

Transfer and Use of Bibliographic Records

Legal constraints on activities

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There is much uncertainty about what institutions are entitled to do with the bibliographic records they receive. There is not an easy answer to this complex problem, as the major restrictions result from the contracts that libraries have with suppliers, rather than IPR, and there is no standard contract (even for an individual supplier).

This is an information paper for librarians and those responsible for bibliographic records. It is a publication from the JISC-funded website "Transfer and Use of Bibliographic Records: Guidance on Legal Issues" which has been developed to help clarify and advance your understanding of what you are legally entitled to do with the bibliographic records which you hold within your institutional library catalogue.

Intellectual Property Rights (IPR)

IPR is the family name for a range of legal protections for things created as a result of human innovation, skill, creativity and endeavour. These include:

Copyright

This is the exclusive property right given to the author (and any subsequent rights holders) of an original creative work for a limited time period. Exclusive rights include copying, issuing copies to the public, and communicating copies to the public (eg over the Internet). Typically, copyright in author generated works will last for 70 years after the death of the author. Works protected by copyright can be licensed to third parties for specific uses, such as reproduction in printed form. Rights can also be assigned (given) by the rights holder to another party.

Database Right

This is the exclusive right given to an individual or organisation with regards to their substantial investment in obtaining, verifying or presenting the contents of a database. The database right is an automatic right and protects the maker of the database (the person who invests in it) against the unauthorised extraction and re-use of a substantial part of its contents. The right lasts for 15 years from the date of creation or publication of the database and can be renewed if substantial enhancements or additions are made to the database. The database right is not infringed if data are extracted for non commercial purposes such as teaching or research as long as the source of the material is indicated. Extraction and re-utilisation is also permitted when it is not possible by reasonable inquiry to ascertain the identity of the maker and it is reasonable to assume that the database right has expired. However, repeated and systematic extraction of an insubstantial amount of the data would constitute an infringement.

Moral Rights

These shield the reputation of the creator of a work protected by copyright. The key points are the right of attribution and the right to object to derogatory treatment of the work. The moral right of attribution (the right to be identified as an author) requires assertion and is not generally available in respect of works created by employees in the course of their employment where ownership of the copyright (which is separate from moral rights) lies with the employer. Neither is it available for works that appear in journals or encyclopaedias. The right to object to derogatory treatment does not require assertion and may apply unless waived. In the case of works created by employees during the course of their employment where ownership of the copyright resides with the employer, the moral right of derogatory treatment does not generally apply to anything done with the authority of the copyright owner. So generally it would not apply, for example, to bibliographic library records created by an individual under a contract of employment and licensed by the employer to a library to the extent that copyright subsists in those records. Neither would it apply to the copyright subsisting in the structure of a database to the extent that might have been created by an employee but owned by the employer.

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IPR and bibliographic records

It is unlikely that a **single bibliographic record** will attract any IPR because it displays neither the originality required for copyright protection nor the substantial investment required for database right. Where bibliographic records are "expressively" written or enriched, such as an abstracts written by a cataloguer, these might, individually, attract copyright protection in single entries. When bibliographic records are associated with other text or other media rich content, such as user-contributed information, including reviews, commentaries and possibly specific tags, the enhanced records are likely to be afforded copyright protection in the whole, as well as in the individual records.

Obtaining, verifying, and presenting a **set of bibliographic records** can attract database rights if there has been substantial investment (which could include human, financial or technical resources). This investment could be in a small number of records, but as long as this investment can be clearly demonstrated it is likely to attract database rights. Examples of databases which might attract the database right so long as there is substantial investment include:

- bibliographic records from sets of information;
- recitation of facts (eg the book title fed from the publisher);
- classifications of numbers and/or comprise of 'Key Phrases' generated using computer algorithms.

Where there has been substantial investment in the selection and or presentation of the content of the set of bibliographic records may attract copyright as well as database right if it was created after 27 March 1996. A database might have copyright protection in its structure if, by reason of the selection or arrangement of its contents, the database constitutes the author's own intellectual creation. Copyright protection of individual records which have been "expressively" written or enriched may subsist in the structure of the database. If copyright subsists in the structure of the database, then moral rights may also be relevant.

Further information about practical steps in dealing with databases is provided by the Out-Law website (www.out-law.com/page-5698). Note that using and transferring enhanced records may also attract other legal issues, such as Data Protection, Accessibility, Freedom of Information, Breach of Confidence, and others, all of which may need to be identified and addressed.

Contract law

Contracts are the means by which permissions can be granted to libraries to use bibliographic records supplied by third parties. They are also the mechanism through which libraries supply bibliographic records to third parties. Libraries must be aware of, and read the detail of any contract they intend to enter into to ensure that they are in a position to negotiate terms favourable to them and, in the final analysis, comply with any agreed terms

The relationship between IPR and contract law

Under UK law, it is possible that the provisions of a contract can over-ride copyright and in particular the exceptions to copyright (although overriding the exceptions to the database right is more difficult). This means that libraries could agree by contract to limit their fair dealing and library privileges to be found in the law, and in particular in the Copyright Designs and Patents Act 1988 (as amended). Agreeing to limit fair dealing may restrict current and future activities.

Through understanding key licensing principles, and through applying the principles and related model contractual terms, libraries can optimise the benefit flowing from the use, supply and making available of their bibliographic records and using the records belonging to third parties in their collections.

Further information about the relationship between copyright law and contract law can be found at www.web2rights.org.uk/documents.html#a1.

Finding out more

If you would like to find out more about this topic, please go to the "Transfer and Use of Bibliographic Records" website www.jisclegal.ac.uk/Projects/TransferandUseofBibliographicRecords.aspx. The guidance in the website is based around 5 steps which will take you through the process of conducting a compliance audit.