

## Changing Libraries, Encountering the Law

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### INTRODUCTION

The technical and legal issues associated with digital material, originally the concern principally of audiovisual librarians, now impact upon library management in general. Three factors, occurring simultaneously, have driven the digital agenda for library managers: the high profile accorded to the accomplishment of mission; the ever-increasing complexity of copyright legislation; and the Internet which has served as a catalyst for deregulation and globalisation.

The purpose of this short article is to explore both the opportunities and the obstacles posed by these factors across three core areas of digital collection management: conservation, access and development.

I shall draw upon the Bibliothèque nationale de France (BnF) in this context. The BnF is a national library containing heritage collections, largely legal deposit and used for research purposes, and also collections aimed at a far wider public. The Audiovisual department is in charge of phonograms, videograms, multimedia and electronic documents. The collection was originally created in 1911 by the linguist Ferdinand Brunot of the Sorbonne University as 'Les Archives de la parole'. Subsequently the collection has been further developed mainly with published records, mostly as legal deposit. The collection now has over one million documents, in all kinds of technical devices and carriers. In France, three institutions share the audiovisual heritage collections: the BnF for documents, the Centre National de la Cinématographie (CNC) for film, and the Institut national de l'Audiovisuel for radio and television archives.

In the BnF audiovisual collections are enlarged by legal deposit, by acquisitions and by donations. But whereas we own the carriers - a material property -, we do not own the intellectual property in the work. The protection of authors' rights and neighbouring rights [1] are central to the actions we have to perform in order to accomplish our missions of conservation and giving access.

## **CONSERVATION : REPRODUCTION**

Conservation is first of all preservation: proper storage conditions and adequate playing equipment. But, for some of the carriers, conservation means reproduction: because they will be damaged by a mechanical playing process, or damaged even when not used (chemically unstable), or because their playback equipment is no longer produced and cannot be maintained. Those endangered carriers represent 20% of our collection, i.e. 200,000 documents for which we have devised a 'Preservation plan'. Reproducing today means digitising, as practically no analogue technology exists any more. Moreover, digitisation preserves quality.

Technically we can reproduce the collection in digital format, but legally reproduction is a patrimonial right, belonging to:

- an author: for 70 years after his death plus war years. For audiovisual documents, many authors contribute to a particular work - author of the scenario, of the adaptation, of the text, of the music, and the film maker;
- a producer: for 50 years after the first registration. A producer means producer of a film, producer of a phonogram;
- an interpreter: for 50 years after the interpretation.

Reproduction also entails a moral right, respecting the quality and the integrity of a particular work. The work cannot be damaged nor abusively restored.

The reproduction right is an exclusive right: it has to be explicitly given or sold. Explicitly means that the reproduction process has to be specified. This is obviously a problem, in a changing technical context. Explicitly also means that it is necessary to specify the aim, the objective of the reproduction, - to conserve, to give access in the library and/or on line, or to loan – together with the duration and territory.

## **GIVING ACCESS : COMMUNICATION**

Librarians speak about giving access to their collections. Because this is beyond the "private sphere", lawyers interpret it as communication.

Communication rights, as with reproduction rights, belongs to authors, interpreters and producers. A communication right is also an exclusive right which has to be given or sold explicitly. Explicitly means that communication has to be specified according to the kind of use, the place and the duration. It's also sometimes necessary to reproduce documents in order to provide access to them regardless of any conservation

consideration. So, BnF digitises sound and video documents in order to make them available on our library terminals via an Intranet. We also need to download CD-roms on a server for the same reason.

## **DEVELOPING THE COLLECTION**

There are two main ways in which we add to our collections: by legal deposit and by acquisitions.

Legal deposit was established in France in 1938 for phonograms, 1975 for videograms and composite documents, 1992 for electronic documents, radio and TV, and will be extended to web sites in the second half of 2004. The missions of institutions in charge of legal deposit documents are collecting, cataloguing, conserving, and giving access to the documents. By a law, soon to be voted in the French Parliament, reproduction and representation rights will be given to these institutions so that they can carry out their missions of conserving and giving access. But access is restricted to individual and research usage on the premises of the institution in charge of the legal deposit. These exceptions to author and neighbouring rights will be an adaptation by French Law of the European Directive.

Acquisitions, either gratis or subject to payment, require an authorisation for communication. For some documents, we also need an authorisation for reproduction, when the reproduction is *a sine qua non* condition in order to conserve and make it available to the public. Such rights can be acquired in two ways: globally when a collecting society exists, title by title when it does not. In the latter case each library or a purchasing outfit or a consortium will contract. The proper procedure depends on the kind of rights holder. The simplest situation is when the rights holder is represented by a global collecting society. This is the case for authors, composers and publishers of music, represented by SACEM, whether they are French or foreign. The more complicated situation is when the rights holder is not known: an unidentified author, or an unidentified rights holder of a dead author. Between those two situations, we take a risk: when a collecting society does not represent all the rights holders to sign a global contract with this society could be risky (e.g. interpreters); when the representative of several rights holders does not represent them for sure (e.g. producers). To simplify, there are 'super-collecting societies' (*guichets uniques*) federating several kinds of rights holders for certain types of use. To acquire audiovisual we have to use an adapted process for each kind of document, in order to settle as many legal questions as possible.

## **CONCLUSION**

The digital era has not changed the nature of legal issues but has highlighted them. I will conclude with the following observations: The quality of a digital reproduction is very good, and can be reproduced and maintained far more effectively than former analogue reproduction. A digital reproduction will never be the original document in its editorial form but it can really be the content of the document. Libraries have always made their collections available to the public outside their premises but in a restricted way: reproductions for publications, for public or private use, settling the rights for each use. Now, with Internet, dissemination of collections has become urgent, as an evolution of the social mission of the library. Legal and economic global solutions are indeed necessary so that libraries are not excluded from the digital explosion.

## **NOTES**

1. Producer and interpreter are "neighbouring rights".

## **WEB SITES REFERRED TO IN THE TEXT**

Bibliothèque nationale de France. <http://www.bnf.fr/>

Centre National de la Cinématographe. <http://www.cnc.fr>

Institut national de l'Audiovisuel. <http://www.ina.fr>

SACEM. <http://www.sacem.fr>

Sorbonne. <http://www.univ-paris1.fr>