

✧ Introduction

Institutions wishing to collect, curate and provide access to digital archives must consider a number of legal issues from the outset. Important legislation to be aware of relates to: public records (see below), human rights (see p. 249), data protection (see p. 250), intellectual property rights (IPRs) (see p. 252) and defamation (see p. 266). Digital archivists need to have a good understanding of the legal framework governing digital archives and employ measures to guard against breaking the law.

This chapter of the Workbook outlines some of the legal issues likely to be encountered in the preservation of personal digital archives. As the institutions and individuals involved in the Paradigm exemplar are all located in England, what follows is based primarily on experience of operating within this context. That context includes common law and equity, parliamentary law and caselaw for England and Wales and European Community law (applicable throughout Great Britain).¹ Access to all UK Acts passed from 1988 onwards are available on the website of the Office of Public Sector Information and caselaw is available through the British and Irish Legal Information Institute databases.² None of the authors are lawyers and the material contained in the Workbook does not constitute legal advice; we would strongly encourage readers to seek professional advice from their own legal teams regarding these issues.

The Scottish³ and Northern Ireland⁴ legal systems are different to that of England and Wales. The National Archives of Scotland provides information about the Scottish legal context as it affects record keeping⁵ and acts passed by the Scottish Parliament are available on the website of the Office of the Queen's Printer for Scotland.⁶

✧ Public Record Acts

Public Records are defined as the records of central government in the United Kingdom and its constituent countries, and of the central courts of law, including bodies under the government such as the national museums and the National Health Service. Most records selected for permanent preservation are open on transfer and, since freedom of information legislation, many are transferred earlier than the traditional 30 years after cessation of use. They are selected, preserved and made available to the public under the authority of the *Public Records Act 1958*, the *Public Records (Scotland) Act 1937*, the *Public Records Act (Northern Ireland) 1923* and the *Government of Wales Act 1998*.

The public record acts are important to repositories collecting personal archives because the boundaries between public and private records are often blurred. This is particularly true where the personal archives of politicians and political parties are concerned, and especially true when dealing with the archives of the governing party and its members. This overlap affects the records that can be accessioned: for example, some of the records created by the London offices of Labour politicians participating in Paradigm are captured by public records legislation and will be transferred to The National Archives.⁷ There may also be cases where personal archives contain similar

1 BAILII, 'BAILII Databases', *BAILII website*. URL: <<http://www.bailii.org/databases.html>>

2 Office of Public Sector Information, 'Legislation', *Office of Public Sector Information website*. URL: <<http://www.opsi.gov.uk/legislation/>>

3 The Scottish Parliament, *The Scottish Parliament website*. URL: <<http://www.scottish.parliament.uk/>>

4 Northern Ireland Assembly, *Northern Ireland Assembly website*. URL: <<http://www.niassembly.gov.uk/>>

5 The National Archives of Scotland, 'Legislation', *The National Archives of Scotland website*. URL: <<http://www.nas.gov.uk/recordKeeping/legislation.asp>>

6 Office of the Queen's Printer for Scotland, *Office of the Queen's Printer for Scotland website*. URL: <<http://www.oqps.gov.uk/scotlegislation/legislation.htm>>

7 The National Archives, *The National Archives website*. URL: <<http://www.nationalarchives.gov.uk/>>

information to public records held by The National Archives (formerly known as the Public Record Office). In cases such as these the status of the related material must be considered when applying closure periods to material.

England and Wales

The *Public Record Office Act of 1838 (c94)* placed the records of the Chancery in the custody of the Master of the Rolls. It also empowered him to take custody of other public records, uniting scattered records at a new Public Record Office (PRO). Records of government departments were not covered by the 1838 Act, though many departments did transfer older records to the PRO.

The main provision of the *Public Records Act of 1877* was the description of a procedure for the destruction of public records without value. However the formula prescribed by the 1877 Act was unduly complex and, as a result, records which should have been scheduled for destruction were rarely disposed of.

In June 1952 the Chancellor of the Exchequer and Master of the Rolls appointed a Committee (known as the Grigg Committee after its Chairman Sir James Grigg) to assess the existing provision for public records. The recommendations of the 1954 report (Cmd 9163) were largely accepted by the Government and resulted in the *Public Records Act 1958 (c51)*¹ which repealed the 1838-1898 Acts in their entirety. The new Act transferred responsibility for public records and the PRO to the Lord Chancellor, and allocated responsibility for the day-to-day management of the PRO to a Keeper of Public Records. The scope of the Act was extended to include the records of government departments and those of other bodies enacted by Parliament to execute public work. It also provided a general public right of access to records which had been held in the PRO for 50 years; the 50-year closure period was reduced to 30 years by the *Public Records Act 1967 (c44)*. The public's right to access public records was altered again by the *Freedom of Information Act 2000 (c36)* (see p. 265) which stipulated that information contained in public records should be open from creation, unless subject to one of the exemptions laid out in the Act.

Northern Ireland

The *Public Records Act Northern Ireland 1923*² established the Public Record Office for Northern Ireland (PRONI) for the 'reception and preservation of public records appertaining to Northern Ireland'. It set out the responsibilities of public record bodies in Northern Ireland to transfer select records, defined in s.1(2), to PRONI³ where they would be preserved.

Scotland

The character of *The Public Records (Scotland) Act 1937* is different to the legislation governing records in England and Wales, and Northern Ireland. The Act does not define 'public records' or impose any statutory duty to transfer records to the National Archives of Scotland;⁴ it merely allows records relating exclusively or mainly to Scotland to be transferred to the Keeper of the Records of Scotland.

1 The National Archives, 'Public Records Act', *The National Archives website*. URL: <<http://www.nationalarchives.gov.uk/policy/act/>>

2 The Public Records Act Northern Ireland 1923, Appendix A. URL: <<http://www.proni.gov.uk/NIRMS/1923%20act.pdf>>

3 The Public Record Office of Northern Ireland, *The Public Record Office of Northern Ireland website*. URL: <<http://www.proni.gov.uk/>>

4 The National Archives of Scotland, *The National Archives of Scotland website*. URL: <<http://www.nas.gov.uk/>>

✧ Proposed archival legislation for England and Wales

Following on from the *Government Policy on Archives*¹ which was issued by the Lord Chancellor as a command paper in 1999 (Cm 4516), The National Archives drafted a consultation paper containing proposals for new archival legislation (August 2003).² The scope of the paper is limited to England and Wales, and specifically to 'organisations and issues which are the responsibility of the UK government' and to local and regional government. Section two of the proposal, 'Records Management and Digital Records in Central Government', specifically refers to digital archives. The consultation paper sets out the unique features (dependence on technology and flexibility) and needs of digital records, but does not recommend entirely separate provision for them.

Problems with the existing legislation

The 2003 paper argues that the PRAs were written with paper records in mind and that some of the provisions are predicated on a concept of 'original' which cannot be easily applied to digital records. The existing legislative framework makes the application of a migration strategy particularly difficult. This is because, under existing provisions, each time a record is migrated to a new format, TNA would need the permission of the Lord Chancellor and the Minister of the originating government department to formally de-accession the old version of the record and to accession the new version. This method is clearly unworkable as the number of digital archives at TNA grows.

Changing the definition of 'public record' for a digital world

The consultation calls for a 'duty to preserve the information, structure and metadata in the record and to maintain its integrity, authenticity and accessibility' rather than a duty to preserve the original record. Such a change would allow TNA to apply the status of 'public record' to migrated records.

Providing guidance to records creators

The consultation also seeks to extend the influence of record-keepers to the creation phase of the record by recommending the introduction of a power to create standards for public record creation and maintenance. This power would probably be vested in the Lord Chancellor acting on the advice of the National Archivist.

✧ Human Rights

Archives relate to Human Rights in two ways. First, they act as primary sources documenting the evolution of Human Rights and the memory of their abuse. Second, they are important in upholding the rights and entitlements of citizens. The misuse of archives could potentially violate Human Rights, including Article 8 of the European Convention on Human Rights - Right to Respect for Private and Family Life.

The Human Rights Act 1998 (c42)

The *Human Rights Act 1998*³ incorporates into UK law rights and freedoms guaranteed by the European Convention on Human Rights. Some of these rights may influence what records may be created and kept, and how information may be accessed.

¹ The National Archives, 'Government Policy on Archives', *The National Archives website*. URL: <<http://www.nationalarchives.gov.uk/policy/idac/government.htm>>

² The National Archives, 'Proposed Records Management and Archives Legislation', *The National Archives website*. URL: <<http://www.nationalarchives.gov.uk/policy/proposed/default.htm>>

³ Office of Public Sector Information, 'Human Rights Act 1998', *Office of Public Sector Information website*. URL: <<http://www.opsi.gov.uk/acts/acts1998/19980042.htm>>

✦ Data protection

Most personal archives, digital or otherwise, will contain personal data that is subject to the provisions of the *Data Protection Act 1998 (c29)*. Depositors or donors may wish to make specific contractual agreements regarding the confidentiality of some, or all, of the material placed in an archive. There is also the privacy of third-parties represented in the archives to consider. Privacy and confidentiality concerns will affect both how digital materials can be managed within the preservation repository and how and when they can be made accessible to researchers.

The *Data Protection Act 1998 (c29)*

The *Data Protection Act 1998 (DPA)*¹ seeks to enable individuals and organisations with legitimate reasons to process personal data to do so whilst protecting the interests of the individuals that the data concerns. The legislation is underpinned by eight principles, which are laid out in Schedule 1 of the Act. Part 1 of the schedule lists the principles; Part 2 contains an interpretation of the principles:

The Data Protection Principles

Personal data shall be:

1. Fairly and lawfully processed.
2. Processed for limited purposes.
3. Adequate, relevant and not excessive.
4. Accurate and up to date.
5. Not kept longer than necessary.
6. Processed in accordance with the individual's rights.
7. Secure.
8. Not transferred to countries outside European Economic area unless the country has adequate protection for the individual.

Section 33 - Exemption for research, history and statistics

Archival practice would seem to contravene some of these principles, but the provision of the 'Research, history and statistics' exemption in section 33 of the Act allows personal data to be stored indefinitely as archives for research purposes provided that 'relevant conditions' are met:

- Data is not processed to support measures or decisions relating to particular individuals.
- Data is not processed in such a way that substantial damage or substantial distress, is or is likely to be, caused to any data subject. s.31(1).

The terminology of the Act

The basic interpretative provisions are set out in Section 1 of the Act.

Data

The act applies only to personal data relating to a living individual who can be identified by those data, or by those data in conjunction with other information that is available. The data covered by the Act includes both facts and opinions about the individual. Personal data may be:

- Digital data: data that are, or are intended to be, processed automatically.
- Data in a 'relevant filing system': data in a manual filing system that are not processed automatically, but are structured in such a way that information relating to a particular individual is readily accessible.

¹ Office of Public Sector Information, 'Human Rights Act 1998', *Office of Public Sector Information website*. URL: <<http://www.opsi.gov.uk/acts/acts1998/19980042.htm>>

- Accessible data: these data include medical, social work and school pupil records, and are governed by provisions established in other legislation (see Section 68 and Schedule 12 of the Act).
- Unstructured personal data held in manual form by a public authority: the *Freedom of Information Act 2000 (FOIA)* extended the definition of data to include all information recorded by a public authority. See Part VII of the *FOIA* for amendments to the *DPA*.

Actors

In addition to defining the data covered by the Act, the legislation also defines the actors:

- **Data subjects:** a data subject means the individual who is the subject of the personal data. Data subjects have a number of rights under the Act :
 1. The right to access personal data (Section 7 of the Act).
 2. The right to prevent processing likely to cause damage or distress (Section 10).
 3. The right to prevent processing for direct marketing (Section 11).
 4. Rights in relation to automated decision-taking (Section 12).
 5. The right to compensation for failure to comply with certain requirements (Section 13).
 6. The right to rectification, blocking, erasure and destruction (Section 14).
 7. The right to ask the Information Commissioner whether the Act has been contravened (Section 15).

The rights which most concern archives are 1, 2, 5, 6 and 7.

- **Data processors:** a data processor means any person (other than an employee of the data controller) who processes the data on behalf of the data controller. A data processor normally acts under contract and could be an offsite storage facility.
- **Data controllers:** the data controller, normally the Chief Executive or Board, determines the purposes and the manner in which any personal data are processed. Under section 18 of the Act, the data controller has a responsibility to notify the Information Commissioner of the processing of personal data.
- **Data protection supervisors:** section 23 gives the Secretary of State power to make provision whereby a data controller must appoint a data protection supervisor to independently monitor the data controller's compliance with the Act. Most universities, councils and large corporate organisations have voluntarily appointed data protection officers.
- **Information Commissioner:** Part VI of the Act establishes the role of the Information Commissioner,¹ an independent official appointed by the Crown to oversee the *Data Protection Act 1998*. The Information Commissioner is also responsible for the *Freedom of Information Act 2000* and the *Environmental Information Regulations 2004*.

Actions

The term 'processing' is used in the Act. This covers all actions that might be taken in relation to information or data; this includes obtaining, recording, holding and carrying out operations with it.

Notification

The *DPA* requires the data controller to notify the Information Commissioner of all processing operations involving personal data. This 'Notification' process is set out in Part III of the Act and the Information Commissioner's *Notification Handbook*.

¹ Information Commissioner's Office, *Information Commissioner's Office website*. URL: <<http://www.ico.gov.uk/>>

Codes of practice

Section 51 (4) of the Act provides that the Information Commissioner may encourage trade associations to prepare and disseminate codes of practice which the Information Commissioner deems to promote good practice. The current *Code of Practice for Archivists and Records Managers* under Section 51 (4) of the *Data Protection Act 1998* was drafted by the then Public Record Office, the Society of Archivists and the Records Management Society.¹ It contains generic guidance, applicable in most organisations, together with sections devoted to the effect of the Act on the functions and activities associated with the work of Records Managers (Part 3) and Archivists (Part 4).

The code is currently being revised and a draft is available from the Society of Archivists.²

The data subject's right to access

Section 33(4) stipulates that personal data processed only for research purposes is exempt from Section 7 of the Act, which establishes the data subject's right of access.

Freedom of information and data protection

The Information Commissioner oversees both the *Freedom of Information Act 2000* and the *Data Protection Act 1998*. The provisions of the two acts must be considered together when a request to disclose personal information is received.

Data protection and digital archives

If digital archives are accessioned earlier than paper archives have been in the past, then archives could potentially be subject to the provisions of the *Data Protection Act* for much longer while they are being managed by an archival repository. This is because the Act covers personal data about living individuals. Repositories may therefore find themselves managing a significant number of collections which are closed to researchers and could come under pressure from historians of the contemporary period to release items. The processes involved in acquisition, appraisal and cataloguing should identify data protection issues so that they can be managed appropriately.

✦ Intellectual Property Rights

Introduction to Intellectual Property Rights

Intellectual Property Rights (IPRs) are composed of a group of rights all relating to the protection of intellectual property. The main types of IPR are copyright, patent, trademark, design, confidence and database right.

Digital archivists are primarily concerned with the first of these: copyright. Copyright is a legal right granted to creators and owners of works which are the product of human thought or intellectual creativity. The purpose of this intellectual property right is to protect the copyrighted author and their work from unfair exploitation while allowing the wider population to have access to their creative work.

Patent, trademark, design and confidence issues are most likely to be encountered when dealing with the archives of business and science.

Paradigm concluded that an effective rights management policy is needed to address IPR issues in archival materials. This involves steps during the acquisition and cataloguing processes to establish the nature, owners and duration of at least the primary IPRs in an archive. This will aid the archivist in creating a rights profile of the collection using metadata, which can be relied upon to manage usage of the collection in a way that respects the rights of rightsholders and those of re-

1 The National Archives, 'Data Protection Act', *The National Archives website*. URL: <<http://www.nationalarchives.gov.uk/policy/dp/default.htm>>

2 Society of Archivists, 'Revised Data Protection Code of Practice, Version 6', *Society of Archivists website*. URL: <<http://www.archives.org.uk/professionalissues/reviseddataprotectioncodeofpracticeversion6.html>>

searchers. Where realistic, rights to undertake preservation and some access activities should be sought, and repositories should consider adopting a ‘take down’ policy and procedure for removing from public access any contentious material which is subject to dispute.

Introduction to copyright

What is copyright?

Copyright in its broadest sense is a right protecting against unauthorised use of a work. Copyright starts at the point of creation and no formal registration of a copyright is required in the UK. The *1988 Copyright, Designs and Patent Act*¹ (CDPA) is the key piece of legislation dealing with copyright matters in the UK. This Act has been subject to a number of significant amendments to harmonise it with European law and international conventions. A key amendment took place in 2003 which brought the Act in line with the EU directive on *Copyright and Related Rights in the Information society (EU Copyright Directive) 2001*.²

The 1988 CDPA can be viewed at the Office of Public Sector Information’s website.³ It should be noted that the text given here is that as passed in 1988 and does not include the key EU amendment. For an unofficial consolidated, although not necessarily up to date, text see the Jenkins *Index to the Copyright Designs and Patents Act 1988*.⁴

What does copyright protect?

Copyright is a negative right which restricts how people, other than the person(s) owning the copyright, can use a copyrighted work. Copyright holders hold exclusive rights in their work and have the authority to restrict or authorise:

- Copying the work.
- Providing copies of the work to the public.
- Renting or lending the work to the public.
- Performing, showing or playing the work in public.
- Broadcasting the work.
- Making an adaptation of the work.

Copyright covers a wide range of work including literary, sound recordings and typographical arrangement of published editions. ‘Literary works’ are defined as any work, other than a dramatic or musical work, which is written, spoken or sung. Indeed, literary extends to what we may think of as mundane and ordinary. For example, a memo sent by a politician’s chief of staff would fall under ‘original literary work’. ‘Original’ in this context means that the work must have been created by the author and not copied from elsewhere. Some degree of skill, labour and judgement must also have been involved in its creation.

Financial assets v moral rights

Historically many IPR laws were devised to protect inventions and processes in the industrial world; for this reason intellectual property rights are also sometimes referred to as ‘industrial and intellectual property rights’. Copyright is of greatest importance to those who survive on income generated by their creative works, for example writers and musicians. However, for many in the academic world, moral rights (the right to be attributed as the author) are more important. It is likely that in many archive collections it is the ‘moral right of authorship’ rather than the need to protect a

1 Office of Public Sector Information, ‘Copyright, Designs and Patents Act 1988’, *Office of Public Sector Information website*. URL: <http://www.opsi.gov.uk/acts/acts1988/Ukpga_19880048_en_1.htm>

2 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. URL: <http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32001L0029&mode=l=guichett>

3 Office of Public Sector Information, ‘Copyright, Designs and Patents Act 1988’, *Office of Public Sector Information website*. URL: <http://www.opsi.gov.uk/acts/acts1988/Ukpga_19880048_en_1.htm>

4 Jenkins, *Index to the Copyright, Designs and Patents Act 1988 (EU Copyright Directive, 2001)*. URL: <<http://www.jenkins-ip.com/patlaw/index1.htm>>

(potential) financial asset which will be most significant to the rightsholder. For this reason the cataloguer must be at pains to attribute authorship carefully. This will be crucial when creating IPR metadata. Perhaps equally important to the 'moral right' of authorship is the right not to be falsely attributed as an author of a work.

Who owns copyright?

Copyright is automatically vested in the creator of a work, unless that work was completed in the course of employment and falls into the creator's job description. Copyright is personal property; it may be bought, sold, leased, or passed on by the owner by way of a will. In most cases the copyright owner is the author or the author's legal heirs, unless copyright has been explicitly bequeathed or assigned elsewhere. Although copyright may be sold on, the 'moral rights' of authorship will continue to reside with the author and his heirs.

Public Records and Crown copyright

It should be noted that Crown copyright subsists in all copyright works produced by officers of the Crown during the course of their duties, in accordance with section 163 of the *CDPA 1988*. Records created by a politician while in ministerial office and acting in that capacity will be categorised as Public Records (see p. 247) and be subject to Crown copyright. It is possible that a personal archive may contain Crown copyright material; the relationship between a politician's 'personal archives' and their ministerial 'public records' must therefore be explored and explained by the cataloguing archivist.

Guidance on Crown copyright is available from the Office of Public Sector Information.¹

What could happen if copyright were infringed?

An infringement of copyright could result in a civil action by the injured party. The civil courts largely enforce intellectual property laws. There is no need for any prior assertion of rights; copyright infringement can be halted by an injunction and damages may be awarded to recompense the rights owner. The damages awarded in a case against an academic library are likely to be small but the costs could be very substantial, especially as the loser is likely to be liable for the winner's costs as well as his own. For example, in 2006 Michael Baigent and Richard Leigh claimed that the novelist Dan Brown (author of *The Da Vinci Code*) had infringed their copyright in their work (*The Holy Blood and The Holy Grail*). The claimants lost their case and were ordered to pay legal costs of around £1.3m.

Although civil action is more typical, breach of copyright can also result in criminal prosecution if the activity is on a commercial scale. Penalties include imprisonment for up to two years, as well as fines and forfeiture of the material in breach and of the equipment used in its production.

Duration: how long does copyright subsist in a work?

When does copyright begin?

Copyright is effective upon creation of a piece of work. It is not necessary to register copyright before a work is protected.

When does copyright end?

Calculating the date when copyright protection ceases can be complex. Generally speaking, the archivist will need to:

- Identify the kind(s) of work in an item and the associated copyright protection(s).
- Discover the item's date of creation.
- Ascertain whether the item has been published.
- Discover the date of death of the item's creator(s). This usually involves the archivist ascertaining the identity of the creator(s) also.
- Ascertain whether the work was created independently, or under contract.

¹ Office of Public Sector Information, 'Copyright Guidance', *Office of Public Sector Information website*. URL: <<http://www.opsi.gov.uk/advice/crown-copyright/copyright-guidance/index.htm>>

Most archival material is unpublished and it is often difficult to ascertain the authorship of the material or the exact date of creation. To complicate matters further, an individual file of correspondence is likely to hold numerous and different copyrights which makes enforcing copyright a daunting task. Information about copyright provisions for some of the materials commonly found in collections of personal archives, which will also be found in personal digital archives, is offered below.

In all cases copyright protections cease on the 31st of December of the year of expiry.

Unpublished literary, dramatic, artistic and musical manuscripts

Where the author is known, duration of copyright in unpublished manuscripts depends on whether the work was created before or after 1989 and the date of the author's death. Where the author is unknown, duration of copyright will be calculated according to whether the work was created before or after 1989 and the date of creation.

- Where an author can be identified and the work was created prior to 1989, the protection period is 70 years following the death of the creator or until 2039, whichever is the longer.
- Where an author can be identified and the work was created after 1989, the protection period is 70 years following the death of the creator.
- Where an author cannot be identified the protection period is 70 years following the date upon which the work was first created.
- Where the work in question was the product of joint authorship the period of protection will be calculated from the date of death of the last surviving author as above.

Correspondence, memos, speeches and articles in unpublished personal archives fall into this category.

Literary, dramatic, artistic and musical manuscripts which were later published

For manuscripts which were later published, the subsistence of copyright will be calculated according to when the work was published and when the author died.

- Manuscripts with a known author published in the author's lifetime remain in copyright for 70 years after the death of the author, provided the author is a European Economic Area national, or the work was first published in a European Economic Area country.
- Manuscripts with a known author which were created and published prior to 1989 but after the author's death remain in copyright for 50 years after publication or for 70 years after the author's death whichever is longer.
- Manuscripts published after 1989 remain in copyright for 70 years after the author's death.
- Manuscripts with an unknown author remain in copyright for 70 years after the year of publication.

Published literary, dramatic, musical or artistic works in archives

Published pamphlets found within an archive should be treated as a book.

- Copyright in published literary, dramatic, musical or artistic work generally lasts until 70 years after the death of the author.
- Copyright in a published edition expires 25 years after the edition was first published.

Sound recordings

Sound recordings are protected by copyright for 50 years from the end of the year in which the recording was created or released, whichever is the later.

There is also an important distinction between copyright in the sound recording itself and in the content of the material recorded. For example, an interview with a politician, which has been recorded, may create a copyright owned by the politician in the politician's words, while the person who arranged the recording holds rights in the recording itself.

Broadcasts

Copyright duration in broadcasts is 50 years from the end of the year in which the first broadcast was made.

Films

- **Films created after 1 June 1957** - Copyright in a film is 70 years from the death of the last surviving 'person connected with the film'. This could be the principal director, the author of the screenplay, the author of the dialogue or the composer of any music specially created for and used in the film. This applies to any film which was first released in the European Economic Area and to any film in which one of the listed 'persons' was an European Economic Area national. Otherwise the copyright legislation of the relevant country applies. For the purposes of copyright a 'film' can be recorded on any medium whether analogue or digital.
- **Films created before 1 June 1957** - Films made before 1 June 1957 are not protected as a 'film', but as a dramatic work or as a series of photographs.

Photographs

Copyright ownership in a photograph is complex and depends upon the date on which the image was taken.

- **For photographs taken between 1 July 1912 and 31 July 1989**, the owner of the copyright is the owner of the material on which the photograph was taken (the negative).
- **For photographs commissioned before 1 August 1989**, the owner of the copyright is the person who commissioned the work, although the photographer may retain some moral rights. The owner of the original negative may also have some rights over the use of the image even if it is out of copyright.
- **Since 1 August 1989**, the author (and copyright holder) is the person who took the photograph. In the case of digital images found in a personal digital archive, the copyright holder will be the person who took the photograph, not necessarily the donor.

Typographic arrangement

The typographical arrangement of an edition of a published book, newspaper or journal is protected by copyright for the duration of 25 years.

Website

In addition to possible literary, photographic and typographic protections a website will often qualify for protection under Database Right.

Database Right

A database may be subject to both copyright and database right. Copyright will only apply if it is a work of personal intellectual activity. Similarly only databases, which have been assembled as the result of substantial investment of time, money or technological expertise, may qualify for database right. Database right lasts for 15 years after the final changes have been made. The ownership of database right is the maker of the database, although the usual rules about ownership of work carried out in the course of employment or for the Crown apply.

Database right was introduced by EC directive (96/9/EC of 11 March 1996), enacted as *The Copyright and Rights in Databases Regulations 1997* (SI. 3032) in the UK. For detailed guidance on database right see *Copyright: interpreting the law for libraries and information services*, by Graham P. Cornish.

Several copyrights in one work

Copyright can subsist separately and collectively in the building blocks of any particular work. A website is a very good example as the content, title, sound effect, logos, images or pictures, even the address of domain name could all have separate rights which belong to their respective owners. Similarly an email with a photograph by an unknown photographer attached would have two different copyright protections.

Copyright and born-digital archival material

Introduction

In the UK, digital records are largely protected by the same copyright regime as other kinds of record: rightsholders retain the same rights while archivists and researchers enjoy the same Fair

Dealing exceptions and Library and Archive Privilege (see p. 259). When the Patent Office amended the 1988 *Copyright, Designs and Patents Act* to take into account the *EU Information Society Directive 2001*, it decided that an explicit exception dealing with the provision of electronic works in archives and libraries was superfluous as such activities were lawful under existing provisions or under licences. These provisions must, however, be interpreted for the digital archival environment. The very nature of digital material makes copyright easier to infringe and such infringements are potentially much more visible (e.g. posting to a listserv or weblog), thus increasing the likelihood of litigation. Careful thought about the ways in which archivists preserve and make accessible born-digital archives is needed, particularly while best practice in this area is at a nascent stage.

Copyright and personal digital archives

Personal archives often include material created by numerous entities, but technological and social changes have made the question of copyright in such archives yet more complex.

Copyright and types of digital archive

Many individuals represented in an archive will be but minor rightsholders: the quantity or significance of the materials in which they own rights is very small. It is understandable then, that archivists cannot trace and approach each rightsholder in order to establish preservation and access licences for the material in which they hold rights. As with traditional archives, it will be more usual for archivists to:

- Negotiate and agree approaches to preservation and access in respect of material in which the depositor holds copyright.
- Rely on existing Fair Dealing provisions and Library and Archive Privilege to supply material of minor rightsholders for private study and make researchers themselves responsible for seeking copyright clearance where they wish to publish from such material. Note that this does not include permission to undertake digital preservation.

Copyright and websites

In the UK, legal deposit does not extend to material published as websites; it is therefore illegal to take snapshots of a website for inclusion in a web archive without permission of rightsholder(s) in the website. To ensure the survival of key websites, UK archivists must either obtain the permission of individual rightsholders or risk prosecution for copyright infringement. While it is feasible to obtain permissions for a limited number of small-scale and simple websites it becomes increasingly fraught the wider the net is cast; it is particularly complex in the case of sites using social software, such as blogs, which contain material from multiple creators. To date, web archiving programmes internationally have followed one of two courses: the pragmatic - albeit legally risky - course of continuing to archive until specific problems with IPR holders are encountered, or permissions-based archiving. The Internet Archive¹ is an example of the first approach, while the Australian Pandora project² is an example of a project in which permissions are painstakingly obtained, which of course limits the extent of collecting. If the first course is chosen, it is essential that there is a robust 'Take Down' policy in place whereby contentious material can be rapidly removed from the public arena.

Copyright and email

A person depositing their personal digital archive cannot, of course, grant permission on behalf of the hundreds of correspondents captured in their email mailbox. It is also probable that an email archive will contain more material created by non-UK nationals than paper correspondence, which could have different copyright protections. This may complicate both the archivist's assessment of rights and rightsholders and the administering of the archive. In practice, many countries have signed international treaties which attempt to harmonise intellectual property rights across countries. One example is the Berne Convention; its principle of 'national treatment' means that material created by a citizen of one state enjoys 'national treatment' in another provided both are signatories of the treaty. For example, an email from Egypt in a personal archive in England is protected under English law because Egypt and the UK are both Berne Convention signatories. The World Intellectual Property Right Organization (WIPO) website includes further information on international treaties and their signatories.³ It seems likely that until copyright has expired (70 years after the death of each author for literary works, but the attachments may have different copyright protections) access to email archives will be administered in a controlled environment, probably a research room, and only to registered readers.

1 Internet Archive, *Internet Archive website*. URL: <<http://www.archive.org/>>

2 National Library of Australia and Partners, *Pandora project website*. URL: <<http://pandora.nla.gov.au/>>

3 World Intellectual Property Organization (WIPO), *WIPO website*. URL: <<http://www.wipo.int/portal/index.html.en>>

Copyright and the preservation of digital archives

There is confusion surrounding the rights of heritage repositories to undertake preservation actions in respect of digital holdings. *The Copyright (Librarians and Archivists)(Copying of Copyright Material) Regulations 1989*, s. 6, does allow copying by archivists or librarians for the purpose of replacing items in a permanent collection, but the wording is not geared towards digital preservation actions, which include making multiple copies of digital archives and migrating them to other formats. This affects all digital materials where the rightsholder has no formal agreement with the repository. In future, it is hoped that the rights of archives and libraries to undertake such preservation actions will be clear. In 2005, the Chancellor commissioned *The Gowers Review of Intellectual Property*, which reviewed the suitability of the UK's current IPR framework for a digital and global age. Among the Review's recommendations (published in December 2006) were that:

- S.42 of the *CDPA* be amended by 2008 to permit libraries to copy the master copy of all classes of work in permanent collections for archival purposes and to allow further copies to be made from the archived copy to mitigate against subsequent wear and tear (Recommendation 10a).
- By 2008, libraries should be permitted to format shift archival copies to ensure records do not become obsolete (Recommendation 10b).

Another issue faced by archives preserving born-digital archives is the growth of Digital Rights Management (DRM) mechanisms in technologies targeted at the personal computing and entertainment markets. DRMs provide protections over and above copyright and do not expire with copyright; such technologies are also subject to obsolescence. It is illegal to circumvent DRMs despite the fact that they inhibit legitimate archiving and research activities. There is a complaints procedure in place by which those unable to exercise a permitted right due to a DRM submit a 'notice of complaint' to the Secretary of State, but it is so complex that at the time the *Gowers Review* was published, no-one had used it. The *Gowers Review* has recommended the simplification of this procedure, but offers nothing more substantial to assist archivists and researchers in this area.

- Recommendation 15: Make it easier for users to file notice of complaints procedures relating to Digital Rights Management tools by providing an accessible web interface on the Patent Office website by 2008.

Acquiring explicit permissions for preservation purposes at accession

While clarity regarding the rights of archives to undertake preservation actions is wanting, Paradigm advises that repositories seek explicit permission for digital preservation in agreements with donors, even though such agreements do not cover materials in which people other than the signatory hold intellectual property rights. Archivists may need to assess the risk of undertaking preservation actions on material of rightsholders with which the repository has no agreement; and where other significant rightsholders in an archive can be established it may be wise to obtain permission to undertake preservation actions from them. Explicit rights to use copyrighted work(s) can be obtained by three means:

- Through an assignment or assignation of copyright in writing form the copyright owner.
- With permission/or licence from the copyright owner.
- By obtaining a licence from a collective licensing organisation (e.g. Copyright Licensing Agency) to which the author has already made a specific agreement on terms and licensed use of the material.

Copyright and researcher access to digital archives

In the absence of clear best practice for providing access to copyrighted born-digital archives, many repositories are unsure how to develop and implement access protocols and systems which ensure copyright compliance in a digital age. To provide access to archives for researchers, archivists require permissions from rightsholders or statutory provisions which enable:

- **Reading of archives by researchers.** Questions relating to who can read material, where and under what conditions must be addressed; such conditions are generally

well-established for traditional archival mediums, but the expectations and risks associated with access in a networked digital environment are different.

- **Reproduction of archives for private research by readers.** In traditional mediums, such reproduction includes various kinds of photocopying and photographic reproduction; in a digital environment readers are more likely to want digital copies or printouts.
- **Publication of archives by readers.** Such publication includes the digital and print mediums and ranges from small excerpts and images to producing calendars of correspondence.

Acquiring explicit access-related permissions from the depositor at accession

While Fair Dealing, and Library and Archive Privilege must be used to provide access to much material in archival collections, archivists can, and should, consult with the significant IPR owners in a collection to negotiate acceptable access conditions and to record appropriate rights metadata (see p. 141). Permission should be sought as part of the accession process, alongside permission to undertake digital preservation activities, and incorporated in the Terms of Agreement for the archive. Generally speaking, rightsholders do not wish to sign away their copyright in its entirety, but may happily come to an arrangement whereby the Library is licensed to administer certain rights on their behalf. This involves the Library taking responsibility for the interests of the rightsholder when approving requests to publish extracts and suchlike.

Providing access in the reading room

Since much of the material in an archive will be that of minor rightsholders with whom the repository has no agreement, the access mechanism provided to researchers for reading and copying digital archives for private study must be within statutory provisions. The following practices would normally be regarded as 'fair and lawful' in respect of literary works under the *Guidelines for Fair Dealing in an Electronic Environment* agreed by JISC and the Publishers Association.¹

Fair and Lawful under the 'Guidelines for Fair Dealing in an Electronic Environment'

- Viewing part or all of an electronic work on screen, so long as any incidental copy made by the computer is deleted afterwards.
- Printing out of a copy or part (to a maximum of 5%) of an electronic publication.
- Copying a part of an electronic publication to disk where the disk is portable or is accessible by only one person at a time.
- Transmission across a computer network of part of an electronic publication to enable it to be printed out locally, so long as any incidental copies are then deleted.
- Transmission across a network of part an electronic publication for local storage and use, but not for onward transmission.
- Quotation from electronic material for the purposes of criticism, review or current news reporting, so long as the source is properly acknowledged.

Unfair and unlawful without prior permission under the 'Guidelines for Fair Dealing in an Electronic Environment'

- The copying of a whole of an electronic work, except an incidental copy for use when viewing on screen.
- Transmission across a computer network of the whole of an electronic work, for any purpose.
- The posting of all or part of an electronic publication on a network or a website.
- The making of more than one copy.
- The copying of an artistic work on its own or of one that was not integral to the text.

This advice is derived from the application of the following existing provisions to the digital environment.

¹ Joint Information Systems Committee and the Publishers Association, *Guidelines for Fair Dealing in an Electronic Environment* (1998). URL: <<http://www.ukoln.ac.uk/services/elib/papers/pa/fair/>>; abstracted from this by Tim Padfield, *Copyright for Archivists*, 3rd edition (Facet Publishing: London, 2007) pp. 166-7.

Provisions for supplying copies of copyright material:

Fair Dealing and Library and Archive Privilege

Fair dealing provisions (s. 29-30 of the *CDPA*) and special provisions for libraries and archives (s 37-44 of the *CDPA*; further elaborated in *Copyright (Librarians and Archivists) (Copying of Copyright Material) Regulations 1989*,¹ as amended by SI 2003/2498 reg 26²) allow a limited amount of certain categories of material to be copied for the purposes of research and private study without the consent of the copyright holder. Some types of work can also be copied for the purposes of criticism or review, as long as due acknowledgment is made.

Copying material for commercial users

The implementation of the *Electronic Commerce (EU Directive) Regulations 2002*³ in the UK in October 2003 means that commercial users no longer benefit from Fair Dealing and Library and Archive Privilege; copies of material cannot therefore be provided without the permission of the copyright holder. Deciding what is 'commercial' is tricky; for example an academic work which is published and thus attracts modest royalties is commercial, as would be research for a BBC documentary. The British Library⁴ advises that in cases where work is subsequently published, it is the intent at the time of copying which is important; genuinely unforeseen income at a much later date is therefore irrelevant to the question.

Requirements under the Library and Archive Privilege

- The rightsholder must not have forbidden copying.
- Each separate copyright work requires a separate declaration form before copies can be produced.⁵
- The copy provided must be for non-commercial private study and research.
- The person receiving the copy cannot supply a copy to another person.
- No person receives more than one copy of the same material.
- A person ordering copies of copyright material under Library and Archive Privilege must be charged a fee which is not less than the cost of the production of the copies.

Rules for copying published copyright digital material

A 'reasonable proportion' of a published work may be copied under Fair Dealing provisions. Many of the UK's universities have acquired licences from the Copyright Licensing Agency (CLA), which acts on behalf of authors and publishers. This licence allows its members to copy:

- One article in a single issue of a periodical or set of conference proceedings.
- An extract from a book amounting to 5% of the whole or a complete chapter.
- A whole poem or short story from a collection, provided the item is not more than 10 pages.
- In the case of a published report of judicial proceedings, the entire report of a single case.

Some materials, such as sheet music and maps, are excluded from the CLA's licence and the licence only allows one copy to be made.

1 Office of Public Sector Information, 'The Copyright (Librarians and Archivists) (Copying of Copyright Material) Regulations 1989', *Office of Public Sector Information website*. URL: <http://www.opsi.gov.uk/si/si1989/Uksi_19891212_en_1.htm>

2 Office of Public Sector Information, 'The Copyright and Related Rights Regulations 2003', *Office of Public Sector Information website*. URL: <<http://www.opsi.gov.uk/si/si2003/20032498.htm>>

3 Office of Public Sector Information, 'The Electronic Commerce (EC Directive) Regulations 2002', *Office of Public Sector Information website*. URL: <<http://www.opsi.gov.uk/si/si2002/20022013.htm>>

4 The British Library, 'Copyright Office: Changes to UK Copyright Law', *The British Library website*. URL: <<http://www.bl.uk/services/information/copyrightfaq.html>>

5 For a sample declaration form see the Copyright and archival material section of the online version of the Paradigm Workbook. URL: <<http://www.paradigm.ac.uk/workbook/legal-issues/copyright-archives.html>>

Rules for copying unpublished copyright digital material

Under the 1989 Library and Archive privilege, all archives and libraries in the UK, including those run for profit, may make and supply single copies of literary, dramatic or musical works (including those in digital format), that have been deposited in the archive or library and that were unpublished prior to deposit, without permission and without infringement of copyright, provided that they meet the Library and Archive privilege requirements (p. 260).

Outside this framework, substantial parts of the material may not be used in the acts restricted by copyright, which are exclusive to the rightsholder (s 16, see also *What does copyright protect?* p. 253). Legal precedent shows that the interpretation of 'substantial' relates to the significance of the part copied as well as to its length; the key question is whether the copying would undermine the rights of the intellectual property owner, including any economic benefit that they could make from their work. This means that substantial portions of an unpublished work may not be mechanically copied or published without the permission of the rightsholder. Further, if the rightsholder has expressly prohibited copying then it is an infringement to supply copies under the 1989 Library and Archive Privilege.

Readers will need to seek permission from the rightsholder(s) if they intend to publish material they have copied at a later date. As with traditional personal archives, researchers may need to trace the current rightsholder(s) to seek permission to publish. It is also possible that permission will be withheld by the rightsholder once located. Sometimes rightsholders are unaware that their material is held at an archive, and family members who have inherited copyright may choose to use it as a means of protecting the family's privacy, since data protection legislation applies only to the living. The WATCH (Writers, Artists and Their Copyright Holders) file is a useful source for tracing rightsholders.¹

Implementing copyright-compliant researcher access

Archivists should be conscious that digital dissemination and duplication techniques exceed those available in an analogue environment; social technologies such as listservs and blogs might increase the visibility of copyright infringements and elevate the risk of litigation arising from these. Digital archivists should therefore proceed cautiously when designing access systems for researchers. The guidelines outlined above suggest that copyrighted born-digital archives should not be made available across a network, and certainly not via a public website, although readers increasingly expect this kind of access. It seems unreasonable that a researcher abroad must visit in person to access archives which could be accessed remotely in order to avoid breaching copyright once other rights associated with living persons (e.g. data protection) have ceased. It is unclear whether Digital Rights Management techniques could be harnessed to provide secure remote reader access in accordance with the law and any agreements with rightsholders; more research into the feasibility and legality of remote access in such cases would be useful.

The legality of providing local network access restricted to the repository's own premises is also uncertain, though provided the network is secure and mechanisms to protect against unauthorised copying are in place this seems a reasonable solution. Paradigm recommends that non-sensitive copyrighted digital material is made available to registered readers in a secure search room once they have signed a condition of use form and the donor has given permission for the collection to be opened. Readers will be responsible for respecting copyright in a similar fashion to current practice in a paper archive and the repository may also supply copies under the terms of the Library and Archive Privilege. The repository should supply readers with access copies in standard read-only formats and/or on specially configured PCs (without network access or support for removable media), as this would offer some protection against unlawful copying and distribution.

When designing access protocols, archives should also be aware of the publication right, which is acquired by any person or organisation that publishes a previously unpublished work after copyright protection ceases and the work is said to be in the 'public domain'. The publication right affords similar rights to those given under copyright legislation and lasts 25 years after publication. If a Library holds unpublished material in which copyright has expired, or will soon expire, it will need to be careful when providing access to the material. Publication by an individual or organisation other than the Library could result in a new publication right, which might impact upon how the Library can make the material available to researchers for a further 25 years.

¹ WATCH, *Watch website*. URL: <<http://www.watch-file.com>>

Copyright legislation

UK legislation

Copyright is mainly governed by the *Copyright, Designs and Patents Act 1988 (CDPA)*, although there is some other primary legislation relating to broadcasting (1990 and 1996) and the legal deposit libraries (2003).

Copyright and international law

The ease of copying and transmitting digital materials means that archives may need to consider the impact of copyright law in other countries. Although copyright legislation is similar in many countries, it may be difficult to obtain redress for infringements of copyright which occur abroad, not least because of differences in the legal systems. Countries who have signed up to The Berne Convention will be able to offer their citizens a greater degree of protection, but international law is slow-moving and does not keep pace with the changes brought about by new technologies. To date it seems likely that the law of the place where the digital information was uploaded will apply to copyright.

The Berne Convention¹

The Berne Convention for the Protection of Literary and Artistic Works (most recent version Paris, 1971) is the principal international copyright treaty. In 1996, a new international copyright treaty was negotiated under the auspices of the World Intellectual Property Organization (WIPO). Known as the *WIPO Copyright Treaty*, it addresses issues raised by new technologies. Many countries are amending their laws to comply with the treaty. More than 30 countries have joined. The essentials of the treaty are to provide for 'national treatment' (so if a UK citizen sued in the US they could benefit from US law) and minimum standards of protection. Difficulties are that international law has trouble keeping pace with technological change and so law relating to copyright of digital items may differ more between countries than laws for more traditional media.

EC Directives

In addition to the *CDPA* there are numerous statutory instruments to bear in mind. Most of these implement EC directives:

- *The Copyright (Computer Programs) Regulations 1992*² SI 1992 No.3233 - which implements Directive 91/250/EEC on the legal protection of computer programs in the UK. Came into force on 1 January 1993.
- *The Duration of Copyright and Rights in Performances Regulations 1995*³ SI No. 3297 - which implements Directive 93/98/EEC (with the exception of Article 4) on the duration of copyright and related rights in the UK. Came into force on 1 January 1996.
- *The Copyright and Related Rights Regulations 1996*⁴ SI No. 2967 - which implements Directives 92/100/EEC on rental, lending and other rights, 93/83/EEC on copyright and related rights in relation to cable and satellite broadcasting and Article 4 of 93/98/EEC on the duration of copyright and related rights in the UK. Came into force on 1 December 1996.
- *The Copyright and Rights in Databases Regulations 1997*⁵ SI 1997 No. 3032 - which implements Directive 96/9/EC on the legal protection of databases in the UK. Came into force on 1 January 1998.

1 *Berne Convention for the Protection of Literary and Artistic Works* (1979). URL: <http://www.wipo.int/treaties/en/ip/berne/pdf/trtdocs_wo001.pdf>

2 Office of Public Sector Information, 'The Copyright (Computer Programs) Regulations 1992', *Office of Public Sector Information website*. URL: <http://www.opsi.gov.uk/si/si1992/Uksi_19923233_en_1.htm>

3 Office of Public Sector Information, 'The Duration of Copyright and Rights in Performances Regulations 1995', *Office of Public Sector Information website*. URL: <http://www.opsi.gov.uk/si/si1995/Uksi_19953297_en_1.htm>

4 Office of Public Sector Information, 'The Copyright and Related Rights Regulations 1996', *Office of Public Sector Information website*. URL: <http://www.opsi.gov.uk/si/si1996/Uksi_19962967_en_1.htm>

5 Office of Public Sector Information, 'The Copyright and Rights in Databases Regulations 1997', *Office of Public Sector Information website*. URL: <<http://www.opsi.gov.uk/si/si1997/19973032.htm>>

- *The Copyright and Related Rights Regulations 2003*¹ SI 2003 No. 2498 - which implements Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society. Came into force on 31 October 2003.

Reviewing copyright law in the digital age

UK

Gowers Review of Intellectual Property²

As part of the Pre-Budget Report 2005, the Chancellor of the Exchequer appointed Andrew Gowers to lead an independent review to examine the UK's intellectual property framework. The review, delivered in December 2006, includes recommendations that would benefit archival institutions if implemented. These are:

- Recommendation 9: Allow private copying for research to cover all forms of content. This relates to the copying, not the distribution, of media.
- Recommendation 10a: Amend s.42 of the *CDPA* by 2008 to permit libraries to copy the master copy of all classes of work in permanent collection for archival purposes and to allow further copies to be made from the archived copy to mitigate against subsequent wear and tear.
- Recommendation 10b: Enable libraries to format shift archival copies by 2008 to ensure records do not become obsolete.
- Recommendation 13: Propose a provision for orphan works to the European Commission, amending *Directive 2001/29/EC*.
- Recommendation 14a: The Patent Office should issue clear guidance on the parameters of a 'reasonable search' for orphan works, in consultation with rights holders, collecting societies, rights owners and archives, when an orphan works exception comes into being.
- Recommendation 14b: The Patent Office should establish a voluntary register of copyright; either on its own, or through partnerships with database holders, by 2008.
- Recommendation 15: Make it easier for users to file notice of complaints procedures relating to Digital Rights Management tools by providing an accessible web interface on the Patent Office website by 2008.

US

The Digital Millennium Copyright Act (DMCA)

The *DMCA* became law in the US in 1998. It implements two 1996 World Intellectual Property Organization (WIPO)³ treaties: the *WIPO Copyright Treaty* and the *WIPO Performances and Phonograms Treaty*. The legislation makes it an offence to circumvent copyright protection mechanisms and increases penalties for infringement of copyright on the Internet.

The Section 108 Study Group

The Section 108 Study Group⁴ is a select committee of copyright experts convened by the Library of Congress, which has been charged with updating for the digital world the *Copyright Act's* balance between the rights of creators and copyright owners and the needs of libraries and archives.

Other Intellectual Property Rights relevant to archives

Although copyright is the IPR most commonly encountered when working with archives, there are others that archivists and researchers should be aware of, especially when working with the ar-

1 Office of Public Sector Information, 'The Copyright and Related Rights Regulations 2003', *Office of Public Sector Information website*. URL: <<http://www.opsi.gov.uk/si/si2003/20032498.htm>>

2 HM Treasury, 'Gowers Review of Intellectual Property', *HM Treasury website*. URL: <http://www.hm-treasury.gov.uk/independent_reviews/gowers_review_intellectual_property/gowersreview_index.cfm>

3 World Intellectual Property Organization (WIPO), *WIPO website*. URL: <<http://www.wipo.int/portal/index.html.en>>

4 The Library of Congress, 'The Section 108 Study Group', *The Library of Congress website*. URL: <<http://www.loc.gov/section108/>>

chives of business and science. These are briefly introduced below; more detailed and up-to-date information is available from the UK Intellectual Property Office.¹

Patent

Patents offer inventors protection by providing a limited period where others cannot make, use or sell their invention without permission. To obtain a patent, the invention must satisfy a number of criteria. For instance, the invention must be new and it must be industrially applicable. The UK Intellectual Property Office can grant UK patents, which last for up to 20 years. Like other property rights, patents can be bought, sold or licensed to others. To obtain patent protection outside of the UK, the inventor will need to register patents in other countries. The European Patent Office (EPO)² issues patents which are valid across the EU.

Trademark

Trademarks offer a way of distinguishing goods and services from other providers. They are distinctive signs that might consist of words, pictures or logos. To qualify for registration, a trademark must be unique to the goods and services for which it is being registered and must not be illegal, for example it must not be defamatory. A trademark registered with the UK Intellectual Property Office can be renewed indefinitely, but it may be revoked if it becomes generic for the product it is associated with. Trademarks may also be registered with other agencies abroad, notably the European Trade Mark Registry (OHIM) which registers marks valid across the EU. UK Trademarks are governed principally by the *Trademarks Act 1994*,³ although this legislation has been subject to some amendments.

Design

There are UK and European design laws which may provide registered design protection for up to 25 years, and unregistered design right protection for between 3 years (European) to 15 years. The requirement for a design to attract registered or unregistered protection is complicated, and the advice of the UK Intellectual Property Office or an intellectual property lawyer should be consulted.

Confidence and trade secrets

'Confidence' is best defined as 'know-how'. It can be any form of technological improvement or knowledge which is kept secret and provides a commercial advantage. Commercial secrets that may be subject to confidence include the recipe for a best selling soft drink or an improved manufacturing technique for a given product. Personally confidential information, such as that found in letters and diaries, does not fall within know-how.

✧ Policy and legislation aimed at enhancing access to information

Archivists must always strike a balance between access and preservation and attempt to reconcile the needs of records creators, who are concerned about privacy and IPRs, with those of records users, who want access. There has been a trend towards enhancing access provision in recent years, which is reflected in public policy and legislation, such as:

- Council of Europe Recommendation: *A European Policy on access to archives*.
- *Freedom of Information Act 2000 (c36)*.
- *Special Educational Needs and Disability Act 2001 (c10)*.

This emphasis on access is apparent in major funding opportunities such as the New Opportunities Fund and the Heritage Lottery Fund, which have tended to focus on projects which potentially widen and increase the audience for archival collections particularly via digitisation schemes.

1 Intellectual Property Office, *Intellectual Property Office website*. URL: <<http://www.ipo.gov.uk>>

2 European Patent Office, *European Patent Office website*. URL: <<http://www.european-patent-office.org/index.en.php>>

3 Office of Public Sector Information, 'Trade Marks Act 1994', *Office of Public Sector Information website*. URL: <http://www.opsi.gov.uk/acts/acts1994/Ukpga_19940026_en_1.htm>

Council of Europe Recommendation: A European Policy on access to archives

The Council of Europe's recommendation¹ calls for the adoption of a European policy on access to archives. The recommendation is based on an understanding that archives play a role in 'reinforcing cultural diversity and democracy' and as historical sources, which promote understanding of the past and allow us to 'take reasoned decisions on the future.' Although the recommendation has not been adopted as a regulation, it has influenced the drafting of archival legislation.

'Your Right to Know' The Freedom of Information Act 2000 (c36)

Over sixty countries have implemented some form of freedom of information legislation and many more countries around the world are working towards introducing similar laws. Such legislation defines a legal process by which government information is available to the public and limits governmental secrecy. The *Freedom of Information Act 2000 (FOIA)* (England, Wales and Northern Ireland) applies across the public sector as a whole, at national, regional and local level and gives individuals a right to access information held by relevant public sector bodies.² The Information Commissioner's Office oversees the implementation of FOI.³

There is separate provision for Scotland in the *Freedom of Information (Scotland) Act 2002 (2002 asp 13)*.⁴

Publication schemes

FOIA places statutory duties on public sector bodies to produce a 'publication scheme'⁵ which explains what information they put into the public domain as a matter of course and how to access that information. Publication schemes may well become a useful tool for researchers.

Freedom of information requests

When a written request for information is made to a public sector body it must be considered as a request under *FOIA*. This means that the enquirer must be told whether the information they seek exists and they must be provided with access to the information within 20 working days of the request.

The Act intends to promote access to information in public records, but it does have a number of exemptions which can be applied, although these are subject to a 'public interest test'. Exemptions relevant to those responsible for archives and manuscripts include:

- Section 21: information accessible by other means, including on payment.
- Section 22: information intended for publication, if it is reasonable to withhold access until then.
- Section 30: information representing a danger to health & safety.
- Section 40: personal information (i.e. information subject to the *Data Protection Act 1998*).
- Section 41: information which has been provided in confidence.

1 Council of Europe, 'Draft Recommendation No. R(2000) 13 of the Committee of Ministers to Member States on a European Policy on Access to Archives', *Council of Europe website*. URL: <[https://wcd.coe.int/ViewDoc.jsp?Ref=CM\(2000\)93&Sector=secCM&Language=lanEnglish&Ver=add2&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679](https://wcd.coe.int/ViewDoc.jsp?Ref=CM(2000)93&Sector=secCM&Language=lanEnglish&Ver=add2&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679)>

2 For a list of the relevant bodies, see Schedule 1 of the Act: Office of Public Sector Information, 'Freedom of Information Act 2000', *Office of Public Sector Information website*. URL: <<http://www.opsi.gov.uk/acts/acts2000/00036-p.htm#sch1>>

3 Information Commissioner's Office, *Information Commissioner's Office website*. URL: <<http://www.ico.gov.uk/>>

4 Office of Public Sector Information, 'Freedom of Information (Scotland) Act 2002', *Office of Public Sector Information website*. URL: <<http://www.opsi.gov.uk/legislation/scotland/acts2002/20020013.htm>>

5 Office of Public Sector Information, 'Freedom of Information Act 2000', *Office of Public Sector Information website*. URL: <<http://www.opsi.gov.uk/acts/acts2000/00036-d.htm#19>>

- Section 43: information which if supplied would damage commercial interests.
- Section 44: information the supply of which is prohibited by other laws.

Information held on behalf of another person is also exempt from the Act under Section 3(2)(a). Under s. 12(1), institutions may also refuse to provide information where ‘the authority estimates that the cost of complying would exceed the appropriate limit’.

Section 46 of *FOIA* required the Lord Chancellor to publish a *Code of Practice on the Management of Records*.¹ He did this in November 2002.

Evaluating the first year of *FOIA*

In 2005 JISC and Universities UK conducted a survey of English and Welsh universities to find out how the first year of *FOIA* has impacted on HE institutions; the results² provide information about operational aspects of fulfilling requests as well as a breakdown of the kinds of requests received. There has also been much press coverage on the *FOIA* during its first year of operation including calls for a clamp down on frivolous enquiries.³

Special Educational Needs and Disability Act 2001 (c10)

*SENDA*⁴ establishes legal rights for disabled students in pre- and post-16 education. The Act amends Part IV of the *Disability Discrimination Act (DDA)* to include education, and now becomes part IV of the *DDA*. The legislation impacts on those responsible for providing access to personal archives and related services in the Higher Education sector. The legislation makes it unlawful for a disabled person to be treated ‘less favourably’ than a non-disabled person for a reason that relates to the person’s disability. Archivists should ensure that means of interfacing with their systems are compliant with *SENDA*’s requirements.

Defamation

Introduction to defamation

Defamation is a false accusation of an offence or a malicious misrepresentation of someone’s words or actions. The defamation laws exist to protect a person or an organisation’s reputation from harm. In England and Wales, a defamatory statement comes in two forms: a permanent defamatory statement called libel (written or recorded in some other way) and a non-permanent defamatory statement called slander (unrecorded speech or gestures). Scottish law regards both forms of defamation as one. Personal digital archives may include opinions which another person could consider as libellous and by making such records available in a digital archive, whether on-line, or in a designated reading area, the digital archivist could be considered as ‘publishing’ that archive. This is significant because both the author and the publisher of a defamatory statement can be sued.

The UK Defamation Act 1996

The *UK Defamation Act 1996*,⁵ exists to protect the reputation and good standing of an individual. In order to pursue a successful defamation suit the claimant must:

1 Lord Chancellor, *The Management of Records Under Section 46 of The Freedom of Information Act 2000* (November 2002). URL: <<http://www.dca.gov.uk/foi/reference/impref/codemanrec.pdf>>

2 JISC infoNet, ‘FOI Survey 2005’, *JISC infoNet website*. URL: <http://www.jiscinfonet.ac.uk/foi-survey/index_html>

3 See article Charlie Falconer, ‘It’s not about toilet paper’, *Guardian* (31 December 2005). URL: <<http://politics.guardian.co.uk/comment/story/0,9115,1675826,00.html>>

4 Office of Public Sector Information, ‘Special Educational Needs and Disability Act 2001’, *Office of Public Sector Information website*. URL: <<http://www.opsi.gov.uk/acts/acts2001/20010010.htm>>

5 Office of Public Sector Information, ‘Defamation Act 1996’, *Office of Public Sector Information website*. URL: <<http://www.opsi.gov.uk/acts/acts1996/1996031.htm>>

- Prove that they have a reputation which can be damaged.
- Be able to show that their reputation has been damaged.

Defences against defamation

Justification

This is the defence most commonly used. The defendant must prove that the statement is not defamatory, but true.

Fair Comment

The defence of fair comment allows for the expression of a genuinely held opinion on a subject of public interest. The defendant must prove that the statement was intended as an expression of opinion, not as a statement of fact and that the opinion was made in relation to facts, which the defendant must be able to prove. Further, the defendant's comments must not imply malice.

Privilege

Privilege recognises that in some circumstances it is in the interests of society that people be able to communicate without fear of being sued. One enactment of privilege is the *Bill of Rights of 1689*, which allows MPs complete freedom of speech when debating in the House of Commons, though action may be taken in the Commons if a Member is found in contempt:

'...That the Freedom of Speech and Debates or Proceedings in Parliament ought not to be impeached or questioned in any Court or Place out of Parliament'
Bill of Rights, 1689

Protection for innocent dissemination

The *1996 Defamation Act* was intended to clarify the position of innocent dissemination, in the event of a defamation suit, by persons who are not authors, editors or commercial publishers of a statement, if they took reasonable care in relation to its publication. These subordinate distributors could be printers, distributors, on-line service providers and live broadcasters. A defence of reasonable care would need to prove that the publisher did not know or did not have reason to believe that what they did caused or contributed to the publication of a defamatory statement. Such provisions are contained in Section 1(1) and 1(3) of the Act:

1(1) In defamation proceedings a person has a defence if he shows that:

- he was not the author, editor or publisher of the statement complained of,
- he took reasonable care in relation to its publication, and
- he did not know, and had no reason to believe, that what he did caused or contributed to the publication of a defamatory statement.

1(3) A person shall not be considered the author, editor or publisher of a statement if he is only involved ... -

- in processing, making copies of, distributing or selling any electronic medium in or on which the statement is recorded, or in operating or providing any equipment, system or service by means of which the statement is retrieved, copied, distributed or made available in electronic form.

Case Law: Laurence Godfrey v. Demon Internet Ltd

The defence of 'innocent dissemination' was first tested in the case of Laurence Godfrey v Demon Internet Ltd by the Queen's Bench Division of the High Court in 1999. Dr Laurence Godfrey, a Physics lecturer, asked the Internet Service Provider (ISP) Demon Internet Ltd to remove a forged posting to a USA internet newsgroup which was made to appear as if it were sent by Dr Godfrey. Despite receiving a fax from Dr Godfrey outlining that the posting was a forgery and requesting that it be removed as it was defamatory to him, Demon ignored his request and the posting remained accessible until it expired around 10 days later. Demon pleaded a defence of 'innocent dissemination' but this was denied by the High Court which ruled that Demon had not acted responsibly as technically the ISP provider was in a position to remove the offensive posting but had chosen not to do so.

Who would be sued?

As yet there is no case law involving an archive in a defamation lawsuit. If things go wrong and a defamation case is brought, is the archivist or the institution responsible? Could both be sued? The answer is likely to be that it would be the publisher of the libel who would be at risk. So it is necessary to decide who the publisher is and where the materials are hosted. Those who repeat or republish the libel can also be guilty of libel.

In some cases an offer to remove the offending material and the issuing of an apology will be sufficient. It would be wise for institutions to have a 'notice and take down policy' whereby offending material could be immediately withdrawn from public access upon notice of a potentially libellous statement. This would be in accordance with European and UK law, which has tended to treat the Internet Service Provider (a role to which an archivist is analogous) as not liable as long as they act promptly to remove libellous material when notified. The critical point being that once a defendant has been notified of the libellous content, they can no longer claim 'reasonable care' in relation to its publication. If an offer to make amends occurs after proceedings have been initiated, it must conform to the specifications articulated in s. 2 of the *1996 Defamation Act* which state that:

An offer to make amends:

- Must be in writing.
- Must be expressed to be an offer to make amends under section 2 of the *Defamation Act 1996*.
- Must state whether it is a qualified offer and, if so, set out the defamatory meaning in relation to which it is made.

When does libellous material cease to be libellous?

The law of defamation only protects the living. Therefore once a person has died they cannot be libelled and their descendants cannot pursue a case to protect their posthumous reputation.

Limitation periods

Since the *1996 Defamation Act*, an action of libel or slander may not be brought 'after the expiration of one year from the date on which the cause of action was incurred' (s. 5.1).

There is also some protection for the ignorant plaintiff: s. 5.4 of the *1996 Defamation Act* allows the one-year limitation period to be overridden where this appears to be equitable. Circumstances that would be considered in such an instance include the length and cause of the plaintiff's delay. Specifically relevant to digital archives may be a scenario in which a plaintiff brings an action outside the one-year limitation period because they were not aware of all the facts within that period. This might happen in relation to the contents of a personal archive because the plaintiff was not aware that someone's personal archive contained material defamatory to their reputation, or indeed that the archive had been deposited at a repository. It is probable that the plaintiff would not discover the existence of the defamatory material for some time after the archive is issued to the public for research. In such a case, the date on which the facts become known to the plaintiff and the speed of the plaintiff's action thereafter would be important factors in deciding whether an action can be brought.

Defamation and digital archives

Defamation on the Internet - cyberlibel

Cyberlibel describes any defamation that takes place on the Internet whether the defamation took place on a weblog, website, email, message board or in a published article accessible online. Cyberlibel raises the issue of freedom of speech and the degree to which individuals can be prevented from expressing their opinion on public or private individuals or a business or organisation.

The early history of the Internet was characterised by a sense of freedom from censorship and rules and many still see the Internet as is a unique medium for free speech.

Cyberlibel legal jurisdiction

One of the trickiest aspects of enforcing laws on the Internet is determining whose laws apply: in which legal jurisdiction did the offence take place? After all, what may be libellous in some countries may not be in others.

There are two options for a court: the offence may be deemed to have taken place in the country where the information was uploaded or in the country/countries where the information was accessed. In the case of defamation, the latter course is generally chosen. This means that defamation cases are subject to numerous different legal jurisdictions across the globe, although in practice, multiple cases are unlikely to be made.

Impact of cyberlibel on access to digital archives

The risk of cyberlibel may impact on the ability of archival repositories to make personal digital archives available to the public on the Internet or via email. Should a personal archive made available in this way be found to contain statements that are interpreted as libellous, then the repository could find itself subject to a lawsuit. Data protection legislation also impedes this kind of transmission of archives containing personal information on living and identifiable individuals, and copyright would require that the repository have the permission of rightsholders. These considerations all suggest that it is safer to provide controlled, meditated, access to archives relating to living individuals. At present, Paradigm recommends that such archives be made available in a supervised research room to accredited readers who understand their responsibilities.

A possible exception could be an Archive making a collection of archived website snapshots available over the Internet to registered users who had digitally signed a condition of use form. If the defamatory material has been in the public arena for some time prior to accessioning, the likelihood of a defamation case against the Archive succeeding is diminished. The Archive would, however, need the permission of intellectual property rights owners to publish snapshots of websites in this way.

Chat, emails and defamation

The informal, spontaneous nature of chat and emails, and their rapid transmission, increases the likelihood of ill-considered opinions, which are not always grounded in fact, and which may be defamatory. The digital archivist needs to exercise caution before providing access to such material.

Liability for defamatory content sent by an individual in the course of their professional and personal life will be influenced by the nature of the message. For example, a message sent by one individual to another at a private address would be deemed less liable than one sent to a business address with many cc addresses or a message sent to a listserv or forum. The huge volume of Internet traffic makes it unlikely that any one given message will be intercepted and that, for the purpose of the law, a message sent from one private address to another is no more likely to be intercepted than a conventional letter. (See sections 5.06-5.08 in Matthew Collins, *The Law of Defamation and Internet*).

Once correspondence is accessioned into a digital archive such categories will not hold sway. All messages which are made available will be treated in the same way regardless of whether the original author intended the original recipient to be the sole reader of their missive.

In the context of a digital email archive, the archivist needs to be aware of both forms of defamation: libel and slander. Typically written defamation, libel may also take the form of other media which fix and publish the statement, such as image and film. Slander is a more transient form of defamation and usually includes speech or gesture. Although chat and email archives are mostly written materials (with the exceptions of image, sound or movie files attached to a message), it is possible that defamatory content in them could be repeated verbally which would lend to the possibility of a slander action against the repeater and a libel action against the library as a publisher.

Where do digital archivists fit in?

Can digital archivists argue that they are not authors, editors or commercial publishers of a statement? It is true that archivists do not seem to fall into any of these categories. Yet digital archivists do have a great deal of control over the material in their care. Unlike an ISP service provider, content is generally not made accessible to the public until many decades after it is received. Therefore the digital archivist has ample opportunity to exercise 'reasonable care' and review archive material before it is made available.

Under *DPA* legislation (see p. 250), archivists also need to check for sensitive personal data and anything which contravenes the *Human Rights Act* Article 8 - Right to Respect for Private and Family Life; archivists must also survey the intellectual Property Rights (see p. 252) associated with a collection. It would be common sense to conduct any such review with an eye to potentially libellous statements. The difficulty will lie in statements which are not obviously libellous, and may on the face of it appear innocuous to the reviewing archivist. In such circumstances the repository may be able to claim that it has taken reasonable care in relation to publication and make a defence of innocent dissemination (see p. 267).

✧ The impact of legal issues on the timing and conditions of access experienced by researchers

Digital archives have the potential to be easily and rapidly disseminated, discovered and read by large numbers of people over a short period of time. This means that libellous statements, which would remain hidden in unpublished sources such as manuscripts, could find a much wider audience and the repository could expose itself to the range of legal risks discussed in this chapter. While archivists might wish to exploit the functionality of born-digital material to provide enhanced access to users, perhaps through (secure) online access or facilitating use of the archive on a reader's laptop (where they have their preferred tools), the reality is that read and write access must be stringently controlled. Given the complex data protection, privacy, defamation and intellectual property rights issues involved it is unlikely that entire digital archives can be made available over the Internet until such a time as the publication of their contents will no longer breach these protections, either because they have expired or because those entitled to the relevant protections have given the library permission to publish. It may also be the case that some parts of the archive become available sooner than others. This is because the length of a legal protection period is calculated from the date of creation, publication or death, hence access will be calculated on a file by file basis. Access will also depend upon the ease of obtaining relevant permissions as it may be less problematic to seek permission from some interested parties than others.

Approaches to access

There are several approaches to providing access to digital archives.

Lengthy blanket closure periods

Providing access to material enjoying legal protections can be complex. For materials which are not covered by freedom of information legislation, it would be easier, safer and cheaper to issue lengthy blanket closure periods until intellectual property right, data protection and defamation considerations have expired.

Archival review - incremental access as concerns expire

Given that the preservation of personal archives is ultimately with a view to providing access for researchers, a preferable approach would be to review materials and allocate appropriate closure periods at a more granular level. This would enable archivists to provide access only to material

where rights are clear and uses have been authorised, and where content has been vetted for any potential personal or defamatory content. This approach is expensive and can lead (initially, at least) to highly restrictive access; it also removes part of the archive from circulation, which has an impact on the context and interpretation of the materials.

Risk management - archival review plus ‘take down’ policy

Perhaps a better option is one of risk management, combining the archival review with a ‘take down’ approach. By adopting a clear ‘take down’ policy and procedure which ensures that objectionable material can be promptly removed from public access, libraries could more confidently provide access to materials of orphan copyright as well as to material which has no obvious defamatory or private content.

Take down policy only

The non-profit Internet Archive in San Francisco, which harvests and archives websites without first obtaining permission from the creator, is an advocate of this approach. Its take down policy is primarily aimed at those who do not want their websites harvested but it also has a procedure for managing removal requests,¹ including those which allege defamatory content. This approach is unsuitable for personal archives.

Useful resources

IPRs

British Copyright Council, *British Copyright Council website*.

URL: <<http://www.britishcopyright.org/>>

The British Library, ‘Copyright Office: Changes to UK Copyright Law’, *The British Library website*.

URL: <<http://www.bl.uk/services/information/copyrightfaq.html>>

Note: provides online guidance on copyright, in particular the impact of the European Union Directive passed in Summer 2001 on copying that is carried out for commercial purposes.

Copyright and Licensing for Digital Preservation Project, *Copyright and Licensing for Digital Preservation Project website*.

URL: <<http://www.lboro.ac.uk/departments/ls/disresearch/CLDP/index.htm>>

Note: this AHRB-funded project investigated the impact of copyright legislation and licensed access to digital content on the ability of libraries to provide long-term access to that content and suggested ways in which the problems could be overcome.

Creative Commons, *Creative Commons website*.

URL: <<http://creativecommons.org/>>

Charlesworth, Andrew, *Legal Issues relating to the archiving of internet resources in the UK, EU, USA and Australia*, a study undertaken for the JISC and Wellcome Trust (February 2003).

Cornish, Graham P., *Copyright: interpreting the law for libraries and information services* (Fourth edition, London: Facet Publishing, 2004).

JISC, *Legal guidelines for fair dealing in HE*.

URL: <<http://www.jisclegal.ac.uk/pdfs/FairDealing.pdf>>

Note: In 1999 JISC produced guidelines for the copying of electronic materials under fair dealing and library privileges. Note these guidelines are specific to the Higher Education Sector and date from before the 2001 EU directive. They are only intended to be pointers to good practice.

¹ School of Information Management and Systems, U.C. Berkeley, *Recommendations for Managing Removal Requests And Preserving Archival Integrity* (December 2002). URL: <<http://www2.sims.berkeley.edu/research/conferences/aps/removal-policy.html>>

JISC and the Publisher's Association, *Guidelines for Fair Dealing in an Electronic Environment* (1998)

URL: <<http://www.ukoln.ac.uk/services/elib/papers/pa/fair/intro.html>>

Madhavan, Mahesh, 'Intellectual Property Rights: An Overview', *JISC Legal Intellectual Property Law Essentials* series (24 March 2006).

Office of Public Sector Information, 'Copyright Guidance', *Office of Public Sector Information website*.

URL: <<http://www.opsi.gov.uk/advice/crown-copyright/copyright-guidance/index.htm>>

Padfield, Tim, *Copyright for Archivists and users of archives* (Second edition, London: Facet Publishing, 2004).

UK Intellectual Property Office, *UK Intellectual Property Office website*.

URL: <<http://www.ipo.gov.uk>>

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Akdeniz, Y., 'Case Analysis: Laurence Godfrey v. Demon Internet Limited, (1999)', *Journal of Civil Liberties*, 4(2), 260-267 (July).

Collins, Matthew, *The Law of Defamation and the Internet* (Second edition, Oxford: Oxford University Press, 2005).

Charlesworth, Andrew, *Legal Issues relating to the archiving of internet resources in the UK, EU, USA and Australia*, a study undertaken for the JISC and Wellcome Trust (February 2003).

URL: <http://www.jisc.ac.uk/uploaded_documents/archiving_legal.pdf>

Edwards, Lilian, 'Defamation and the Internet: Name calling in Cyberspace' from Edwards, Lilian and Waelde, Charlotte (eds.), *Law and the Internet: regulating cyberspace* (URL: <<http://www.law.ed.ac.uk/it&law/internet.htm>>) (Oxford: Hart, 1997).

URL: <http://www.law.ed.ac.uk/it&law/c10_main.htm>

Liberty, 'Defamation', *The Liberty Guide to Human Rights website*.

URL: <<http://www.yourrights.org.uk/your-rights/chapters/right-of-free-expression/defamation/>>

Department for Constitutional Affairs

Department for Constitutional Affairs, 'Data Protection', *Department for Constitutional Affairs website*.

URL: <<http://www.dca.gov.uk/foi/datprot.htm>>

Department for Constitutional Affairs, 'Freedom of Information', *Department for Constitutional Affairs website*.

URL: <<http://www.dca.gov.uk/foi/index.htm>>

Department for Constitutional Affairs, 'Human Rights', *Department for Constitutional Affairs website*.

URL: <<http://www.dca.gov.uk/peoples-rights/human-rights/index.htm>>

Digital Curation Centre

Digital Curation Centre, 'Frequently Asked Questions about Freedom of Information (FOI) Legislation', *Digital Curation Centre website*.

URL: <<http://www.dcc.ac.uk/FAQs/foi.php>>

Information Commissioner

Information Commissioner's Office, *Information Commissioner's Office website*.

URL: <<http://www.ico.gov.uk/>>

JISC Legal

JISC Legal, 'Data Protection Overview', *JISC Legal website*.

URL: <<http://www.jisclegal.ac.uk/dataprotection/dataprotection.htm>>

JISC Legal, 'Disability Legislation and ICT in Further and Higher Education - Overview', *JISC Legal website*.

URL: <<http://www.jisclegal.ac.uk/disability/accessibility.htm>>

JISC Legal, 'Freedom of Information', *JISC Legal website*.

URL: <<http://www.jisclegal.ac.uk/freedomofinformation/freedomofinformation.htm>>

JISC Legal, 'Human Rights in Further and Higher Education', *JISC Legal website*.

URL: <<http://www.jisclegal.ac.uk/humanrights/humanrights.htm>>

JISC Legal, 'Intellectual Property Rights Overview', *JISC Legal website*.

URL: <<http://www.jisclegal.ac.uk/ipr/IntellectualProperty.htm>>

Liberty

Liberty, *YourRights.org.uk : the Liberty Guide to Human Rights website*.

URL: <<http://www.yourrights.org.uk/your-rights/the-human-rights-act/>>

TechDis

TechDis, *TechDis website*.

URL: <<http://www.techdis.ac.uk/>>

Note: TechDis is a JISC-funded service which provides advice regarding technology and disability issues.

The National Archives

The National Archives, 'Policy & legislation', *The National Archives website*.

URL: <http://www.nationalarchives.gov.uk/policy/?source=ddmenu_services5>