

Tutorial iPres 2013:

Legal challenges in the preservation lifecycle – How to address and how to solve them!

Abstract

One particular field of interest that is typically underrepresented in Digital Preservation (DP) and computer science conferences, tutorials and workshops are legal aspects of preservation activities and legal risks motivating DP. But legal aspects are influencing nearly all preservation activities, and at the same time they are a strong motivation for preserving digital artefacts. Therefore one focus of the TIMBUS project, which endeavours to enlarge the understanding of preserving business processes, lies on various legal research questions, amongst them:

- Intellectual Property (IP) Rights related to databases, computer programs, pictures
- Data Protection regulations
- Legal obligations for preserving data in various sectors
- IT contracting issues

The legal research questions of TIMBUS can be transferred to DP in general and introduce the DP community to this hardly attended area of research. In this tutorial we want to raise awareness for legal aspects and want to discuss, illustrate and work out different challenges and potential solutions for the legal challenges.

Tutorial Level

Introductory Level

Duration

Three hours

Outline of the contents

The tutorial will cover the following topics:

IP-Rights and DP The first part gives an overview of legal issues in DP and European Copyright. Therefore all relevant European Copyright regulations are listed and aspects of copyright and related rights of the Information Society Directive (Directive 2001/29/EC) as well as the Computer Program Directive (Directive 2009/24/EC) are explained in detail. Hence we give an overview of the object of protection as well as for DP relevant exclusive rights of reproduction and alteration. It will be discussed who is the author of a computer program and who gains the exploitation rights in case a computer program is developed by employees in order to fulfil their labour contracts. The exceptions and limitations to the exclusive rights established in the Information Society Directive and the

Computer Program Directive are explained in detail and an examination is made to find out whether these exceptions and limitations apply to the relevant processes for DP.

IT-Contracting In order to develop appropriate rules for the conduct of parties involved in DP, it is recommendable to determine the execution of digital archiving in legal contracts. Of particular interest appears the situation in which the user outsources the execution of the preservation process to an external provider. In that case comprehensive framework contracts appear necessary. The relevance of ITIL, ISO/IEC 20000, change request clauses and the specific significance of Service Level Agreements will be explained. The main focus of the module is nevertheless the topic of licensing which is of equal importance in the outsourcing scenario and in the scenario where the user preserves his business processes in his own DP-system. After a short introduction in licensing, the clauses of a license contract which might be relevant for the executing of DP will be illustrated. Special emphasis will be put on Open Source Licenses and their advantages for DP.

Holistic Software Escrow If organisations buy customized software or use externally provided services (like SaaS in the Cloud) they are dependent of the third party's maintenance and support regarding changes or bug fixes. These dependencies pose problems, for instance if the developer files for bankruptcy or refuses to maintain the program. Software Escrow offers a mitigation here as it places a trustable third party between the developer and customer. All artefacts relevant for the software are deposited at the escrow agent, who is obliged to hand out the material in case a stipulated trigger event occurs. Different technical and legal considerations that have to be taken into account will be the focus of this module. First we will give an overview of the Software Escrow domain. Then we will point out different aspects that have to be considered for a successful escrow. We will also give an overview of the escrow phases (planning, executing and redeploying) and how to legally and technically ensure that a developer is allowed to and is able to maintain it once it gets handed out.

Legalities Lifecycle Management To facilitate the DP process with regards to legal consideration, we have started to develop a prototype tool providing an overview of legal aspects for preservation and migration of software services and their data in the course of DP and to address some legal aspects regarding the long-term aspect of an archive. The solution for legalities lifecycle management (LLM) is based on open source technology, which is tailored to the needs for the continuous management of legalities. The tool supports legal assessment by asking questions sequentially, similar to the questions a lawyer would ask during the legal consultation. Having gathered the crucial and legally relevant information from the user, the LLM tool guides the user step by step in the relevant legal areas and outlines the situation. This is an easily manageable and timesaving way for the user to get acquainted with the legal requirements for his specific tasks. In order to allow for a deeper understanding and the right approach to the legal matter, the user has the possibility to read the guidelines which are implemented as an annex to the LLM. They ensure an overview of the subject matter and explain the interdependencies between the questions. In addition and for the purpose of long term DP, the LLM tool will provide an automatic crawling feature that informs about changes in the legal environment, i.e., changes in laws or legal directives are considered relevant for a specific organization. The outcome of the LLM tool is a simple and comprehensive report that covers the most relevant legal areas of the DP domain.

Intended Audience

The tutorial is targeted at all listeners interested in the field, who have not intensively discussed it until now and who want to start learning about legal challenges in preserving digital artefacts.

Expected Learning Outcomes

The participant will understand:

- Who is the author of a computer program, who is the copyright holder and what happens if the computer program is developed by various employees in fulfilment of their employment contract?
- What is the legal difference between Data Migration and Software Migration?
- What is an Escrow Agreement?
- What reasons are there for an escrow contract?
- How can an escrow contract mitigate risks of a third party dependency?
- Which artefacts have to be deposited?
- How to ensure the quality of the deposited material?
- What kinds of framework contracts seem appropriate for digital preservation if an external provider is involved in the execution of the process?
- What is the importance of Service Level Agreements?
- What are license contracts and what is their relevance for DP?
- Which clauses in a license contract appear relevant for the permissibility of DP?
- What are the advantages of OSS for DP and what are the legal characteristics of Open Source Licenses?
- Which legal obligations cause risks, motivating DP?

Biography of the Presenters

- Dr. Rihards Gulbis works as a Legal Adviser on Copyright in the Ministry of Culture of the Republic of Latvia where he deals with a wide range of legal issues regarding copyright, such as national copyright policy, amendments to the Latvian Copyright Law etc. He also provides expertise and takes part (as a national expert) in the European Union Working Party on Copyright and the Standing Committee on copyright within the World Intellectual Property Organisation. His academic and research work in Latvia and abroad covers IT law encompassing many aspects of intellectual property law. His doctoral thesis addresses legal protection of computer programs and he has various scientific publications on this topic and other copyright issues. Dr. Rihards Gulbis regularly gives lectures and seminars on copyright in universities and he has run the intellectual property study course at the BA School of Business and Finance in Riga.
- Dr. Barbara Kolany (ITM) works as a research associate at the Institute for Information, Telecommunication and Media Law in Muenster, Germany. She has studied law in Austria and Spain with emphasis on European and International law. After obtaining her doctorate in Law she has started in April 2011 her work for the TIMBUS project.
- Silviya Yankova (ITM) is a lawyer and works as a research fellow at the Institute for Information, Telecommunication and Media Law in Muenster, Germany. She studied law at the university of Freiburg with emphasis on European law. She carried out her legal clerkship

in Freiburg and Offenburg, Germany as well as in Vienna, Austria and specialised in particular in copyright law.

- Elisabeth Weigl (SBA) received her master's degree in "Information & Knowledge Management" from the Vienna University of Technology, where she is currently enrolled in a doctoral program in Computer Sciences with a focus on Digital Preservation. Since February 2012 she is working for SBA where she is doing research for the TIMBUS and APARSEN projects.
- Daniel Draws (SQS) studied Computer Science in Munich. He joined SQS (the world's largest company in Software Quality) in 2008 and is part of SQS Research since 2011. With a strong interest in the internal quality of software systems he started his research in DP in the TIMBUS project.

Target Group

People interested in legal aspects of DP