Copyright Issues for Digital Libraries

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A Brave New World

• Digitisation can be described as the process of transferring analogue works into digital format.
• A simple example might see a page of text scanned and converted into machine readable format. (例子)
• In this format, the work can be studied by anyone, anywhere at any time.
• Concerns about damage to fragile paper manuscripts are eliminated.
It's not just words

• Any recorded work can be digitised
  – Photographs
  – Sound recordings
  – Television broadcasts
  – Cinema films
Examples

- **Google books**
  - *With impressive partners*
- Many other national and international projects
  - **Google – Italy**
  - **Europeana**
  - **European Digital Library**
What can be wrong with all that?

• A variety of concerns have been raised.

• Some, especially related to Google’s proposals are grounded in concern that “knowledge is power” and allowing one company to control access to too much knowledge is dangerous. (Google的建议 – ‘知识就是力量’ – 危险性)
And copyright

• The copyright owner has the exclusive right to authorise reproduction of the whole or a substantial part of a work. (版权拥有者的权利)

• Determining what is a substantial part is often a difficult issue. There are qualitative and quantitative issues.

• Publishing the first chapter of a mystery novel might be acceptable but not the last page(s) in which the solution is revealed.
Copyright uncertainties

• Copyright lasts for the lifetime of the author and for a period of up to 70 years after the author’s death. (版权有效时间)

• After that the work is in the public domain although there may be other forms of protection – e.g. in a typographical layout
An imprecise period

- Unlike the other main form of intellectual property right – patents – it is not easy to determine whether a work is still in copyright.
- A seventy one year old work may be out of copyright and a one hundred and fifty year old one is still within copyright.
- Only a small percentage of published works remain in print for more than a decade.
Further difficulties

• It can be difficult to identify right owners – who may of course be different from the author
• And then, of course, the issue of moral rights.
• Who would run a digital library ??
• But the potential benefits to us all are clear.
• How can (nearly) everyone be kept happy?
A Broad Structure

- Materials less than 70 years old will be in copyright and permission is required before the work can be reproduced.
- Materials more than 170 years old will almost certainly not be in copyright and can be reproduced freely.
- There is a (roughly) century long window of uncertainty regarding copyright status.
The Google Books Case

• The original idea was to link with a range of libraries to produce digital copies of all their holdings. (最初的想法 - 联合图书馆)
• Many would have been in copyright.
• Users would be able to download copies of out of copyright works
• Short passages from copyright works would be made available with users able to buy copies of the full work.
Not universally popular

• Many copyright owners objected to the fact that their works were being copied even though only short sections would appear on Google books.

• Issues of fair dealing and also what constitutes a substantial part of a work.

• Legal action began but an out of court settlement was reached – although itself still the subject of anti-trust proceedings.
European Approaches

• Europeana is sponsored by the European Union and involves many national libraries.

• Its ambitions are cultural rather than economic – seeking to digitise documents of historical or artistic significance.

• Following a European Commission Recommendation of 2006, much work has been done to promote digital libraries.
High Level Expert Group - Copyright

• Part of the European Digital Libraries Project
• Has produced Recommendations dealing with:
  – Web harvesting
  – Orphan works
  – Out of print works
Web Harvesting

• A major task of libraries in Europe has been to maintain a record of publishing activities.
• In the UK we have the notion of deposit libraries.
• A copy of every book published must be given (free of charge) to the British Library and (on request) to a number of other libraries.
• The National Archives keep almost all public documents.
But today ....

• Who needs paper?
• We rely more and more on the Internet
• But the medium can be transient
• Web sites come and go (and change URL’s) at frightening speed
• Much is superficial
• But what is important might only become clear with hindsight
Legal Uncertainties

• It is unclear whether existing laws sanction web harvesting

• Recommended that this should be clarified to allow national libraries to make copies of web sites (这一点应该被澄清，从而使国家图书馆们...)
Orphan works

- Guidelines recommended for handling works
- Effectively, due diligence (reasonable care) to be taken to try to identify right holders.
- An EU funded project ARROW is working on systems of data bases and rights clearance mechanisms in relation to possible orphan works. The system will (hopefully) give an authoritative indication either who owns the rights or than no owner can be identified.
Wider application

• The provisions regarding orphan works will apply to all publishers.
• They will legitimise publication after due diligence but preserve the right holders position in the event that he or she re-appears
Out of print works (绝版作品)

• A model agreement to provide a contractual basis for dealings with out of print works.
• 2 Model Agreements are proposed, one for use on closed networks and one where wider access is proposed (over the Internet)
Conclusions

• The Internet poses many challenges (and opportunities) for right holders and the copyright system in general.

• Historically, only a small proportion of works have remained in print for more than a decade.

• Book shops have limited shelf space.

• With digitisation storage constraints largely disappear
For the future

• There is a clear need – recognised by the High Level Group – for better systems of record keeping.

• With expanding markets for E-book readers, new markets are opening up.

• Although digitisation is of limited value with old and blurred typefaces. A digital copy can only be as good as the paper original from which it derives.
Information Overload?

• Possibly – but it all depends
  – “Its full significance only appears in connections between nations. Whilst for internal connections in small states it might to some extent be replaced by postal improvements, nothing can take its place internationally, seeing that it annihilates distance.”

• A good description of the Internet but the quote relates to the Telegraph network of the 19th century
From Knowledge to Information

• It used to be said that knowledge was power.
• Today we recite the mantra that information is power.
• The two concepts are different.
• Digitisation and digital libraries give us access to masses of information on a global basis.
• But do we understand how to use it?
Useful Links

• High Level Expert Working Group Papers