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— COPYRIGHT CONSULTANCY —

Preservation and archiving special interest group

Copyright or wrong: Resolving compliance and pragmatism in the context of digital preservation

OR Copyright - Fifty Shades of Risk

Copyright

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Disclaimer:

The information provided within this presentation is an opinion and should not be construed as legal advice.

Topics

- Outline of the copyright risks
- Implications
- Risk mitigation
- Safety and risk aware culture

Rights management = risk management

WHY?

CDPA 1988 – meant for an analogue world

The screenshot shows the UK Legislation website (legislation.gov.uk) displaying the Copyright, Designs and Patents Act 1988. The browser address bar shows the URL <http://www.legislation.gov.uk/ukpga/1988/48>. The website header includes the Royal Coat of Arms and the text "legislation.gov.uk". The main navigation bar contains links for Home, About Us, Browse Legislation, New Legislation, Changes To Legislation, and Search Legislation. The search bar is set to "All Legislation (excluding draft)".

The main content area displays the title "Copyright, Designs and Patents Act 1988" and the reference "1988 c. 48". Below the title are tabs for "Table of Contents", "Content", and "More Resources". The "Content" tab is selected, showing the text of the Act. The text begins with "An Act to restate the law of copyright, with amendments; to make fresh provision as to the rights of performers and others in performances; to confer a design right in original designs; to amend the Registered Designs Act 1949; to make provision with respect to patent agents and trade mark agents; to confer patents and designs jurisdiction on certain county courts; to amend the law of patents, to make provision with respect to devices designed to circumvent copy-protection of works in electronic form, to make fresh provision penalising the fraudulent reception of transmissions; to make the fraudulent application or use of a trade mark an offence; to make provision for the benefit of the Hospital for Sick Children, Great Ormond Street, London; to enable financial assistance to be given to certain international bodies; and for connected purposes."

The text is dated "[15th November 1988]" and concludes with "Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—".

The left sidebar contains sections for "What Version" (Latest available (Revised), Original (As enacted)), "Advanced Features" (Show Geographical Extent, Show Timeline of Changes), "Opening Options", and "More Resources" (Original Print PDF).

The right sidebar contains a section for "Changes to legislation" with a note: "There are outstanding changes not yet made by the legislation.gov.uk editorial team to Copyright, Designs and Patents Act 1988. Any changes that have already been made by the team appear in the content and are referenced with annotations."

The bottom of the page shows the browser's taskbar with various application icons and the system clock displaying "14:16 31/03/2016".

Copyright and the digital age – a good fit?



But things have changed



Image courtesy of John Hunt Associates,
Designers, Birmingham UK & Baltimore

Whilst we are still analogue



Image courtesy of Barbara Band

How we enable access.....



Image courtesy of Barbara Band

...and to what – has changed





What's in copyright (or not)?

- Works of artistic craftsmanship?
- Unmade beds?
- Pile of bricks
- Video art?
- Net Art?
- Tweets
- Sometimes we just don't know

Orphan works + 2039!



Facts and figures

- Ca. 50 million
- Up to 50% of archives
- 27,000
- 4-5 million photos

BUT THINGS HAVE CHANGED



New Exceptions to copyright

The screenshot shows a web browser window displaying the legislation.gov.uk website. The browser's address bar shows the URL <http://www.legislation.gov.uk/uksi/2014/1372/contents/made>. The website header includes the Royal Coat of Arms, the text "legislation.gov.uk", and a logo for "The National Archives" with the tagline "delivered by". Navigation links include "Home", "About Us", "Browse Legislation", "New Legislation", "Changes To Legislation", and "Search Legislation". A search bar is present with fields for "Title:", "Year:", "Number:", and "Type:" (set to "All Legislation (excluding draft)").

The main content area displays the title "The Copyright and Rights in Performances (Research, Education, Libraries and Archives) Regulations 2014" with the reference "2014 No. 1372" and a "Table of Contents" link. Below the title are tabs for "Table of Contents", "Content", "Explanatory Memorandum", "Impact Assessments", and "More Resources". There are also links for "Plain View" and "Print Options".

On the left side, there is a "What Version" section with options for "Latest available (Revised)" and "Original (As made)". Below this is an "Opening Options" section and a "More Resources" section with a link to "Original Print PDF".

The main text area shows the "Status" of the legislation: "This is the original version (as it was originally made). This item of legislation is currently only available in its original format." Below this is a list of contents with expand/collapse controls:

- Introductory Text
- 1. Citation and Commencement
- 2. Amendments to the Copyright, Designs and Patents Act 1988 etc.
- 3. Research, private study and text and data analysis for non-commercial research
- 4. Education
- 5. Libraries and archives: amendments to Part 1 of the Act
- 6. Libraries and archives: amendments to Part 2 of the Act
- 7. Recordings of folksongs
- 8. Recording of broadcasts for archival purposes
- Signature
- SCHEDULE CONSEQUENTIAL AMENDMENTS, REPEALS AND REVOCATIONS**
- Explanatory Note

At the bottom of the page, there is a "Back to top" link and a footer containing the "OGL" logo and the text "All content is available under the Open Government Licence v3.0 except where otherwise stated" and "© Crown copyright". The Windows taskbar at the bottom shows various application icons and the system clock indicating 15:27 on 31/03/2016.



- NEW * preservation exception enabling organisational format shifting for preservation purposes - WIN, WIN, WIN
- NEW* Dedicated terminal exceptions enabling reproduction of digital copies of collection items on dedicated terminals on premises open to the public

The CILIP Poster

**IS YOUR
COPYING
LEGAL?**

MAKE SURE YOU UNDERSTAND THE LAW

**YOU MAY MAKE A SINGLE PRINT
OR DIGITAL COPY OF ANYTHING
IN COPYRIGHT FOR:**

Non commercial <ul style="list-style-type: none">- private study or research- illustration for instruction or teaching And for <ul style="list-style-type: none">- Quoting from a work- Caricature, parody or pastiche- News reporting, except for photographs	THE AMOUNT YOU COPY MUST BE 'FAIR AND JUSTIFIABLE' <ul style="list-style-type: none">- You must not reproduce the copy, sell it, or share it online.- You must acknowledge the source where reasonably practical.
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Go to www.cilip.org.uk/copying

OR ASK YOUR LIBRARIAN OR COPYRIGHT OFFICER FOR FURTHER INFORMATION

cilip
Chartered Institute of
Librarians and Information
Professionals

The Libraries
and Archives
Copyright
Alliance

CC BY-SA

**BUT STILL - Terminology and application
unclear and undefined = uncertainty and
reliance on risk management**

JUSTIFIABLE

FAIR

TERMINALS

DEALING

NON COMMERCIAL

DEDICATED

Operational Risks

- Members of the public:
 - copying more than they should
 - Using it in ways they shouldn't
 - Viewing and downloading inappropriate/illegal material
- Us
 - getting it wrong – giving incorrect advice
 - Copying more than we should
 - Using things without permission

Impact

- Breaking the law
- More stress and uncertainty
- Financial penalties
- Reputational impact
- Increased pressures on resources
- Discontented users who don't visit, or cause problems for us, or tell on us
- Job losses/disciplinary

The “business” of being a museum: critical issues

- Failure to manage direct risks – means objectives not achieved
- Failure to embrace opportunities which could offer an improved way of achieving objectives

The Human Condition

The Human Condition:

**The changes that we face as museums,
good and bad, bring uncertainty and worry**

Conundrum:

**How can we help our staff feel safe, to take
necessary risks, when we don't feel safe?**

Reality check

- Risks can be proportionate and informed
- Organisational risk mitigation activities are key
- Most people want to do the right thing
- We can make it easier for them to do so
- Your role is not to police
- But just in case – have provisions in place

Immediately feeling safe

- Passing the risk where appropriate and possible
 - Every where copying/access takes place – notices
 - CILIP Posters for self service copying on walls and on desks and in spaces in between
 - Information on museum website
 - Declarations in writing for copying by librarians
 - Terms and conditions for access to digital content
 - Acceptable Use Policies for Internet sites (children/adults)

Feeling safer

- Staff awareness training and support
- Policies + procedures –
personal/organisational
- Industry standards like SPECTRUM
- Project + programme planning
- Risk registers
- Action plans; risk book; SMT risk owner

Who?

- Staff
- Heads of Department
- Project Managers
- SMT
- Board

Long term

To translate copyright and risks into practical solutions

Operational

Strategic

Business Critical

Thank you!



Image courtesy of Barbara Band

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