



Final report: MIDESS WP7

Intellectual property issues in institutional and cross-institutional multimedia repositories

Mary Cordiner
MIDESS Project Officer, UCL SSEES Library

Summary

The MIDESS Project is a JISC project funded under the *Digital Repositories Programme*. MIDESS explores the management of digitised content in an institutional and cross-institutional context through the development of a digital repository infrastructure. The project addresses how support can be provided for the use of digital content in a learning and research context, in an integrated manner. The partners in the project are the University of Leeds, University of Birmingham, London School of Economics (LSE) and University College London (UCL).

This work package, based at UCL SSEES Library, looks at the intellectual property rights and other relevant considerations in educational settings, particularly as they affect institutional and cross institutional multimedia repositories. The term 'multimedia repository' is purely used as a shorthand way of referring to any repository software that manages content in image or multimedia formats, such as digital video files or audio files. Traditionally repositories have managed text files, however it is increasingly common for repositories to manage a wide variety of content in different file formats. The term is not however, used to designate a distinct type of repository as it is expected that increasingly most repositories will manage multimedia content of some form.

The terms of current UK copyright duration are tabulated and include reference to the 1956 Act. An overview of intellectual property rights and related rights, based on the Acts, and documents from many sources, formal and informal discussion lists is given together with a summary of the provisions for the higher education sector. The report also considers licensing schemes, particularly Creative Commons end user licensing and the ERA scheme which licenses the recording of some UK broadcasts. International conventions and directives as they relate to UK law are briefly considered.

Intellectual property rights are generally considered technology neutral. The introduction of provisions for communicating to the public, making illegal the circumvention of technological protection measures and protecting electronic rights management systems seems to signify a shift to differences in protecting digital works. New intellectual property rights may be created in repositories not

only in the new forms of material but also as database rights in the repository itself.

The third section of the report includes a series of case studies based on specific multimedia content held in MIDESS partner libraries and identified in Work Package 3, the User requirements analysis. For each example the main issues are listed and best practice indicated. This work package identified: medical images which include photographs, audio and video recordings; photographic collections; film and video collections; slides of architectural works; recorded and/or digitised broadcasts; lectures to students and to the public; designs; musical work and motion capture.

The fourth section is devoted to good practice in the incorporation of multimedia in institutional repositories and highlights

- Assessing risks and recommending risk management strategy - identifying risks such as copyright infringement by both those depositing material and those using the material in the repository,
- Establishing the copyright status of the starting material including tracing copyright holders,
- Emphasising the importance of record keeping both in tracing the copyright status and licences,
- Having agreements with depositors to ensure that they understand their responsibilities to clear copyright and the rights depositors may wish to retain,
- Publishing or displaying the material through institutional repositories
- Having in place appropriate policies for the use of material
- Licensing end-users - advising end users what they can and cannot do with the material - in particular looking at one Creative Commons licence version which has limited use and cannot be used where third party rights are involved or there is any chance that permission may be revoked
- Negotiating licences to permit inclusion
- Having in place notice and take down policies.

The narrative is supported by an appendix listing questions to which satisfactory answers should be obtained at the outset. These questions are accompanied by outline answers.

The report includes a list of sources, subdivided by category of material encountered in the report.

Disclaimer

The author is not a copyright lawyer and has no legal training. Every effort has been made to check the accuracy but this report does not constitute legal advice, merely guidance. This report presents an overview and a snapshot of the situation at October 2006. Each situation will be different. The best way to approach IPR is to seek legal advice.

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1. Introduction

This document is work package 7 in the JISC-funded MIDESS project which looks at the management of digitised content in institutional and cross-institutional repositories that hold documents and objects which may be textual or multimedia. The objective of Work package 7 is to establish the IPR and related issues in the context of multimedia material and content sharing.

Intellectual property rights are a key element bearing on the inclusion of content (whether born digital or converted from an analogue original), its management and how it is accessed through a repository and its intended use. Intellectual property rights are relevant throughout the lifecycle of materials in repositories e.g. preservation, access, conversion into different formats and reuse.

1.1. What is a multimedia repository?

In this context, an institutional repository is a 'container' that brings together in one place or through one access point a disparate collection of resources for long-term storage, preservation, management, and retrieval or, as the JISC wiki says:

IRs [Institutional repositories] are partly linked to the notion of a digital library -- i.e., collecting, housing, classifying, cataloguing, curating, preserving, and providing access to digital content, analogous with the library's conventional function of collecting, housing, classifying, curating, preserving and providing access to analog content
(http://en.wikipedia.org/wiki/Institutional_repository)

The resources can range from the research output of a university to basic research materials, including special collections. Currently material can be scattered around the university, often inaccessible to all but a few individuals, although the contents reflect much effort and valuable assets for which there is frequently no preservation strategy in place and/or very limited access.

Repositories are very powerful management, preservation and access tools for multimedia and offer great opportunities particularly when extended across institutions or possibly made accessible to external users. There are areas of overlap with VLEs but repositories have a much wider remit. The JISC wiki also gives one of the two main objectives of IRs as:

to store and preserve other institutional digital assets, including unpublished or otherwise easily lost ("grey") literature (e.g., theses or technical reports).

which is further extended in repositories which contain multimedia documents and objects. VLEs, in contrast, have specialised functions in the teaching, learning, support and assessment processes, being organised on a course by course basis with access generally limited to registered students on the relevant course. VLEs potentially support a high degree of interactivity with the user. Repositories could also be a storage, management and access tool for learning objects (for which there are several definitions) or reusable learning objects. Repositories, however, may not allow the necessary degree of interactivity; while the material can be ingested some formats may not be immediately viewable without further configuration of the repository.

Multimedia can be derived from many sources and in many different formats, often analogue in the original, which are converted to digital form. It is essential to respect the intellectual property rights in all types of material to be included in a repository, whether these are 'born digital' or analogue materials converted to digital formats.

For the purposes of this report the term 'multimedia repository' is used as shorthand to cover repositories that include a wide variety of types of material ranging from digital images of text to videos, music files, broadcasts, films, etc as opposed to those repositories that concentrate on digital or digitised textual material. It is not a new type of repository: most repository software can be configured to capture multimedia.

2. Intellectual property rights

Intellectual property rights in the UK are governed by the Copyright Designs and Patents Act (CDPA) 1988 which has been the subject of numerous amendments since it became law. The result of many of these amendments has been to bring the UK law into line with EU directives which aim to harmonise intellectual property treatment across the European Union, including harmonising the length of protection and permitted acts. The largest component of intellectual property rights in multimedia repositories is copyright.

Copyright is an automatic right which requires no registration in the UK and many other countries which are members of the Berne Convention. Fixation or recording in a material form of the 'work', however, is an essential requirement for copyright protection in the UK. There remain a few countries, mainly African nations, which are signatories to the UCC but not the Berne Convention - these include most recently Brunei, Nepal and Samoa, who all signed in 2006. To qualify for copyright protection under the Universal Copyright Convention the © must be included. Copyright does not protect ideas or facts although a compilation of facts, by virtue of skill in selection, may be protected. Copyright cannot exist of its own accord but must refer to a work, or the expression of the idea, i.e. it subsists.

The main provisions of copyright are the right of the author or creator to authorise:

- publishing the work
- copying the work
- communicating the work to the public
- performing, showing or playing the work in public
- adapting the work - particularly relevant in the multimedia repository environment
- renting or lending the work to the public.

2.1 What is a 'work'?

A work can be in one of the following categories:

- Literary, dramatic, musical or artistic which include, for example:
 - literary work includes tables, a compilation, a libretto in an opera, the script of a film, or an original database;

- musical works include any musical work e.g. orchestral works, popular songs - note it does not include the lyrics or words: these are literary works;
- an artistic work can be a photograph, a well-known painting, a map;
- Broadcast, film or sound recording
- A typographical arrangement - most relevant here when considering an out of copyright work that may have been republished.

A 'work' can only benefit from protection if it is deemed to be in one of the above categories i.e. if the work cannot be fitted into one of the above categories it will not qualify for copyright protection.

Several copyrights can exist in one work e.g. a film may include the film sequence, a film script (a literary work), musical work for the background music and copyright in the recording of the soundtrack, or in certain cases broadcasts may have film copyright in addition to broadcast copyright.

To qualify for copyright protection the work must also be original, although the degree of originality varies. For example,

'...two people setting out to survey Hyde Park. All being well, the resulting maps will show the same feature in the same relative positions. If the surveyors choose the same scale and use the same set of mapping symbols their maps may well look virtually identical, but each will be a copyright work without infringing the other because each was created independently.' (Padfield, 2004)

In addition, the author or creator must fulfil certain qualifications of nationality or residence at the time of creation or publication to qualify for copyright protection under UK law. This is important when considering copyright protection under international conventions and is a 'point of attachment' between UK law and international conventions and agreements

Copyright is a property right which can be assigned and this can complicate the identification of the copyright owner.

The lifetime of the author or creator is commonly used as a basis to define the duration of copyright protection although other criteria are used in certain cases as may be seen by reference to Appendix 1 Duration of copyright under UK law.

2.2. Other intellectual property rights

In addition to copyright there are intellectual property rights in

- Design rights - registered and unregistered design rights which may be applied to fabrics or the form of goods.
- Moral rights - the right to be identified as the author or creator of a work and to object to derogatory treatment of the work. It is a right which may not be transferred but must be asserted. Under UK law this right is not automatically applicable to UK employees although some university IPR policies do allow employees this right.

- Database right - applies when substantial investment has been made in its compilation. Databases are protected by copyright where selection or arrangement of the content is based on the author's intellectual creation.
- Patents for original inventions.
- Trademarks.

2.3 Related rights

Among the related rights to copyright three most commonly stand out in the context of multimedia repositories

- Performers rights - the right of those participating in any production (film, etc) to authorise its performance and broadcast and possibly be rewarded financially.
- Database right - the protection of a database due to the substantial investment by the creator.
- Publication right for material in which copyright has expired.

2.4 Copyright in the higher education sector

The basic rights permitted under the CDPA are,

- Copying for private study and/or non-commercial research is permitted.
- Fair dealing for criticism or review provided adequate acknowledgement is given.
- Fair dealing which allows copying of an insubstantial part and here quality must be taken into account as well as quantity. Although the often quoted 5% or one chapter may not be an insignificant part, a quantitative abstract may give results values could be considered a 'substantial' part. Fair dealing is a defence not a right under the Act.
- Visually impaired persons may have copies made, provided it is for his or her private use.

In addition there are specific provisions that apply to HEIs. These relate to the educational purposes of the establishment as set out in Sections 32, 33, 34, 35 and 36, which allow for material to be used for examination or instruction. Other sections of the Act set out exceptions for private study and non-commercial research. However, these exceptions in the other sections do not apply to sound recordings, broadcasts, films or topographical arrangements.

It should be noted that the qualifying establishments are strictly defined in Statutory Instruments. The provisions that are most applicable in the context of multimedia repositories are:

- Recording of broadcasts, subject in certain instances to appropriate licences being in place.
- Performing, playing or showing works in the course of instruction to registered students.
- Lending copies by educational establishments.

The term 'Educational purposes' has not been clearly defined but is generally understood to include instruction, examination and research, as is evidenced by its

inclusion in the BUFVC outline <http://www.bufvc.ac.uk/aboutus/index.html> . Another potential hurdle comes when defining 'non-commercial research', a term for which various interpretations have been offered, some more restrictive than others. The 'fair dealing' defence does not apply to sound recordings, broadcasts and films. While recordings can be used for research inclusion of any extracts in the published research need to be copyright cleared.

2.5 Licensing Schemes

When works are still in copyright and exceptions permitted under the Act are insufficient for the needs of the establishment then one option is to acquire a licence to use the material. The three principal licensing schemes that have been developed and are most widely applicable to the higher education sector are:

- CLA - Copyright Licensing Agency - the Higher Education Trial Licence Agreement applies to copying or scanning material from books and journals. Some material that is copied or scanned may be incorporated in lectures e.g. images, diagrams.
- ERA - Educational Recording Agency - licenses the recording of broadcasts.
- NLA - Newspaper Licensing Agency - as the name implies.

In music there are a number of agencies, or collecting societies, that grant permission to perform, adapt etc works. The Open University has set up its own licensing scheme for its material. Where no certified licensing scheme exists then recording does not infringe copyright in the broadcast or 'any work included in it'.

Of these the ERA Licensing Scheme, covering recording for instruction, is most pertinent to multimedia repositories. The ERA acts on behalf of its members, comprising copyright owners and performers, to license for educational use the recording of broadcasts which are made in the UK. The establishment may make the recording itself or designate a third party. Note that recordings made off-site must be delivered in hard copy and not be transmitted electronically.

The ERA scheme covers:

- BBC television and radio broadcasts (BBC Worldwide),
- ITV Network services,
- Channel Four and E4,
- Five television,
- S4C.

The ERA licence does not cover feature films or advertisements contained in the broadcasts, but there are no certified licensing schemes. Therefore recording this material does not infringe copyright. The ERA licence does not apply to commercial CDs or DVDs.

All material must be labelled with i) the date of recording, ii) name of the broadcaster, iii) title of the programme and iv) include the sentence 'This recording is to be used only for educational and non-commercial purposes under the terms of the ERA Licence' (ERA, 2005). Labels may be obtained from the ERA.

Programmes that were recorded after 30th May 1990 may be stored indefinitely in analogue or digital form while the establishment has a licence. Adaptation of the

programmes by adding subtitles or separating the soundtrack, for example, is not permitted but extracts may be used for non-commercial educational purposes of the licensed establishment, with appropriate acknowledgement.

Recordings may be copied for non-commercial educational use within the establishment and supplied in hard copy to other licensed establishments. Charges to cover the out-of-pocket costs of this activity are permitted and not considered 'dealing' which would infringe the Act.

The licence allows showing the recordings of the broadcast within the establishment for educational purposes and loan to registered students or other members of staff also for educational purposes, again in hard copy form. It is recommended that borrowers complete a declaration clearly stating that the recording is lent for educational purposes only. Within the establishment the recordings should only be used for educational purposes and by those giving or receiving instruction. This limitation precludes use of any extract in promotional material for the establishment and showing the recording for entertainment purposes, regardless of whether payment has been made.

2.6 International conventions and directives

A number of international treaties and conventions relating to IPR have been implemented in UK legislation. One of the central principles of international treaties is 'national treatment' i.e. the country (contracting party) gives the same treatment to foreigners as it would to its own nationals. The UK is a signatory to the Berne Convention (or Union) with the 1971 text entering into force on 2 January 1990, the UNESCO Universal Copyright Convention (6 June 1957 for the 1952 text, 5 May 1972 for the 1971 text) and the World Trade Organization TRIPS (Trade Related Aspects of Intellectual Property Rights) Agreement.

EC directives implemented in the UK apply not only to the European Union countries but also to EEA countries which include Iceland, Liechtenstein and Norway. Some EU countries have been slow to comply with these directives, notably France and Spain have complied with EC Directive on Harmonisation of Certain Aspects of copyright and related Rights in the Information Society in 2006 <http://www.ipr-helpdesk.org/controlador/resources/pdfVersion?type=noticia&idFicha=0000005966&len=en> and other relatively recent accession states have yet to comply fully e.g. Czech Republic (at the time of writing, September 2006). States that are due to join the EU in 2007 may not have yet fully implemented the Directive.

It is worth noting that the Russian Federation has ratified the Berne Convention (2003), the UCC (1973) but not the TRIPS Agreement because the Federation is not yet a member of the World Trade Organization.

2.7 Intellectual Property rights in the digital environment

Copyright, it is argued, has largely applied in the same way to traditional 'works' and digital materials. The law has tended to catch up after the technology has evolved. Many of the works considered here have originated in the traditional forms described in the legislation.

There are two areas of law specific to digital materials:

- legislation relating to circumvention of technological protection measures,
- protection of electronic rights management information.

2.8 New IPR created in repositories

There are several types of IPR that will be created by the establishment in the course of populating a multimedia repository and which it will own. Thus the establishment needs to consider its attitude to its IPR being infringed by users of the repository and whether or how it wants to protect its rights. This policy should be made clear in terms and conditions of use and other readily accessible policy documents.

These new rights include the

- copyright in the repository,
- database rights,
- proprietary rights in the formats of contents,
- copyright and other rights e.g. publication right in previously unpublished material,
- rights in the new forms of material.

2.8.1 Repository - database right and copyright

It is generally agreed that a repository is a database with substantial investment in its creation and originality in the selection of the contents. The skill in selection will confer copyright protection while the investment gives database rights. The database is likely to be continuously developing and so qualify for 'rolling' protection of 15 years from making or publication and thus effectively permanently protected while additions are being made. It could be argued that individual large databases where a repository contains compilations of different types of material should also enjoy database protection.

Database rights and copyright in the repository will belong to the educational establishment. This means the institution should have a policy regarding its approach to dealing with possible infringements of intellectual property rights by users of the multimedia repository. Institutions may not be concerned about extraction or re-use of the whole or substantial parts of the content. Ultimately the only absolutely safe way to prevent illegal exploitation of resources is not to make them publicly available.

2.8.2 New copyright in previously unpublished material

The duration of copyright for unpublished material varies according to the type of material e.g. photographs, manuscripts, sound recordings, and has been subject to change as UK legislation has developed. Much previously unpublished material is now protected only until 2039. Careful consideration should be given to the copyright aspects of publishing, via an open access repository, previously unpublished material and the effect this will have on the type and duration of copyright protection.

In the examples given in Work package 3 this may apply to images created for the LSE textual material of the Ionian Bank, Charles Booth's enquiry into London life

and Labour notebooks, depending on whether or not they were previously published, and images of medieval manuscripts.

The images created from these materials may also have proprietary rights in the format by virtue of the software used in their creation e.g. pdfs. Commercially available software may produce images which include coding that is copyright or patented and so create an intellectual property interest in the resultant image.

2.8.3 Digital forms and IPR

Creating digital forms for out-of-copyright material or material for which there is no protection can involve three new sets of rights: intellectual property rights in the new digital form, rights in the form produced by using proprietary software to create it and possibly publication right. For example, creating

- digital images of artefacts will create new copyright in digital photographs which the institution may wish to exploit,
- images of out-of-copyright textual works using commercial software may create in a new image a residual IPR interest which is derived from the software used,
- digital forms of out-of-copyright material could give publication right.

In the case of making digital images from old photographs that are out of copyright, it is arguable whether there is new copyright created. This will depend on the skill exercised in touching up and finishing the digital image to achieve a good digital image. In the UK, it is likely that there will be new copyright protection but in some jurisdictions this may not be the case.

As creating a digital form of material is making a copy, a restricted act, great care should be taken to observe the intellectual property rights of the original.

3 Intellectual property in multimedia repositories

The inclusion of material in digital format in multimedia repositories will be determined by intellectual property rights in the starting materials whether these are analogue or digital. There may be several sets of property rights in one type of material and there are overlaps between types of material identified here e.g. there will be sound recordings in lectures and film intellectual property rights in broadcasts, to name but two. This section looks at the criteria that have to be fulfilled before different formats material can be included and thus the limitations the criteria may impose.

Many originators of material are wary of repositories in general because digital material can be so quickly transmitted to multiple recipients as high quality copies that can be reproduced with little effort. Thus it is easy to contravene two of the Berne Convention three conditions and

- Conflict with the normal exploitation of the work.
- Prejudice the legitimate interests of the author.

3.1 Art and Architecture

Museums are constantly searching for ways to increase access to their material, enhance the user experience, conserve collections and encourage visitors. To this end museums and galleries have invested heavily in virtual tours on their websites with significant image content. The images of artworks and artefacts in their collection are often generated by the museum or gallery although they do not necessarily own the copyright in the original work, but will own the copyright in the images generated.

3.1.1 Scope

For the purposes of this study the relevant types of artistic works are graphic works (paintings, drawings, maps etc) and artistic works (including three dimensional articles and buildings as works of architecture). In the case of graphic works there are no qualifying criteria of quality for copyright to subsist for the period of the author's life plus 70 years, but there must be originality.

3.1.2 Inclusion in a multimedia repository

Unless it is in the public domain or the copyright has expired on the original artistic work, creating an image without the permission of the copyright holder is an infringing act. This does not apply to buildings. There is the additional problem of the actual work belonging to someone or an institution that is entitled to control access and use of collections through its terms and conditions of access even although the work is on public display. In the case of out of copyright works or where permission has been obtained from the copyright holder many museums and galleries charge for the images they have created of works in their care and try to generate income from the use of these images. These images will have their own copyrights.

Although the work itself may be out of copyright it is possible that for any images an institution does not own it may need to go down the licensing route.

Consequently the original owner of copyright in the image may restrict severely the conditions under which the image may be used and published, especially to anyone other than those under instruction in the establishment or considered to be conducting commercial research.

For material in copyright and not belonging to the institution itself it will be necessary to clear copyright or license its use. This is most likely to be limited to those giving or receiving instruction and research with access being limited to those within the institution or agreed terms. Additional permission will be needed to publish the image in any future published research output.

Case studies

Material: Leeds' University Fine Art School's slide collection

Purpose: for teaching and research

Issues:

- What is the copyright status of the original subject matter i.e. age of work and date of death of the creator? If it is still in copyright it is advisable to obtain the permission of the copyright holder to make an image, although legally this is not essential if the subject matter is on public display. It is also advisable to credit the original creator of the work. This is not essential if the work was created before 1989.
- If the subject of the slides is out of copyright, what is the copyright status of the images i.e. who created the images, photographer and what is their copyright and employment status?
- Who owns this slide copyright and can copyright clearance be obtained?
- If not, is licensing the use of the material possible? If yes, what are the conditions and are they acceptable?
- Who owns the subject matter - it may be necessary to obtain the permission of the subject's owner (although they may not be the copyright owner) to use any image.
- If the institution does not own the copyright in the images or the material has to be licensed then it is likely access to the material may have to be restricted.
- Reproduction of the images is likely to be limited if permission to include in the first place has to be sought.

Material: Birmingham University Department of History of art collection of architectural images

Purpose: for teaching and research

Issues:

- It is not an infringement of copyright to photograph a building. However, care should be taken not to treat the subject in a derogatory way. The intellectual property rights are likely to lie in the images and with the creator of the images. The architect should be credited.
- Plans will be subject to copyright as an artistic work and should not be reproduced without permission as they are subject to copyright protection.

3.2 Broadcasts

Broadcasts are a specified category of work in UK copyright law. They may include several types of material such as films, news programmes and advertisements in addition to programmes made specifically by the broadcasting organisation.

3.2.1 Definition

A broadcast is defined as

*'an electronic transmission of visual images, sounds or other information which -
(a) is transmitted for simultaneous reception by members of the public and is capable of being lawfully received by them, or
(b) is transmitted at a time determined solely by the person making the transmission for presentation to members of the public*
(CDPA amended by SI 2003/2498)

This definition excludes on-demand services as these would not necessarily satisfy either of the above criteria for simultaneous reception or time of transmission. Some broadcasters currently provide the capability to hear or view some programmes that may have been missed for up to seven days after transmission. The conditions of use make it clear these are intended only for personal non-commercial use. At present these 'listen again services' are not considered broadcasts by the ERA and are therefore not licensed under this scheme. This is an area where the law has yet to catch up with developments in technology.

3.2.2 Copyright protection

It should be noted that it is the broadcast signal that is protected. Broadcasts are protected for 50 years from the end of the year in which the programme was first transmitted. There is no new copyright in repeat transmissions in UK law unless significant new material has been added.

The authors of broadcasts are either the person(s) or organisation transmitting the broadcast provided the person(s) or organisation has responsibility for the broadcast's contents or any person providing the programme who makes with the person transmitting it the necessary arrangements for its transmission.

Where the author is not a national of an EEA state, the place of broadcasting determines the duration of protection of the broadcast. The term of protection of the recorded broadcast is limited to the duration of protection under UK law. Certain infringements are determined by the place of recording.

In the education sector special provisions are made for broadcasts:

A recording of a broadcast, or a copy of such a recording, may be made by or on behalf of an educational establishment for the educational purposes of that establishment without thereby infringing the copyright in the broadcast, or in any work included in it, [author's emphasis] provided that it is accompanied by a sufficient acknowledgement of the broadcast and that the educational purposes are non-commercial. (CDPA 1988, Section 35)

Nor is copyright infringed when this recording is communicated to and can only be received by person(s) situated within the premises of the educational establishment. This provision does not apply where there is a certified licensing scheme, such as has been discussed in Section 2.5. Feature films are not included in this licensing scheme.

As with other provisions this copy cannot be 'dealt' with i.e. sold or let for hire or exposed for sale or hire or communicated from within the premises of the

establishment. It may, however, be lent i.e. on a CD or DVD to another educational establishment. (CDPA Section 36A).

There has been debate about lending films which are not classified by the BBFC. According to www.screenonline.org.uk (British Film Institute) the Video Recordings Act does not require all videos to be scrutinised by the BBFC and some are exempt from classification if they are considered educational provided the video did not contain images of human sexual activity, urinary or excretory functions, extreme violence and torture or show techniques likely to be useful in committing crimes.

3.2.3 Inclusion in multimedia repositories

A multimedia repository presents the opportunity to store and manage centrally broadcasts so that they can be accessed in the secure way with the necessary warnings required to satisfy the law.

Section 35 permits the recording of broadcasts, without infringing copyright, for non-commercial educational purposes, subject to the existence of a certified licensing scheme exists for educational establishments, e.g. ERA licensing scheme, Open University, operates a licensing scheme for its own programmes. Where the recordings are made available through central servers there should be an opening page stating the conditions under which the ERA licensed copy was made.

The ERA represents among others DACS, PRS and PPL for material recorded under the ERA licensing scheme. When it is to be performed in settings which are not non-commercial educational, e.g. open days, licences are still required from the appropriate collecting societies e.g. PRS, PPL.

For the last two years the ERA has been looking at a licence it describes as ERA Plus. This is envisaged as a commercial licence which would be outside the provisions of Section 35 and comprise an electronic library facility for educational establishments and their use of ERA recordings for educational purposes on or off the establishment's campuses. Access would be through a secure system.

A copy of a broadcast stored and accessed only within the establishment would not be an infringing copy and would meet the legal requirements for non-commercial educational purposes including research.

Case studies

Material: Russian broadcasts held at UCL SSEES Library, for use in research in culture, politics, film studies etc and excerpts for language teaching,
Issues and restrictions on use:

Argument:

- The Russian Federation ratified the UCC Geneva text 1952 in 1973, the Paris text of 1971 in 1995, the Berne Convention in March 1995. Hence the Russian Federation is bound by the UCC Paris text (1952) until 1995. Neither UCC texts of '52 or '71 cover broadcasts. The Russian Federation ratified the Rome Convention for Phonograms, Broadcasts etc - the most important instrument protecting broadcasts on 26 May 2003. It is not, however, retroactive and grants protection for 20 years from the end of the year of broadcast. This Convention like others effectively refers those countries which have ratified it back to the national legislation. So in UK law broadcasts are protected for 50 years. The Russian Federation has not signed the TRIPS agreement which also covers broadcasts, as it is not a member of the WTO,

although it has observer status and thus should complete negotiations within 5 years. Earlier this year it was reported that negotiations were being encouraged to complete the Russian Federation's accession to the WTO.

- The point of attachment between the UK and Russian Federation being location of broadcasting organisation for transmission

Conclusions:

- Apart from the broadcast being accompanied by sufficient acknowledgement and not dealing in copies then Russian Federation broadcasts could be used for 'educational purposes' of the educational establishment. Depending on how you define 'educational purposes' they could be used to encourage registered students to study the language etc-(educating about facilities within the establishment) or use in research by staff or students.
- extracts could be used for language exercises
- Stills from more recent material may be used with the consent of the director or other author i.e. copyright clearance has been obtained.

Caution:

- Should not use a playable extract of a broadcast that post-dates the entry into force of the Rome Convention on the website i.e. after (26 May 2003) as that would be communicating outside the establishment and therefore the public, or on publicity material
- beware of using stills from underlying material (e.g. films) in broadcasts unless pre-date the protection given by Berne Convention for films which is 50 years after the work was made or made available to the public - but UK law extends this to 70 years after the death of one of a number of people involved in making the film. The Berne Convention is retroactive with the entry into force in 1995.

Material: Digitised off-air broadcasts LSE CLT database.

Purpose: for teaching and learning in relation to specific courses

Issues:

- These broadcasts are digitised under the ERA licence, fuller details of which are set out in Section 2.5 Licensing schemes.
- Although these are programmes licensed by the ERA and it should be noted there is material, such as feature films, that are broadcast by the participants in the scheme that is not covered by the licence. With the exception of material where rights are held by the Open University, generally there is no certified licensing scheme for material such as feature films and advertisements. Hence under the CDPA these may be recorded from broadcasts.
- These recordings may be held in digital format and stored on LSE's server provided appropriate security measures are employed
- Under current licence conditions access is limited to students on the campus
- Analogue copies may be transferred to digital formats.

3.3 Designs

Design rights are another type of intellectual property right that are included in the CDPA 1988. They were the subject of specific earlier Acts e.g. Registered Design Act 1949 much of which was amended by the CDPA 1988. As a result of an EU directive it has been further amended.

3.3.1 Scope

A design refers to the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture or materials of the product or its ornamentation. In the UK

there are three provisions, namely: registered designs, unregistered design rights and artistic copyright.

(Source: <http://www.intellectual-property.gov.uk/faq/designs/what.htm>)

3.3.2 Implementation:

Registered designs are protected in the UK or EU-wide (if protection is applied for the Office of Harmonisation for Internal Trade) in the class in which they were registered (there are 14 different classes) and any other countries where protection has been applied for. Design registration gives the owner a monopoly on their product design, i.e. the right for a limited period to stop others from making, using or selling a product to which the design has been applied, or in which it has been incorporated without their permission and is additional to any design right or copyright protection that may subsist automatically in the design. Designs are protected under the CDPA 1988 under the Registered Design system for 25 years from the date of first marketing provided registration is renewed every 5 years.

Design right (or unregistered design rights) which is defined as

'applies to original, non-commonplace designs of the shape or configuration of articles' (Source: http://www.intellectual-property.gov.uk/faq/designs/design_right.htm)

is not a monopoly right but a right to prevent deliberate copying, and lasts until 10 years after first marketing articles made to the design, subject to an overall limit of 15 years from creation of the design. Design right does not have to be applied for and it can be bought, sold or licensed.

The design is owned by the company, if created in the course of employment or if created for a company it is likely to be the property of the company employing the contractor, but that depends on contractual conditions.

Copyright may exist in design documents or if the design itself is considered an artistic work it may have protection under copyright law which will extend 70 years after the death of the creator.

3.3.3 Inclusion in a multimedia repository

Tracing registered designs still in force will be relatively easy through UK and other databases. While the protection for the design has been exhausted there may still be copyright protection for the design documents. The latter will need to be cleared which may be challenging e.g. where companies have merged. Designs can be subject to copyright as well but there are rules in place to reduce the overlap between the two rights.

Representing the designs by new images will create a new copyright in the images subject to the appropriate duration. Should previously created images be used then copying these will require the permission of the copyright holder, especially if it is simply a matter of converting these to digital form. Reasonable efforts should be made to trace the rights holders.

There are special provisions for designs applied to textiles.

Case studies

Material: Archive of textile designs (Leeds University)

Purpose: to make available the collections to the widest possible public and educational audience.

Issues:

- Original drawings that show the pattern to be applied to a textile are protected by copyright as artistic works - current duration 70 years.
- Age of the design drawings is important in considering duration of copyright protection i.e. those still in copyright at 31 December 1995 may be subject to extended or revived copyright
- Ownership of the copyright in the design drawings - unless the International Textile Archive owns the copyright, making photographs may infringe copyright protection.
- Whether or not the Archive owns the copyright it should consider if it wishes to control the use of the material in its care.
- While copyright protection of the original design subsists it is an infringement for those in signatories to the international conventions to produce a textile with the same surface decoration.
- Where new images are created, new copyright will be created in the images and displaying the terms and conditions of their use would encourage all visitors to the virtual display to respect them.

3.4 Lectures

Lectures may contain more than one set of rights, for example, copyright protection as a literary work, moral rights to be identified as the author and performing rights of the lecturer in the delivery.

3.4.1 Scope

This section considers lectures that have been recorded and to be held in a repository which may be accessed by students or the general public within and without the educational establishment. So doing enables students and others to 'attend' or listen again to the lecture at a time convenient to them.

It is assumed that the lecturer prepares and delivers the lecture as part of their normal duties. Hence the copyright in the lecture belongs to the employing institution under the CDPA 1988. In practice, the institution must follow its own policy on such matters: some institutions may grant moral rights, copyright and performing rights to the lecturer. For public lectures agreements that are acceptable to the lecturer and the institution will be required.

3.4.2 Lecture content

While the lecture itself will be a copyrightable as a literary work it may also contain copyright material from third parties. So the lecturer must take care in preparation and selection of materials that may be included. Advice on use of materials (Cornish, 2005) that may be included in lectures highlights options for third party material:

- Use out of copyright or public domain material and research output funded by public bodies

- Use material where the copyright owner has stated it may be used for educational purposes e.g. from international organisations, voluntary bodies, US Government
- Ask the permission of the copyright holder
- Get a licence (preferably in perpetuity to obviate the need to seek permission periodically)
- Use material under copyright law exceptions e.g. use material under provisions for criticism or review if it is to be discussed in the lecture

It should also be noted that

- inclusion of deep links to parts of websites may be considered to infringe IPR, where the website owner has intended that the viewer see the preliminary material. Deep links may also be viewed as derogatory treatment in certain circumstances. Careful note should be taken of the website policy before including 'deep links'
- copyright material used in the lecture should not be significantly altered as this may also be seen as derogatory treatment of the original copyright material.
- proper accreditation should be given to the copyright owner for the work used e.g. when the provisions for criticism or review are invoked.
- Some material may be used in presentations under criticism and review exceptions and under the conditions of educational blanket licences without further permission being sought

3.4.3 Including lectures in a multimedia repository

Before the digital recording of the lecture is included in a multimedia repository the establishment should acquire the copyright in the lecture, as a literary work, because it is part of the lecturer's normal duties, CDPA Section 11(2), provided that is the establishment's approach to IPR. Copyrights in the video will subsist in the recording in the sound track of the lecturer speaking and the film of the lecture and these are likely to belong to the establishment. The performing rights belong to the lecturer. So in theory the lecturer has the right to control the broadcast of the recording and to make copies for rent or lending but the establishment should try to obtain these rights to minimise potential problems with the re-use of lectures. A record of these rights should be maintained either in the multimedia repository or closely linked to the material.

Before recording permission should be sought from the lecturer to record the lecture and use it as the establishment deems fit. Students attending the lecture should be advised that it is being recorded. As the lecturer should have given permission for the recording it is likely the copyright in the film will have become the property of the institution which may then control the use of the film.

From the viewpoint of data protection and privacy it is good practice to exclude shots of anyone attending the lecture, or to ensure that they have granted the rights to repeat showings as they too may have acquired performing rights, especially if they are to ask questions at any point during the lecture.

3.4.4 Resultant IPR and neighbouring rights

Problems over copyright and performing rights may arise subsequently when a lecturer moves to a post in another institution and wishes to use the same or similar material if the copyright in the recording is now owned by the original employer. Similarly, this aspect needs to be considered in relation to visiting or external lecturers or lectures to the public. Both possibilities should be covered by institutional arrangements and contracts.

Compilation rights may belong to the lecturer or institution as a result of preparing the lecture where their skill, judgment etc has been used. Copyright in the video tape or other record will belong to the University unless otherwise agreed.

Case studies

Digitised course lectures from LSE

Material: video and audio recordings from course lectures, made available to students through WebCT or departmental websites; potentially managed through a multimedia repository.

Issues:

- Ensure that all third-party material included in the lecture has appropriate copyright clearance, if not permitted by exceptions
- In theory, there are no moral rights, but this is a matter for employment contracts and the approach adopted by individual institutions
- Ensure that the lecturer has given the institution permission to communicate the performance to students and preferably to all audiences that the institution deems appropriate. Even if it can be inferred from what has gone before it is good practice for the lecturer to give formal permission and this permission to be recorded.

Public lectures given at LSE

Material: video and audio recordings from public lectures made available to public, possibly through streaming

Issues:

- As above, especially third party rights and performing rights are matters for contract regarding ownership of lecture (literary work) and agreement to permit communication to the public.

3.5. Medical images

Best practice set out here does not cover publication in conventional literature or use in public media such as television. Further guidance is available from the British Medical Association and the General Medical Council should the intention be to use the images in public media. This section does not cover commercial images or images from medical services.

3.5.1 Scope

In this context, medical images include:

- Copies of video or audio recordings
- Photographs and other visual images of patients.

There are three main considerations to be addressed and adhered to in respect of medical images, namely:

- Copyright
- Data Protection and privacy
- Medical ethics and the requirement for informed patient consent

3.5.2 Guidance to creators and users

Patient consent, preferably written, is generally required. The patient's consent, however, is not required to use:

- images of pathology slides
- X-rays
- laparoscopic images
- images of internal organs
- ultrasound images

for teaching purposes provided they are anonymised before use, that is by removing any identifying marks e.g. marginal notes such as date of birth, name, name of hospital. If it is certain the patient cannot be identified and the record has any or all identifying marks removed then the record can be used for teaching purposes.

Patient consent is required for other types of images. When giving consent the patient must understand the purpose of the recording and precisely how it will be used, whether copies will be made, arrangements for storage and the length of time the recording will be kept, and all potential uses of the recording. There must be no suggestion that permission is expected and patients should be asked after the recording has been made if they wish to vary or withdraw their consent. If the patient cannot give consent it may be sought from close relative or carer. It is essential to get consent if recordings cannot be anonymised.

There are cases where medical images cannot be anonymised but their use would be in the interests of medical science. These cases must be thoroughly discussed with medical practitioners before this step is taken and be justifiable to the patient.

For teaching purposes both GMC and BMA Guidance indicates it is permissible to continue to use recordings made before 1997, provided the patient is not identifiable. Every effort should be made to replace these images and recordings with similar ones where the patient has given consent.

If the image is to be used beyond the institution then it may be prudent to use a more restrictive agreement.

3.5.3 Ownership of copyright

Recordings of patients are likely to be the copyright since 1 April 1991 (England and Wales) or 24 July 1990 (Scotland) of the employing National Health Service body e.g. health authorities or NHS trusts.

3.5.4 Including in a multimedia repository

The principal concerns are with patient confidentiality, medical ethics and data protection in addition to copyright. The patient consent should cover all uses of

images and specify who can access the images i.e. repository administrators or librarians. It is generally accepted that access to the images is through an authenticated password system. In this case it is important that users have a clear understanding of what they may and may not do with the material e.g. they may not distribute it.

The metadata (e.g. patient consent) about the patient must be retained to prove, for example, that patient consent has been obtained and to aid removal of the images should the patient so request in the future. However, access to the metadata about the image needs to be very rigorously controlled to meet the requirements for patient confidentiality.

Currently, services available from medical publishers to medical professionals require user registration and access via a secure password system. It is advisable to follow the stricter guidelines that are applied to public media.

Case studies

Material: currently scattered collections of digital images and video for teaching, learning and reference, held in Medical School, Leeds University

Purpose: to collect, manage, preserve and make accessible current resources

Issues:

- Patient confidentiality
- Data protection of identifiable individual
- Need for patient consent for all uses of material
- Requirement for consent forms and extremely limited access to this metadata. Depending on consent forms while not for public media password protection seems to be sufficient in practice.

Material: MP3 sound files from a variety of sources, held at Leeds University

Purpose: to provide learning material for medical students

Issues:

- performing rights in sound clips, presumably given permission to be reused.
- Copyright in the sound recording may be joint between the employing institution and the patient, requiring both to give copyright release permission
- Commercial material - copyright and other contractual conditions in the purchase - may be obviated by supplier's willingness to participate in project. Need to ensure appropriate permissions are in place before project begins and apply to continued use of the material.

3.6 Music and motion capture

Many intellectual property rights surround music and dance in their various forms and need to be addressed before incorporating any music or motion captured material in a multimedia repository. For example:

- copyright in the original musical work, including adaptation (in arrangements and transpositions), publication right
- moral rights
- performing rights
- rights in recordings
- communicating to the public

Recent developments (e.g. music file sharing and downloading) have given a high profile to copyright in the music arena. The duration of protection for rights is set out in Appendix 1.

3.6.1 Scope of material

There are many types of musical works ranging through orchestral pieces, opera, popular music, traditional music, scores etc. A musical work can include several copyrights and related rights: for example, a score may include copyright in the music (notation and symbols (*f*, *p*) and the libretto for opera or words (literary work) of an aria.

Much of the material will be fixed in the form of sound recordings or scores. The recordings may be of broadcasts, performances, commercial recordings etc while the scores may be original or newly published versions of older material.

3.6.2 Implementation

In music it is important to separate instruction from any other uses such as research or enhancing the experience of an audience (e.g. use as background music). General limitations set out in the CDPA 1988 apply to copying, distribution and performing musical works unless giving or receiving instruction. Similar restrictions apply to sound recordings of musical works made from broadcasts as apply to other broadcast recordings made under an ERA Licence, although the ERA acts on behalf of several musical collecting societies for teaching, learning and non-commercial educational purposes. Although the recordings may be studied for research purposes their reproduction in research outputs will require further permission from the rights holders.

When incorporating musical works from broadcasts or public performances in a multimedia repository restrictions on the use of the material equally apply. Communicating the work outside the establishment is an infringing act as is dealing. Special care needs to be exercised with works that are derived from others e.g. arrangements - the original work may be out of copyright but not the arrangement. While including excerpts in examination papers is permitted publishing a collection of examination papers which include short extracts on open access in a repository is unlikely to be permitted without permission from the rights holders.

There are a significant number of collecting societies which process different types of rights for musical works e.g.

- Performing Rights Society for public performances even to provide 'mood' music for lectures or performances to audiences not being taught (PRS n.d.)
- MCPS - recording of musical works
- PPL - Phonographic Performances Ltd

Where performances included in broadcasts are used for giving and receiving instruction these collecting societies are represented by the ERA and included in its licence fee. The collecting societies do have tools to aid the identification of rights holders.

For other uses a range of collecting societies will need to be approached. For example to digitise scores that are in copyright or include sound recordings in a multimedia repository for research purposes the Music Publishers Association should be contacted.

3.6.3 Inclusion in a multimedia repository

A multimedia repository could be a useful management tool to manage access to music and maintain records of use and rights, but the music industry assiduously guards its intellectual property rights.

While it is permitted with limitations to use music in the course of instruction or for examination there is very little else allowed under the exceptions. As a few seconds of a work can be so characteristic relying on fair dealing is problematic. To use music for other purposes, including showing work prepared for examination or research, requires permission or licences from a variety of sources, unless the institution owns the intellectual property rights. Any such 'showing or performance' is likely to contravene the law.

Regardless of whether a work is in the public domain a licence from the Performing Rights Society may be needed. As public communication is a restricted act access will require authentication. The provisions of fair dealing for criticism and review should cover publication of research work provided the recording is publicly available.

Case study

Material: Music scores, held at School of Music, Leeds University

Purpose: to manage, encourage use and facilitate preservation.

Issues:

- Must ascertain the copyright status before digitisation as any reproduction will potentially infringe copyright. This may include the investigation of the edition to be used for reasons of publication right or editorial contribution to the edition which may confer its own copyright
- Authors alive in 1989 and later need not be credited
- Can only publish or 'communicate to the public' those works that are out of copyright and where any publication right has also expired.

Dance files

- Consider performing rights even of students, perhaps rights in background music
- Copyright in the recording - done with permission for final and all possible uses.
- Cautious approach would be to share the dance files with similar legally recognised educational establishments.

3.7 Photographs and cinematographic works (films)

Photographs and films are another complex area in that the law has changed significantly at different times, both in the copyright ownership and the period of protection. Photographs were not protected under the Universal Copyright Convention, 1971 whereas the Berne Convention did protect them. There is debate about the level of originality in a photograph required for protection but it is generally thought they do qualify for protection in the UK although they may not do so in other jurisdictions.

Over a similar period there have been significant changes in the protection afforded to cinematographic works. Several different rights may subsist in the same fixation, e.g. film, script, background music and performing rights. The various parts of a cinematographic work cannot be disassociated without incurring the risk of derogatory treatment.

3.7.1 Scope

Photographs are defined as

'a recording of light or other radiation on any medium on which an image is produced, and which is not part of a film'

This includes X-rays, infra-red images, holograms while the medium on which they are recorded or fixed is not specified, thus allowing for digital photographs.

While films are defined as

a recording on any medium from which a moving image may by any means be produced. (CDPA 1988).

There are a number of collecting societies representing the interests of directors, performers etc and collecting fees on behalf of their members for different uses e.g. Motion Picture Licensing Company which licenses public performances, Performing Rights Society, and Public Performance Licensing.

3.7.2 Implementation

3.7.2.1 The 1911 Act protected films only as dramatic works and the underlying script as literary works. Retrospective protection to the individual photographs within the film was granted by the 1957 Act to films pre-dating the Act. Since 1957 films have been protected in their own right.

Currently, protection is for 70 year after the death of the last survivor of the principal director, author of screen play, author of the dialogue or the composer of any music specially created for and used in the film.

3.7.2.2 Photographs. The creator of photographs is usually the photographer but between 1912 and 1989 the copyright holder was the owner of the material on which it was taken.

3.7.3 Inclusion in a multimedia repository

Including a commercially film purchased on a DVD or CD in a repository would be making a copy of the whole film and it is difficult to see how this could be achieved within the legal provisions. Indeed this problem is reflected in the hurdles the British Library has encountered in trying to preserve through digitisation deteriorating films in obsolete formats.

Photographs included in a multimedia repository would be copies of the whole work. In most cases they would then be infringing copies.

Case studies

Material: **Godfrey Bingley photo collection 1842-1927 held at Leeds University**, photographs taken between 1884 and 1913 (lantern slides) comprising mainly places of local interest. The material is beginning to deteriorate. Bingley transferred the copyright to Leeds University.

Purpose: to store the material securely and to preserve it for the future

Issues:

- Copyright will have expired, although at the time of the gift the copyright would not have been transferred under the law. It seems the photos were not published elsewhere in the EU and so there is little likelihood that copyright would have revived, however briefly.
- Leeds could, by making digital copies, claim publication rights for 25 years if the photographs were previously unpublished.
- Simply scanning the photographs would not create a new copyright: it would be producing a copy, but in the light of the deterioration of the material efforts to digitise the collection may require considerable skill and hence create a new copyright.
- The collection may wish to consider retaining the copyright or publication right
- An attempt should be made to establish if any of the photographs have been published as they would then be in copyright.
- In the light of creating new IPR institution may wish to consider charges for use of images, if this is in line with the parent institution's policy on IPR.
- So need to think carefully about resolution of images and clear notice of policy for download and re-use.

Leeds University films

Material: films produced by the University of Leeds for teaching purposes

Purpose: to preserve and enhance access to historically valuable material for research work.

Issues:

- As the material was produced for the University it is to be assumed that the University acquired the copyright in the original material although this would be in the individual stills for pre-1957 material and for any script.
- In newer material there may also be performing rights to consider
- A number of film libraries make their films available for hire/licence or to registered users and it may be an approach the University wishes to consider, assuming the University holds all rights.
- If the University does not hold the copyright then tracing copyright holders and obtaining their permission could prove challenging and incur financial costs in the rights

4. Good practice

A number of practices will minimise the risk of infringing intellectual property law:

For material to be included in a multimedia repository:

- Risk appraisal and a management strategy
- Checking copyright status of material, including where necessary tracing rights holders and seeking their consent
- Recording attempts to seek permission to display material
- Licensing material

For those managing the multimedia repository

- At output deciding how material will be display and used
- Having clear policies in place for terms and conditions in the use of material

A number of papers have covered aspects of good practice in the e-learning environment and many of their tips can be used in multimedia repositories. (See JISC legal website and references)

4.1 Risk management

Before placing material in a repository, or making the material available, it is essential that a risk management strategy is in place. This strategy will identify the types of risk and liability to which an institution's repository is exposed and how they will be managed.

The types of legal risks that may be found in multimedia repositories include:

- copyright Infringement and related areas including moral rights
- infringement of database right
- infringement of design rights
- infringement of performing rights through access to broadcasts, sound recordings and films
- Defamation or derogatory treatment
- Breach of data protection
- Breach of confidentiality

These risks may be assessed according to the likelihood of their occurrence, the likely consequences and the acceptability of their occurrence. If the risks do occur then a remedial course of action should be available in a clearly stated policy.

It is worth noting that selection of material by administrators will expose the establishment to legal liability.

This has largely been viewed as the risk of the institution breaking the law but equally the risk should be viewed from the exposure of the establishment to piracy by users of the repository breaching conditions of use and consequently the law. The institution should have a strategy in place to cover this eventuality.

4.2 Checking copyright status

An initial appraisal of the copyright status of material may be made by reference to the table in Appendix 1 giving the duration of copyright. Once that is done further research on the legal status at the appropriate period in time for older material may be necessary before expending effort on tracing the holders of copyright and other intellectual property rights. Note, however, there is no provision to make reasonable enquiries into the copyright status of broadcasts.

4.2.1 Tracing rights holders

Serious efforts must be made to trace rights holders for items or material to be included in the multimedia repository. As copyright is an automatic right there is no register of copyright holders in the majority of cases for material that is likely to be incorporated in any deposited item(s). Hence it will be necessary for the depositor or the administrator to look at all components of the material and there may be several items that have to be examined to ensure all rights have been cleared or at least a genuine effort has been made to trace copyright holders. Sample copyright release forms, mainly for the e-learning environment, have been published in several places. Pedley gives a sample copyright release form for the VLE environment which could be adapted as do the JISC/TLTP Copyright guidelines.

While Sherpa/Romeo holds information on publishers' copyright policies, in other cases Ingenta-Heron will clear copyright for learning materials (for a charge) depositors will need to:

- Identify and locate the copyright owner e.g.
- Contact publisher
- Contact DACS, ALCS, various music copyright holders
- Consider advertising in relevant press
- Carry out a risk assessment, if anonymous or author will not reply, despite several attempts to contact
- Annotate the item to the effect that diligent attempts have been made to contact copyright holder and asking them to come forward

4.3 Record keeping

All efforts to seek copyright permission must be recorded and the records kept. If the level of risk has been judged low and the decision is taken to proceed then the 'notice and take down' policy comes into its own and is a useful 'fall back' position. This should minimise the effects of any further action by the author or creator, but it is not without dangers. Note: it is strongly advised not to tell a rightsholder that permission will be assumed if no reply is received.

Keeping track of the IPR and licences or permissions granted is essential for efficient use of material and to ensure legal requirements are met. Whether this is within the repository package or outside it (some institutions use PackTracker with VLEs) will depend on the software. However it is done the linking or attachment of rights information should be a tight one to ensure the information does not become easily detached, especially in the light of possible later migrations to other software. The detailed information should only be available to a very limited audience, administrators and include relevant depositors. In some cases e.g. medical detailed rights information should be extremely restricted as this may

enable identification of subjects. In a simplified form the rights information may be available to all users, indicating how visitors may or may not use the information.

4.4 Agreement with the depositor

An agreement between the depositor and the repository must be in place when material is deposited. This should specify that all intellectual property rights have been cleared, or if not, give details of rights cleared and specify the level of risk for any uncleared material. Only material which has been assessed as low risk should be included on open access multimedia repositories.

If rights may be inferred this should be recorded and preferably formalised.

The agreement should also specify the rights that the depositor wishes to retain, mindful of the institution's policies on IPR. Initially the majority of depositors may say that their material can be accessed and printed but are much more reticent about allowing others to annotate or modify their material. The Rights and Rewards in Blended Institutional Repositories project (http://rightsandrewards.lboro.ac.uk/files/resourcesmodule/@random43cbae8b0d0ad/1150709518_Final_Report_of_Survey.pdf) found that almost half those participating in the survey would not allow others to sell their material although a third would allow material to be sold under limits or conditions. The project concluded that between 30% and 50% of participants wanted to keep some control over their teaching materials. It is essential that the rights that the individual wishes to retain match the establishment's policy.

The rights that the depositor or the institution's policy requires should be clearly expressed and recorded. Again the detailed rights information may only be available to a limited audience but it is likely that a simplified form may be necessary for those visiting the repository, especially in open access areas of the repository, perhaps through a pop-up onscreen information box that the user must accept before being allowed to proceed.

4.5 Publishing or displaying material

Material deposited under the provisions of the education exceptions permitted by the CDPA 1988 should only be available within the establishments to staff or to registered students by authenticated access off-site. This is likely to represent a significant proportion of the material. It will include material under the various certified licensing schemes as they presently operate e.g. broadcasts (on-site only). It should be made clear to users of the repositories that the material is only to be used to prepare for research, or for instruction, for those receiving instruction, and no copies should be made for other purposes, certainly not copying for dealing i.e. 'sold, let or hire or communicated to the public'. These are considered infringing copies under the legislation.

Currently the certified licensing schemes limit sharing between co-operating educational establishments, even when all establishments have the correct licence in place. The development of an ERA plus licence may ease this situation, at a financial cost.

Where the establishment owns the copyright it must decide whether or how it wishes the material to be made available in line with its perceived responsibilities to make the material publicly available and its IPR policies. If the establishment decides to make the material available on open access it should bear in mind how this material may be used, mindful of geographical and time limitations of protection (e.g. designs, patents, differences in copyright duration in, for example, James Joyce literature in other countries) and the ease and speed with which digital copies may be transmitted in high quality form. The institution may wish to attach licences which will follow the material around, bearing in mind the legal provisions that make their removal an offence.

The current drive to open access means that establishments are likely to come under increasing pressure to make material available in this way. It may be appropriate to consider implementing technological protection measures but weighed against this approach are the costs both in creating the material and administration. A balance must be found when setting the multimedia repository policy.

4.6 Policies for use of material

A clear statement of the permitted uses of material in the multimedia repository should be readily accessible. Indeed it may be advisable to have something akin to a short pop-up warning screen before material is displayed and prior to the full licence or permission being displayed. It should be in simple easy-to-understand unambiguous language. The British Library makes a short clear copyright statement at: <http://www.collectbritain.co.uk/collections/wax/> or the Tate Gallery at: <http://www.tate.org.uk/servlet/ArtistWorks?cgroupid=999999961&artistid=942&page=1> comments inside the space that would normally be allocated for the image. It is standard practice to include an indication of copyright in the 'alt' text of images e.g. <http://www.predatron3da.co.uk/sipart/artwork/elvis01.htm>

4.7 Licensing

End-user licences are contracts that grant specific rights, often permitting restricted acts, to those wishing to use material, usually, but not always, for a limited time period. The licensee never owns the material and generally the licences are non-exclusive thus allowing the material to be licensed to many end-users.

Licences come in many forms:

- 'Shrink-wrap'
- Commercial licences
- Blanket licences as found in the educational sector
- Creative Commons licences of which there are six main flavours

Using licences can impose a high workload if each one is individually negotiated and therefore use of generic licences is to be highly recommended.

The main components of licences are:

- Introduction - licence aims and the definition of terms and parties

- Terms of the licence - what is allowed and not allowed, including warranties
- Generalities - termination and the jurisdiction where disputes will be settled.

To be valuable a licence should extend the acts permitted under UK law and should certainly not exclude acts permitted by law.

Bebbington has given a good exposition of licences in several publicly available documents e.g. 'Managing content: copyright and privacy issues in managing electronic resources'. TASI also provides an Example Licence Agreement in legal language.

4.7.1 Licensing end-users

HEFCE recommends the use of Creative Commons type licences for end-users as a first-line of protection for e-learning where commercial considerations and third-party rights are not relevant. Creative Commons licences are available in easy-to-understand versions which could be used as warning screens

There are six basic types:

1. Attribution - you must credit the originator of the work
2. Attribution - non-commercial, no derivatives - allows redistribution and sharing with others provided you are credited but no changes are allowed and the material cannot be changed or used commercially
3. Attribution- non-commercial share-alike - only allows use by non-commercial organisations and you must share your product. Derivatives are allowed.
4. Attribution - non-commercial - again derivatives are allowed but derivative works can be licensed on different terms. Only non-commercial use is allowed.
5. Attribution - no derivatives - allows redistribution by commercial and non-commercial organisations but it must be passed on unchanged with the originator credited.
6. Attribution - share alike - allows derivatives even for commercial reasons provided the originator is credited.

Looking at the Attribution-NonCommercial-Share alike, this in human-readable summary is expressed as:

You are free:

- to copy, distribute, display and perform the work
- to make derivative copies

under the following conditions:

- Attribution. You must give the original author credit
- Non-commercial: you may not use this work for commercial purposes
- Share alike. If you alter, transform or build upon this work, you may distribute the resulting work only under a licence identical to this one.

For any reuse or distribution, you must make clear to others the licence terms of this work

Any of these conditions can be waived if you get permission from the copyright holder.

Your fair use and other rights are in no way affected by the above.

There are also public domain options, and founders' copyright which grant exclusive use for 14 years before entering the public domain. There is a sampling licence for music, image and other files. The sampling licence allows the licensee, in simple terms:

- To sample, mash-up or otherwise creatively transform this work for commercial or non-commercial purposes
- To perform, display and distribute copies of this whole work for non-commercial purposes (e.g. file-sharing or non-commercial webcasting)

The following conditions apply:

- You must give the original author credit
- You may not use this work to advertise or promote anything but the work you create from it
- For any reuse or distribution, you must make clear to others the licence terms of this work

In all cases there are legal versions of the licences, applicable to the law of England & Wales and machine readable versions.

There are applications where versions of the Creative Commons licences can be used but each 'database' of material has to consider seriously the implications in relation to its contents.

The Creative Commons model, which is based on trust, does not allow technological protection measures and these licences are granted in perpetuity for any copyright in the work to which they are attached. Except for breaches of conditions the licences are irrevocable - a condition alone which could exclude their use with medical images. One should bear in mind that the nature of electronic communication will make tracing all copies and derivatives an onerous task. As the material is distributed it can result in a large file of permissions following derivative files.

The simplicity of the human readable form is admirable but the conditions are unlikely to be suitable in all situations e.g. where third party material is included or where, for example, the institution wishes to retain rights to photographs or there are confidentiality issues. A Netherlands court has upheld the validity of Creative Commons licences. Although the licences were written by national legal experts to apply to a particular country there seems to be very little case law.

4.7.2 Negotiating licences

Several documents and sections in books discuss licences and their negotiation, mainly in the e-learning environment. The same principles can be applied in a multimedia repository. A licence should:

- Ensure that all allowed by education exceptions is permitted OR
- General exceptions are allowed OR
- Meet all the criteria required by the repository

The key element is to achieve a balance between the rights of copyright holders and the institution's wish or need to exploit the material. Licences should preferably be in perpetuity (to minimise work) but this will not be acceptable to many licensors as the material will go out-of-date and this could be seen as treating the originator in a derogatory manner.

4.8. Notice and take down

Notice and take down policies have developed under the US Digital Millennium Copyright Act and in Europe under the eCommerce Directive as means of exempting or limiting the liability of the information service provider. Some establishments already have these in place (e.g. Heriot Watt University <http://www.hw.ac.uk/edu/vle/policies-take-down.htm>).

Notice and Take Down policies are implemented by a formal notice that asks visitors, the copyright holder(s) or their representative, to the site to report in writing (including a physical or electronic signature), any material that visitors consider infringing:

- Complainants are asked to give full contact details
- identify the work that is believed to be infringed
- provide adequate information to identify the infringing work to be removed

The complainant is also asked to provide a statement that the material is infringing or not legally permitted. There is a danger of hoaxers but until proved otherwise such requests should be treated in good faith.

All institutions with open access material need a 'notice-and-take-down' policy in place.

The components of the notices are:

- report by the complainant
- removal by the information service provider (ISP) without judging the merits of the request
- The complainant may respond asking for replacement which is followed by replacement by the ISP without judgement.

5 Future of intellectual property rights

The one certainty about intellectual property law and in particular copyright is that it is constantly evolving but it tends to lag behind technological developments. It is generally regarded as 'technology neutral' although legislation concerning technological protection measures and digital rights management is leaning towards a different approach to digital information.

Most if not all the mechanisms currently available have drawbacks. The European Union has held consultations on copyright levies i.e. adding a charge to the media or equipment which enables copying to take place, a 'tax' not applied in the UK

legislation. Levies need to be applied consistently to prevent copyright users seeking the cheapest source of recording material or equipment.

Collecting societies at present operate on a geographical basis and so it is impossible to get global clearance, thus creating a potentially huge administrative workload. This is in contrast with the Terms of Reference of the Gowers Review:

'The award and observance of IP should be predictable and transparent, with minimal information costs and transaction costs for firms and citizens.'

[author's emphasis] (Source: http://www.hm-treasury.gov.uk/independent_reviews/gowers_review_intellectual_property/gowers_review_scope.cfm)

IP owners in the form of publishers, which include universities, are being encouraged by funders of research such as the Wellcome Foundation and some Research Councils to make the results of funded research available on open access which means the business model has to change. Music publishers have already faced the challenge and there is a move afoot to make music available 'free' with advertising support.

It is feared technological protection measures will inhibit the use of permitted exceptions and ultimately be more restrictive than current legislation. Intellectual property law is intended to be a balance between the creator's economic and other interests and the user's interests. To achieve a balance between the camps is challenging.

It will be interesting to see how the European Commission recommendation on the digitisation and online accessibility of cultural material and digital preservation can be implemented to facilitate preservation of cultural heritage while respecting intellectual property laws.

6. Conclusions

There are challenges to be met with regard to IPR in multimedia repositories and their use in storing, managing, conservation and providing access for research purposes. The situation is somewhat better where multimedia repositories are used to manage materials for teaching purposes. Current licensing bodies are wary of permitting the inclusion of material in repositories because of the ease of reproduction and transmission of high quality copies and the possibility that material could be used for purposes other than those licensed.

The position regarding sharing of material across institutions is not easy because producers of materials may view the work's inclusion in a multimedia repository as 'conflicting with the normal exploitation of the work' and 'prejudicing the legitimate interests of the author'. Currently some digital material may be loaned in hard copy e.g. CDs, DVDs thus limiting the benefits of cross-institutional multimedia repositories.

At present it seems there are two routes possible for material where the IPR is not owned by the institution:

- Licensing
- Digital rights management or the inclusion of technological protection measures

The potential problems are:

- current licences are often time limited and the institution never owns the material. Thus long term conservation and access becomes problematic.
- Technological protection measures may impede the use of permitted exceptions.

Various reviews and publications have pointed to the potentially damaging effect of copyright laws on research in the humanities and social sciences and the loss of a valuable archive of sound recordings.

Go carefully.

Appendices

Appendix 1

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Appendix 1: Duration of copyright under UK law.

Work	Examples of types of work included	Protection under 1988 CDPA	Protection under 1956 Act
Literary	Books etc letters, tables, compilations, computer programs, email, web pages and some databases	Currently, life of author plus 70 years after death.	50 years after death of author
Artistic	Photographs* & X-rays, maps, paintings, drawings and engravings	Life of creator and 70 years after the death of the creator or last surviving creator for joint works	50 years after death of author
Dramatic	Works of dance or mime	Life of author plus 70 years	50 years after death of author
Musical		Life of creator plus 70 years	50 years after death of author
Films	CDs. DVDs, videos	70 years from death of last survivor of principal director, author of dialogue, composer of music	50 years after death of author. Author is director
Sound recordings	Regardless of form, CD, DVD	50 years after recording was made or released within the 50 years	
Broadcasts	Documentaries, feature films, music etc	50 years after broadcast was first transmitted	
Typographical arrangement	Includes new editions of material previously out of copyright or previously unpublished material which is out of copyright. Publisher is the author.	25 years	Not applicable

Work	Examples of types of work included	Protection under CDPA 1988	Protection under 1956 Act
Designs	Registered and	Registered design up to 25 years, subject to 5 yearly renewal with monopoly right applying to the countries	15 years
	Unregistered design rights	Unregistered designs or design right up to 15 years after creation of the design or 10 years after first making the product	Not applicable
Databases	Qualification - substantial investment required	15 years or copyright	Not applicable

Notes:

*Duration of copyright protection under 1988 Act was extended in 1996 from life of author plus 50 years to 70 years. This has led to some works having extended or even revived copyright duration.

This table is a simplified presentation of the duration of copyright in various types of material. It is strongly advised that individual cases be investigated as there are many variations.

Appendix 2 - Questions

Questions to determine the status of IPR of material to be included in a multimedia repository.
The questions are intended as a general guide for those administering repositories in their institution.

	Question	Answer
10	Institutional environment in which the multimedia repository operates	
	These questions relate to the institutional environment in which any institutional multimedia repository operates and are a matter of institutional policy. Some establishments have set out their approach to staff intellectual property rights, e.g. Leeds http://www.leeds.ac.uk/research/hbook/ipr3.htm UCL http://www.ucl.ac.uk/staff/resources/copyright-policy/	
11	Does the establishment have an agreed IPR policy?	Refer to institution's documentation, handbooks etc
12	Does the institution grant copyright, moral rights and performing rights to the individual staff?	Refer to employment contracts and other documentation
13	Does institution have a specified policy on retaining or assigning rights	Refer to institutional policies
14	Are there standard forms for staff to assign those rights to the institution, if appropriate?	Depending on answer to previous. Refer to Institutional documentation
15	Does the institution have any licences to reproduce material for students and staff?	e.g. CLA licence, NLA licence, ERA licence, Open University licence. Refer to Library or person responsible for copyright
16	Is there an easily accessible and clearly stated 'notice and take down' policy?	There should be a policy in the event of someone complaining about material incorporated in the repository.
17	Are there clear terms and conditions of use for the institutional multimedia repository?	The terms and conditions of use should be easily accessible from any material.
18	Does the institution have a policy about infringements of the law by staff depositing and users of material in the multimedia repository?	A policy should be available and easily accessible via the repository.
20	General questions relating to material being deposited	
	These are general questions which apply to most types of materials being deposited.	
21	Does the institution own the copyright or other IPR?	Check actual material.
22	Does the material being deposited contain any material derived from third party (outside) sources or is it all the depositor's own work?	Go to questions on relevant type of work.
23	Is the third party material still in copyright?	Refer to the type of material i.e. does it fall within one of the broad classes protected by

	Question	Answer
		copyright? If material does not fit one of the categories, then no copyright protection although may be other IPRs e.g. design, trademarks, patents and other related legislation.
24	Does the source of the third party material include a copyright statement permitting its reproduction and use for non-commercial educational purposes?	Often found in material produced by international organisations, charities etc. Does the website copyright policy allow reuse for educational purposes? If not check copyright status or exceptions.
25	Can the amount of material used from third party sources be considered 'fair dealing'?	Either used under criticism or review exceptions or quoted as 5% of a work or one chapter or one article in an issue of a periodical but beware of quality i.e. is it central to the content of the item?
26	What is the age of the material?	Refer to table of IPR duration to estimate if it is still subject to copyright protection.
30	Questions to be addressed to the depositor of material	
	These questions are to be asked of the person(s) depositing material in the repository and deal with the copyright and IPR position of the material being deposited. They also address the rights the depositor wishes to retain, depending on the institution's policy. They should be answered satisfactorily before material is accepted into the repository.	
31	Are there other rights or legislation, in addition to copyright, that apply to the material?	e.g. performing rights, data protection, confidentiality, human rights act.
32	What rights does the depositor or institution wish to retain?	e.g. right to authorise copying, right to adapt the work, right to communicate to the public.
34	Has the depositor understood a deposit declaration about the IPR status of the material included in the deposit and the conditions under which it is accepted?	Understood that all copyright material is either covered under the exceptions to the law or appropriate copyright permission has been granted and the documentation is available to record in the rights section of the repository
35	Has the depositor expressed which terms and conditions under which the material may be used and the rights that (s)/he wishes to retain?	These must be in line with the institution's policy e.g. attribution, non-commercial use.
36	Has depositor completed a declaration saying all material cleared, or	Depositor should verify that all necessary

	Question	Answer
	licensed for this use?	permissions etc are in place otherwise further work may be required.
37	Have all the necessary clearances and permissions been included with the material for inclusion in the repository or attachment to the records?	An audit trail of permissions and clearances is necessary.
40	Art	
	These questions are intended to be considered and answered when preparing and accepting artistic works in digital form for deposit in a multimedia repository.	
41	What is the approximate age of the original artwork?	Refer to Table of duration (Appendix 1)
42	Is the original artwork out of copyright?	Then consider the origin of the copy.
43	Does the institution own or hold the original artwork?	Yes, and if it is out of copyright proceed to digitise or include in a multimedia repository.
44	Is the original artwork on public display outside the institution?	If yes and the material is out of copyright, then theoretically an image taken by a viewer is legal. In practice, it may be a condition of admission that photos cannot be taken.
45	If still in copyright, can the institution obtain permission to make digital copies?	The curating gallery or museum may impose conditions on the use of any image created or the image it provides.
46	Has the digital image been obtained from the museum or gallery displaying the original work?	If yes, what conditions were attached to the use of the image? These must be adhered to.
47	If the multimedia repository's institution holds the rights does the institution wish to retain any rights to the digital version?	e.g. the copyright and rights to reproduction and use of digital images
50	Broadcasts	
	These questions relate to the limitations on the use of broadcasts in education.	
51	What is the country of origin of the broadcast?	UK - or overseas. If It is from a UK broadcaster go to Q 52
52	If it is from a UK broadcast organisation is it covered by one of the licensing schemes to which the institution subscribes?	See Q 15 above in institutional section.
53	If it is not covered by one of licensing schemes. Then is it covered under the provisions of the provisions of Section 35?	e.g. overseas broadcasts, adverts. If no certified licensing scheme then broadcast or any work included in it can be recorded with proper acknowledgement, for use within the

	Question	Answer
		establishment by staff and registered students.
54	Does the broadcast originate in an EEA state or a state that has ratified the Rome Convention and/or TRIPS agreement?	Then UK national law applies.
55	Is the broadcast properly labelled?	It should include programme title, date of recording, name of broadcaster.
60	Designs	
	These questions are intended for those depositing material which could be protected in UK law by provisions for designs and to ensure that the appropriate level of access is granted if it is to 'open access'	
61	Do you know when was the design created?	If older than 25 years in UK then probably no longer protected.
62	In which country was the design registered?	Registered designs are only protected in the countries where protection was sought.
63	If less than 25 years old has the registration been renewed?	Check the Design registers via UK Patent Office or OHIT.
64	Which class of design was it registered under?	The design is only protected for the class in which it was registered.
65	Is design right (unregistered design) applicable?	Remains in force for a maximum of 15 years.
66	Is the design applied to product other than the one for which it was registered?	The design is only protected for the class in which it was registered.
67	Are the design documents included?	These qualify for copyright protection as artistic works - 70 years after death of author.
68	Is there any concern about others exploiting the design?	If yes, then need to consider how the will be displayed and accessible to the user.
69	What level of 'openness' is envisaged e.g open access or restricted access?	In conjunction with the above question may influence format for open display, if there is concern about being 'ripped-off'.
70	Lectures	
	These questions are intended to be addressed to those responsible for depositing lectures in the multimedia repository, whether staff or external lecturers. It is important to ensure the correct policy approach of the institution to IPR is being followed. Refer to institutional questions.	
71	Are the correct agreements assigning IPR to the institution or retaining the IPR completed?	e.g. if not part of the employment contract. This will determine how the deposited material may be used.

	Question	Answer
72	Has the lecturer been advised that the lecture was being recorded?	Lecturer should be advised or it is in the establishment's policies.
73	Has the lecturer given permission for the lecture to be stored digitally and re-used and distributed?	These permissions should follow the institution's policies.
	Content	
74	Does the lecture include diagrams, images drawn from other copyright sources? / Does the lecture include any other material not created by the lecturer and drawn from elsewhere?	If yes, then go to Q 76
75	Are images, diagrams etc being discussed or reviewed etc in the lecture rather than for enlivening the lecture?	These images being reviewed or criticised should be acceptable under fair dealing provisions.
76	Can they (diagrams, images etc) qualify as fair dealing?	As above, but they should not be substantial in quality and quantity.
77	Does the lecture include deep links and if so, how are they presented?	Deep links can be construed as derogatory, or there is information on the main pages that the user is supposed to see.
78	Has all material from other sources been properly credited?	In most cases need to acknowledge the source unless it is impracticable. Could include under diagram etc in PowerPoint presentation although not uttered in the lecture.
80	Medical images & sound recordings	
	Medical images, sound recordings etc present particular challenges with respect to confidentiality and medical ethics in addition to copyright. These are generally maintained behind authenticated password systems although there is increasing consideration being given to more open access.	
81	Does the contribution include any medical images?	Pathology slides, X-rays, laparoscopic images, images of internal organs, ultrasound images are exempt from consent requirements.
82	What type of images are included?	See previous question for those types of images that are exempt from patient consent.
83	Does the contribution include other types of medical images, including audio recordings?	These need informed patient consent for all uses that could be made of them. They must be anonymised or if not the decision must be justifiable to the patient.
84	Have you got the patient's informed consent?	Preferably written.

	Question	Answer
85	When were the images taken?	Pre 1997 images should be replaced with similar ones as soon as possible.
86	Have the images been anonymised as far as possible?	If not anonymised the decision to use must be justifiable to the patient - good idea discuss with colleagues.
87	Has the material previously been published?	So presumably consents were in place? Was copyright assigned to the publisher or retained?
88	If the copyright was assigned to the publisher has it been cleared with the publisher?	If not, can it be cleared or other images substituted?
89	Who took the images e.g. clinician, technician	If creator was undertaking his or her normal duties then copyright belongs to institution (or health authority) and no moral rights subsist.
89A	Are the appropriate metadata and permission available to be linked to the record?	Must have metadata including patient's consent which can be accessed if required to remove image.
90	Music	
	There are likely to be several copyrights in most forms of music materials. Negotiating a way through collecting societies for publishers, performing rights, authors etc can be challenging. It is very important to do so.	
91	What is the form of the original material?	e.g. scores, sound recordings, broadcast recordings, motion capture. Establish the protection that applies to the 'fixation'.
92	Is the form one that qualifies for copyright protection?	See general copyright guidance.
93	What rights are there in the form e.g. copyright in the music, lyrics, rights of the performers.	Identify all the rights.
94	Do you know who holds the differing rights?	We need to know all the holders of the various rights.
95	Have all the various rights been cleared for the intended use of the material e.g. teaching, research.	Permissions need to be linked to the material.
96	Are there uses which have been restricted or not permitted?	Any restrictions such as requirement for secure access need to be noted carefully and appropriate notices put in place. These will also depend on the degree 'openness' allowed.

	Question	Answer
100	Photographs	
	Photographs pose a particular problem in a multimedia repository because they may be derived from another image especially an analogue one. The latter case will almost certainly have or had copyright in the original image. Satisfactory answers are essential. Copyright may also switch between photographic copyright and literary copyright in the digital image.	
101	Is the image derived from another photograph?	If yes go to Q 102.
102	If the image is derived from an old photo, how was it produced - by scanning?	If it was simply scanned with no 'touching up' or skilful manipulation then there is unlikely to be new copyright, simply a copy. If the image was deteriorating and skilful manipulation was necessary then there may be copyright in the new image.
103	How old is the original photo or when was it taken?	There are complex provisions for copyright in old photos - see Copinger and Skone James for full explanation.
104	Who took the original photo?	Generally the original photographer is the owner of the copyright, but check the changes in legal provisions. If author is unknown depending on age it may be acceptable to digitise with a note that copyright holder is untraceable and asking for information.
105	Is the original still in copyright?	Then permission from copyright holder to digitise will be needed.
106	If the original is still in copyright, have you got permission to digitise and what limitations were stipulated?	If no permission documentation is available do not include in the repository. Ensure all permissions are recorded together with all limitations on use. Limitations should be set out clearly when the individual image is displayed.
107	Are living people included?	It may be necessary to consider privacy, confidentiality etc and seek their permission for it to be displayed.
108	If the photo was taken since 1988, has the author been acknowledged?	Need to acknowledge author, especially if they have asserted their moral rights.
109	If this is an original digital image, then is copyright cleared and what conditions are attached to its use?	Note rights information and any limitations in a record of rights.

	Question	Answer
109A	What rights does the institution or you wish to retain?	This is particularly important if making a high quality image available via a website as people may appropriate it. Is the author or institution happy for that to happen? Whether or not the institution wishes to recoup its costs in images.
Note: EEA area - includes EU states plus Iceland, Liechtenstein, and Norway		

Appendix 3 Sample warnings

Films

You may use this film for

- instruction, examination and non-commercial research

You must not use any images from this film

- in any publication, including a thesis which is to be published (including on the internet) without seeking and obtaining formal permission from the author(director etc)

Photographs

You may use this photograph for

- instruction, examination or non-commercial research

You may not include this photograph

- print or reproduce this photograph
- in any publication including theses which is to be made available to the public
- amend or distort this image

If you wish to use this photo you in any of the above you must get permission from the copyright holder

Textile designs

You may

- view this textile pattern and print it

You may not

- Copy and apply it to a textile without seeking the permission of the copyright holder

Appendix 4 References

General intellectual property rights

Many of these works have useful sections about intellectual property rights in specific classes of copyright works and this section should be used in conjunction with material under specific headings. All hyperlinks checked 27 November 2006.

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