

# Digital Preservation and Copyright in Australia

July 2008

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CRICOS No. 000213J

# Copyright in Australia

- *Copyright Act 1968*
- Protects 'works' (literary, artistic, musical and dramatic), as well as 'other subject matter' (films, sound recordings, broadcasts, published editions)
- Standard fair dealing exceptions (research, criticism, news, legal advice, parody and satire) plus a large number of very specific exceptions for certain uses (eg format shifting) and users (eg libraries)

# Library and Archive Exceptions

- Part III, Division 5 & s110B
- Various exceptions for non-profit libraries, archives, galleries and museums – including those run by for-profit entities, as long as they are accessible to the public
- ss51A (works) and 110B (films and sound recordings) allow preservation of any work in the collection but:
  - where the material is already damaged, stolen, lost, deteriorated
  - only apply to published material where it is not ‘available in a reasonable time at an ordinary commercial price’
  - Manuscript, original artistic, first records/copies – “against”

# Key Cultural Institutions

- ss51B, 110BA and 112AA
- Introduced in 2007 as a result of a major 'Fair Use' review
- Intended to allow international best-practice preservation
- 'Key cultural institutions' can make 3 copies of material of 'historical or cultural significance to Australia' to preserve it *against* loss or deterioration
- 'Key cultural institution' = those empowered by legislation (ie State and Federal collections)
- For published material, again, only applies where not otherwise commercially available

# Three Step Test Exception

- s200AB – again introduced in 2007
- Intended to add flexibility to the Act (instead of US-style fair use)
- Only applies to certain categories of users – libraries and archives, educational institutions, those assisting people with disabilities
- Allows uses which comply with the Berne three step test, ie must:
  - not conflict with a normal exploitation of the work or other subject-matter;
  - not unreasonably prejudice the legitimate interests of the © owner; and
  - be a ‘special case’.
- In addition must:
  - be for the purpose of maintaining or operating the library
- Application is uncertain – not suitable for large scale projects?

# Other Legal Issues

Legal deposit? s201

- Federal – limited to printed materials
- Tasmania and Northern Territory – incl. digital

How can materials be accessed?

- on library premises (s51A and 110B)
- Very limited provisions - can be communicated off site in response to user requests for research and study (s49, 110A))

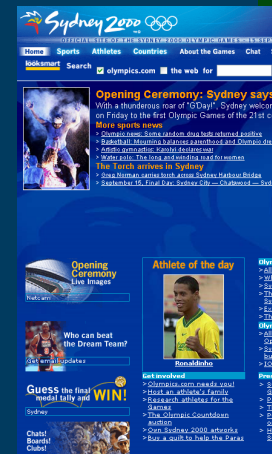


# Digital Preservation Landscape

- Almost all digital preservation conducted by government funded libraries, archives and museums (some universities)
- Primarily with the author's agreement
- Various efforts to establish guidelines and raise awareness – but mainly ad hoc

# PANDORA

- Preserving and Accessing Networked Documentary Resources of Australia
- Est. 1996 by NLA
- 10 participating institutions
- Collects 'culturally significant' online publications with permission
- 51 million archived files fully accessible to the public
- 3 complete harvests of the .au domain since 2005





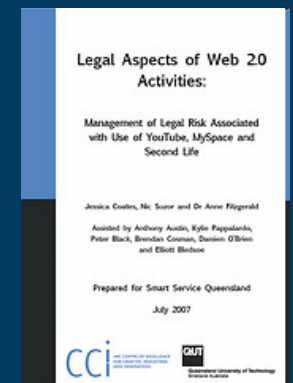
# Our Digital Island



- Est. 2000 by State Library of Tasmania
- Archives Tasmanian websites
- Does so under State legal deposit legislation
- All material fully accessible to the public

# QUT ePrints

- One example of ad hoc repositories developing across university sector
- Deposit compulsory for all published works by QUT employees
- Exception for commercial and confidential material
- Copyright management left to author – but encourages OA licensing



# Impediments and Solutions

- Limited legal deposit – extension after AG’s paper?
- Limits on exceptions - ‘commercially available’ in digital environment?
- TPMs – problem – re supply of circumvention device
- Contracts overriding the exceptions – legally grey area
- Orphan works – is s200AB the solution?
- Remote access – particularly important because of Australia’s geographic challenges
- Government material – movement towards OA

# Key Recommendations

Legislative changes to:

- extend legal deposit to digital materials (deposit and harvest);
- clarify how current exceptions work (eg multiple copying and format shifting);
- provide workable TPM and contract exceptions; and
- permit remote access to obscure works – under certain conditions

Voluntary actions to develop:

- National policy, guidelines and agreed practices
- Open licensing of government and publicly funded works – where possible



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OAK Law is funded by the Australian  
Department of Education, Employment and  
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