimedia works.

Netherlands: Legal scope exists to bypass TMP.... but in practice TMP has prevailed over the ‘exceptions’.
None of the exceptions set out at the EC level serves the purposes of the KEEP project.

EC Law does not provide for legal deposit requirements.

EC Law does not provide for scientific, study or education purposes across the full range required for KEEP.

Reproduction of computer programs and databases even when carried out by memory organisations and authorized under national laws, *is in conflict with EC Law*.
An independent report by Ian Hargreaves

In November 2010 the Prime Minister David Cameron announced an independent review of how the Intellectual Property framework supports growth and innovation.

Chaired by Professor Ian Hargreaves and assisted by a panel of experts, the review reported to Government in May 2011. The Review makes 10 recommendations designed to ensure that the UK has an IP framework best suited to supporting innovation and promoting economic growth in the digital age.
Thank you!

Questions?