

Old Dogs and New Tricks: Digital Curation – a New Concept Touching on Numerous Established Areas of Law

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Abstract

Scientists, researchers and scholars across the world generate increasingly vast amounts of digital data. Together with institutional investment in digitisation and licensing of digital content, this activity results in what has been termed 'the data deluge'. The scientific record and the documentary heritage created in digital form are at risk from technology obsolescence, from the fragility of digital media, and from lack of the basics of good practice, such as adequate documentation for the data.

The Digital Curation Centre (the DCC) was launched just over two years ago in order to address these issues. It provides a national focus for research and development into digital curation issues and promotes expertise and good practice for the management of all research outputs in digital format. To carry out this project the DCC took on staff from some of the more obvious disciplines such as computer science, database theory and records management. In addition to this, the project creators had the foresight to recognise that digital curation involves a number of legal elements. On that basis they teamed up with the AHRC Research Centre for Studies in Intellectual Property and Technology Law and appointed a full time member of staff to address the legal aspects of the project.

It is crucial that such an important topic is brought to the attention of the legal profession so that the legal issues involved in this developing area can be fully debated from the outset. The areas of law of most significance to digital curation are intellectual property (in particular copyright and the database right), data protection and freedom of information. However, when you consider that the process may involve creating, re-using, preserving or amending all types of digital data or documents, whether they are legal case reports or databases containing petabytes of astro-physics results, many more areas of law become relevant. Examples include: defamation, contract, evidence, legal deposit, accessibility and human rights.

From the perspective of the sole legal personnel at the DCC the author would like to draw the topic of digital curation to the attention of other lawyers. The paper will explain the purpose of digital curation and describe its importance in an increasingly sophisticated technological environment. This will be followed by an overview of the DCC and its work. The last part of the paper will take a more in-depth look at the areas of law that have most relevance for digital curation (intellectual property and information governance) and the live and largely unresolved issues in these areas.