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## 1. Introduction

- (i) What is this guidance paper about and how should one use this guide?

This essentials guide provides practical legal information to institutions operating e-repositories on the laws in the UK affecting e-repositories and some of the legal issues arising in each area of the law.

For a more in-depth discussion, readers are advised to read “Legal Aspects of e-Repositories and e-Collections” and the sources listed in it for any further information. This is available on the publications page of the JISC Legal website at - <http://www.jisclegal.ac.uk/publicationspage.htm>.

- (ii) What are the legal issues that one may encounter when using e-repositories?

The legal issues mainly concern aspects of copyright law, database law, issues on liability, accessibility and data protection law.

## 2. Copyright and e-Repositories

- (i) Who owns copyright of works in e-repositories?

The first owner of copyright in a work is the person who created the work. Copyright may therefore be held by an institution, its staff, outside sponsors or even students as a sole owner. A work may have joint owners when more than one author is involved in creating it. So, copyright may also be jointly held between staff and students, staff and outside contractors or between students and outside contractors.

- (ii) An academic or student is the copyright owner of a published article. Can he/she post it in an e-repository?

The agreement between the publisher and the copyright owner should be checked. If publishers demand an exclusive licence to publish in all media or if the terms of the publication agreement prevent submission or publication of the article in an e-repository, the article may not be posted in an e-repository.

- (iii) Why is proper clearance of rights in audio-visual resources necessary?

Audio-visual resources have separate copyright and performance rights. So, anyone using audio visual resources without proper clearance of rights may infringe the copyright or performance right in the item.

- (iv) Is adaptation and archiving of e-repository contents permissible?

The right to make an adaptation of a work is an exclusive right of the copyright owner. So, adaptation of the contents of e-repositories without the permission of copyright owner may not be permissible.

Archiving e-repository content can involve making a copy of the digital resource or web site which constitutes a reproduction in a material form and so may amount to copyright infringement.

- (v) Is fair dealing for research and private study allowed for all works in an e-repository?

Fair dealing for research and private study applies only to literary, dramatic, musical, artistic works and to the typographical arrangements of published editions. It does not apply to sound recordings or films in an e-repository.

### **3. The Database Right and e-Repositories**

- (i) How can the database right be obtained for an e-repository?

To gain the database right for an e-repository, the database owners must demonstrate a substantial investment in the obtaining, verifying or presenting of the contents in the e-repository.

It is also required that the maker or makers of the e-repository be nationals or resident of one of the States in the EEA, at the time the e-repository is made.

- (ii) What is the legal position on the outsourcing of e-repository building to a country with no database right?

If an e-repository is built or its building is outsourced to a country with no database right of protection, the e-repository can lose out on gaining the database right. Institutions that still wish to outsource such work must consider having joint collaborative owners in the EU or building the e-repository in the EU itself.

- (iii) Who owns the database right in an e-repository?

The maker of a database is the first owner of the database right in it.

The maker is the person who takes the initiative and assumes the risk of investing in the obtaining, verifying and presenting of the contents of a database. So, the ownership of an e-repository will probably rest on the funding body or institution that provides the requisite infrastructure or funds the e-repository.

(iv) What is fair dealing under the database right with e-repositories?

Fair dealing under the database right allows lawful users to extract or re-utilise insubstantial parts of the contents of an e-repository that they are authorised to extract/re-utilise.

(v) What is the term of the database right in an e-repository?

The database right in an e-repository runs for 15 years. When substantial changes are made to an e-repository resulting in it being considered a substantial investment, it can gain another 15 years or even an unlimited term of protection.

#### **4. Liability and e-Repositories**

(i) What legal liability issues can arise when publishing content in e-repositories?

Publishing content in e-repositories can raise liability issues relating to defamation, obscenity, contempt, blasphemy, race hatred, child pornography and even issues relating to terrorism.

(ii) What constitutes the offence of defamation in an e-repository?

If the content published in an e-repository is untrue or if tends to lower a person in the estimation of right thinking members of society generally; or tends to make them shun or avoid that person, it constitutes the offence of defamation.

(iii) What constitutes the offence of obscene publication in an e-repository?

A material is considered 'obscene' if it has the tendency to deprave or corrupt those likely to be exposed to it.

Under the Obscene Publications Act 1959 and 1964 the word 'obscene' includes other materials rather than just sexual depictions.

Thus, an offence of obscene publication may be committed simply by making an obscene material available for electronic transfer or downloading by another party in an e-repository.

#### **5. Accessibility Law and e-Repositories**

(i) What should institutions do so that disabled students are not placed at a disadvantage when using e-repositories?

Institutions that administer e-repositories must not discriminate in the student services it provides or offers to provide through e-repositories.

Institutions should not treat disabled students less favourably without justification. Institutions must make reasonable adjustments to an e-repository or to its contents so that a disabled student is not placed at a substantial disadvantage.

- (ii) What are the limitations under the Copyright and Visually Impaired Persons Act 2002 (CVIPA) on making copies of works in e-repositories in alternative formats for visually impaired people?

Only accessible copies of a literary, dramatic and musical copyright works can be made without permission from the copyright holder.

Making accessible copies of sound recordings or films for a visually impaired person without permission or a licence from the copyright owner is not allowed.

## 6. Data Protection and e-Repositories

- (i) How does the Data Protection Act 1988 (DPA) affect e-repositories?

The DPA applies to personal data relating to any identifiable living individual in manual or electronic format and thus regulates the obtaining, holding, using, processing and disclosing of personal data relating to individuals held in e-repositories.

- (ii) What is the duty of an institution, an e-repository record manager or archivist under the DPA?

An institution as the data controller of an e-repository or an e-repository record manager or archivist acting as data controllers on behalf of the institution must notify the Information Commissioner that they are processing the personal data of individuals and should keep this notification up-to-date.

They should thus as 'rule of thumb' observe the eight data protection principles.

- (iii) When does the harvesting of web pages from the Internet for the purpose of archiving constitute a breach of the DPA?

If the harvested web pages contain personal data or sensitive personal data which includes data placed on the web by third parties it may place the e-repository curators at a risk of breaching the DPA.

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