MInisterial NEtwoRk for Valorising Activities in digitisation, eContent*plus*
- Supporting the European Digital Library –

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MINERVAeC IPR Guide	
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1 Introduction

This guide has been developed for the use of cultural heritage institutions which are digitising cultural material and publishing it online, or are considering doing so. The objective of the document is to provide pragmatic, concise advice to cultural heritage institutions on the topic of intellectual property rights, as it impacts on digitisation projects.

> **Note on links**: All the links in this document were accessible in early June 2008.

This guide focuses on the aspects of Intellectual Property which are **most relevant to cultural heritage institutions** involved in digitisation projects. Industrial Intellectual Property, which focuses on patents, trademarks and other commercial Intellectual Property, is outlined in Appendix A.

Intellectual Property Rights impact on digitisation projects at two key points
- Permission must be obtained from rights holders to digitise and publish must be obtained. This is referred to **rights clearance**.
- The rights of rights holders and of the cultural heritage institution must be protected during the online **publication** of the digitised material.

This guide thus has **two main sections** – rights clearance and publication. For each section, a range of background information is provided. Guidelines on how a digitisation project should respond to this background information are then provided.

1.1 The Internet – Opening a Door

Traditionally, cultural heritage institutions have controlled access to the material that they contain, by physically holding the material at their premises. To view or access the material, visitors, researchers and others were forced to physically visit the cultural institution. Once there, access was typically restricted to viewing the material.

By digitising their holdings and placing them online, cultural heritage institutions enable a new form of access, where anyone, anywhere, can view the material. The educational, cultural and quality of life benefits of such access are clear. However, such open access also means that third parties can view, copy and manipulate cultural content beyond the control of the institution. The potential exists for third parties to exploit the content in new ways and to benefit from access to the content in ways not anticipated, or approved, by the holding institution. This creates a vulnerability for the cultural heritage institution from two directions:

1. The institution may lose revenue or other benefits which should accrue to it from its holdings

2. If the creator or copyright owner of the material is not the institution, he or she may make the institution legally and financially viable for the abuse of his or her intellectual property.

The benefits of digitisation and online publication of cultural heritage material are enormous – for the institution itself, for students, researchers and for the interested public. Opening access to the institution's collections raises the profile of the institution, underlines its public service value and helps to reinforce the message that the institution deserves public support. Online digital representations of cultural material enable re-use of the material across several fields of application, from printed t-shirts to scholarly works. Online access opens Europe's cultural riches to users around the globe, including the elderly or ill who cannot physically visit the institution. It also raises the profile of the institution, and encourages visits to view the original materials.

The potential for additional benefits from cultural tourism, from the sale of reproductions and other merchandise and from new scholarship and research is significant. However, if the legitimate interests of the institution and of the copyright holder are to be protected, then it is essential that intellectual property protection is taken into account from the very start of the digitisation project.

1.2 The Players – Institutions, Rights Owners, Users

A key player in any digitisation project is the **cultural heritage institution** which

- holds the cultural material
- digitises it and
- publishes it online in an online culture project.

However, the institution is not the only actor on this stage. Even if the material is owned by the institution, the right to represent or copy the material (e.g. by digitisation, by photography, by other means) may not be owned by the institution and may in fact be held by the **rights holder**, who may be the creator of the material or by some other party. This topic is explored in more detail in *section Errore. L'origine riferimento non è stata trovata.*, below. The key points are

- digitisation is a form of reproduction
- online publication is subject to similar rules to paper publishing
- if the intellectual rights to material are not owned by the institution, the permission of the rights owner must be secured before such material is digitised or placed online.

The third link in the chain is the **end user**, who accesses the digital material over the internet. Once in possession of the digital material, the user can re-use in a large number of ways. The manner in which it may be legally re-used must be clearly stated by the publisher (the cultural institution), who must have agreed this use policy in advance with the rights owner.

In many cases, of course, the cultural institution will also be the rights owner. However, this should not be taken for granted; an important step in any digitisation project is the verification that the institution has the right to digitise and to publish each item.
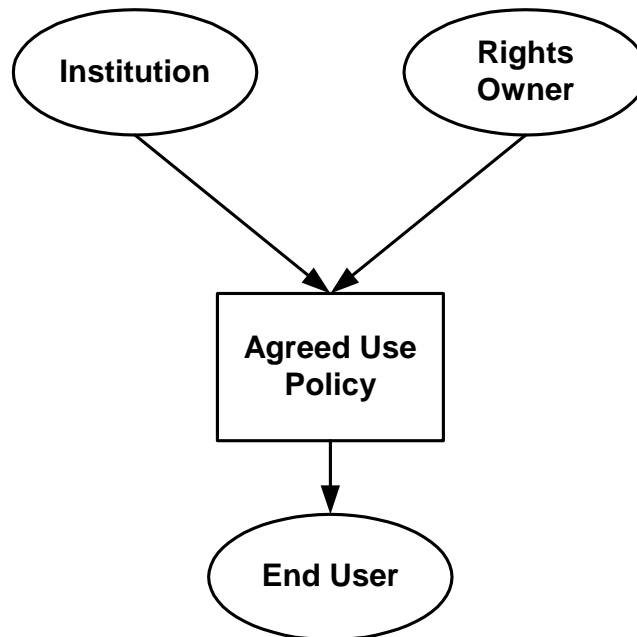
Figure 1 - The Players

1.3 What is Intellectual Property?

"Property" is something that is owned, and that brings benefits to the owner. "Intellectual property" is property which associated with works created in the mind – with ideas and their manifestation. It includes artistic works, such as paintings, literature and music, and industrial creations, such as patents, trademarks and brands. The owner of a piece of intellectual property is referred to as the 'rights owner', because he or she owns the right to allow or forbid use of the property.

For example, if a group of musicians compose a song, this reflects their ideas and their talent. If the song is played on the radio, or recorded and the recordings sold, the musicians have the right to benefit from this.

Intellectual property can, like other property, be bought, sold and assigned. Importantly, intellectual property relating to an item can be separated from the item itself. For example, the owner of a painting may donate it to a gallery – this does not automatically give the gallery the right to copy the painting and sell reproductions.

There are two major categories of intellectual property:

- **Copyright** protects creative 'works' such as books, paintings, architecture, sculpture and music. Copyright protects the rights owners of such works, by enabling them to allow, or to forbid, the reproduction, publication or re-use of these works. This usually means that if a third party wishes to reproduce or publish the work, a payment must be made to the rights holder. Copyright applies to original works, not to copies of existing works. The work must 'exist' in some **tangible medium** (e.g. on a computer, on paper, on canvas, in stone – a pure idea cannot be copyrighted (but can be patented, see below).

- **Industrial intellectual property** concerns the protection of **ideas** that can be commercialised in new products and processes. The most important example of industrial property is the patent, which grants exclusive use and application of an idea to the inventor, for a fixed period of time. Related concepts are trademarks, registered designs and appellations of origin. Industrial property rights protect ideas – these ideas do not need to be in a tangible form to be protected.

While these two categories are often dealt with together by the law, it is **copyright** that is most relevant to cultural heritage institutions involved in digitisation projects. Industrial Intellectual Property is surveyed in Appendix A.

Guidance

There are countless resources online dedicated to Intellectual Property. A sample from reputable sources includes the following.

The **World Intellectual Property Organisation** is an agency of the United Nations, "dedicated to developing a balanced and accessible international intellectual property (IP) system, which rewards creativity, stimulates innovation and contributes to economic development while safeguarding the public interest". Its handbook on Intellectual Property ("WIPO Intellectual Property Handbook: Policy, Law and Use") is available at http://www.wipo.int/about-ip/en/iprm/index.html. WIPO's FAQ on copyright is here http://www.wipo.int/copyright/en/faq/

Electronic Information for Libraries (EIFL.net) is a not-for-profit organisation focusing on access to electronic resources by library users in developing countries. Its "Handbook on Copyright and Related Issues" is available at http://www.eifl.net/cps/sections/services/eifl-ip/issues/handbook

A general help desk and source of knowledge about Intellectual Property is the **Intellectual Property Helpdesk**, a project funded by the EU at http://www.wipo.int/about-ip/en/copyright.html

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1.4 Why are Intellectual Property Laws Important?

Intellectual property laws provide a framework for rewarding creative people. Without them, inventors would derive no benefit from new ideas, artists would not gain from their work, and the investment made in works such as books, films and software would never be recouped. The fact that creativity is rewarded tends to stimulate new creativity, which has benefits for society as a whole.

Industrial intellectual property protects the consumer – branding and trademarks give the consumer confidence that what they are buying will meet their expectations.

For a cultural heritage institution involved in digitisation projects, intellectual property laws mean that the institution can safely place information online, in order to stimulate interest in its holdings, without the risk that the published material will be re-used without permission. However, it also places a responsibility on the institution, to ensure that it has copyright clearance from the rights holder, and to take appropriate measures to protect its intellectual property rights.

2 Background: The Regulatory Framework

Intellectual property is a legal concept – intellectual property is protected by a framework of laws which rewards creative people, while defining how new ideas can be used by society as a whole. The need to protect intellectual property has been recognised for centuries, as has the requirement for a common approach to intellectual property protection across national boundaries.

2.1 Global Framework

Global intellectual property frameworks were first agreed in the Paris Convention for the Protection of Industrial Property (1883) and the Berne Convention for the Protection of Literary and Artistic Works (1886). Since then, national and international initiatives have led to the current situation, where the global intellectual property domain is the subject of the World Intellectual Property Organisation (WIPO) and the World Trade Organisations Trade Related Intellectual Property Rights (TRIPS) agreement and where intellectual property is explicitly mentioned in the Universal Declaration of Human Rights.

Intellectual Property law covers both copyright and industrial Intellectual Property (patents, etc.) Industrial Intellectual Property is surveyed in Appendix A, but is not central to the scope of this guide.

2.2 EU Legislation

The EU Directorate General Internal Market is responsible for intellectual property law within the EU. The major EU initiative in this area is the 2001 EU **Copyright Directive** ("Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society"). The Directive mandates all member states to update their national legislation to a common model. The Directive reaffirms the basic principles of intellectual property and in particular addresses the impact of the internet on IP.

Guidance

An **EU Website** dedicated to the Copyright Directive is at http://ec.europa.eu/internal_market/copyright/copyright-infso/copyright-infso_en.htm

A good overview is available from **Wikipedia** at http://en.wikipedia.org/wiki/Directive_on_the_enforcement_of_intellectual_property_rights

A Section by Section summary of the Directive is available from the Minerva Europe website at http://www.minervaeurope.org/structure/workinggroups/servprov/ipr/documents/wp4ipr040806.pdf page 10 et seq.

What is most relevant for cultural heritage institutions online is the details of the directive and the *related national legislation*, which define the criteria for the lapsing of copyright, the exceptions to the copyright, and the rules which cover educational, personal, research and other use.

2.3 National Laws

Each country has its own intellectual property laws, which reflect the overall intellectual property concept, flavoured by the national legislative background. However, within the EU, national laws are increasingly influenced by EU directives, which serve to establish a common baseline for intellectual property protection across the EU. Cultural digitisation projects are advised to refer to their national legal codes.

2.4 EU Projects

The EU has funded a significant number of R&D, concertation, network and standards-related projects over several programmes, in the area of intellectual property. These aim to progress the state of the art in copyright implementation, in harmonisation of models and paradigms, in the provision of cultural services protected by copyright and in many other areas. The MinervaEC project has itself significant manpower dedicated to the area of intellectual property, of which this document is one deliverable.

3 Rights Clearance Background

3.1 Copyright

From the perspective of a cultural heritage institution engaging in a digitisation and web project, copyright is the most important of the intellectual property rights. Digitisation is a form of copying, and placing material online is a form of publication; both copying and publication are covered by copyright.

Two sets of copyright need to be respected and protected – the rights of the **rights holder** for the cultural heritage items which are digitised, and the right of the **cultural heritage institution** to protect the work which it has invested in digitisation and online publication.

Guidance

Excellent coverage of copyright from a UK (and so to a large degree an EU) perspective is provided by TASI at http://www.tasi.ac.uk/advice/managing/copyright.html

The full text of the **Irish Copyright and Related Rights Act**, 2000, is available at http://www.irishstatutebook.ie/2000/en/act/pub/0028/index.html

The **British Library's Manifesto** on Intellectual Property addresses several of the topics touched upon in this section, at http://www.bl.uk/news/pdf/ipmanifesto.pdf. In general it argues for limiting the application of Intellectual Property law.

IFLA's 'Position on Copyright in the Digital Environment' makes similar arguments, at http://www.ifla.org/V/press/copydig.htm

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3.1.1 To What Categories of Work does Copyright Apply?

In order to enjoy the protection of copyright law, **a work must be <u>original</u>**. Thus a work cannot be a simple copy of another work; it must be clear that this is a new creation of the mind. This does not mean that works which consist of the creative combination of elements of other works (like a collage, or a musical work which uses 'samples' of other music) cannot be copyrighted. The work must exhibit creativity and originality. Typically, all artworks, photographs, written compositions, statues, architectural plans and models fall under copyright. An interesting example is photographs of items that are out of copyright – thus a photograph of an item which is the public domain (and so not protected by copyright) may itself enjoy copyright protection, because of the creativity or artistry employed in the photographic process.

The *idea* expressed in the work does not need to be original. But the manner in which the idea is expressed (in words, in brush strokes, in sculpture…) must be original.

> **Guidance**
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> Guidance on the criteria for applying copyright are well covered in the **British Academy's** Guidelines on Copyright and Academic Research, at http://www.britac.ac.uk/reports/copyright/guidelines.html

3.1.2 Does Copyright Last Forever ?

No. Copyright has a strict **duration**, which is set by law, and which in most cases follows the Berne Convention. As a general rule, copyright applies for the lifetime of the creator, plus fifty years. However, in the EU and the US, copyright applies for seventy years after the death of the creator. It should be noted that each country has its own rules on the duration of copyright.

The duration of copyright is trending (at least in the US) to become longer as laws are adjusted. This protects the creator and his heirs, but means that the freedom of others to use, integrate and build upon the creativity of others is restricted.

A clear issue is where a work has been created by several individuals (e.g. a pop song by Lennon and McCartney), or where the author is anonymous or pseuodonymous. In this case, a typical approach is to establish a reasonable belief that the *last author* has been dead for seventy years.

> **Guidance**
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> Guidance on duration, and on other aspects of copyright, is available from the **UK National Archives** at http://www.nationalarchives.gov.uk/legal/pdf/copyright_full.pdf
>
> Information on copyright duration, in the UK, is presented in the **British Academy** publication referenced above, at http://www.britac.ac.uk/reports/copyright/guidelines.html
>
> A good FAQ on all things copyright is provided by the **Arts and Humanities Data Service (AHDS)** at http://ahds.ac.uk/copyrightfaq.htm
>
> A profile of **copyright duration around the world** is provided by Australian consultancy Caslon Analytics at http://www.caslon.com.au/durationprofile.htm

3.1.3 Who Owns the Copyright?

In general, the owner of the copyright, the **rights holder**, is the author or creator of the work. However, there are exceptions. Common examples include the following:

- If the work was created by an employee of a company during working hours, the company will typically own the copyright.
- If the work is created by more than one person, all creators hold copyright, unless otherwise agreed.
- Where students have assigned copyright in their research or exercise works to the university or educational body, the copyright then resides with the body.

Copyright can be sold, inherited or assigned. It can also be divided, so that the rights holder can assign copyright for a particular application or medium. Thus, for example, an author may sell the movie rights to a book, while retaining merchandising, book publication, etc. rights. The major media companies (Disney, Sony, Bertelsmann, etc.) are important copyright holders and have a significant impact in the drawing up of intellectual property legislation.

If a company goes out of business, its copyright assets belong to whoever bought the company. If the company is bankrupt, then no-one owns the copyright; however, if the company were to be re-established, its assets would belong to the new owners.

Guidance

A good FAQ on all things copyright is provided by the **Arts and Humanities Data Service (AHDS)** at http://ahds.ac.uk/copyrightfaq.htm

TASI also has a good copyright FAQ at http://www.tasi.ac.uk/advice/managing/copyright_faq.html

Further information, with a Canadian emphasis, is available from the **Canadian Intellectual Property Office** at http://strategis.ic.gc.ca/sc_mrksv/cipo/cp/copy_gd_protect-e.html

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3.1.4 Moral Rights

Apart from the right not to have his work copied or exploited without authorisation, the author of a copyrighted work also has moral rights. A moral right guarantees the **integrity** of a work is not compromised – a work cannot be changed without the fact of its modification being made clear where the work is displayed. A work cannot be distorted or modified. A work cannot be falsely attributed. Thus, for example, the text of a book cannot be changed without the

authorisation of the author, or a quotation must be accurate and must not misrepresent the work from which it is extracted. An interesting case is where a work is unfinished, and where the original creator does not wish to be associated with the work after it has been completed by a third party.

Moral rights are distinct from economic rights, such as copyright, which have some commercial potential. A rights holder may assign the economic rights to a work to a third party; this does not authorise the third party to distort or modify the work in any way.

Guidance

Wikipedia has a section on moral rights at http://en.wikipedia.org/wiki/Moral_rights. Unfortunately, the focus is mainly American.

An article on moral rights appeared in **Ariadne** in 1996, at http://www.ariadne.ac.uk/issue4/copyright/

Artquest at the University of the Arts, London, has a section on moral rights, at http://www.artquest.org.uk/artlaw/moralrights/28184.htm

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3.1.5 Related Rights

A further body of intellectual property law addresses the area of related rights. These are rights which are similar to copyright, but do not protect the originator or creator of the work. Instead they protect others who are in some way involved with the work or its communication to the public or other audiences. The French term '*droits voisins'* (neighbour's rights) is perhaps clearer.

A good example is the performer of a piece of music. While the core copyright protects the composer of the music, the performer also has an input which should be protected – this is protected under related rights. Producers and broadcasters of music, films, etc. are also typically protected under related rights law.

Guidance

Wikipedia has a section on related rights, at http://en.wikipedia.org/wiki/Related_rights

Related rights are treated under the **EU Copyright Directive** 93/98/EEC and 2001/29/EC. A guide to the Directives and related documents is provided at http://ec.europa.eu/internal_market/copyright/documents/documents_en.htm

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3.1.6 What can legally be done with a copyright work? Fair Dealing

The details of the laws on exceptions and limitations on copyright vary from one country to another. However, the following exceptions are found in many countries and are based on the concept of 'Fair Dealing'. :

1. Certain categories of work may be free of copyright. In some countries, the text of legislation is free of copyright. In the US, maps and other materials created with public money are in the public domain. This does not apply in most European countries, however.

2. A small part of written copyright works can be quoted in another work, so long as the source and copyright holder of the quotation is cited.

3. A part of the work may be used for news reporting

4. A work may be used by way of illustration for educational purposes.

5. The owner of an authorised copy of a work may make copies of his own, for archive, private and non-commercial use. Thus the owner of a music CD may make a copy for his own use. The details of what is legal in this common practice varies from country to country.

6. Many countries recognise the wider idea of 'fair dealing', which allows unauthorised use of a work or a part of a work, so long as such use has no impact on the commercial exploitation of the work, the use is itself non-commercial in nature, the nature of the use, and the proportion of the work which is used.

Historically, Fair Dealing has been quite broad and has acted as a balance against the overall thrust of copyright law, which protects the rights holder at the expense of society as a whole. Most member states and countries beyond the EU had a list of ways in which copyright could be ignored if the copying was non-commercial.

However, the 1996 EC Copyright Directive protects the use of digital rights management and copy protection devices, and legislates against efforts to overcome them. This means that the making of copies of copyrighted works for personal and archive purposes or for other purposes which up to now have been considered 'Fair Dealing' may be legally prevented by the rights holder. In addition, the Directive tends to make intellectual property laws more stringent than they were before. See *section 5.2.7* for more on DRM.

The precise interpretation of Fair Dealing, and the implementation of the Copyright Directive, varies significantly from EU member state to member state. Cultural heritage institutions should review their own legislation before relying on Fair Dealing as the basis for a decision to publish material online.

Note: 'Fair Dealing' is known as 'Fair Use' in the US.

Guidance

The Joint Information Systems Committee (**JISC**) and the Publisher's Association (UK) have published *Guidelines for Fair Dealing in an Electronic Environment* at http://www.ukoln.ac.uk/services/elib/papers/pa/fair/

Indiana University's Copyright Management Centre has a 'Fair Use' checklist at http://www.copyright.iupui.edu/checklist.htm

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3.1.7 The Public Domain

When a work is not protected by copyright, related rights or other legal constraints, it is said to be 'in the public domain'. Because the laws which govern intellectual property vary from one country to another, items may be in the public domain in one country, and protected in another. When a copyright has expired, the work will usually enter the public domain. Thus, for example, books where the author has died more than seventy years ago will often be in the public domain. Particular editions or presentations may be protected by intellectual property law, but the literature itself may be re-used without restriction. The works of Beethoven are in the public domain; however a performance of Beethoven's music will be protected by related rights for the performers, producer, etc.

Precise details of how a work enters the public domain vary from jurisdiction to jurisdiction. In general, it is best to assume that an item is not in the public domain. In particular…

- An item received without payment (e.g. downloaded from the internet) is not necessarily in the public domain
- An item without a copyright © notice is not automatically in the public domain
- Open source software and works released under various internet-friendly intellectual property models such as the GNU Public License, Copyleft and Creative Commons are not in the public domain; instead they typically have quite unrestrictive licences.

Guidance

Wikipedia has a section on the public domain at http://en.wikipedia.org/wiki/Wikipedia:Public_domain

Several **EU projects** address the public domain. Examples include **Communia** (www.communia-project.eu), and **rightscom** (www.rightscom.com)

> More in-depth discussion of the underlying rationale is presented by the **Foundation for Information Policy Research** (FIPR) at http://www.fipr.org/intellectual.html

3.1.8 Orphan Works

An orphan work is a copyrighted work where it is practically impossible to identify or contact the rights holder in order to gain authorisation to use the work. There is little definitive legislation on the topic of orphan works, although the (slow) trend is towards making it possible to move orphan works into the public domain.

Orphan works are a major issue – an enormous amount of material exists which has been created in the last 100 years (so the likelihood is that the creator has not been dead for seventy years) and so is under copyright, but the rights holder is impossible to identify or contact. As a result, enormous amounts of cultural material are not being reproduced, included in other works or made available to the public, even though in many cases the rights holder might have no objection. The risk for the user of an orphan work is great – if a copyright holder emerges after an orphan work has been used, the resulting costs may be significant.

There are several ongoing efforts to deal with orphan works, including proposals from the US Copyright Office (report submitted to US Congress Jan 31, 2006) and the Gowers Report in the UK. The overall thrust of these initiatives is to allow the use of orphan works after a 'reasonable search' by the user for the copyright holder. A certain amount of resistance is being driven by the photographic, graphical and textile design industries, where copyright information is easy to detach from the work itself. Orphan works continue to be an active area for reform, with specific reference to orphan works appearing in work programmes of the EU.

> **Guidance**
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> US lobby group **Public Knowledge** has a significant amount of information about Orphan Works at http://www.publicknowledge.org/issues/ow
>
> UK & Ireland information professionals group **CILIP** (Chartered Institute of Library and Information Professionals) has an outline of the orphan works problem and a proposed outline solution at http://www.cilip.org.uk/NR/rdonlyres/E6F612ED-6CE1-4723-8348-CB7162D983C2/0/LACAorphanworksstatement FINAL 19 dec 07.pdf
>
> **The i2020 Digital Libraries High Level Experts Group** addresses Orphan Works in its report at http://www.edlproject.eu/downloads/ report_HLEG_preserv_orphan_works.pdf

> More information on the **High Level Experts Group** is available at
> http://ec.europa.eu/information_society/activities/digital_libraries/cultural/actions_
> on/consultations/hleg/index_en.htm

3.1.9 Out of Print Works

When demand for a work from the public drops below economic levels, publishers stop reproducing it. This makes it difficult to acquire a copy of the work, which is said to be 'out of print'. In general the fact that a work is out of print and a commercial copy of the work is not available does *not* mean that it is out of copyright. Out of print works remain protected by the same laws as works which are easily commercially available.

In Europe, the report of the i2010 Digital Libraries High Level Experts Group suggests new model licenses to allow libraries and archives to make digital versions of out of print works available on closed networks.

Overall, a long-term solution for out of print works does not appear to be emerging. For the public and for the cultural heritage institution, this means that a large number of works will become obscure and unknown, due to being protected by copyright law despite the fact that there is no commercial exploitation ongoing.

> **Guidance**
>
> Out of Print works are addressed by the **i2020 Digital Libraries High Level Experts Group** at http://www.edlproject.eu/downloads/ report_HLEG_preserv_orphan_works.pdf

3.2 IPR and Digital Preservation

The preservation of digital material relies on its repeated copying, in order, as a minimum, to ensure that the media on which the digital material is stored remains current, and that hardware is available which can read the media. Thus, for example, digital content originally stored on 5.25 inch floppy disks are almost unreadable now, and will need to have been copied to 3.5 inch disks, then to CD.

The archiving or backing up of a digital artefact is itself a form of copying and so governed by intellectual property law. Fortunately, there are exceptions to copyright law which can often be applied. These include Fair Dealing (described below) and use for educational and archive purposes.

The rights holder of a digital artefact must authorise such copying, if the preservation is not to impact on his legal rights. As a result, cultural heritage institutions which are engaged in digital preservation must engage with the rights holder and seek to secure his permission before archiving takes place. In so doing, the institution should emphasise that the copying is for preservation only

and will have no impact on the commercial value or exploitation of the work, and that the integrity of the digital object will not be reduced.

Digital preservation may be covered under Article 5.2 of the *Copyright Directive*, which describes the exemptions. However, these are optional, which means that some member states will enshrine them in national law, and some will not.

The enforcing of intellectual property using digital rights management has an impact on the preservation of digital material. This is discussed in *section 5.2.11*, below.

Guidance

The **CEDARs project** addressed the relationship between Digital Preservation and IPR. The key results are published here: http://www.cus.cam.ac.uk/~ew206/ipr.html

The UK's **Paradigm project** has a good resource at http://www.paradigm.ac.uk/workbook/legal-issues/copyright-archives.html

The Joint Information Systems Committee (**JISC**) and the Publisher's Association (UK) have published *Guidelines for Fair Dealing in an Electronic Environment* at http://www.ukoln.ac.uk/services/elib/papers/pa/fair/

The **Digital Preservation Coalition** is an organisation dedicated to addressing many issues in this area. Their website is at www.dpconline.org

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3.3 IPR and User-Generated Content (Web 2.0)

Web 2.0 content is created to a large degree by the users. Typical applications such as YouTube, Flickr and Facebook combine an infrastructure provided by the website with content provided by the users. There are several issues here.

- Much of the material on sites such as YouTube is uploaded in contravention of copyright. While this is mainly a concern for the YouTube site (and its parent company, Google), it does highlight the fact that 'user-generated' content may not in fact be generated by users.

- Material on Web 2.0 sites is typically uploaded in compliance with set terms and conditions of use. These will often make the content, which is generated by the users, subject to copyright which is vested in the site. It may also license the site to re-use the content for its own purposes.

For a cultural heritage institution which wishes to add some Web 2.0 functionality to its own web application, for example by enabling users to comment on cultural

material online, or to upload old photos of their own families, or to tell stories that their ancestors told them, etc., it is essential that IPR be clearly managed from the start. That means that cultural heritage institution sites must also have clear terms of use, to which users must consent, before they create content on the site. This protects the site from third parties (e.g. the creators of copyright material which users are uploading without considering IPR), and also ensures that the site can re-use and re-format user content if the cultural heritage institution sees fit.

> **Guidance**
> **JISC** in the UK has funded a project (Web2Rights) which addresses this issue. See http://www.web2rights.org.uk/index.html
>
> A podcast from **JISC** on this topic is available (in English) at http://www.jisc.ac.uk/home/events/2008/04/jiscconference08/ipandweb2.aspx

3.4 Database Rights

An important category of copyright for cultural heritage institutions is the database right. This is the right of the creator of a database to have his work protected against duplication or large-scale copying by a third party. Unlike other forms of copyright, the protection of the law is provided to the information in the database, rather than the form of expression of the information. Thus, the large-scale extraction and re-use of database information is covered by this law, rather than the form of the database.

The law regarding the database right varies significantly between the EU and the US. This is explored here.

3.4.1 EU Database Right

Within the EU, under Directive 96/9/EC, a database is protected if it represents a significant investment of effort, regardless of whether or not any creativity, judgement or originality was involved in the selection of the material in the database. This is particularly important for databases which hold comprehensive or complete data sets, where no judgement can be demonstrated. Databases which are 'compilations' and which can be argued to have involved some originality or creativity in the selection of the material in the database, are also protected under EU law. Under EU law, database rights last for fifteen years after the completion of the database; this period may be re-started if the database is substantially updated.

> **Guidance**

The **Directive** which directly addresses the IP protection for databases is at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996L0009:EN:HTML

A brief overview is provided by the **University of Cambridge**, here: http://www.caret.cam.ac.uk/copyright/Page92.html

The UK government's **Intellectual Property Office** describes database rights here http://www.ipo.gov.uk/copy/c-claim/c-otherprotect/c-otherprotect-database.htm

3.5 Other Legal Issues

Intellectual property law and licensing are important issues to take into account when creating digital item, digitising non-digital items and providing access over the internet. In many cases, copyright and other intellectual property issues are the most important obstacle to be overcome. They may, for example, have a decisive impact on the choice of material to be included in the online resource.

However, there are other legal issues which need to be considered when offering an online cultural heritage resource. These include the following:
- The need to protect personal privacy
- Indecency and obscenity laws
- The right to freedom of expression
- Personality rights

Material placed on the internet is accessible globally. This means that cultural heritage institutions may need to take legal and cultural sensibilities in other countries into account, when creating online resources.

3.5.1 Personal Privacy

Cultural heritage institutions should not intrude upon the personal privacy of any individual while creating and publishing content on the internet. In particular, no pictures of individuals should be taken and published without their consent. Even if the picture is, for example, covering an exhibition, it is important that no individual can be identified in the picture.

Guidance

The **American Fair Trade Commission** has guidance on personal privacy in the online environment at http://www.ftc.gov/privacy/

The **w3c** has an initiative on personal privacy policies at http://www.w3.org/P3P/details.html and some guiding principles at http://www.w3.org/TR/P3P/#guiding_principles

The **EU's Data Protection law** is outlined at http://ec.europa.eu/justice_home/fsj/privacy/index_en.htm

The (US) **Centre for Democracy and Technology** has a guide to the Directive at http://www.cdt.org/privacy/eudirective/

3.5.2 Indecency and Obscenity

The line between art and indecency varies from one jurisdiction to another. In particular, the laws concerning nudity are typically stricter in the US than in Europe, while Middle Eastern customs are often even more conservative. While selecting material for an online resource, cultural heritage institutions may take into account the greater sensitivity of some audiences to certain types of material.

> **Guidance**
>
> **IFLA** and **UNESCO** have published guidelines on access to online material, at http://www.ifla.org/faife/policy/iflastat/Internet-ManifestoGuidelines.pdf . This follows on from IFLA's Internet Manifesto, at http://www.ifla.org/III/misc/im-e.htm

3.5.3 Freedom of Expression

The previous paragraph may be in direct conflict with beliefs and laws which support freedom of expression. It is the responsibility of the cultural heritage institution to decide where the limits of good taste and freedom of expression lie.

Freedom of expression also applies to artists, and may conflict with personal privacy laws. If an artistic installation includes representations of individuals, the potential exists for these individuals to believe that their personal privacy has been intruded upon. Again, this is something which the cultural heritage institution may take into account.

> **Guidance**
>
> **IFLA** and **UNESCO** have published guidelines on access to online material, at http://www.ifla.org/faife/policy/iflastat/Internet-ManifestoGuidelines.pdf . This follows on from IFLA's Internet Manifesto, at http://www.ifla.org/III/misc/im-e.htm

3.5.4 Personality Rights

In some jurisdictions (e.g. France, the US), individuals have legal rights over the use of their likeness (face, voice, other distinguishing characteristics). This is particularly relevant for famous persons; it prevents the use of their likeness for promotion of products or services without their authorisation, and protects revenue from endorsements. Cultural heritage institutions must avoid the unauthorised use of images of famous persons in promotional or online resources. Similar laws protect the use of images of fictional characters.

> **Guidance**
>
> The Arts and Humanities Research Council Centre for Studies in Intellectual Property and Technology Law at The University of Edinburgh (**AHRC**) has a database of personality rights cases, including analysis, at
> http://personalityrightsdatabase.com/index.php?title=Main_Page
>
> **Wikipedia** has a good overview and selection of relevant links, at
> http://en.wikipedia.org/wiki/Personality_rights

3.5.5 Authenticity and Certification

It is of course essential that cultural items which are published online by cultural heritage institutions are authentic. The credibility of the cultural heritage institution is at stake if the material published by the institution is not authentic.

3.5.6 Reproduction Rights

The cultural heritage institution must ensure that it has authorisation to *reproduce* the items which it includes in its online resource. Because placing an item on the internet is effectively copying and publication, the cultural heritage institution must be able to show that it owns not just the item, but also the right to reproduce it. The fact that a cultural heritage institution happens to own an item does not necessarily imply that it has the right to reproduce it, or to publish it online.

> **Guidance**
>
> The **Traditional Fine Arts Association** (Arizona, USA) has an article which addresses this directly, at http://www.tfaoi.com/articles/andres/aa2.htm
>
> The **International Federation of Reproduction Rights Organisations** is at http://www.ifrro.org/show.aspx?pageid=home

3.5.7 Donor Restrictions

The fact that a person or organisation has donated an item to a cultural heritage institution does not necessarily imply that the intellectual property rights to the item have also been donated. In addition, donors may sometimes explicitly restrict the manner in which items may be used. Prior to online publication, the cultural heritage institution must verify that there are no restrictions of this nature, and that rights have been cleared.

3.5.8 Safety of Cultural Property

The publication of information about cultural property raises its profile. More people become aware of the cultural property, its location, its value and its other properties. This creates a risk that unscrupulous third parties may use the information provided on the internet to identify and steal or damage cultural property. A significant proportion of all cultural property is not protected – it is outdoors, often in relatively remote locations, sometimes under the sea. Care must be taken that cultural heritage information published online does not lead to an increase in theft, vandalism or other damage. An example is the case of the online publication of little-visited (and unguarded) heritage sites in a Mediterranean country. The database was used by thieves to identify promising sites from which to loot historic artefacts.

3.5.9 Unfair Competition

While creating a new online resource, the cultural heritage institution may investigate the existence of similar resources which are provided on a commercial basis. For example, genealogical resources are provided by a number of companies online; the provision of free online access to similar resources may impact on the business of commercial companies. In order to avoid accusations of unfair competition, the cultural heritage institution may review the marketplace and attempt to avoid intruding on the business space of established enterprises.

3.6 New Licensing and Access Models

The copyright and industrial intellectual property rights described in section 3.1 and Appendix A are all based on the Berne and Paris conventions. While the intellectual property laws have developed continuously in the last century, the fundamental concepts remain constant.

The arrival of the internet and the opportunity for large-scale publishing of ideas and works at very low cost has led to the demand for new forms of intellectual property protection, and for new models which enable free sharing and duplication of ideas, without the loss of ownership of an idea or a work. This demand is also driven by a perception (see *section 5.2.8 et seq*) that traditional copyright law and more recent rights management technologies have a negative effect on society's ability to create, to innovate or to enjoy content.

One response to these perceptions is the *open source software* movement; a more recent development is the creation and publication of other (non-software) forms of content on the internet, using a class of intellectual property management called '*Creative Commons'*. These are explored here.

By and large, these new license models are applied most often to digitally-born works such as web pages, documents, diagrams, software and documentation. They are also increasingly applied to digital photographs, music recorded in

digital formats and other forms of digital art. In general (there are many exceptions), they make duplication and distribution of works easier, while maintaining integrity and attribution.

3.6.1 Collective Licensing

Collective Licensing is an access model where copyright holders make their works available for duplication, download, sharing, broadcast, etc. *through a collective organisation.* The collective organisation receives fees for the use of the material it manages, and it allocates these fees to its members on the basis of the popularity of their works. A similar model exists in the payment of fees for music broadcasts by radio stations. This has significant benefits for all concerned – the radio stations do not need to discover and pay thousands of different rights holders; musicians do not need to concern themselves with monitoring and demanding payment for the broadcast of their works.

It has been suggested by the Electronic Frontier Foundation that a similar model could be used for music sharing online.

> **Guidance**
>
> The **Electronic Frontier Foundation's** paper on collective licensing for music sharing is at http://www.eff.org/wp/better-way-forward-voluntary-collective-licensing-music-file-sharing
>
> A list of **copyright collection societies** is available on wikipedia at http://en.wikipedia.org/wiki/List_of_copyright_collection_societies
>
> A Danish approach to **extending collective licensing** in the library sector is provided at http://ec.europa.eu/information_society/activities/digital_libraries/doc/mseg_meet/1st/von_hielmcrone.ppt#1

3.6.2 Creative Commons

Creative Commons is a non-profit organisation which develops and publishes legally binding licences that allow a rights holder to grant some or all of their rights to the public while keeping others. Creative Commons licences offer a range of license models from public domain to full copyright.

The underlying driver for creative commons is the fact that the organisation believes that copyright legislation does not stimulate the re-use and further development of copyrighted information, and that creators are held back by the restrictions of standard copyright models. Creative Commons licenses protect the rights of creators, while enabling more open use of the works which they create.

Creative Commons licenses were originally created for the US legislative context; a wide range of localised licenses are now available.
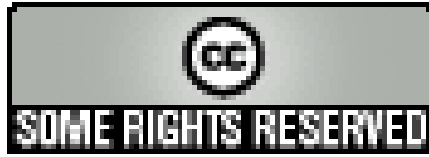
Several million pages of web content use creative commons licenses.

Guidance
The Creative Commons **website** is at www.creativecommons.org.

Wikipedia has a good creative commons section at http://en.wikipedia.org/wiki/Creative_Commons

An exploration of the value of **Creative Commons for public sector information** (in the Netherlands), including a description of Creative Commons, is at http://www.ivir.nl/publications/eechoud/CC_PublicSectorInformation_report_v3.pdf

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3.6.3 Open Content

The OpenContent Licence is another licence model which provides a legal platform for the copying and distribution of content without payment.

Open content describes any creative work which can be freely copied or modified by anyone. Wikipedia is the largest open content project. Open content is royalty free – it may be in the public domain or it may be governed by a no-payment license such as one of the Creative Commons licenses.

Open Content licenses vary somewhat in terms of what they allow. In general, open content licenses allow free copying and distribution of the work. The creation of **derivative** works, building on the content, may be more controlled, as may be the licensing of the new derivate work. Some common restrictions include the following:
- works which derive from an open content license must themselves be released under an open content license – this prevents a third party from making a commercial product on the basis of content he received for free.
- the use (or not) of the open content in a commercial application
- the requirement to attach a copy of the license to any derivative work – this ensures that further descendant works are covered by the same licence
- attribution of the source of the content must be attached to the content, and retained in later derivate ('descendant') works. This attribution is often the only form of reward enjoyed by the creator, and is used by him as a method to develop reputation, employability, etc.
- no warranty is provided – the work is provided on an 'as is' basis.

- The license cannot be changed.

Guidance
The Open Content **website** is at http://opencontent.org

3.6.4 Open Source

Open source is a software development method where teams of volunteer programmers work on projects which are released free of charge, typically over the internet. The source code is released, which means that other programmers can review, change and enhance the software, and release it again. This can lead to high-quality software development, as well as the involvement of many talented people in each project. It also means that the user of an open source product can adjust it to his own ends.

An open source software license complies with the following:
- The software can be redistributed, either on its own or as part of a larger solution, either for free or for payment.
- The software must include the source code, and must allow the distribution of the source code.
- The software must allow the creation of derived works, which may be distributed under the same license. If the author wishes to protect the integrity of his source code, he must allow the parallel distribution of 'patch files' which modify the code at build time.
- The software must be available to all groups and in all fields of endeavour.
- The software license must not rely on the software being part of a greater solution or package.
- The software license must not restrict the distribution of any other software with the software
- The license must not enforce any particular technology or style of interface.

There are dozens of major open source licenses, each slightly different from the other, but all meeting the criteria outlined above. Examples include the Apache Software licence (covering the popular Apache Web Server), the GNU General Public Licence (GPL), the Nokia Open Source Licence, the Mozilla Public License, and many more.

Figure 2 - Copyleft and anti-copyright logos. From 'A Guide to Open Content Licences' by Lawrence Liang (http://pzwart.wdka.hro.nl/mdr/research/lliang/open_content_guide).

).

A large proportion of all internet sites use open source components. Particularly popular are

- Apache, the web server that drives more websites than any other
- Linux, a very popular operating system
- MySQL, PostgreSQL, Firebird and other open source databases
- PHP, Python, and other scripting languages

3.6.4.1 How Open Source Works

Open source software is developed by teams of collaborating programmers, who typically work in different organisations and even different parts of the world, who are interested in a particular problem domain. There are many thousands of open source projects being developed at any one time, depending on the time and the enthusiasm of their development teams.

Typically, open source software does not offer professional support or make guarantees as to functionality; however, this limitation is overcome by the availability of active, enthusiastic user communities, who share an ethos of assistance and open knowledge. The communities may include the developers of the software, or simply those who have used it and are in a position to help others. Commercial support for very popular open source software is often also available, from companies and individuals who are expert in the software. While the software cannot be sold, support and consultancy can be.

3.6.4.2 Impact of Open Source Model on Cultural Heritage Applications

Open source software, by its nature, is flexible and easily changed by a competent programmer. This means that the software can evolve over time, to cope with the requirements and demands of changing legislation and technology. A cultural heritage project which uses open source software thus has the opportunity, given the right human resources, to maintain access to its materials across new technology versions, in compliance with new standards, and in the face of new requirements from users, government and other stakeholders. Interoperability with other (and future) systems is facilitated in the open source context, by the fact that the software can be extended, without losing existing functionality.

Guidance

The **website** of the open source initiative is at www.opensource.org

An enormous repository of open source projects is at **sourceforge** (www.sourceforge.net)

3.6.5 Open Access

Open Access (OA) is a publication model for cultural and academic publications that relies on the use of the internet. Peer review in academic open access publication is carried out either by OA journals or by readers commenting on the papers online. Authors, peer reviewers and OA journal editors all donate their time – this is not incompatible with existing academic publishing, where authors are not paid for their papers.

OA is also supported by cultural heritage organisations which believe that it should be easier to gain access to cultural content online.

OA is typically funded by institutions which host the material, sponsorship, fee payment by authors, subscription by academic institutions or companies, or the provision of advertising or auxiliary services.

OA has a number of advantages for the publication of scholarly communications
- There are no price barriers – access is free
- There are no permission barriers – OA publications are copyright-free (the use of OA material in a commercial application may or may not be free)
- OA licences typically protect the integrity and attribution of content
- OA does not preclude copyright, peer review, career advancement, revenue or other aspects of traditional scholarly publication. But the costs are not borne by readers, and so do not serve as barriers to access.

- Scholars lose nothing by using OA – unlike musicians and movie producers, scholars typically receive no payment from journals or publishers.

Much OA content is published under a creative commons license. The wide range of such licenses allows authors to control the degree of freedom enjoyed by the public in terms of re-use of their work.

OA requires the consent of the author. It is *not* the same as the public domain. Nor is it similar to file sharing networks such as Napster or KazaA, where the author's consent is not required.

Guidance

IFLA (International Federation of Library Associations and Institutions) has a statement on Open Access here http://www.ifla.org/V/cdoc/open-access04.html

A detailed overview by **Peter Suber** of open access is given here http://www.earlham.edu/~peters/fos/overview.htm

Wikipedia has a detailed page on open access, here http://en.wikipedia.org/wiki/Open_access

The **Berlin Declaration** on Open Access to Knowledge in the Sciences and Humanities is available here http://oa.mpg.de/openaccess-berlin/berlin_declaration.pdf

The **ECHO project** is an example of an open access project focusing on cultural heritage, at http://echo.mpiwg-berlin.mpg.de/home

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4 Rights Clearance Guidelines

This section provide practical guidelines on rights clearance for cultural heritage institutions who are engaging in projects which digitise cultural heritage items and provide access to the digital material over the internet. Such projects are referred to here as "*online culture projects*" or simply '*projects'*.

Requirement Levels

Further, in standards documents, the key words 'must, should and may', when printed in bold text, are used to convey precise meanings about requirement levels. These requirement levels reflect the terminology used in Internet Engineering Task Force (IETF) documentation, and defined in IETF RFC 2119.

- **Must**: This word indicates absolute technical requirement with which all projects must comply.
- **Should**: This word indicates that there may be valid reasons not to treat this point of guidance as an absolute requirement, but the full implications need to be understood and the case carefully weighed before it is disregarded.
- **May**: This word indicates that the topic deserves attention, but projects are not bound by this advice.

There are **two main issues to be considered – rights clearance and publication**. **Rights clearance** is concerned with identifying the rights holder for any material that you plan to publish. **Publication** is concerned with protecting your own rights, and those of your rights holders, when your material is accessible online.

4.1 Summary

Before digitising a work, a cultural heritage institution should carry out at least the following steps

1. **Rights Clearance** – ensure that permission from the rights holder is available, where necessary, for the digitisation and publication of the work.

2. Where the rights holder cannot be identified, or does not respond to communication, or no longer exists (e.g. a bankrupt company) – **take and record all reasonable steps to secure copyright clearance**. If clearance cannot be obtained, consider not digitising the works. Only proceed where the benefit, risk of problems and potential costs of problems have been considered and balanced. This applies particularly to **orphan works**.

3. While there is clearly no requirement to obtain permission to digitise **digital-born** works, all other rights (such as reproduction and publication) must be cleared.

4. Where it is assumed that a work falls into the **public domain**, ensure that this is the case.

5. Where a project considers its use to be **Fair Dealing**, and thus not subject to copyright restrictions, this must be fully verified. The key criterion is the impact which your actions may have on the commercial interests of the rights holder. Only proceed where the benefit, risk of problems and potential costs of problems have been considered and balanced. Bear in mind that the Copyright Directive is not overall very supportive of Fair Dealing, and that web publication of copyright works is unlikely to be able to use Fair Dealing as a justification.

*Pragmatically, cultural heritage institutions **may** consider digitising **only** items which are either certainly in the public domain, items to which the institution certainly owns the full copyright or after expert legal advice has been obtained..*

4.2 Obtaining Permission

A fundamental first step for online culture projects is to **ensure that the cultural heritage institution has authorisation from rights holders to duplicate (digitise) items and to place them online (publish and distribute).** If items are expected to be free of copyright restrictions, this must be verified.

The rights status of items will be an important factor in the selection of which items to digitise and publish online.

Guidance
Excellent resources on copyright can be found at

British Academy: http://www.britac.ac.uk/reports/copyright-guidelines/final%20guidelines.pdf

Technical Advisory Service for Images (**TASI**) http://www.tasi.ac.uk/advice/managing/copyright.html

A **case study** of how rights holders were tracked down by two UK projects is presented by **AHDS** at http://ahds.ac.uk/creating/case-studies/tracing-copyright/index.html

4.2.1 Digitisation and Publication of Physical (non-Digital) Items

Projects **must** establish the intellectual property status of all physical items which are to be digitised and placed online. Projects **may** use the intellectual property status of an item as a criterion in the selection of which items to include in the scope of the project. Projects **should** establish the intellectual property status of items before beginning the digitisation process.

Projects **should** establish whether an item falls into the *public domain*. The most common test will be to establish the identity and time of death of the creator of the item. Items where the creator has been dead for over seventy years will usually be in the public domain.

Guidance

Wikipedia has a section on the public domain at
http://en.wikipedia.org/wiki/Wikipedia:Public_domain

Several EU projects address the public domain. Examples include Communia (www.communia-project.eu), rightscom (www.rightscom.com)

More in-depth discussion of the underlying rationale is presented by the Foundation for Information Policy Research (FIPR) at http://www.fipr.org/intellectual.html

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Where an item does not immediately fall into the public domain, projects **should** create a record (a diligence file) of the research and other effort invested in identifying the rights holder, contacting the rights holder and receiving authorisation to digitise and place the item online. Such a record will be valuable in the event that no rights holder authorisation can be established, to demonstrate that the project took all reasonable efforts to secure the authorisation. This applies particularly to orphan works (see *section 3.1.8*).

Guidance

TASI (the Technical Advisory Service for Images, UK) has a guide to the use of copyright information in a teaching environment, at http://www.tasi.ac.uk/advice/managing/copyright-users.html#cp4

The **Collections Trust** in the UK has a guide to rights clearance, at http://www.collectionslink.org.uk/assets/userfiles/index.php?file=000655.pdf

A (US) guide to getting permission to use a copyright item, with links to many copyright management and collective licensing organisations, is provided by the

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| **University of Texas** | at http://www.utsystem.edu/OGC//Intellectualproperty /permissn.htm |

If no authorisation is secured, projects **should** establish whether or not the digitisation and online publication of the item constitutes 'Fair Dealing' (see *section 3.1.6*). If the project concludes that its work does in fact fall into the category of 'Fair Dealing', the arguments and evidence supporting this **must** be recorded.

Guidance

The Joint Information Systems Committee (**JISC**) and the Publisher's Association (UK) have published *Guidelines for Fair Dealing in an Electronic Environment* at http://www.ukoln.ac.uk/services/elib/papers/pa/fair/

If an item has been donated to the cultural heritage institution, the project **must** establish whether or not a deed of gift or other documentation exists, and whether or not this documentation covers copyright, reproduction or publishing. Where such restrictions exist, the donor **may** be contacted and authorisation to digitise and publish **must** be secured prior to publication.

4.2.2 Publication of Digital Born Items

Where the items to be included in the scope of the project are digital born, there is no requirement to secure authorisation to digitise them. However, such items are certain to be covered by intellectual property restrictions.

If the cultural heritage institution does not possess explicit authorisation to duplicate, publish and distribute the digital born item, clearance must be secured from the rights holder. Projects **must** create a record of the research and other effort invested in identifying the rights holder, contacting the rights holder and receiving authorisation to publish the item online. Such a record will be valuable in the event that no rights holder authorisation can be established, to demonstrate that the project took all reasonable efforts to secure the authorisation. This applies particularly to orphan works (see *section 3.1.8*).

Guidance

TASI (the Technical Advisory Service for Images, UK) has a guide to the use of copyright information in a teaching environment, at http://www.tasi.ac.uk/advice/managing/copyright-users.html#cp4

The **Collections Trust** in the UK has a guide to rights clearance, at http://www.collectionslink.org.uk/assets/userfiles/index.php?file=000655.pdf

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> A (US) guide to getting permission to use a copyright item, with links to many copyright management and collective licensing organisations, is provided by the **University of Texas** at http://www.utsystem.edu/OGC/ Intellectualproperty/permissn.htm
>
> The **Visual Arts Data Services** (**VADS**), and **TASI** have a guide to clearing rights at http://vads.ahds.ac.uk/guides/creating_guide/sect29.html

If no authorisation is secured, projects **should** establish whether or not the online publication of the item constitutes 'Fair Dealing' (see *section 3.1.6*). If the project concludes that its work does in fact fall into the category of 'Fair Dealing', the arguments and evidence supporting this **must** be recorded.

> **Guidance**
> The Joint Information Systems Committee (**JISC**) and the Publisher's Association (UK) have published *Guidelines for Fair Dealing in an Electronic Environment* at http://www.ukoln.ac.uk/services/elib/papers/pa/fair/

If an item has been donated to the cultural heritage institution, the project **must** establish whether or not a deed of gift or other documentation exist, and whether or not this documentation covers copyright, reproduction or publishing. Where such restrictions exist, the donor **may** be contacted and authorisation to publish **must** be secured prior to publication.

4.2.3 Rights Assessment Examples

This section provides some **examples** of rights clearance rules. However, these vary from country to country, and cultural heritage institutions **should** verify which rules apply to them.

4.2.3.1 Photographs

In general, copyright in a photograph rests with the photographer, unless a contract exists to the contrary (e.g. with an employer, with a customer). Photographs of art works are an exception, however. However, like all copyright, the rights over photographs have a limited duration. **In the UK**, the following applies:

1. all photographs taken before 1946 have no copyright.
2. Photographs taken since the start of 1946, but before 1989 are protected by copyright for seventy years from the death of the photographer.
3. If the photograph was commissioned, copyright is vested in the commissioner.
4. If the copyright is not commissioned, copyright belongs to the person who owned the film on which the photograph was taken (not to the photographer).

5. After 1989, the photographer has copyright over the image he creates.
6. It may be noted that if a photograph has never been published before, copyright is created *when it is first published* (e.g. on the website of a cultural heritage institution), with a duration of 25 years.

The complexity of the UK situation is not unusual – many countries have similarly complex rules. The cultural heritage institution **must** ensure that it fully understands these rules prior to publication of photographs on a website.

Guidance

The above points, and much more, are to be found at the **artquest** website http://www.artquest.org.uk/artlaw/artlaw.htm

Duration of copyright in the **US** is covered in great detail in http://www.copyright.gov/circs/circ15a.html

Duration of copyright in **Germany** is explored at http://www.iuscomp.org/gla/statutes/UrhG.htm#64

Caslon Analytics (an Australian consultancy) has a good page on copyright duration at http://www.caslon.com.au/durationprofile1.htm

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4.2.3.2 Photographs of Artwork

If a photographer makes a photograph of an artwork, the copyright remains with the artist, not the photographer. The photographer is considered to have created a 'mere or slavish' copy of the artwork, rather than having exercise his own creativity. This applies even if a great deal of effort and expertise was invested in taking the photograph. The underlying case law is from a 1999 US court case between the Bridgeman Art Library and Corel Corporation. To date there is no EU case law, though UK legislation follows the same logic as the US court decision. [http://www.artquest.org.uk/artlaw/artlaw.htm]

This means that cultural heritage institutions who publish photographs of artworks in their collections, where the artworks themselves are out of copyright due to age, do not automatically have copyright in these photographs. Instead, they **must** rely on the terms and conditions, and the contracts with users of their websites, to protect their interests and prevent exploitation of the images of their artwork.

If the artwork is itself subject to copyright (e.g. relatively modern) then the photograph is a breach of copyright and **must** be authorised by the copyright holder. Any subsequent publication or distribution of the photograph **must** also be authorised.

Guidance

> The above points, and much more, are to be found at the **artquest** website
> http://www.artquest.org.uk/artlaw/artlaw.htm

4.2.3.3 Photographs of Persons

The general rule that a photographer owns the copyright to his photographs applies to photographs of persons. However, personal privacy legislation protects persons from intrusive publication of their images and activities; personality law adds additional protection (*section 3.5.4*). The permission of the persons shown in the photograph, or named in the photograph metadata or caption, **must** be secured before a cultural heritage institution publishes such photographs online.

Guidance

TASI has a good section on copyright at
http://www.tasi.ac.uk/advice/managing/copyrights.html

The Arts and Humanities Research Council Centre for Studies in Intellectual Property and Technology Law at The University of Edinburgh (**AHRC**) has a database of personality rights cases, including analysis, at
http://personalityrightsdatabase.com/index.php?title=Main_Page

Wikipedia has a good overview and selection of relevant links, at
http://en.wikipedia.org/wiki/Personality_rights

4.2.3.4 Databases

Databases are protected by the database right (*section 3.4*). In general, projects **should not** extract large amounts of data from third party databases and use them on their own online projects. In addition, where material is extracted from a database, the copyright status of the material itself (as well as the database) **must** be clarified.

Where a cultural heritage institution wishes to provide a metasearch or portal functionality to third party databases, the authorisation of the database owner and creator **should** be secured in advance. The terms of use agreement between the end user and the database owner may also be relevant.

Guidance

The **Directive** which directly addresses the IP protection for databases is at
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996L0009:EN:HTML

> A brief overview is provided by the **University of Cambridge**, here:
> http://www.caret.cam.ac.uk/copyright/Page92.html
>
> The UK government's **Intellectual Property Office** describes database rights here http://www.ipo.gov.uk/copy/c-claim/c-otherprotect/c-otherprotect-database.htm

4.2.3.5 Metadata

The publication of metadata for online images must take into account personal privacy legislation. If individuals can be identified from the image metadata, their consent must be secured before such metadata is published online.

The assembly of metadata is itself protected under copyright law – the metadata is a literary composition and involves significant intellectual input from its creator.

The harvesting of metadata and its subsequent publication online (e.g. in a project which utilises the OAI-PMH protocol) **must** first be authorised by the metadata owners.

4.2.3.6 Personal Letters and Diaries

Personal letters and diaries are protected under copyright legislation. The authors of the letters and diaries are the rights holders. However, Fair Dealing (*section 3.1.6*) may allow the publication of extracts or quotations from such personal correspondence.

In addition, personal privacy legislation will apply; this may include in its scope both the author, the recipient (if a letter) and any other persons mentioned in the letters and/or diaries. Defamation and libel law may also apply. Cultural heritage institutions **should** carefully review the content of personal letters and diaries prior to publication – such documents may not have been composed with publication in mind.

Guidance

The **American Fair Trade Commission** has guidance on personal privacy in the online environment at http://www.ftc.gov/privacy/

The **w3c** has an initiative on personal privacy policies at http://www.w3.org/P3P/details.html and some guiding principles at http://www.w3.org/TR/P3P/#guiding_principles

The **EU's Data Protection law** is outlined at http://ec.europa.eu/justice_home/fsj/privacy/index_en.htm

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The (US) **Centre for Democracy and Technology** has a guide to the Directive at http://www.cdt.org/privacy/eudirective/

4.2.3.7 Musical Works and Sound Recordings

As discussed under Related Rights (*section 3.1.5*), there are several rights holders in a musical work. These include the composer of the music, who usually holds copyright, the performer, the producer and potentially also the broadcaster (all of whom usually hold related rights). The likelihood is that music works and sound recordings will be subject to copyright (the seventy year rule will not apply), and authorisation **must** be secured from each stakeholder before the musical work or sound recording can be duplicated or published.

In the UK, sound recordings (the recording of the performance of the music, rather than the composition of the music) are protected for fifty years from the year of recording or from date of release. The duration of this protection may vary from one country to another.

Guidance

UK Copyright Services, a UK copyright registration company, has a good guide at http://copyrightservice.co.uk/protect/p07_music_copyright

Kohn on Music Licensing has a huge selection of links and information relevant to music rights management at http://www.kohnmusic.com/

4.2.3.8 Moving Images

Moving images (films, movies) have much in common with music – there are several rights holders, with rights ranging from copyright to related rights. Again, it is likely that any moving image work will be in copyright, and so projects **must** secure authorisation from all rights holders before the moving image can be duplicated or published.

In the EU, under the directive (93/98/EEC, replaced by 2006/116/EC), copyright protection extends for 70 years from the death of the last principal director, author or composer.

Guidance

A good example of the application of these rules can be seen at the **US Library of Congress** (http://www.loc.gov/rr/mopic/copies.html)

Australian copyright law, and how it relates to old films, is covered at http://www.artslaw.com.au/LegalInformation/Copyright/04OldFilms.asp

> **Irish law** in this area is explained at http://www.irishstatutebook.ie/2000/en/act/pub/0028/sec0025.html
>
> The 2006 **EU Copyright Directive** is at http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_372/l_37220061227en00120018.pdf
>
> UC Berkeley has an internal guidance document at http://www.lib.berkeley.edu/MRC/Copyright.html which is both clear and informative (though of course it focuses on US law).

4.2.3.9 Software

Software is protected by copyright throughout the EU. The authorisation of the copyright holder is needed to run, copy, modify or distribute the software. Where software is modified, the modifier may have copyright in his changes; the original author will also usually retain his rights. Software copyright is covered by directive 91/250/EEC. In order to be protected under the directive, the software must be original.

> **Guidance**
>
> The EU has a **directive** (Directive 91/250/EEC) on software copyright, accessible at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31991L0250:EN:HTML
>
> A **briefing document** on the Directive is available from the IPR Helpdesk project at http://www.ipr-helpdesk.org/docs/docs.EN/softwareCopyright.html#N40013B

Projects using software **must** ensure that the software has been distributed to them in a manner authorised by the copyright holder and with his authorisation. Projects **must** also abide by whatever licence agreement governs the software.

Software is the type of content most often governed by open source, copyleft, creative commons and other less-restrictive forms of licence. Where appropriate, a project **may** prefer to use software which is available under such licences. However, the project **must** be fully aware of the details of such licenses and **must** abide by them.

> **Guidance**
>
> The **website** of the open source initiative is at www.opensource.org
>
> The Creative Commons **website** is at www.creativecommons.org.

> **Wikipedia** has a good creative commons section at http://en.wikipedia.org/wiki/Creative_Commons
>
> Copyleft is well explained here: http://www.gnu.org/copyleft/copyleft.html

4.2.4 Authorisation, Permissions and Licence Negotiation

It is clear that an online culture project **must** have authorisation from the holders of rights in the items to be used in the project. Alternatively, the items **must** be free of copyright or the project **must** plan to use the item in a manner for which authorisation is not required.

4.2.4.1 Establishing a Legal Basis

If a project intends to enter into legal agreements with rights holders, in order to enable the distribution, publication or duplication of protected works, the project **must** have a clear legal identity. This will usually be the cultural heritage institution which is running the project (e.g. the library or museum). However, project managers **should** verify that there is no obstacle or legal restriction to entering into legal agreements of this type.

4.2.4.2 Obtaining Authorisation

The first step to obtaining authorisation is to identify the copyright holder. The institution **should** open a 'diligence file' for each item –an information repository which records the work done by the institution to gain authorisation. Where it is possible to identify the rights holder, the project **must** contact the rights holder and secure his permission.

> **Guidance**
>
> **Diligence files** are described by VADS and TASI at http://vads.ahds.ac.uk/guides/creating_guide/sect29.html

In order to gain permission, the project is very likely to need to state the purpose of the project, the manner in which the item will be used, the duration of use and the intended audience. This information will enable the rights holder to assess the commercial or other impact of granting permission.

The project **should** have the rights holder sign a licence agreement for the use of the item by the project. This **should** state any restrictions over the manner of use of the item, so that there is no potential for subsequent conflict. All documentation **should** be stored in the diligence file.

> **Guidance**

Sample **licence agreements** can be found at the **University of Texas** website http://www.utsystem.edu/ogc/intellectualProperty/contract/cprtlic.htm.

A much **wider selection** of sample agreements is available from the same source, at http://www.utsystem.edu/ogc/intellectualProperty/dbmock.htm

Licences are outlined by **VADS** and **TASI** at http://vads.ahds.ac.uk/guides/creating_guide/sect27.html

It is likely that the rights holder will place *constraints* on the manner of publication of the item, so that it has minimal impact on the commercial or other potential of the item. For example, it may be necessary to restrict the resolution of images, or to place a large watermark on the image. The rights holder may also wish to review the terms of use of the project website, so that the rules governing the end users are clear. Projects **may** offer several *technology options* to rights holders, in order to gain permission for the most beneficial end product for the users. For example, if high resolution images are not to be published, a 'zooming' version of the images may be allowed, which enables users to view portions of the image in high resolution, without any access to a high-resolution image

All agreements **must** be carefully preserved.

4.2.4.3 Items free of Copyright

If a project believes that items to be published are free of copyright, this **should** be verified and the reasons for this belief **should** be noted in the diligence file. While the guidelines in this document will provide some of the information needed, projects **should** also review the national legislation on copyright limitations. The usual reason to believe that items are free of copyright is if copyright has expired (see *section 3.1.2*).

To recap, most works are out of copyright seventy years after the death of the last author, composer, producer or creator. However, there are many exceptions, which vary from one country to another.

Guidance

Guidance on duration, and on other aspects of copyright, is available from the **UK National Archives** at http://www.nationalarchives.gov.uk/legal/pdf/copyright_full.pdf

Information on copyright duration, in the UK, is presented in the **British Academy** publication referenced above, at http://www.britac.ac.uk/reports/copyright/guidelines.html

A good FAQ on all things copyright is provided by the **Arts and Humanities Data Service (AHDS)** at http://ahds.ac.uk/copyrightfaq.htm

4.2.4.4 Fair Dealing

If the project believes that its use of a work constitutes Fair Dealing (see *section 3.1.6*), the reasons for this **must** be noted in the diligence file. While the guidelines in this document will provide some of the information needed, projects **should** also review the national legislation on Fair Dealing, and the copyright directive.

The key issue for Fair Dealing is that it should not impact on the commercial or other interests of the copyright holder. Examples of areas of application where Fair Dealing may apply include

1. Certain categories of work which have no copyright.
2. Cited quotations
3. News reprorting
4. Educational illustration
5. Personal, private and archive copies which are not distributed.

The UK's AHDS says (at http://ahds.ac.uk/creating/information-papers/copyright-introduction/) that…

> … Fair Dealing is aimed more at those engaged in private research or for use in the classroom, i.e. those that are only producing a small number of copies. The **digitisation project** that aims to disseminate a digital resource on the Internet, with the potential for infinite copying, **will not find much assistance from Fair Dealing**.

Guidance

The Joint Information Systems Committee (**JISC**) and the Publisher's Association (UK) have published *Guidelines for Fair Dealing in an Electronic Environment* at http://www.ukoln.ac.uk/services/elib/papers/pa/fair/

JISC also has a publication on Fair Dealing and 'Permitted Actions' at http://www.jisclegal.ac.uk/pdfs/FairDealing.pdf

4.2.4.5 Orphan Works

Orphan works (see *section 3.1.8*) are works which are in copyright but where the rights holder is impossible to identify or to contact. In general, orphan works may be used by projects only after all reasonable efforts to gain authorisation for their

use have been made. A full record of such efforts **must** be recorded in the diligence file.

Guidance

US lobby group **Public Knowledge** has a significant amount of information about Orphan Works at http://www.publicknowledge.org/issues/ow

CILIP (Chartered Institute of Library and Information Professionals) has an outline of the orphan works problem and a proposed outline solution at http://www.cilip.org.uk/NR/rdonlyres/E6F612ED-6CE1-4723-8348-CB7162D983C2/0/LACAorphanworksstatement FINAL 19 dec 07.pdf

The i2020 Digital Libraries High Level Experts Group addresses Orphan Works in its report at http://www.edlproject.eu/downloads/
report_HLEG_preserv_orphan_works.pdf

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5 Publication Background

The following sections explore IPR aspects of the **publication** process. In the scope of these guidelines, *publication* means publication on the internet, on a website which is accessible to the general public, but which may have terms and conditions of use with which users must comply.

5.1.1 Website Design

The website of an online culture project **should** have certain legal elements in order to protect the cultural heritage institution which owns it. These include

- Terms and conditions of use
- A copyright statement
- A disclaimer
- Credits and attribution

These are described in more detail later in these guidelines (section 0).

The technology and functional design of the website **should** reflect the items published on the site, the intended use of the items (and the agreement with their rights holders, if applicable) and the intended audience.

Typically, an online culture project website will be driven by a database which holds the content, and a rendering engine which creates web pages based on the database content which the user wishes to see. Items such as photographs, music, film, etc. may be stored in the database or may be stored in the file system and linked to by the database.

Where feasible, the presentation elements of the website (the look and feel of the end user interface) **should** be separated from the content shown on the website and from the technical workings of the rendering engine.

5.1.2 Specific Design Decisions

A number of specific decisions must be taken by any online culture project in the planning of its website. These decisions affect the way in which the website can be used and how the items which it publishes can be accessed. These are discussed in the following sections.

5.1.2.1 Deep Linking

The project must decide whether or not to allow *deep linking* – the use of hyperlinks which link directly to a digital item, bypassing introductory screens and removing any branding or informational content. An online culture project may decide not to allow deep linking, by limiting the pages which are allowed to link to a particular item (the 'Referer') or by using Cookies. Deep linking prevention does not stop any user from downloading or saving images from a website onto a

local hard drive, and then re-using them, but it does prevent other websites from bypassing the front pages of your site.

It should be noted that sending fake 'referer' information (referrer spoofing) is technically not very difficult, and can be used to overcome some prevention strategies. Several free software packages are available to do this.

Guidance

W3C has a guide to deep linking at http://www.w3.org/2001/tag/doc/deeplinking.html

Wikipedia describes deep linking at http://en.wikipedia.org/wiki/Deep_linking]

A description of the use of the 'referer' information to **prevent deep linking** is provided at http://www.albionresearch.com/disaster/sex_sells.php

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5.1.2.2 Framing

Any web page can be broken up into 'frames' – areas of the page which contain content from a single HTML document. This is very common on sites where the sidebar or the header is intended not to move (e.g. not to leave the visible part of the screen) when the main part of the screen is scrolled.

It is possible to populate frames with web pages from third party sites – this opens the opportunity for one web site to 'wrap' third party content with its own headers, navigation, etc. This can lead to users being misled as to the source of material they are viewing, or mistakenly believing that one site endorses or is associated with another.

It is possible to ensure that your website is not 'framed' by a third party site. This is achieved by ensuring that the window in which your site opens on top of any frameset, using the '_top' frame name.

Guidance

Wikipedia has a section on framing, at http://en.wikipedia.org/wiki/Framing_%28World_Wide_Web%29,

Another online **resource** about framing is at http://www.technorealm.co.uk/design/frame-targetting.html

A **simple script** to ensure that your content is not framed by another site is available at http://en.wikipedia.org/wiki/Framekiller

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The **W3C** page which describes frames is at http://www.w3.org/TR/REC-html40/present/frames.html

5.1.2.3 Inlining

Inlining (or *inline linking, hot linking, leeching…)* is the practice of embedding images or other content from a remote website within your own website. For example, if a website author wishes to include a cultural image from a museum website, he can embed an image (<img>) tag which points (deep links) to that image on the museum site. This leads to bandwidth costs for the site hosting the image; it also constitutes unauthorised use of the image on the linking site. Inlining also means that visitors to a third party site will view images without the surrounding information, such as terms and conditions, which might appear on the home site of the image.

In general, inline linking is frowned upon in the web community. It can lead to a lack of clarity as to the source and owner of content.

Technical solutions which prevent inlining are similar to those used for deep linking.

Guidance

Wikipedia's page on inlining is at http://en.wikipedia.org/wiki/Inline_linking

A description of the use of the 'referer' information to **prevent inlining** is provided at http://www.albionresearch.com/disaster/sex_sells.php

A **less easily circumvented** approach to avoiding inlining of your content is presented at http://www.alistapart.com/articles/hotlinking/

5.1.2.4 Graphic Layout

The layout and 'look and feel' of the online culture project website is largely a matter for the project team. However, the following may be noted
- Compliance with accessibility guidelines such as the W3C Web Content Accessibility Guidelines is to be encouraged, and is in some cases mandated by funding agencies
- Multilingual text and user interfaces are to be encouraged, and may be mandated by the EU or other funding agencies
- Not all browsers support frames, javascript or Flash, and so these technologies may not be appropriate. That said, the large majority of browsers do in fact support frames and javascript, while Flash support is also very common.

There are thousands of sites online with web design tips – no specific sites are listed here.

Guidance

Unfortunately, the popular **Bobby** test from Watchfire.com is no longer available, since the purchase of Watchfire by IBM. However, a similar service is available from the excellent **TAW3** website at http://www.tawdis.net/taw3/cms/en, including a standalone tool.

Accessibility guidelines published by the **W3C** Web Accessibility Initiative are available at http://www.w3.org/WAI/

Guidelines on **how to assess** your site are provided at http://www.w3.org/WAI/eval/Overview.html

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5.1.2.5 Domain Names

Domain names are important pieces of intellectual property, in that they represent the 'brand' of an online culture project. The domain name **should** be carefully chosen and registered without delay; renewal of domain names **should** take place in a timely manner. The more active a domain name is, the more attractive it is to a third party who can attempt to gain control of the domain name in order to use it to host advertising or to sell it back to the cultural heritage institution.

Domain names are allocated on a first-come first-serve basis. This means that popular names and brands may be registered by third parties, who expect to sell them to companies or others with whom the name is associated, for a profit. This practice is known as 'cybersquatting'.

In the US, cybersquatting is illegal under the Anticybersquatting Consumer Protection Act (ACPA) 1999. In other countries, the Internet body ICANN has a resolution process (UDNRP) which may apply. The World Intellectual Property organization (WIPO) also provides an arbitration system.

Guidance

Domain names and related Intellectual Property issues are discussed by the **W3C** at http://www.w3.org/IPR/

Domain name disputes are covered by the **World Intellectual Property Organisation** at http://www.wipo.int/amc/en/index.html

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5.1.2.6 Meta Tags

Meta tags or *meta elements* are HTML tags which provide information about a website. They are used primarily by search engines, to categorise web sites. Meta tags are important for end users because they influence the appearance of web sites in search engine results. They are important to the owners of web sites for the same reason.

Meta tags are placed in the <head> element of HTML and XHTML documents. They may include a page description, some key words, information about how the page was constructed, and other information not provided by other <head> elements.

While meta elements were, in the 1990s, a very important influence on the ranking of websites by search engines, this is less the case in recent years, where links to a website (particularly from popular websites) are more important, as are intrinsic factors such as uniqueness, quantity and quality of content, quality of hyperlinks, etc.

Of the meta elements, the *keyword* meta attribute is now largely ignored (*inktomi* is the only large crawler-based search engine which still indexes the keyword tag), while the *description* attribute is still used to a degree. *Pragmatically, online culture projects may ignore the keyword attribute, and should not place excessive emphasis on the description tag.*

Despite the decrease in value of the keyword and description tags, other meta tags remain useful for purposes other than search engine ranking. These include the *author*, *lang*uage, *copyright*, *date* and PICS-related (age/adult content rating, etc.) tags.

Guidance

The **W3C's** meta data (META) tags are described at http://www.w3.org/TR/REC-html40/struct/global.html#h-7.4.4

5.1.2.7 Software

As noted above, most online culture projects use a database and a rendering engine to store and to display their content. These elements, combined with a back-end system for data entry, are often referred to as a *content management system*. The system will run on an operating system (typically Windows, linux or some other form of UNIX) and utilise a web server such as Apache or IIS. The database will often be an open-source offering such as MySQL or PostgreSQL. (See *section 3.6.4* for more information on open source).

The software which is used by the site will have an impact on the security of the site, the end user experience and the protection of the intellectual property represented by the site. Some guidelines include

- Projects **should** ensure that unauthorised large-scale harvesting of data from the site database is not feasible. This may be implemented using software component authentication.
- Projects may prevent access to particular files and directories/folders within their website, in order to control access to (for example) high resolution images. In websites running on the popular Apache web server, access can be controlled in a comprehensive manner using .htaccess files.

- Projects **should** ensure that the systems software they are using (e.g. the database, the scripting language) is up to date and includes any security upgrades or patches. Such software is typically updated several times per year, to deal with issues or vulnerabilities which have been identified.

- If a common content management system (e.g. PHPNuke, Joomla, Mambo, Wordpress, many more) is used, the project should monitor the website of the development community in order to track any new issues or vulnerabilities that should be dealt with.

Additional software may be used to provide specific functions such as watermarking, image zooming, etc. These are discussed later.

Guidance

An **overview** of open source content management systems is provided at http://www.la-grange.net/cms

An **evaluation environment** for open source content management systems is provided at www.opensourcecms.com

Guidance on using .**htaccess** to prevent access to particular files in particular directories of your site is available here: http://httpd.apache.org/docs/1.3/howto/htaccess.html

A wide range of **open source content management systems** can be found at the open source repository SourceForge www.sourceforge.net

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5.1.3 Re-Use

While an online culture project may have very clear objectives at the time of project start, there is a strong likelihood that the material hosted by the project will be suitable for re-use in other domains. In such cases, projects **must** be

aware that authorisation obtained for the purpose of the project may not be sufficient for the re-use of the material.

A good example is the educational sector, where the availability of high-quality cultural material online is an important teaching asset.

It is important that any intellectual property implications of such re-use are fully understood, and that additional authorisation is obtained where necessary. While Fair Dealing (*section 3.1.6*) may cover a certain amount of educational use, it should not be regarded as an authorisation to use copyrighted material freely in an educational context.

For each item that is to be re-used, the diligence file **must** be reviewed. Where authorisation was obtained, the rights holder **must** be contacted again and clearance obtained for the new application of the item. For material which was not authorised, the project **must** verify that the reasons quoted for its inclusion in the original project also apply to its new use.

5.2 Technological Protection Measures

Over and above the legal and documentary protection described in the previous section (section 0), online culture projects can protect their own and their contributors' intellectual property rights using a range of technological tools which have been created for the purpose.

The use of technology to protect online copyright is an active research area. The commercial value of such research is enormous, particularly in the management of rights to music, images and film online. A wide variety of models, schemes and processes have been developed. In this section, a selection is considered:

- Protecting images by restricting resolution
- Watermarking, both visible and invisible
- Digital Rights Management schemes

5.2.1 Image Resolution

The resolution of an image refers to the density and level of detail with which the image is shown – higher resolution images show more detail and are higher-quality in terms of the visual experience. In technology terms, resolution is defined in terms of the number of dots of colour ('pixels' or picture elements) per inch of image, and the number of bits of digital information per pixel.

The medium on which an image is viewed will have its own limitations in terms of the level of resolution it can display. A computer monitor typically displays 72 dots (pixels) per inch, while a commercially-printed image onto glossy paper or a printed digital photograph may have a resolution of several hundred dots per inch.

This leads to a common approach to copyright protection by online culture projects – items are shown in low resolution only and at a restricted size (usually less than 800 pixels wide by 600 pixels high). This stops third parties from downloading high-resolution images and re-using them elsewhere, thus protecting the commercial interests of the rights holder, while still enabling the material to be represented online.

5.2.2 Zoomable Images

An attractive alternative approach is the use of 'zooming' technologies that allow the end user to view parts of an image in great detail, without enabling the download of a high-resolution image. This works by cutting the master image into a number of smaller images or 'tiles', which are recorded at various levels of resolution. The amount of the original image shown in any one tile varies as the user zooms into and out of the image. The same process is used in the popular Google Maps online application.

It may be noted that it is technically feasible to reverse the process, given access to the directory with the tile images.

Where high-quality master images are stored on the same web server, access control may be used to ensure that the master images cannot be downloaded.

Guidance

Access control based on .htaccess may be suitable for may projects which use the Apache web server. Guidance on using .**htaccess** to prevent access to particular files in particular directories of your site is available here: http://httpd.apache.org/docs/1.3/howto/htaccess.html

A useful tool for the **display and manipulation of high-resolution images** is available at www.zoomify.com

Another **zooming tool** is provided by the brainmaps project at www.brainmaps.org

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5.2.3 Watermarking

Watermarking refers to the practice of embedding an image and/or some text on or within a digital item. This may be as simple as writing a copyright notice over an image, or may use sophisticated digital techniques which incorporate encryption technologies.

Watermarks serve a range of purposes
- They may simply indicate the assertion of copyright

- They may make an image usable for personal purposes, but not suitable for commercial re-use (e.g. by placing a visible mark on the image)
- They may include information about the supplier and the purchaser of a digital item, so that the individual item (and copies thereof) can be identified

5.2.4 Visible Digital Watermarks

The simplest form of digital watermark is the placing of a copyright image or text (e.g. '© thismuseum.org') on top of all images before placing them on the web. This can be simply achieved in an automated manner using common image processing tools such as Photoshop, or using a system like imagemagick. The example below shows a watermark ('Brian Kell 2006'). (The image itself is in the public domain). In order to avoid the situation where the copyright notice is simply cropped from the image, watermarks are often placed centrally on the image.

Figure 3 - Visible Watermark

5.2.5 Invisible Digital Watermarks

Invisible digital watermarks are watermarks which are not visible to the viewer, but which are embedded in an image and detectable by appropriate software. Some digital watermark products combine a watermarking process with a service which searches the web for images containing the digital watermark, thus identifying some of the locations where the copyright image is in use.

While digital watermarks have the advantage of being invisible and non-intrusive, they can sometimes be circumvented by suitable image processing (e.g. breaking the image into many smaller images and then re-assembling it,

adjusting colours and resolution, etc.). The robustness of watermarks against such attacks depends on the details of the technological algorithms used to create the watermarks.

5.2.6 Fingerprinting

An important issue for rights holders is how to control the duplication of an image where they have sold one copy to a legitimate purchaser. They then wish to know the purchaser of an image if it appears in an unauthorised location. An invisible watermark may contain information about the authorised purchaser of an image, so that if images are found being used elsewhere, they can be tracked back to the original purchaser. This is known as '**fingerprinting'**, because the original purchaser can be uniquely identified. Such fingerprints are generated at the time of purchase of the image, and embedded in the image before it is downloaded by the purchaser.

Guidance

The **industry perspective** on digital watermarking can be found at http://www.digitalwatermarkingalliance.org/

TASI has a digital watermarking briefing page at http://www.ukoln.ac.uk/qa-focus/documents/briefings/briefing-76/html/ and further advice at http://www.tasi.ac.uk/advice/using/uissues.html#ui6

The **AHDS** touches on digital watermarking at http://vads.ahds.ac.uk/guides/creating_guide/sect63.html

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5.2.7 Digital Rights Management (DRM)

Digital Rights Management or DRM is the management of copyright and other rights in the digital domain. More specifically, 'DRM' is used to describe the models and processes to be used to *state and enforce intellectual property rights* for digital material, both on and off the internet.

Digital rights can be expressed using rights expression languages (see *section 5.3*), which offer an unambiguous way to link items, users, rights and conditions of use. The rights thus expressed are then implemented by DRM systems using a combination of software, hardware, encryption and legal components.

Guidance

 http://www.dlib.org/dlib/june01/iannella/06iannella.html describes DRM for digital libraries in an article in D-Lib magazine.

The most widely used DRM is **Apple's FairPlay** system, as implemented in iTunes, iPods, etc. Wikipedia has a good page on this, at http://en.wikipedia.org/wiki/FairPlay

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> **Microsoft Windows Vista** also includes a DRM system called Protected Media Path. See http://en.wikipedia.org/wiki/Protected_Media_Path for an overview.

DRM is protected under the 1996 WIPO Copyright Treaty, which makes it an offence to circumvent DRM technologies. This was transposed into EU law in the Copyright Directive (see *section 2.2*). This legislation makes it an offence to attempt to circumvent DRM technologies.

5.2.8 DRM Limitations

Many experts consider DRM to be a net negative, with more problems than benefits. There is a strong perception that the legislation which supports DRM reflects the priorities of the media and entertainment industries in an unbalanced manner, with negative impact on society as a whole. Analysis of DRM systems by cryptography and security experts indicates that DRM is inherently insecure and that no DRM system can expect to remain unbroken for extended periods of time.   Overall DRM systems are seen to be poor at preventing determined copying, but good at restricting the valid activities of consumers ('Fair Dealing'). The net result is that serious pirates, who derive significant revenue from overcoming DRM, will continue to do so, while end-user consumers will be inconvenienced, without there being any great benefit to the content owners. The enforcement provisions do not differentiate between commercial piracy and consumer archiving/personal use copying.

DRM appears to be losing ground
- Apple, the dominant player in the online music market, has begun to offer music without DRM, as an alternative to DRM-protected content.
- No major music company now includes DRM on its CDs
- Region-specific DVDs have been circumvented by the fact that the large majority of DVD players now sold are 'multi-region'.
- DRM systems are popular targets for security attacks; most major DRM solutions have been cracked in the past, and it is reasonable to expect them to be cracked again in the future.

DRM has some important negatives
- DRM prevents the use of assistive technologies to enable visually impaired persons to access content; screen-readers are seen as a form of duplication.
- DRM undermines interoperability; again the most obvious example is Apple, whose iTunes format works only on Apple iPod hardware.
- DRM may impede the legitimate copying of content for digital preservation purposes, or as permitted under Fair Dealing.

> **Guidance**

The **Electronic Frontier Foundation** looks at some limitations of DRM at http://www.eff.org/issues/drm

5.2.9 Business Models

DRM enables business models which rely on restricting the consumption of digital material. DRM-managed content is typically encrypted in some manner; to utilise the encrypted content, the user must have access to hardware or software which can extract the content and play it. The hardware or software will also then enforce the digital rights embedded in the content. For example, Apple's iTunes software must be installed if a user wishes to play some content bought from the iTunes store. The software then enforces the digital rights management policies of Apple and its content providers.

DRM can be used to implement a range of business models:

- DRM rules can include time periods, so that content can be accessed only for a limited time, after which further payment is required. Thus, DRM enables subscription-based business models.

- DRM rules can restrict access to content on a limited number of other devices (e.g. one PC and two portable music players). This enables business models where users have sufficient freedom for legitimate copying and use of content they have acquired, without offering free-for-all reproduction.

- DRM rules can enforce geographical limits, by, for example, restricting where a DVD can be played by restricting DVD players to play DVDs only from a particular region.

- DRM can also implement pay-per-view business models, where only a single consumption of the item is enabled.

Guidance

An ongoing DRM business observatory is provided by the commercial site http://www.drmwatch.com/

Extensive links and discussion are available on **Wikipedia** at http://en.wikipedia.org/wiki/Digital_rights_management

5.2.10   The DRM 'Triple Lock'

The use of DRM technologies gives content owners (and their publishers, who include global media companies such as Sony, Disney, etc.) a 'triple lock' over content. The three elements of the 'lock are'

- The use of DRM technology
- The protection of DRM under the Copyright Directive and WIPO Treaty
- Copyright law

Consumer representatives, digital rights activists and analysts see this 'triple lock' as bad news for society as a whole, for the consumer and ultimately for the content industry itself. The triple lock places constraints on digital libraries and online culture projects by preventing the duplication of content for research and preservation purposes, as well as by undermining the 'Fair Dealing' exceptions which are fundamental to the relationship between cultural bodies and content owners.

5.2.11   DRM and Digital Preservation

The technical constraints imposed by DRM can cause problems for digital preservation. Digital preservation relies on migrating content from one medium to another, in order to ensure that the content remains accessible. This is discussed above, in *section 3.2*.

While Fair Dealing arguments may be made for the reproduction of digital materials for preservation purposes, and while copyright law may allow reproduction by libraries and archives, these legal exceptions are often ignored by DRM technology. DRM-protected content is thus vulnerable to being lost due to the obsolescence of the media and the technology used to store it and to access it.

Guidance

A **good presentation** on the impact of DRM on Digital Preservation is at www.dcc.ac.uk/docs/publications/DPC_CILIP45NoNotes.ppt

A rather **anti-DRM,** but well argued paper on the impact of DRM from Electronic Frontier Foundation is at http://www.eff.org/wp/digital-rights-management-failure-developed-world-danger-developing-world

The UK's Institute for Public Policy Research (**IPPR**) has a detailed report (*Preservation, Access and Intellectual Property Rights Challenges for Libraries in the Digital Environment*) on DRM, Digital Preservation and related topics at http://www.ippr.org.uk/members/download.asp?f=%2Fecomm%2Ffiles%2Fpreservation%5Faccess%5Fip%2Epdf

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5.3 Documentary and Legal Protection measures

5.3.1 Statement of Intellectual Property

The first step in the protection of the intellectual property on an online culture project website is to state that the material on the site is protected by copyright and related laws. The key issue here is to state the rights which are in force, and to link those statements to the digital material to which they apply.

Intellectual property rights information is a form of data about data, or **metadata**. Metadata can be created and associated with content in a number of different ways.

- On a **project level,** metadata can be presented in the same environment as the material being protected, for example as a copyright statement covering a website, or terms and conditions for users.
- On a **web-page level**, metadata can be included in the meta tags (see *section 5.1.2.6*) for the web pages, or visible on each screen (e.g. in a footer).
- On a **per-item level**, metadata can be linked to the item by embedding it in the digital file itself.

These are explored here

5.3.2 Copyright Metadata

One possible approach is to define a set of metadata terms which focus on copyright, and which would be associated with digital materials, in order to make the user of the digital materials aware of the copyright status of the digital item. This copyright metadata would typically be included in the meta tags for each web page.

The copyright metadata could include fields such as
- Copyright status
- Publication status
- Dates of creation of copyright, renewal of copyright
- Copyright Statement
- Country of publication
- Creator
- Copyright Holder
- Publisher
- Administrative data
   - Source of information
   - Contact information

Such copyright metadata is still being suggested, no standardised approach exists at this time.

> **Guidance**
>
> A suggested **copyright metadata schema** is provided at http://www.firstmonday.org/issues/issue10_10/coyle/index.html
>
> The California Digital Library outlines a copyright metadata schema at http://www.cdlib.org/inside/projects/rights/schema/faq.html

5.3.3 Copyright Metadata for Images

While the use of copyright metadata can easily be implemented for web pages, using meta tags, other technologies are involved in the addition of such metadata to digital items such as photos, scanned images, etc. The EXIF metadata stored by many devices when an image is created includes fields for copyright information. These can be used to add specific copyright information to the image. EXIF is most commonly used in JPEG and TIFF images; EXIF is not supported in PNG or GIF images. The EXIF data can be edited to add copyright information (of course, it can also be edited to remove this information maliciously!)

> **Guidance**
>
> The **EXIF** standards for image metadata are available at www.exif.org
>
> A process for **embedding copyright information** in image metadata is presented at http://www.wap.org/journal/protectingimages/default.html (requires an Apple computer)
>
> **Wikipedia's** coverage of EXIF is at http://en.wikipedia.org/wiki/Exif

5.3.4 Rights Management Languages

Several initiatives have been carried out (and/or are underway) which aim to express rights, rights management and intellectual property constraints in an unambiguous, machine-readable manner. The overall aim is to enable computer applications to establish rights statuses for digital objects, and to use this information to enforce the rights constraints which are imposed by rights holders. Rights are expressed in *rights expression languages (RELs)*.

The rights management statements expressed in these languages could be provided with the digital material being protected (e.g. within meta tags or EXIF fields), or could be made available on an internet server, indexed by the digital object identifier (*see the next paragraph)* for the item being protected.

The area of rights management using computers (Digital Rights Management means the Digital Management of Rights, not the Management of Digital Rights) is of particular interest to large content industries where the end product is digital in nature (music and film are excellent examples)

There are two main rights expression languages at present – XrML, on which the MPEG21 Rights Expression Language is based, and ODRL.

- XrML (Extensible Rights Markup Language) is a proprietary technology of ContentGuard, Inc. ContentGuard is a spin-off of Xerox Corporation; the early work on XrML was carried out under the name DPRL (Digital Property Rights Language). The MPEG21 REL (see *section 5.3.6* below) is based on XrML.

- Open Digital Rights Language (ODRL) is a grammar for describing digital rights, promoted by the Open Mobile Alliance, a group of major actors in the mobile technologies sector.

While the two languages are independently developed, their common application environment and XML expression means that it possible to convert rights statements in one language into the other.

Guidance

The **xrml** rights management language is described at www.xrml.org

The **odrl** grammar is described at www.odrl.net

Rights expression languages are described succinctly in the paper at http://dmag.upf.edu/papers/jpjpjdodrl2004.pdf

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5.3.5 Standard Identifiers – Digital Object Identifier (DOI)

The digital object identifier (DOI) is a unique value which identifies a digital object. Unlike a URI, which states the address of an object (where it is to be found on the internet), the DOI is linked to the object, regardless of where it is stored online. A DOI can be used to find the location (URI) of the object, using a 'resolution' service or 'Handle System'.

The key value of a DOI is that it persists, remaining linked to the digital object regardless of where it is stored. This means that it is possible to state intellectual property and rights management assertions about a digital object, and to link them permanently, via the DOI, to the work to which they apply. Indeed, much of the focus in the DOI area has been on its applications in the Intellectual Property context.

5.3.6 MPEG21 Rights Data Dictionary

The MPEG21 Rights Data Dictionary (RDD) is an initiative of the Motion Pictures Expert Group within the ISO standards body (Working Group 11 of the ISO/IEC Joint Technical Committee, Sub-committee 29). It consists of a dictionary of standard rights management terms, which can be used to describe the rights which apply to an object. Other ways of describing these rights can be mapped in a consistent manner to the MPEG21 RDD; this means that the MPEG dictionary can be used as a 'lingua franca' or common model for describing rights, across domains and across linguistic boundaries.

The 'words' in the RDD are combined using the MPEG21 Rights Expression Language (REL). This provides a standard model to represent the granting of *rights* to a *principal* (the user) over a *resource*, subject to *conditions*.

Both the RDD and the REL are designed to be used programmatically, rather than by human users.

The area of digital rights metadata and digital rights expression languages is one which is in active development. Projects **may** wish to monitor this topic, and to periodically ensure that they are reflecting best practice.

5.4 Digital Preservation and Legal Deposit

Digital preservation is an issue which must be addressed by any digitisation project, if its efforts are not to become obsolete in the short to medium term. This is not an issue which is specific to Intellectual Property; instead it applies to every online culture project.

Digital preservation relies on the migration of digital content from older media to more modern media, and/or on the emulation of older systems by newer ones, as the old ones become obsolete. These processes are known as migration and emulation, respectively. Intellectual Property law and Digital Rights Management

can impact on digital preservation, by restricting the freedom of cultural heritage institutions to copy material for preservation purposes. The Copyright Directive does make allowances for this purpose, but the exception is rather narrow.

Another aspect of digital preservation is the extension of legal deposit to the digital domain. Where publishers have had to distribute copies of their output to deposit libraries in the past, this has been in the form of books and other (primarily) paper materials. The inclusion of digital publications in the scope of legal deposit is treated differently from country to country. In several countries, automated harvesting of the national internet domains is allowed under the legislation.

Guidance

A good guide to legal deposit in the digital environment is available from the National Library of **Australia's** Preserving Access to Digital Information initiative at http://www.nla.gov.au/padi/topics/67.html

The **Danish** approach, which includes harvesting of the Danish part of the internet, is explained by the Danish Royal Library at http://liber-maps.kb.nl/articles/dupont11.htm

IFLA has a publication covering 15 National Libraries at http://www.ifla.org/V/pr/saur119.htm

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6 Publication Guidelines

Once the website of an online culture project is available online, the project team must continue to manage the rights of the project, and of the rights holders who have authorised the use of their items. There are two key elements to this process:

1. Protecting intellectual property by **legal and documentary** means
2. Protecting intellectual property by **technological** means.

Each of these is explored here.

6.1 Summary

Before placing a digitised work online, a cultural heritage institution **should** carry out at least the following steps

1. Agree with the rights holder the manner in which the item will be published, and how the rights will be protected. This will typically be a combination of legal/documentary steps and of technical measures. This applies even where the cultural heritage institution is the rights holder.

2. Establish a policy and process which addresses technology issues such as deep linking, framing, etc.

3. Apply legal and documentary measures as appropriate. These may include copyright statements, disclaimers, etc.

4. Apply technology measures as appropriate and agreed with the rights holders. These may include watermarking, low-resolution images, digital rights management, etc.

5. Test a sample of digitised items with a user focus group, to ensure that the end result retains user value. A website which protects its content but is unusable has little value.

6. Note that metadata and website/database design are automatically covered by copyright, and that this copyright is vested in the creator of the metadata and/or database.

Pragmatically, cultural heritage institutions may decide never to publish top-quality, unprotected material online without any terms or conditions of use. Low-resolution images, watermarks, copyright statements and site terms and conditions may be used by the majority of cultural heritage institutions.

6.2 Protecting IP by Legal and Documentary Means

Having stated the intellectual property rights which apply to the online culture project, the project may now create a collection of documents that provide guidance and information to users and partners which inform them in more detail of the intellectual property arrangements, and which protect the project from unauthorised exploitation and from rights holders who feel that their rights have been infringed.

The advantage of creating and publishing an intellectual property document set of this nature is that such documents explicitly establish a legal framework for the project, particularly in terms of its relationships with end users, with third parties and with copyright holders in the material being published. Where disputes or other issues arise, the project can point to these documents as the basis on which decisions were taken.

These documents reflect several of the requirements and issues explored earlier in this topic. They include

- A project-wide copyright notice
- A disclaimer
- A links policy
- A privacy policy
- Terms and conditions of use
- Credits

6.2.1 Copyright Notice

Any online culture project **should** have a clear copyright notice which is prominently displayed (or at least prominently linked to) on the project homepage.

The copyright notice **should** as a minimum assert
- The database right of the project itself
- The copyright, related rights and moral rights of the cultural heritage institution in all the text and other elements of the site which have been created by the institution
- The copyright, related rights and moral rights of the rights holders of any item displayed on the site.

These assertions **should** make clear, in simple language, what is allowed and what is not allowed to be done with the content of the site.

It **should** also state that all reasonable efforts have been made to identify rights holders and secure authorisation for the inclusion of items on the site, and it should provide a contact person for rights holders who believe their rights may have been compromised.

6.2.2 Disclaimer

A disclaimer aims to protect the project from future disputes or litigation due to problems with the material which it publishes online. A disclaimer **may** take some or all of the following into account:

- While an online culture project will invest as much effort as is feasible in clearing rights for the material which it publishes, there is a real possibility that the project will wish (and decide) to publish material for which it does not have authorisation. Typically, these will be orphan works, where the project has been unable to contact the rights holder, or where the rights holder has not replied to efforts made to contact him. A disclaimer **should** state that all reasonable efforts have been made, and **should** also state that rights holders who believe their rights have been infringed may contact the project.

- There is every possibility that some element of the material on the site will be inaccurate or ambiguous. In order to avoid conflicts in the future, this possibility **should** be stated in the disclaimer.

- Where the content on the project site is collected from multiple sources, it is possible that some content may be contentious or may not reflect the opinion of the project. The disclaimer **should** dissociate the project as a whole from the views of third parties, including those who contribute content to the site.

- It **should** be clear that links to other websites does not imply any endorsement of the sites or their content. Even where the online culture project provides information about a third party website, this should not be interpreted as an association or endorsement. Such a limitation **should** appear on the disclaimer.

- The naming or provision of contacts details for a person or company should similarly not be interpreted as an endorsement. Again, this **should** be covered by the disclaimer.

- The disclaimer **should** explicitly state that no warranty of any sort is provided with the content and that that project will in no way be

responsible or liable for any expense or other consequence of the use of any material on the site. This **should** include non-liability for viruses and other malicious computer programs.

Guidance

An example disclaimer is available at the Van Gogh museum http://www3.vangoghmuseum.nl/vgm/index.jsp?page=13346&lang=en

The **Library of Congress** (US) has a detailed set of legal statements, at http://www.loc.gov/homepage/legal.html

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6.2.3 Links Policy

An online culture project **may** publish a links policy. This policy **should** state the following
That links from the online culture project website to third party websites do not indicate any endorsement of the third party website, its content or creators.

- That linking of content on the online culture project website by third parties ('deep linking', see *section 5.1.2.1*) is/is not permitted. If deep linking is permitted under certain conditions, a contact person **should** be provided.
- That linking to the home page of the project is permitted.

Guidance

An **example** of a clear, short links policy is available at http://www.mla.gov.uk/website/links/our_links_policy

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6.2.4 Terms and Conditions

An online culture project **may** publish terms and conditions of use for its website and the material on it. The terms and conditions **should** be prominently linked from the project homepage and **may** be linked from every page.

Terms and conditions of use are the primary legal agreement between an online culture project website and its end users. End users may have to actively indicate that they have read, and agreed with, the terms and conditions of use; this provides the project with a legal basis for enforcing its copyright and other policies. Alternatively, the terms and conditions may state that *'by accessing this website, you agree with the terms and conditions – if you not agree, please leave this website now'*.

Terms and conditions **may** reflect the concern of content owners – for example, if material is available to the project on the basis that it will be used only for private study, this can be included as one of the terms and conditions of use.

> **Guidance**
>
> A **good example** is provided by the Guggenheim Museum (http://www.guggenheim.org/terms_conditions.html).

6.2.5 Credits

Projects **may** wish to acknowledge the individuals and organisations who are involved in an online project. This has the practical advantage that other organisations can discover who to contact, if they require advice with their own projects.

Care **should** be taken not to compromise the personal privacy of any individuals, for example by publishing email addresses online.

Where suppliers such as web design companies, graphical artists, etc. are listed, the project **should** take care that there is no unintentional implied sharing of copyright or other rights in the website.

6.2.6 Ownership

In the event that the digitisation project includes material held by multiple cultural heritage institutions, it is important that the ownership of each item is clearly apparent to the end user, so that the contributing institution does not perceive any loss of ownership. Projects **should** ensure that ownership is clear at all times.

6.3 Protecting IP by Technological Means

The choice and application of technology to protect the Intellectual Property assets of a project will vary from one project to another. However, the use of watermarks (especially copyright statements) and lower-resolution images are very common.

6.3.1 Image Resolution Guidelines

A project **may** offer its images in a low-resolution format. Such a format may be suitable for on-screen viewing, but not for commercial-quality printing and/or re-use. A common resolution for on-screen viewing is 72 pixels per inch. Some projects may wish to make higher-resolution images available in a protected area or on a commercial basis.

Closer examination of the images may be supported using a zooming and panning tool such as those at www.zoomify.com or www.brainmaps.org.

Guidance

Access control based on .htaccess may be suitable for may projects which use the Apache web server. Guidance on using .**htaccess** to prevent access to particular files in particular directories of your site is available here: http://httpd.apache.org/docs/1.3/howto/htaccess.html

A useful tool for the **display and manipulation of high-resolution images** is available at www.zoomify.com

Another **zooming tool** is provided by the brainmaps project at www.brainmaps.org

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6.3.2 Watermarking Guidelines

Low-resolution images and zoomable images are commonly used in online culture projects. Where low-resolution images are used, the project may deliver a higher level of quality using a zooming technology

The use of **watermarks** is particularly suitable for projects which offer low-resolution or watermarked images freely, and which sell higher-resolution images under license to third parties.

Projects **may** utilise visible watermarks in order to discourage the unauthorised re-use of images placed online. However, projects **should** be aware that in order to be effective, watermarks may need to be intrusive and to reduce the value of the image to the end user. Projects **should** use visible watermarks *only* where essential to protect the project and its contributing rights holders.

Projects **may** use invisible watermarks to fingerprint digital items and to prove ownership. However, projects **should** be aware of the ongoing costs involved in monitoring and tracking image use online and **should** make themselves aware of any limitations of the tracking service.

Guidance

The **industry perspective** on digital watermarking can be found at http://www.digitalwatermarkingalliance.org/

TASI has a digital watermarking briefing page at http://www.ukoln.ac.uk/qa-focus/documents/briefings/briefing-76/html/ and further advice at http://www.tasi.ac.uk/advice/using/uissues.html#ui6

The **AHDS** touches on digital watermarking at http://vads.ahds.ac.uk/guides/creating_guide/sect63.html

6.3.3 DRM Guidelines

DRM systems have a significant impact on the use of digital material. DRM should be used only where the benefits clearly outweigh the disadvantages. DRM **should** be applied to as few items as possible - DRM **should** not be the default option. Projects **should** be aware that the content industry is in many cases moving away from DRM, having concluded that the negative aspects of the use of DRM outweigh the benefits.

DRM further increases the vulnerability of digital materials to the obsolescence of the technology used to access it. For DRM-managed items, no only must the media and the access software and hardware be available, but a working DRM system must also be maintained, if content is not to be locked away without recourse.

Projects must be aware of the details of any DRM model which applies to content which they are publishing. Cultural heritage institutions should publish DRM-protected material as part of online culture project websites only with the greatest care.

Guidance

A **good presentation** on the impact of DRM on Digital Preservation is at www.dcc.ac.uk/docs/publications/DPC_CILIP45NoNotes.ppt

A rather **anti-DRM,** but well argued paper on the impact of DRM from Electronic Frontier Foundation is at http://www.eff.org/wp/digital-rights-management-failure-developed-world-danger-developing-world

The UK's Institute for Public Policy Research (**IPPR**) has a detailed report (*Preservation, Access and Intellectual Property Rights Challenges for Libraries in the Digital Environment*) on DRM, Digital Preservation and related topics at http://www.ippr.org.uk/members/download.asp?f=%2Fecomm%2Ffiles%2Fpreservation%5Faccess%5Fip%2Epdf

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7 Frequently Asked Questions (FAQs)

This section poses and answers some of the most common questions about copyright and intellectual property, in a brief and user-friendly manner. The questions reflect the material above, and also some topics touched upon by the AHDS (ahds.ac.uk/copyrightfaq.htm). Another good source is TASI (tasi.ac.uk/advice/managing/copyright_faq.html).

7.1.1 What is covered by copyright

Almost anything created by the exercise of the imagination is protected by copyright. The work must be in a **tangible** form (e.g. a book, a computer program, an image) – copyright does not protect the idea, but the manifestation of the idea.

The work must be **original** – not a copy of some existing work, but new in some way.

7.1.2 How do I know if an item is in copyright?

Unfortunately, there is no short, comprehensive answer to this question; it depends on national legislation as well as the EU copyright directive or other law in your country.

However, in the majority of cases, an item is out of copyright if the last main creator (author, film producer, composer) has been dead for at least seventy years. So all the music of Beethoven and Bach is out of copyright, while the songs of John Lennon are still copyrighted.

But note that even with Beethoven and Bach, the actual performance will be protected by intellectual property law, so that the *related rights* of the conductor, the musicians and the record company or broadcaster are protected. However, you can play the music yourself, and sell recordings of that performance, or collect payment for listening to it.

7.1.3 Can I digitise a photograph of a painting or artwork?

Maybe, if the subject of the photograph is out of copyright. The photo will have copyright of its own, but if you took the picture, then you own the copyright. Most museums and galleries only allow photography under strict conditions, and you may be violating those conditions.

If the subject of the photo (e.g. a painting) is in copyright (e.g. the painter is alive, or has been dead for less than seventy years), then you may not photograph it without the permission of the rights holder.

Additional guidance on this and related questions can be found in the AHDS FAQ at http://ahds.ac.uk/copyrightfaq.htm

7.1.4 Can I create and disseminate a podcast of a dance or movie?

No. The movie itself will be copyright. If you created the movie yourself, the performers will have related rights (see section 3.1.5) which must be dealt with, before you can copy and disseminate the material.

7.1.5 What is Fair Dealing?

Fair Dealing is the set of circumstances under which individuals and (to some degree) libraries and archives can ignore certain elements of copyright. The precise circumstances where Fair Dealing applies will vary from country to country, and from circumstance to circumstance. However, a general principle is that Fair Dealing should not impact on the legitimate commercial interests of the copyright holder.

In the US, Fair Dealing (or 'Fair Use') is assessed using four criteria: **Purpose** of the use, **Nature** of the work, **Amount** of the work infringed upon, as a proportion of the work as a whole, and impact on the commercial **Market** for the work.

7.1.6 Is Copyright Law the same across Europe?

No. Each country has its own legislation. However, many aspects of Intellectual Property law have been harmonised under the Copyright Directive (see section 2.2), and the underlying Berne Convention has wide international application. So most aspects of copyright are treated in a common manner across the EU (and to a lesser extent, beyond).

7.1.7 How do I identify a copyright holder?

This can be difficult! If the item does not have copyright information embedded in it e.g. a book, a captioned photo), then you must carry out research to discover who is the copyright holder. Collective licensing organisations (see *section 3.6.1*) may be able to help. There are organisations and databases of rights holders in several countries. See, for example, the Copyright Licensing Association in the UK (www.cla.co.uk). The University of Texas WATCH initiative is also useful.
If, after a reasonable amount of research (documented in your diligence file), you cannot identify the rights holder, you may be able to treat the item as an orphan work (see *section 3.1.8*)

7.1.8 If I find an image on the internet, can I use it?

No. Almost everything on the internet is protected by copyright. The fact that something is freely accessible does not mean it is in the public domain.

7.1.9 Where can copyright-free images be found

There are online resources with images which are in the public domain or which can be re-used under license. Many of the larger ones are in the US. See Wikipedia's page (http://en.wikipedia.org/wiki/Wikipedia:Public_domain_image_resources) for details.

7.1.10 If I don't charge, is it a violation?

If you publish an item online, without copyright clearance, you violate copyright. Whether or not you are paid for access is not the issue.

7.1.11 How can I copyright my work?

Your work is automatically protected by copyright, once it has taken a tangible form. Your ideas are not copyright, but documents, images, movies, etc. are automatically covered.

7.1.12 Is my website protected by copyright?

Yes. If your website is not a simple copy of another website, or derived from some other work, then it is (a) original and (b) tangible, and so protected by copyright. In addition, it may be protected under the database right (see *section 3.4*). If your website is a copy of another website, you are probably in breach of copyright yourself.

7.1.13 Is my database protected by copyright?

A database is protected under the copyright act, even if it contains material that is all in the public domain or not subject to copyright. This means that an entire database cannot be copied.

7.1.14 Are my emails protected by copyright

Yes. Email copyright belongs to the author of the email (or his employer), not to the recipient.

7.1.15 Can I copyright a name?

No. But names can be protected using trademarks (see Appendix A).

7.1.16 If an item is out of copyright, can I digitise it and put it on the web?

Yes. Once the item is out of copyright, you can duplicate and distribute it any way you wish.

But note that you must ensure that there are no related rights. A book of Shakespeare, printed in 2005, will be protected by the rights of the typographer who printed the book, any illustrator who worked on it, etc. even though the text itself is not protected.

You can, however, type in the text of a Shakespeare play and place it on the internet.

7.1.17 If copyright belongs to a company which no longer exists, does the copyright exist

Yes. If the company was bought by another company, then the new company owns the copyright, as an asset it has acquired. If the company has gone bankrupt, then while copyright exists, there is no rights holder. In this situation, it is *probably* safe to ignore copyright.

7.1.18 Does a company own the copyright in the work of its employees?

Yes. Unless contractually agreed otherwise, a company owns the copyright to work carried out in the course of employment. Copyright to work carried out in free time remains with the employee.

7.1.19 Does a University own the Copyright to its Students' Work?

No. Unlike a company-employee relationship, the copyright in a student's work remains his own. If a university wishes to publish examples of student work on its website, it must first receive authorisation from the student.

7.1.20 What if a work has multiple copyright holders

Where there is more than one rights holder, the permission of **all** holders must be secured.

7.1.21 If I modify a copyright work can I sell the results?

No. Derivative works, which are derived from existing copyright work, cannot be duplicated, sold or distributed without the authorisation of the rights holder. However, you are now a joint copyright holder – the original creator has copyright to the original work, and you have copyright to your changes.

7.1.22 May I copy a digital item, in order to store it in a personal archive?

In general, yes. Private copying falls under the notion of 'Fair Dealing'.

7.1.23 May I copy a CD onto my iPod?

In general, yes. Private copying onto another device which belongs to you falls under the notion of Fair Dealing. But you may not distribute copies of the work, either by placing the CD on the internet or by making copies of the CD and giving them to friends.

7.1.24 Is viewing a file on the internet not a form of copying?

Technically, when a website is viewed, the browser makes a local copy of the material. This is a short-term, temporary copy, solely for the purpose of viewing

the material in an authorised manner. This is not a breach of copyright; the US DMCA covers this topic explicitly.

7.1.25 Does deep linking violate copyright?

No. Deep linking (see section 5.1.2.1), even to a copyright item, does not involve copying and does not violate copyright. However, content should not be copied and passed off as your own.

7.1.26 Can I copy text from another website?

Only if you have copyright clearance. Even if you acknowledge the source of the material, you are still violating copyright, unless you have the permission of the rights holder.

7.1.27 I am a library. Can I lend copies of a copyright work?

In general, yes. This assumes that the items you are lending are published copies of a book, a CD or another item. This is the basis of a lending library.

7.1.28 I am a library. Can I make my own copies of a copyright work, and lend them to the public?

In general, no. The rights of libraries and archives vary from country to country and from circumstance to circumstance, but it is safer to assume that you cannot do this unless you have clear legal advice to the contrary.

7.1.29 I am a library. Can I make copies of a copyright work, for archive purposes?

The situation varies from country to country. In general, yes, you can do this under Fair Dealing.

7.1.30 I am a library. Can I digitise a copyright work?

This depends on *why* you are digitising it. If you are doing so in order to preserve it, you may be able to justify this as Fair Dealing. If you are digitising it in order to place it on the web as part of an online culture project, you usually cannot do this without the authorisation of the rights holder.

7.1.31 I have a collection of old letters. Can I digitise them and place them online?

This depends on the age of the letters. If the letters are out of copyright (writer dead at least seventy years), then yes. If the letters are still subject to copyright, then you need to check if the copyright is held by you, or by the writer. If the writer or donor assigned the copyright to you, then you can go ahead and publish the letters. If not, authorisation must be received first.

7.1.32 I have created a digital artwork which I would like others to be able to use, but I want everyone to know that I created it. How can I share my work and protect my interests?

This is a common problem for software programmers and graphic artists. A creative commons licence (see *section 3.6.2*) may be right for you.

7.1.33 Can I digitise a work in the public domain, from a modern printed edition?

No. The typesetting and layout of the modern edition will be protected by copyright, even though the text itself is not. You can, however, digitise an older (out of copyright) edition, or type in the text yourself.

7.1.34 How do I stop others copying my website?

Enforcing copyright will depend on technical and legal measures. There are various technology measures you can deploy, such as disabling the right-click download of images or the delivery of your site using Flash. None of these is infallible. You can also protect your content using copyright law, by providing a prominent terms and conditions of use for your site, and making your copyright explicit for each item on the website. These measures will strengthen your case if you need to take legal action against someone who has copied your work without authorisation.

However, often the best way to protect your work is avoid placing it online, and instead showing only low-resolution and/or watermarked pictures on your site.

7.1.35 What legal statements should my online culture project website have?

An online culture project website should have at least the following:
- A copyright statement, where you make it clear that everything is copyright protected unless stated otherwise
- A disclaimer, where you state that you accept no liability for the use of website content or for the content itself
- A links policy, where you make it clear that you do not endorse the sites to which your website links. You may also state your policy regarding deep linking.
- Terms and conditions, where you state that the user, by accessing the website, has agreed to all of the above.

These may be collected into a single document, or presented as a series of separate documents.

7.1.36 Can I protect my website from being 'framed'?

Yes. You can prevent your website from being shown within a frame on another site. See *section 5.1.2.2* for details.

7.1.37   Can I prevent deep linking to pages within my website?

Yes, but not very securely. If you prefer all visitors to your website to access it via the front page (e.g. so you can show the terms and conditions of use), you can use HTTP referrer information to protect access to internal pages. This is not secure against determined attack, but offers some level of protection. See *section 5.1.2.1* for details.

7.1.38   Can I prevent the use of images within my website, on another website?

Yes, but not very securely. This process is known as inlining. You can use HTTP referrer information to protect access to internal pages, as for deep linking. This is not secure against determined attack, but offers some level of protection. See *section 5.1.2.1* for details.

7.1.39   Can I copy some material from another website, so long as I attribute it?

No. Websites are subject to copyright. If you wish to cut and paste some material from another website into yours, you must obtain authorisation from the copyright holder.

7.1.40   What is Public Domain?

Works in the public domain have no intellectual property rights asserted over them. Anything can be done with them, by anyone, for any purpose – they can be copied, modified, distributed, used by a third party for commercial purposes, etc. An excellent example of public domain content is the images on the NASA website in the US.

7.1.41   Can an item leave the public domain?

No. Once an item is in the public domain, it cannot be re-copyrighted. However, changes in copyright law, extending the term of copyright, have led to items which were previously copyright-expired once again falling under copyright.

7.1.42   Is a work without a copyright notice in the public domain?

No. A work is by default subject to copyright. A work only enters the public domain after all copyright has expired, or after it has been explicitly placed there by its rights holder.

7.1.43   Can material which is out of copyright in one country be downloaded into another country, where the material is under copyright?

No. This is equivalent to importing the material into the country where the material is protected. This infringes the copyright.

7.1.44 When should I use Creative Commons?

Creative commons licences are useful in the situation where you wish to maintain some rights over your work, but not the full protection of copyright. For example, you might be happy to have people reproduce and distribute your work, and to adapt it in any way they wish, so long as they always attribute the work to you. This is equivalent to the Creative Commons Attribution 2.0 Generic license. A full spectrum of licences is available from creative commons (www.creativecommons.org).

8 Appendix A: Background: Industrial Intellectual Property

The discussion above focuses on intellectual property rights which are concerned with the tangible manifestation of an idea. Copyright protects, for example, a painting of a landscape, but not the idea that a landscape may be painted.

A second important category of intellectual property is concerned with the protection of an *idea*, rather than of any single manifestation of that idea. Usually, the idea will be for a new invention of some sort –the most common form of industrial intellectual property is the patent. Others include industrial designs, trademarks, commercial designations and layouts for integrated circuit boards.

8.1 Inventions

Inventions are new solutions to problems. The fact that the solution is *new* is central to its being an invention. A new discovery, such as new type of animal or plant, is not an invention. But the application of a plant product to solve a particular problem is an invention. The invention is the *idea* behind the solution, not a 'work'

Guidance

The **IPR Helpdesk project** addresses inventions at http://www.ipr-helpdesk.org/documentos/docsPublicacion/pdf_xml/8_invencionesTecnicasBP%5B0000001055_00%5D.pdf

The **World Intellectual Property Organisation (WIPO)** addresses inventions (and much more) in their publication "Understanding Industrial Property" at http://www.wipo.int/freepublications/en/intproperty/895/wipo_pub_895.pdf

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8.2 Patents

Inventions are typically protected by patents. These are rights, granted at national or international level, which allow the inventor to control the use of his invention for a fixed period (typically twenty years). Thus, if a drugs company develops a new treatment, it can apply for a patent, and no other drugs company can make and market the new drug for twenty years (unless, of course, licensed to do so by the inventor).

In order to apply for a patent to protect an invention, the invention must meet certain *conditions* of patentability
- The invention must have some commercial or industrial potential
- The invention must be new – the idea must not have been published prior to the patent being granted.
- The invention must not be obvious

- The invention must be within an area of patentable subject matter. The types of things that can be patented vary from country to country, but a good example of something that cannot be patented in many countries is anything which would undermine the public good if it were to be patented.

A patent application is typically quite expensive, as existing patents must be searched to ensure that an invention meets the conditions outlined above. Such searches are usually carried out by expert patent attorneys. Since an application must be completed in each country where a patent is applied for, protecting a new idea can be very expensive.

A patent applies only in the countries where it has been granted. However, the patent typically prevents third parties from importing products based on the patented invention from countries where no patent protection has been secured.

Like copyright, patent rights can be bought, sold and inherited. A patent can be over-ridden in exceptional circumstances, by a state authority granting a compulsory license.

Guidance

The **World Intellectual Property Organisation (WIPO)** addresses patents (and much more) in their publication "Understanding Industrial Property" at http://www.wipo.int/freepublications/en/intproperty/895/wipo_pub_895.pdf

The **European Patent Office** provides background information, as well as patent search, at http://www.epo.org/

Google has a patent search facility at http://www.google.com/patents

The UK government's **Intellectual Property Office** addresses patents at http://www.ipo.gov.uk/abroad/abroad-patenteurope.htm

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8.3 Utility Models

A utility model is a 'simplified patent', which protects less complex ideas than a patent does, and which as a shorter life span (seven to ten years). In some countries (e.g. Ireland), the utility model is in fact termed a 'short term patent'.

The conditions of patentability are usually less stringent for utility models than for full patents; in particular, the invention need not be non-obvious or new to the same degree. Utility models often apply to incremental developments of existing inventions.

Applying for a utility model is typically faster and cheaper than applying for a full patent.

> **Guidance**
>
> The **National Board of Patents and Registration of Finland** addresses utility models here http://www.prh.fi/en/hyodyllisyysmallit.html
>
> The **World Intellectual Property Organisation (WIPO)** describes utility models at http://www.wipo.int/sme/en/ip_business/utility_models/utility_models.htm
>
> Ongoing **EU work** on utility models is presented at http://ec.europa.eu/internal_market/indprop/model/index_en.htm

8.4 Industrial Designs

An industrial design is the aesthetic form of a practical or useful invention. Such an invention will serve a purpose other than simply art. Thus, for example, a chandelier may be subject to an industrial design – it provides light (and so is a practical invention) but also looks beautiful (and so has an aesthetic aspect). The aesthetic form is protected by an industrial design. An industrial design can only protect something that serves a useful (not solely artistic) purpose. Another good example of an industrial design is the design of a dress or other article of clothing.

Industrial designs must be new or original. The duration of an industrial design is typically from 10 to 25 years (varying according to jurisdiction).

> **Guidance**
>
> **Wikipedia** has a good page on industrial design at http://en.wikipedia.org/wiki/Industrial_design
>
> The **Canadian Intellectual Property Office** has a detailed section at http://strategis.ic.gc.ca/sc_mrksv/cipo/id/id_gd_main-e.html
>
> Of course, **WIPO** has a guide to industrial designs, at http://www.wipo.int/designs/en/designs.html

8.5 Trademarks

A trademark is a distinctive (usually visual) mark which is associated with a particular category of product – typically the products of a single supplier. Examples include the Nike 'Swoosh', the CocaCola logo, the Adidas three

stripes, etc. Trademarks are very important in consumer purchase decisions, and are the focus of enormous expenditure in advertising and marketing.

In addition to trademarks which identify a company's goods, other classes of marks exist. **Collective marks** are used by members of an organisation, such as an association of accountants or electrical contractors. **Certification marks** are used to indicate that a product meets a defined domain standard, such as the UK 'Kite' Mark, the German DIN Mark or the EU's EC mark.

Trademarks typically distinguish one commercial offering from its competitors, in terms of producer, quality, standards and promotion. Trademarks are registered by the holder with the state authorities; a registered trademark cannot then be used by a competitor in the same domain. Trademarks must be registered to be enforceable, but can be renewed indefinitely –they do not have a fixed lifetime like copyright or patents.

Guidance

The UK government's **Intellectual Property Office** addresses trademarks at
http://www.ipo.gov.uk/tm.htm

The **International Trademark Association** is an industry group focusing on trademarks at http://www.inta.org/

WIPO has a guide to trademarks, at http://www.wipo.int/trademarks/en/

8.6 Trade Names

Trade names are a form of trademark that identifies a company or other enterprise. Trade names do not need to be registered, but are automatically protected. As a result a new company cannot operate in the same domain as another company with the same name. Trade names are very common in the pharmaceutical industry, where drugs are typically sold under quite different name to their industrial name.

Guidance

A detailed guide to trade names (in the **US**) is provided at
http://www.dol.wa.gov/forms/700128.pdf

8.7 Geographical Indications

A geographical indication is a trade mark which indicates the location in which a product originated. Typically, such an indication will be associated with ideas of quality or appeal in the eye of the consumer. For example, 'Champagne' is a

geographical indication which is applied to sparkling wines from a certain part of France. Other sparkling wines, e.g. from Australia, cannot call themselves 'Champagne'. To a greater or lesser degree, some geographical indications reflect unique agricultural or other factors involved in the production of the product. Many agricultural products are labelled 'AOC' (Appelation d'Origine Controllee), indicating that they must come from a particular location.

Geographical indications can also cover non-agricultural products. A good example is Swiss watches, which indicate a tradition of build quality and precision.

Guidance

The **World Trade Organisation** describes geographical indications at
http://www.wto.org/english/tratop_e/TRIPS_e/gi_background_e.htm

EU work in this area, focusing on agricultural indications, is outlined here
http://ec.europa.eu/agriculture/foodqual/quali1_en.htm