



# **The Digital Agenda and Cultural Institutions**

**An Empirical Study into Digitisation  
Practices and Copyright Law in Museums,  
Galleries and Libraries**

**Emily Hudson, April 2005**

# Credits

- Joint project of the IPRIA and the CMCL, instigated and supported by Museums Australia.
- Primarily funded by the Australian Research Council along with:
  - Art Gallery of NSW
  - ACMI
  - Aust War Memorial
  - Museum Victoria
  - National Museum of Australia
  - State Library of Victoria
- Chief Investigators: Dr Andrew Kenyon and Prof Andrew Christie.

# Relevant law

- Exclusive rights of the copyright owner include:
  - digitising an analogue item (an act of reproduction or copying); and
  - putting digitised material online (a communication to the public).
- Fair dealing exceptions.
- Libraries and archives provisions:
  - Purposes include: inter-library loans, preservation, replacement and ‘administrative purposes’
  - Caveats on application of provisions, eg:
    - Commercially available works; and
    - Limits on accessibility.

# Digitisation practices

- Variety in practice.
- Benefits:
  - Public uses, eg exhibitions, interactive display, website; and
  - Internal uses, eg internal catalogues.
- Logistical difficulties:
  - Expensive;
  - Time- and resource-intensive;
  - Information management issues;
  - Longevity; and
  - Storage.



Extract from forthcoming website,  
Art Gallery of New South Wales

# What is the impact of copyright law?

1. Varies between internal and public uses:
  - Importance of ‘administrative purposes’ exception.
2. Varies between ‘works’ and audiovisual items:
  - Multiple rights holders; and
  - Asymmetry within the *Copyright Act*.
3. High reliance on licences in the sector, particularly for public uses:
  - No exception for putting digitised content on the Internet, regardless of resolution or purpose of the institution.

# Impact cont ...

4. Interviewees strongly supported the protection of creators by copyright law:
  - How to balance these interests with the interests of cultural institutions?
5. Copyright is difficult to administer, eg:
  - Entire positions dedicated to copyright compliance;
  - Unknown or impossible to locate copyright owners;
  - Lack of consistency in process;
  - Time-consuming process; and
  - Problem of limited licences (duration and uses).

# Tentative conclusions

- Copyright law:
  - Adds further layer to administrative costs of cultural institutions; and
  - May prevent or hinder important content for being: (i) digitised; or (ii) accessed in digital form by users.
- Not a ‘win-win’ for copyright owners or cultural institutions?

# Options for the future

- Amendment of copyright law to replace purpose-based fair dealing provisions with free-roaming 'fair use' doctrine.
- Exceptions in relation to 'orphan works' (in which copyright owners are difficult or even impossible to locate).
- Other suggestions:
  - Additional exceptions for cultural institutions?
  - Statutory licensing scheme?
  - Greater use of collecting societies?

Please contact me if you'd like further information:

[e.hudson@unimelb.edu.au](mailto:e.hudson@unimelb.edu.au)

Many of the issues in today's presentation will be further discussed at a one-day conference we are holding on Friday 26 August 2005 at the State Library of Victoria. Please let me know if you're interested in attending.