



24 December 2008

PANEL OF EXPERTS:

Ms Margy Burn Director, Australian Collections & Reader Services, National Library of Australia

Mr Michael Crayford Assistant Director, Collections and Exhibitions, Australian National Maritime Museum

Professor Graham Durant Director, Questacon National Science and Technology Centre

Ms Caroline Lorentz Manager, Loans, Historic Houses Trust of New South Wales

Dr Matty McConchie Director, Collections Development, Department of the Environment, Water, Heritage and the Arts

Mr Tim Sullivan Deputy CEO and Museums Director, Sovereign Hill Museums Association

Mr Alan Ventress Director, State Records Authority of NSW

PART C: COLLECTIONS

CHAPTER 10 DIGITISATION OF THE COLLECTION

INTRODUCTION

Digital technology now makes it possible for all types of information (including images and sounds) to be reduced to a complex and easily transmittable pattern of ones and zeros. Application software that achieves this is both available and cheap.

Combined with the right equipment, complete interactivity is possible – that is, one is now able to de-materialise (up-load), access, view or listen to and download that image or information. Once downloaded, this material may be reproduced perfectly in its original form – that is, perfect quality reproductions.

In addition, digital technology provides a simple and seamless method of manipulating those digitised images and materials – by adding material to them, by simply sampling specific parts of them and incorporating those parts into new images or in combination with

samples from other original artworks, or by simply re-arranging or cropping the subject matter of the image itself. All things are possible – and with great speed and quality.

In other words this same technology also permits:

1. the extraction or sample of certain parts of the material;
2. the manipulation or adding to the material or parts of it; and
3. the seamless integration of any sampled parts of the original material.

The technology continues to develop quickly. Both the public and most collecting institutions have become active users. Collecting institutions have become important creators, providers and distributors of digital content and their digitisation programs have become a core tool in the granting of access to their collections. The institutions are able to make a vast range of material accessible for viewing at any one time – unlimited by the amount of physical exhibition space available. Similarly, the digitised collection material can be used to enhance the experience and the value of an individual exhibition for it can be used to present additional educational materials or allow public visitors to ‘browse’ through the other works related to the exhibition not actually exhibited due to lack of exhibition space.

With digitisation, the collection material and its associated educational and merchandising products become dissociated from the physical museum and its geographical location. Digitisation is not just a technological issue. It is also a financial, legal, administrative and philosophical issue.

What are digital rights?

The law does not have a particular category of rights called ‘digital rights’. They are merely an application of the usual rights of copyright, applied in a specific technological medium.¹ In practice, however, digital rights include:

- the right to reproduce material in digital form;
- the right to store and archive in a data base;
- the right to permit the public to access and retrieve on a computer monitor;
- the right to transmit, distribute or otherwise make available (whether via Internet, Intranet or CD-ROM).

¹ The Centre for Media of the University of Melbourne and the Intellectual Property Research Institute of Australia, with Museums Australia, have undertaken a two-year project examining copyright issues in cultural institutions. It will deliver guidelines for digitisation of collections and survey museum digitisation practices.

Technology permits all of this. Whether one is authorised to do it is another matter. Essentially, there are two core elements to the right to digitise.

1. **Do you have the right of access to the item?** Without access to the item, the ability to digitise the original is limited. You do not have to own it: mere possession (for example, as a borrower) will do.
2. **What is the copyright status of the item?** This is no hurdle where the material is not the kind of material in which copyright subsists, or is so old that copyright either never subsisted in it,² or has expired. If there is no copyright, the only issue is access. Similarly, if the institution owns the copyright outright, it also has the digital rights. However, where the institution has only been granted limited rights of copyright, it may or may not have the digital rights. This usually depends on the wording of the documentation.

The warning for museums is that they must review all copyright licences obtained in the pre-digital era for they are very likely to be inadequate for use in digital format or environment.

Digital rights management

Modern collecting organisations are in the business of rights management. The ability to manage this **new 'resource' or 'asset'** is of growing importance and requires a sound knowledge and understanding of:

- the technology;
- the material held in the collection;
- the purpose for which digitisation is undertaken;
- the extent of the rights enjoyed by the museum;
- the ability to clearly identify the digital object; and
- the business principles.

We are used to these requirements in an atom-based environment. Most collections now routinely maintain such records. Those that don't capture this essential information when accessioning material are falling far short of professional best practice: not only are they exposing their institution to legal liability, they are restricting the use that the collecting institution will forever be able to make of the accessioned item.

² For example, where the material came into existence prior to the copyright laws.

Design of the database

This is not just a new **distribution** system. It is also a new **access** system. If you are going to give clients access through the Internet to your databases, you will have to review your existing protocols.

In setting up any such database, you should never lose sight of the following fundamental questions.

1. What level of access do you want to provide to third parties?
2. What use do you want them to be able to make of the data obtained from this access?
3. What design factors need to be built into the data base to promote your aims and minimise the attendant dangers?
4. What hardware and software systems can be built in?

Digital Object Identification

It is crucially important that the owner of the digital object that is to be used or licensed is able to precisely identify the digital object. It must also be able to attach digital information to that object so that the digital object carries with it, as part of its very being, information that identifies the owner of the rights in it and the terms upon which it can be used or traded. One example of such systems is called the Digital Object Identifier (DOI). It is like an invisible, digital barcode. It is a hugely important development for it will be part of the mosaic of enablers that will allow digital rights to be identified, described, communicated, traded and audited. Each digital object will have its own DOI Material that is made up of an assemblage of works (such as a page of a text book that contains several licensed paragraphs of text and various charts, illustrations and photographs) will have a DOI for each of its constituent parts and for the page itself. The bonus of DOI is that it allows a great degree of 'granularity': you can license the book, the chapter, the page, the paragraph, the sentence – provided each has its own DOI.³

It is important to note that DOI is just one of the available systems that provide this functionality. For example the National Library of Australia devised its own scheme of Persistent Identifiers.⁴

Maintenance and training

When you go digital the administration doubles. Now you must also know:

- **what** material you have in your digital library;

³ For further information contact the Copyright Agency Limited, which was the first DOI registry in Australia.

⁴ See <<http://nla.gov.au/initiatives/persistence.html>>.

- **where** to find it;
- **which** rights you have to that material, and
- **how** you can exploit the digital material.

The planning of this information architecture so that it is easy to navigate and retrieve is essential to efficient digitisation. It is often forgotten that many of the apparent cost savings in digitising collection material is eaten up with the additional costs of administering the new resource. One of those costs is the on-going training for employees – both those who establish and maintain the digital repository and those who need to use it.

Planning

It is of fundamental importance to plan early and to implement effective and easily maintained rights management systems for material that might be or is to be digitised.

Getting the right information at time of accession

At the very least, accurate cataloguing and records will be crucial. These must include details of:

- creator's name
- circumstances of creation (commissioned, employee etc)
- copyright status
- whether it has been published (in the copyright sense) and where
- copyright owner
- rights/licences acquired by the museum
- whether there is any licensee or agent from whom copyright permissions have to be obtained⁵
- duration or term of those licences
- any specific restrictions on use or access
- renewal dates or triggers for extending term of licence(s)
- licence fees or royalties (if any) payable
when (eg quarterly/half-yearly)?
to whom?
by whom?

We are used to these requirements in an atom-based environment. Most collections now routinely maintain such records. Those that don't capture this essential information when accessioning material are falling far short of professional best practice: not only are

⁵ For example, Viscopy, CAL.

they exposing their institution to legal liability, they are restricting the use that the collecting institution will forever be able to make of the accessioned item.

How to acquire digital rights

There are two ways of acquiring a licence of digital rights:

- identify the rights owner and obtain a direct licence; or
- get a licence from one of the collecting societies that represent digital rights owners.

For example, if the work is **literary**, the first stop would be the Copyright Agency Limited (CAL);⁶ for **fine art**, Viscopy;⁷ for artistic works such as **plans, diagrams and illustrations**, CAL; for **audio-visual** material such as films and television programs, Screenrights;⁸ for **compositions**, APRA/AMCOS;⁹ for **sound recordings**, it will either be PPCA¹⁰ or the individual record company owners.

Where you are seeking to license collective or multi-media works such as a website (which may contain thousands of individual pieces of copyright material in various media) there is no single collecting society or joint venture of collecting societies that can assist. Unless the museum is unable to rely on a 'fair-dealing' or 'library and archive' provision of the *Copyright Act 1968* (Cth), the process is going to be long and painstaking. Each piece of material will need to be broken down into its component parts; each component will need to be described, each owner will need to be identified, the extent of their rights determined, the licence sought, the purpose of the licence explained, and, after all that, the licence granted (or refused). Then the licence and its details must be recorded and administered. This process must be meticulously repeated for each copyright component. And now for the good news.

⁶ <<http://www.copyright.com.au>>.

⁷ <<http://www.viscopy.com>>.

⁸ <<http://www.avcs.com.au>>.

⁹ <<http://www.apra.com.au/Licence/LicIntro.htm>>.

¹⁰ <<http://ppca.com.au>>.

Orphan works

Orphan works are works that are still in copyright but the copyright owner cannot be found.¹¹ This is a particularly difficult problem with some collection material (such as manuscripts) where the copyright period does not start running until the work has been 'published'. For example, say you have in the collection, a diary written in 1910 in The Kimberley. You know the name of the author but can find no other information on her. You have no idea as to who her heirs were. In some cases, the information could possibly be uncovered – but only at the cost of an amount of time and resources that would make seeking a licence completely impractical. In others, no matter how much you expended, you couldn't unearth the identity of the current owner of the rights.

Many collections have large holdings of orphan works and all want to be able to digitise and reproduce this material. After all, not knowing the identity of the rights owner does not affect the importance of the material.

Management has three choices:

1. do nothing with it;
2. use the material in accordance with a risk management strategy;
3. use the material relying on s 200AD of the *Copyright Act 1968* (Cth).

The first option is undoubtedly the safest – but at what cost? You have saved the organisation any danger of having to pay legal costs and damages but in doing so have lost the opportunity to further the public interest aims of the collection.

The second option is commonly (and sensibly) used in Australian collecting organisations. For example, the National Library digitised all sheet music published prior to 1940, except where there was known to be an active musical estate.¹² This approach enabled the digitisation of some 40 000 items for the National Library's well-known and highly used Music Australia service. Despite getting something like two million page views per annum, no copyright owner has emerged with a complaint of unauthorised breach of copyright through the Library having digitised its sheet music collections. (If they did, the

¹¹ For information about the way that various countries are dealing with the problems arising from orphan works, see the Australian Copyright Council article at <http://www.copyright.org.au/information/specialinterest/g101.htm>.

¹² Such as that of the composer Jack O'Hagan, who was particularly active in the early decades of the twentieth century, but only died in 1987. Where the estate is active, the works are not 'orphan works' because the rights owners are easily identified.

Library would immediately take down the material in question, while it negotiated an agreement with the claimant.) Had the Library not taken this approach, it would have digitised very little of this material, and expended a huge amount of staff resource in the probably fruitless search for copyright owners who might be approached for permission for digitisation. The risks with this material were low: The works were old catalogue; they did not involve active estates; if there is a claim the material will be readily removed until the claim is sorted; and the potential financial liability for breach of copyright is minuscule.

The third option is to rely on s 200 AB of the *Copyright Act 1968* (Cth).

Section 200AB

Because of the particular difficulties faced by collecting organisations in clearing rights, an important amendment has been made to the *Copyright Act 1968* (Cth). Section 200AB is extremely useful and much under-utilised. While it is dealt with in detail in the copyright chapter of this book, it is worth noting that the library, museum, public gallery or archive is able to digitise its collection material if it can show that the use:

- does not conflict with a normal exploitation of the material by its owner; and
- does not unreasonably prejudice the legitimate interests of the owner of the copyright; and
- is made by or on behalf of the body administering a library or archive; and
- is made for the purpose of maintaining or operating the library or archives (including operating the library or archives to provide services of a kind usually provided by a library or archives); and
- is not made partly for the purpose of the body obtaining a commercial advantage or profit.

This is the provision that allows collecting organisations to digitise their collections for the purposes of conservation, storage and archive, ease of access and retrieval, and even education programs – both internal and external. It is the provision that permits the collection to display digital copies of its holdings on its website.

Each of the conditions must be fulfilled. Consequently, it is important to consider the desired use against each of the requirements. For example, because of the requirement that the reproduction does not conflict with the normal exploitation of the rights by the owner, it is important that the reproduction put on the website is of low resolution; people wanting to use the image commercially will need a high resolution image and will not be able to use the web version for their commercial purpose. They will need to go back to the rights owner and obtain a licence in the normal way.

How to realise the potential of your digital rights

Where you own the digital rights, you do not maximise their value merely by selling them to Mr Gates. You must make the new media an integral part of the delivery of museum services. Digitisation provides another means of delivering the museum experience and services to your public. At the very least, it creates new messaging channels that will reach new 'customers'. As such, it can be an effective and cost-effective tool to increase public awareness of your museum and your collections – especially to the younger members of the public (for they are very active users of this technology). This in turn has the potential of leading to:

- membership increase
- visitors increase
- business and commercial opportunities
- educational opportunities

The challenge is not merely how to embrace the technology. Rather, it is how to use this communication medium to further the public interest purposes and policies of the museum.¹³

Further reading

Reference should be made to the materials made available at the AMOL site on Digital Collections Standards¹⁴ and the excellent paper delivered by Dr Timothy Hart entitled 'Digitisation: An Australian Museums' Perspective', Collections Council of Australia, Digital Collections Summit, 17 August 2006.

¹³ Later in this book, there will be an extensive discussion of licensing your collection material.

¹⁴ <http://sector.amol.org.au/reference/standards_and_guidelines/digital_collections_standards>.