

Current principal legislative issues concerning digital resources in the UK

This summary reflects the Digital Preservation Coalition's point of view, as expressed in one of the answers of the questionnaire on digital preservation submitted to the experts of the Firenze Agenda Working Group. The DPC is a coalition of mainly UK organizations which recognize the need to work jointly and share information and experiences in order to solve the problems posed by digital preservation. Other comments and links will, I hope, give you most of the information you need.

“In the UK, new legislation has just been passed covering the issue of *legal deposit*; this is to ensure that there is proper legal provision for the safeguarding of the published heritage, by ensuring that digital publications are covered as well as traditional publications.

The UK is also seeking to update its archival legislation. The current statute, drawn up nearly half a century ago, was drafted to cover written records and archives, film, audio tape etc but does not explicitly provide for the different requirements of digital material. As an example, the legal concept of a ‘copy’ of a written record has no meaning when applied to a digital record.

Copyright legislation also needs to acknowledge the right of appropriate institutions to undertake digital preservation for important digital resources. Related to this, though not a legal issue as such, is the concept of trusted digital repositories which will become increasingly important. The issue of what mechanisms are required for formal certification of such repositories is being addressed by various working groups and these efforts need to be closely monitored, co-ordinated and supported.

Other UK legislation, such as the new Freedom of Information Act for the UK at large, as well as that specifically for Scotland, and the Data Protection Act, and the new Environmental Information Regulations in support of the EU Aarhus Convention, all require good records management practice to be adopted if departments are to comply with the regulations.

The DPC view is that it is important to consider all relevant legislation and ensure that it can apply to digital formats as well as traditional material. Whether the legislation acts as an enabler for institutions to collect digital materials (such as legal deposit), or as an incentive for good digital records management (such as the FOI and DP Acts), the legal right to preserve materials will need to be underpinned by an increasing understanding of what constitutes good practice when preserving digital materials over time.

This is particularly true, of course, for matters of public access, which will increasingly be managed on an international, worldwide basis, via the internet”.

The Legal Deposit Libraries Act 2003 now makes it a matter of law that electronic publications are deposited in the relevant libraries. There was a legal requirement previously to deposit publications, and had been for centuries, but the new Act recognized that new issues and problems arose from digital publications, and was designed to clarify how the law should deal with these. If you go to the British Library site www.bl.uk and do a search on the term ‘legal deposit’ you will find plenty of further information. A copy of the Act itself can be found at <http://www.legislation.hms.gov.uk/acts/acts2003/20030028.htm>.

The Legal Deposit Libraries Act deals only with publications. As our reply to the questionnaire said, there is also a project underway, run by The National Archives, to introduce new legislation

on records management and archives, with a special emphasis on providing for the management and long-term preservation of digital records. It is not yet clear whether this will succeed. Policy proposals are to go to government ministers, we hope, later in the summer. It is clear that the existing legislation is inadequate to deal properly with digital records, but it is not yet clear whether ministers will regard the issue as being sufficiently important. Regrettably, they may not. For information on the proposals, you should look at The National Archives website, http://www.nationalarchives.gov.uk/news/consultation/response_intro.htm, where you will find a copy of a public consultation document about the legislative proposals, that The National Archives ran last year. Of particular interest may be the report on the response to the public consultation, http://www.nationalarchives.gov.uk/news/consultation/responsestocp03_01.htm. You will see that the proposals deal with a lot of issues as well as digital records. This is because it is very difficult to get new legislation in the UK, so the proposals are intended as a general measure as well as specifically one for digital records. However I can assure you that the only reason these proposals have got as far as they have, is that there is a real need for new law on digital records and archives.

I have looked at Mrs Maria Guercio's paper and it is clear that many of the same issues to do with digital records and archives and their preservation have arisen in both of our countries.

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