

Museums and digitisation: A view from the UK

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Weighing up the issues



Image by southernfried, from the Morguefile:
<http://www.morguefile.com/archive/?display=93433&>

Overview

- Many museums, galleries and archives in the UK have or in the process of digitising their collections
- Access and preservation are main reasons
- Much funding from Lottery money
- Material ranges from images, text, maps, recordings, graphics and film
- Because ownership of the item does not confer ownership of rights – copyright clearance may be a hidden issue and expense

IPR issues

- Database rights
- Trademark issues
- Performers Rights
- Copyright: Ownership of rights in commissioned works
- Copyright: Ownership of rights in works by freelancers
- Copyright: Clearance of third party rights

Other legal issues

- Contractual issues: funders, commissioned works, freelancers
- Licensing: providing access to users (use of Creative Commons?)
- Other legal issues (DP, Obscenity, indecency and libellous material)

Orphan works



Orphan works

- Orphan works =
 - Rights holders are unknown
 - Rights holders cannot be traced
- Massive growing problem
- British Library estimate: orphan works = 40% of all creative works
- BAPLA estimate: 85% of all works = orphan works in 10 years
- Locking up cultural content

Orphan works – a case study

- British Library's Archival Sound Project
- St Mary's Bow Public Debate Recordings
- Made between 1964 – 1979, famous and unknown
- Rights clearance:
 - 150 hours was spent by a freelancer
 - 152 hours by British Library staff
 - Eight permissions being received
- Cost of copyright clearance disproportionate to value of recording

Why are there orphan works?

- Range of rights that can exist in material
- Digitisation does not capture all information
- No formal mechanisms for contacting rights holder
- No statutory provisions
- In UK, copyright protection is automatic
- Few standards for capturing metadata
- Honouring role of creators

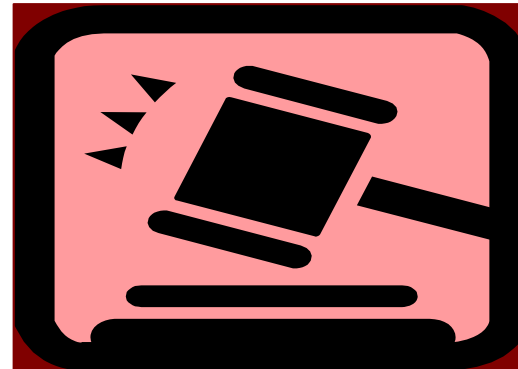
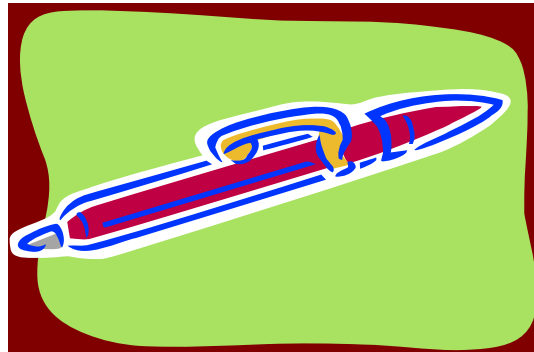
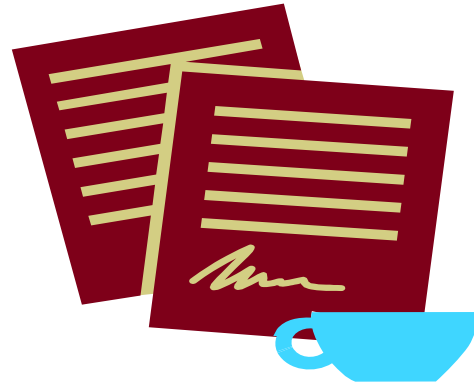
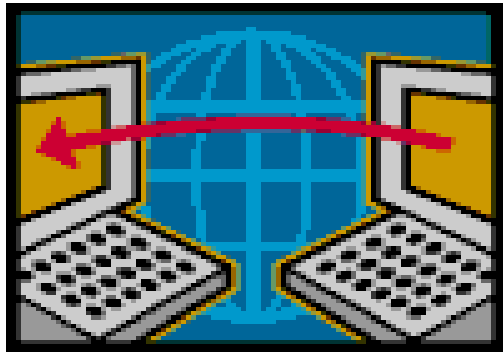
The European response

Copyright Sub-Group of European Digital Library (20 November 2006)

Section on improving conditions for digitisation of, and online accessibility to, cultural material by:

- Creating mechanisms to facilitate the use of orphan works, following consultation of interested parties,
- Establishing or promoting mechanisms, on a voluntary basis, to facilitate the use of works that are out of print or out of distribution, following consultation of interested parties,
- Promoting the availability of lists of known orphan works and works in the public domain,
- Identifying barriers in their legislation to the online accessibility and subsequent use of cultural material that is in the public domain and taking steps to remove them

So, what are the possible solutions?



Orphan works: technological solutions

- The Picture Licensing Universal System (PLUS) – Licence format
- Creative Commons
- IPCT Headers
- Digital Rights Management

Orphan works: pragmatic solutions

- Reasonable efforts = Due Diligence
- Due Diligence: recording efforts and notices
- Due diligence – mitigates risk, but does not eliminate it
- Risk management
- MDA - UK's lead organisation on information standards – SPECTRUM
- MDA's IP Advisory Committee

Orphan works: licensing solutions

- Voluntary digital licence with DACS
- Negotiated by the Museums Copyright Group
- Nominal annual fee
- Use of images for non-commercial uses
- Big issue – how far this covers orphan works?

Orphan works: legislative solutions

- Canada: Compulsory licensing schemes that allow licences for the use of published works to be issued by the Copyright Board of Canada on behalf of unlocatable copyright owners
- USA: In May 2006, U.S. Representative Lamar Smith introduced a Bill aimed at addressing the issue of orphan works by providing limitations of remedies in cases in which the copyright holder cannot be located
- UK – Gowers Review of IP

Concluding remarks

- Copyright is not just a legal issue
- Role of licensing
- Importance of making informed decisions
- Risk management
- Damage limitation strategies
- Ethical issues
- Balancing accessibility to cultural content vs. honouring role of creators and their relationship to their creative works

Useful resources

- Copyright Sub-Group of European Digital Library http://europa.eu.int/information_society/activities/digital_libraries/doc/mi
- PLUS <http://www.useplus.com/home.asp>
- MDA <http://www.mda.org.uk>
- BAPLA <http://www.bapla.org.uk>
- British Library <http://www.bl.uk>
- Museums Copyright Group <http://www.museumscopyright.org.uk>
- Creative Commons <http://www.creativecommons.org>



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