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# Intellectual Property and Copyright

IMPACT Briefing Paper

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Briefing Paper on Intellectual Property and Copyright

## Intellectual Property in Text-Based Mass Digitisation Projects

An understanding of intellectual property (IPR) and the issues it raises is key to the successful completion and delivery of a digitisation project. Laws governing the legal ownership of a work differ from country to country, but in general if legal ownership of the work resides outside the digitisation institution, then that work cannot be digitised, reused or repurposed without the owner's permission. In a mass digitisation context, this has huge implications for initial content selection: the sheer volume of material and rights owners may make negotiating with the owners impractical or impossible. Nevertheless, if an institution is digitising modern material (20<sup>th</sup> century onwards), such negotiations may be unavoidable.

This section explains why IPR matters and how to best to deal with the issues as they arise. Best practice in project management of digitisation projects will consider and act on IPR issues from the outset (which may include budgeting, being aware of third party terms requirements), and project managers should be alert to the fact that IPR requires ongoing management throughout the duration of the project and well beyond its delivery date.

## What is Intellectual Property?

Intellectual Property can allow you to claim ownership over what you create as a result of human intellectual creativity. The four main types of intellectual property are:

- **Copyright** - protects material, such as literature, drama, art, music, sound recordings, films and broadcasts.
- **Designs** - protect the visual appearance or the look and feel of products.
- **Patents** - protect the technical and functional aspects of products and processes.

- **Trade Marks** - protect signs that can distinguish the goods and services of one trader from those of another.

However, intellectual property also covers trade secrets, in audiovisual material the performer's rights and so on. Often, more than one type of IP may apply to the same creation. For example, a design can be covered by copyright as well as design right/a registered design.

## What are Intellectual Property Rights?

Broadly speaking, intellectual property rights (IPR) are rights granted to creators and owners of works that are results of human intellectual creativity.

In any digitisation programme, one needs to assess the different rights present, who owns the rights, and how to get permission to use them. It is also important to evaluate the level of any risk involved where the rights holders cannot be traced.

## Copyright

Copyright is an automatically created exclusive right given in law: it does not have to be registered. Therefore permission is required to use someone else's copyright material, unless this is done through a set of limited exceptions granted to particular users in law (e.g. Fair Dealing and Library Privilege). It may also be possible to licence the use of a third parties' material either directly with the author/publisher/musical performer through a licensing agency. A list of copyright and licensing agencies worldwide is provided by the World Intellectual Property Organisation<sup>1</sup>.

Copyright protects text, music and designs. All text, articles, stories, graphics, cartoons, drawings, designs, musical scores and other written material will be protected by copyright, as will photographs, video footage and sound recordings.

Unless evidence is known to the contrary, it should be assumed that any work used is covered by a third party's copyright and it should be ensured that all works have been cleared for use with the relevant copyright owners. As copyright lasts for a fixed duration some older works may be out of copyright but this would need to be checked. There are over many different durations of copyright depending on the material in question so careful consideration should be given to whether the copyright in an item has expired.

## Design Rights

Some products or design may be covered by design rights. For any design used it should be considered whether the consent of the owner of the design right is required. It is worth remembering that it is possible for both copyright and design right to exist in a single design.

## Trade Marks

If a third party's trade mark is to be used, then the owner may need to be contacted to gain their permission.

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<sup>1</sup> Directory of Intellectual Property Rights Offices; World Intellectual Property Organisation; 2011: <http://www.wipo.int/directory/en/urls.jsp>  
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