

Museums Association - copyright seminar

Changes in legislation

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Issues facing museums

- ◆ Museums are both:
 - ▶ *users* of copyright works; and
 - ▶ *creators* and *owners* of copyright works
- ◆ Ownership, creation and use raise different issues and indeed create tensions within the museum
- ◆ A balanced approach in managing copyright is needed - increasing use of IPR policies
- ◆ Museums are having to address the issues posed by technological change - whether as users or as owners

Museums as owners of copyright

- ◆ Traditional publishing and image licensing to generate revenue
- ◆ New media: interactives, CD-Roms, DVDs, websites
- ◆ Piracy and enforcement
- ◆ IPR policies
 - ▶ managing the asset
 - ▶ relevance of copyright to acquisitions
 - ▶ tighter staff management
 - ▶ balancing revenue-generation against public access

Museums as users of copyright

- ◆ Many reasons for reproducing items in collections
- ◆ Greater reach of copyright (longer period of protection, acquisition of modern artifacts)
- ◆ Digitisation projects:
 - ▶ huge quantities of material involved
 - ▶ difficulties of finding owners
- ◆ Can be facilitated by:
 - ▶ information sharing
 - ▶ exceptions and limitations
 - ▶ rights clearance mechanisms eg licensing schemes

Exceptions - current position

- ◆ fair dealing (research/private study; criticism/review)
- ◆ anonymous works - but not if:
 - ▶ author is known but owner of copyright is unknown
 - ▶ author (probably) died less than 70 years ago
- ◆ non-reprographic copying in the course of instruction
- ◆ sculptures (s 62 CDPA 1988)
- ◆ unpublished works over 100 years old
 - ▶ only literary, dramatic or musical works - Schedule 1, paragraph 16, CDPA 1988

Exceptions - current position

- ◆ Compare libraries and archives
 - ▶ ss 37 - 43 CDPA 1988
- ◆ Compare auction houses and commercial galleries
 - ▶ s 63 CDPA 1988
- ◆ Compare other countries
 - ▶ Germany (catalogues)
 - ▶ Ireland (conservation, insurance)

EU Directive 2001/29

‘Information Society Directive’ 2001/29/EC of 22 May 2001

- ◆ Aims to update copyright in the digital sphere:
 - ▶ confirms rights of copyright owner
 - ▶ bolsters copyright protection and management systems
- ◆ Sought to harmonise the exceptions and limitations but exceptions and limitations are non-mandatory
- ◆ All must satisfy the ‘three step test’
 - ▶ “special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the rightholder”

Exceptions - Directive 2001/29

- ◆ Non-commercial research Arts 5 (2)(b) and (3)(a)
- ◆ Reproduction by museums - *not* on-line communication Art. 5(2)(c)
- ◆ Illustration for teaching Art. 5(3)(a)
- ◆ Advertising exhibition of artistic works Art. 5(3)(j)
- ◆ Communication or making available, for the purpose of research or private study, to individual members of the public by dedicated terminals on the premises of museums Art. 5(3)(n)

Directive 2001/29 - other provisions

- ◆ Circumventing technological measures [Art. 6](#)
- ◆ Encryption, scrambling or other methods of controlling access
- ◆ Exceptions? Voluntary measures [Art. 6\(4\)](#)
- ◆ Rights-management information [Art. 7](#)
- ◆ Removal or alteration of rights-management information
- ◆ Criminal offences? (cf hacking)

Implementation of the Directive

- ◆ Late!
- ◆ Under European Communities Act, ie implementation *only* of those provisions that are mandatory
- ◆ No improvement of the position of museums without further lobbying of UK government
- ◆ Digitisation projects still require full copyright clearances
- ◆ Underlines need for licensing schemes

Clearance

- ◆ Difficulty of identifying owner
- ◆ Funding terms often very onerous
- ◆ Directive emphasised the role of licensing schemes
- ◆ Few (or no) schemes yet for on-line display
- ◆ Are now some initiatives:
 - ▶ Resource feasibility study
 - ▶ Tate / DACS deal
 - ▶ ARLIS discussions
 - ▶ EMII (mda)

Enforcement Directive

- ◆ Proposal
- ◆ Disclosure of evidence
- ◆ Remedies (injunctions, orders for seizure and destruction, damages)
- ◆ Treat serious infringements as criminal offences
- ◆ Says nothing about ease of access to the courts or the cost of proceedings

Public sector information

- ◆ Commission proposal published 5 June 2002 - COM 2002 (207)
 - ▶ “a key resource for economic activity and proper functioning of the internal market”
- ◆ Covers:
 - ▶ “all documents used by public sector bodies as an input for information products or services which they commercialise”
- ◆ “Document” means “any content whatever its medium”
- ◆ Directive only applies to the extent compatible with Berne and TRIPS

Public sector information

- ◆ Aim is to facilitate commercial exploitation:
 - ▶ obligation to make documents available
 - ▶ charges only to recover a “reasonable return on investment”
 - ▶ licence terms must be “non-discriminatory”
- ◆ Current proposal exempts documents held by cultural establishments (eg museums, libraries, archives) and educational establishments (eg universities, schools)
- ◆ Current position

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