

When I was asked to present a paper on *The Audio Visual Archive System in Great Britain and its Generic Legislation* the question that immediately came to mind was: could the term 'system' reasonably be applied to such archives in Britain? The word suggests a form of ordered network, a framework of inter-relationships that is deliberate and considered. Looking at the overall picture of the audio-visual archives in Britain, I am not at all sure that such a system exists or has ever existed. What has happened over a period of time is that a range of archives has been established which, taken together, cover most of the areas of interest in the photographic and audio-visual fields. This reflects the reality of what we collect: mass media that are constantly evolving, both technologically and in terms of their applications, and which even now are rapidly changing with the impact of digital technology.

In 1977, in the first and, so far, only directory of photographic collections <sup>[1]</sup>, John Wall listed 1582 collections in Britain, ranging from archives with a few hundred photographs to those with many millions. He aimed to be comprehensive, including commercial picture libraries alongside museum and university archives, local libraries, private and institutional collections. In the period since the survey was published, there have, of course, been changes but the situation remains broadly similar today.

As for moving image collections, the British Universities, Film and Video Council in its latest edition of *The Researcher's Guide to British Film and Television Collections* <sup>[2]</sup> lists over 450 such archives in Britain; again, these range from commercial stock shot and clip libraries to film and television production company archives, and the large national archives.

These figures give a broad idea of the scale and breadth of resources in Britain. The sheer number of collections and the range of subject matter they collect - from the art and science of photography and the moving image to records of rural life, trains, buildings, local studies, portraits, social history – makes for a complex picture that virtually defies systemisation. In order to simplify matters a little, in this paper I shall concentrate on the archives of publicly-funded institutions. Their obligation to the society and culture whose

outputs they collect and represent, and which pays for them, distinguishes such bodies from the commercial picture or film libraries, no matter how important (and some are extremely important) such collections may be. Most importantly, public archives generally have a legal obligation to preserve and safeguard their collections.

There are 11 major national collections of photographs in Britain. These include that of the National Museum of Photography, Film & Television, Bradford, which has well over three million photographs in its collection. The Museum opened in 1983 but its collection originated in the South Kensington Museum (the precursor of London's Science Museum and the Victoria and Albert Museum) in the 19<sup>th</sup> century. The collection reflects the history of photography and is suitably wide-ranging. It includes the picture library of the Daily Herald newspaper and the collection of the Royal Photographic Society.

The Photographs Collection of the Victoria and Albert Museum in London also began in 1857 as part of the South Kensington Museum.<sup>[3]</sup> It now contains some 300,000 photographs, mainly devoted to the development of photography as an artistic medium. The National Portrait Gallery, London has 220,000 photographs, from the 1840s to the present day, of which at least 130,000 are original negatives.<sup>[4]</sup> They are all portraits of distinguished British people. The Imperial War Museum, London, founded in 1920, has over 6 million photographs documenting the two world wars and other conflicts in which Britain has been involved. The National Maritime Museum, London, which dates back to 1937, has a photographic collection comprising a million prints, 270,000 negatives and 1463 albums devoted to naval subjects. The National Monument Record at Swindon has 10 million photographs documenting Britain's buildings. Birmingham Central Library, the only local institution in this list, has an important collection of 19<sup>th</sup> century photographs that includes 335,000 negatives, 30,000 prints and 60,000 magic lantern slides.

In Edinburgh, the Scottish National Portrait Gallery has a photographs collection of 27,000 items. In Wales, the National Library has collected photographs since its foundation in 1907 and now has about 750,000 images.

These collections are all members of the Committee of National Photographic Collections, which was formed in 1987. Curators from these institutions meet regularly to discuss methods of storage, cataloguing and presentation, copyright and electronic imaging and to keep each other informed about new acquisitions.

There are four national film archives in Britain. The largest, indeed the largest film archive in the world, is the National Film and Television Archive, which is part of the British Film Institute and was founded in 1933. This holds 275,000 feature, non-fiction and short films, and 210,000 television programmes. In addition, the NFTVA has collections of film stills (7 million), a substantial film poster collection (15,000) and a huge library and manuscript collection, though this is outside the scope of this paper. The Film Archive of the Imperial War Museum in London has a collection of 120 million feet of film, over 6,500 hours of video and 32,000 hours of historical sound recordings. The Scottish Screen Archive's collection totals some 32,000 films comprising documentary, newsreels, short films, educational, advertising and promotional films, and amateur productions. The National Screen and Sound Archive of Wales which is based at the National Library has over three million feet of film, 200,000 hours of video and 150,000 hours of sound recordings.

The English regions, with the exception of London, are covered by eight regional film archives. The first of these to be established, the East Anglian Film Archive at the University of East Anglia, dates back to 1976 and was followed two years later by the North West Film Archive at Manchester Metropolitan University. These two set the model for the development of regional film archives and many later ones also have close associations with academic institutions. The Yorkshire Film Archive was established in 1986 and is based at York St John College in York; The Wessex Film and Sound Archive was set up in 1988 and is based at the Hampshire County Record

Office in Winchester. The South East Film Archive has bases at the University of Brighton and the West Sussex Record Office in Chichester, and was founded in 1992. The South West Film Archive, based in Plymouth, grew out of the film library of the regional independent television station. The Northern Region Film and Television Archive was formed in 1998 and operates across two sites, the University of Teesside in Middlesbrough and Tyne and Wear Archives Service in Newcastle. The final part of the jigsaw is the Media Archive for Central England, founded in 2000 and based at the University of Nottingham. Most of these archives have, typically, in the region of 13-15,000 films and videotapes in their collection.

All the regional archives and most of the nationals are members of the Film Archives Forum whose Chair, Luke McKernan, makes the important point:

‘This blossoming of what have been best-described as public sector moving image archives shows how really the concept of a ‘national film archive’ is now wider than one institution could or should represent and reflects, in particular, moving image productions made for and by local communities that were not considered when the notion of a ‘*repository of films of permanent value*’ [one of the objectives of the British Film Institute when it was established in 1933] was first put forward. The ‘national film archive’ has become a collective responsibility.’ [5]

So perhaps, in the film archive sector at least, a ‘system’ has evolved over the last twenty-five years. This has been the result of the growing realisation that the existing national institutions were unable to fulfil all the needs for preserving audio-visual material in Britain. The perspective of a ‘National’ by definition must be set at a national level: it collects material that it considers to be of importance to all citizens of the country. As a consequence, material that has significance mainly to a particular sector of society or region may not be deemed to be appropriate for a national collection. So, such material is in danger of being lost unless a private individual or an institution or body of people who recognise its significance steps in to form a new collection.

This is often how many of our greatest collections have been founded, rather than in a 'systematic' way. The beginnings of photography go back to the 1830s, film to the 1890s, television to the 1920s and digital to the 1980s. As a result, the audio visual collections of Britain have all been established at different times in response to perceived needs, and have grown or been transformed in response to new media developments or through the acquisition of other collections. There has been no overall national strategy, although there has been a concerted effort over the last decade to address problems that have arisen and to update current legislation.

The main area of activity has involved the practice known as 'legal deposit'. Under Section 15 of the Copyright Act 1911, a copy of every book or serial published in the Britain must be deposited, free of charge, in the British Library within a month of publication. Under the same Act, five other national libraries may request free copies of any book published.

This principle did not apply to 'non-print' materials such as photographs, moving images or recorded sound. There have been repeated attempts to extend the range of material subject to legal deposit, particularly to film.

In 1969, the Films (Statutory Deposit) Bill received all-party support in Parliament but failed on financial grounds. In 1976, a report of the Prime Minister's Working Party on the future of the British film industry recommended a statutory deposit scheme. This was supported in 1978 by the report of the interim Action Committee on the Film Industry presented to Parliament. Such thinking was plainly in line with broader international views, as in 1980 UNESCO produced the resolution that recommended the safeguarding of moving images by national government intervention on an international scale.<sup>[6]</sup>

Much of the recent activity has been initiated by the British Library in response to the concern over the loss of on-line and various other forms of electronic publication. In 1996, the British Library, along with the other legal deposit libraries and the British Film Institute, presented a proposal to extend legal

deposit to non-print materials, including audio-visual and electronic publications, to the Government department then responsible for such matters, the Department of National Heritage. In 1997, the Government published *Legal deposit of publications: a consultation paper* and invited interested parties to submit their views on extending the system of legal deposit.

Following the replies received – 161 in all – the Secretary of State for Culture, Media and Sport set up a Working Party to consider how an effective national archive of non-print material might be achieved. One of its objectives was:

‘to ensure that such arrangements are compatible, where appropriate, with the existing arrangements for the voluntary deposit of films and sound recordings.’<sup>[7]</sup>

But in its Report, presented to the Department in 1998, the Working Party firmly advocated statutory deposit as the *only* way forward for audio-visual media:

‘The problems with a voluntary system are most clearly illustrated by the experience of the British Film Institute. In the 63 years since the founding of the National Film Archive the Institute has been operating voluntary procedures, and they have been unable to secure full co-operation from the industry and what co-operation has been received has been at best shifting and haphazard. Copies voluntarily handed over have often been in poor condition; damaged goods, in fact. In the opinion of the BFI voluntariness has been exhaustively tested and found wanting.’<sup>[8]</sup>

The Working Party’s recommendation was that:

‘It is of fundamental importance that a legal deposit scheme for audio-visual materials recognises their innate physical characteristics and vulnerability and the need to acquire them in new condition. This is to ensure that they are preserved at minimum cost to the taxpayer, and can be studied and enjoyed in the future in the pristine form their

creators intended. It is also a benefit to the depositors themselves when they seek renewal and re-use of their materials for future commercial purposes. <sup>[9]</sup>

However:

‘Deposit should not necessarily be automatic. The system should provide for the obligatory notification to the repository of all audio-visual works shown or played or published, and for the repository to request materials within the context of established selection criteria and guidelines’ <sup>[10]</sup>

It proposed that ‘In the case of films shown or published in the UK...the following materials be deposited:

a) British films (however defined): (i) A mint print of the authorised premiere version, to be delivered to the repository within 30 days of the first showing. (ii) After three years (or other agreed period), the original negatives or acceptable alternative pre-print materials.

b) Other films shown or distributed in the UK: A best copy of the film in the form first shown in the UK.

In the case of videos, the deposit materials should consist of a mint-condition duplicate original and new reference copy (if British); a new-condition reference copy (if imported).’ <sup>[11]</sup>

Following this report, a Private Member’s Bill to change the law on legal deposit was put before Parliament in by Chris Mole MP in December 2002. In October the following year Royal Assent was given to the Legal Deposit Libraries Act 2003. The Act came into force in February 2004. It is interesting to note that throughout the parliamentary debates on the Bill in both Houses of Parliament the emphasis was overwhelmingly on non-print publications, mainly digital media. It is thus not surprising that the main clause relating to ‘non-print’ materials is suitably all-embracing:

‘(1) The Secretary of State may make regulations supplementing sections 1 and 2 as they apply to works published in media other than print.

(2) Regulations under this section may in particular-

(a) make provision about the time at which or the circumstances in which any deposit library becomes or ceases to be entitled to delivery under section 1;

(b) require the person mentioned in section 1(1) to deliver, with the copy of the work, a copy of any computer program and any information necessary in order to access the work, and a copy of any manual and other material that accompanies the work and is made available to the public;

(c) require delivery within a time prescribed by reference to publication or another event;

(d) permit or require delivery by electronic means;

(e) where a work is produced for publication in copies of differing quality, specify the quality of copies to be delivered;

(f) where a work is published or made available to the public in different formats, provide for the format in which any copy is to be delivered to be determined in accordance with requirements specified (generally or in a particular case) by the deposit libraries or any of them;

(g) make provision as to the circumstances in which works published on line are or are not to be treated as published in the United Kingdom;

(h) specify the medium in which a copy of a work published on line is to be delivered.’<sup>[12]</sup>

The Legal Deposit Libraries Act 2003 is what is termed an ‘enabling’ act, which means that it gives the Secretary of State powers to make further regulations, in this case about what, how and when material should be deposited. These regulations will now be drawn up in consultation with the deposit libraries and the various publishers likely to be affected, and will have to be passed by both Houses of Parliament. An Advisory Panel is being set up by the Department for Culture, Media and Sport during 2004. The precise



outcome of the nature of the material to be deposited and exactly when such regulations will come into force has yet to be determined.

The implications of the legal deposit of film on the archives and their resources could be considerable. Set against the advantages of obtaining good quality copies of all films and broadcasts must be the consideration of enlargement of dedicated storage spaces and the expansion of staff and facilities to administer the new regime. There are important cost implications both in the immediate and long term – and this in a sector where core funding has been static and there are moves to contain costs and alter priorities for the National Film and Television Archive. This will no doubt form part of the discussions of the Advisory Panel.

What the new Act will not affect is ‘unpublished’ works and it is such material that is often a major concern for archives – especially those that have remits to collect material of social historical importance. These will, as always, rely on voluntary deposit from individuals and small producers.

Since 2000, a Voluntary Code of Practice has been in place enabling the deposit libraries and publishing trade bodies to introduce the statutory deposit of non-print publications. However, the emphasis is on material published by electronic means and does not cover film or sound recordings, as those media are covered by existing voluntary schemes, even though, as we have seen, the British Film Institute had expressed reservations about this in the 1998 *Report of the Working Party on Legal Deposit*. An important aspect of this scheme is to monitor how the procedure operates and to contribute to the drafting of legislation.

The Copyright Act 1911 includes clauses about the legal deposit of printed material, but the impact of intellectual property legislation on photographic and moving image collections goes much wider. Ownership of the physical artefact does not confer the right to make and distribute copies of that material freely. Considerable proportions of most collections remain in copyright. Under the terms of the original version of the Copyright, Designs and Patents

Act 1988, the copyright period of an artistic work, which includes photographs, extended to 50 years after the death of the work's creator. However, if a photograph was commissioned prior to the 1988 Act, the copyright was that of the commissioner, not the photographer. The Act was amended in 1996 so that the copyright period was extended to 70 years after the creator's death, to bring British legislation into line with European law. This amendment, unusually for British law, was retroactive and brought works whose copyright had already expired back into copyright.

The copyright of a film extends 70 years after the death of the director, writer or composer or, if they are unknown, 70 years after the film was made or first made available to the public. However, films made before 1 June 1957, when the Copyright Act 1957 came into force are not protected as a film but as a dramatic work or as a series of photographs. Broadcasts made before 1 June 1957 were also not protected. Under the 1988 Act, a broadcast or sound recording is in copyright up to 50 years after it was made. In cases where a film or broadcast originates outside the European Economic Area, the duration of copyright is that as stipulated by the country of origin, though the period cannot exceed that laid down by the British Act.

The Copyright, Designs and Patents Act also introduced three new moral rights into United Kingdom legislation, which mirror those laid down in article 6 of the Berne Convention of 1886. An author, artist or director has the right not to have a work falsely attributed to him or her, as well as the right to be identified in relation to their work. They have the right to protect their work against derogatory treatment. Additionally, anyone who commissions films or photographs for private and domestic purposes enjoys a new right of privacy and can control the publication or display of that work.

The Copyright, Designs and Patents Act has several implications for audio-visual archives. The major one is where archives wish to reproduce material from their collections. Those items in their collection whose authors died in 1934 or before are in the public domain. However, nearly all collections contain material whose author is either alive or died after 1934 and there is

certainly material, such as film, where it is often impossible to be certain that all aspects of the production are out of copyright. There are also films where a later soundtrack has been added, essentially creating a new work - for instance a new music score for an early silent classic.

As curators and archivists, an important aspect of creating collections is to be able to give the public access to the material we hold, and for that material to be disseminated as widely as possible. There are provisions within the Copyright, Designs and Patents Act that allow copying of copyright material as long as it falls within the conditions of 'fair usage'. This covers, broadly:

- ?? a temporary copy (except for film or sound recording)
- ?? a single accessible copy for personal use
- ?? multiple copies for visually impaired persons
- ?? research and private study
- ?? criticism, review and news reporting
- ?? purposes of instruction and examination

This gives a reasonable amount of leeway to allow copying for research and educational use. But increasingly, institutions want to exploit their material more widely – for example, on the web to allow on-line access to their collections or commercially, in order to raise income. It is fair to say that no publicly-funded archive can rely solely on grant-aid to support its activities. For relatively small organisations, such as regional film archives, regular and predictable public funding is simply not available. So the drive to make use of collections to generate income is becoming an important aspect of archive management and with it the need to be aware of copyright law.

Most of the larger institutions listed earlier have separate commercial subsidiaries whose function is to generate income that can be used to support the parent institution. Typically, they run commercial activities such as shops, conference and commercial hire of the institution's premises, develop product lines based on the collections and manage picture and clip sales. The ideal

image or clip from the collection is one where copyright has expired but where material is in copyright they have to negotiate terms with the copyright owner.

A good example of where the archive and commercial arms work well together is the British Film Institute which has a video publishing arm that distributes copies of masterpieces such as *Napoleon*, *90° South* and *Piccadilly* which have been restored by the National Film and Television Archive.

Though the main topic of this paper is generic legislation governing the practice of audiovisual archives in Britain we cannot ignore related legislation that affects specific bodies. One example relates to the Copyright, Designs and Patents Act 1988, which gives permission for archival recordings of broadcasts to be made by designated bodies, without stating what those bodies are. A further piece of legislation, known as a Statutory Instrument, which makes detailed provisions supplementing the enabling Act, was required. The relevant Statutory Instrument was passed in 1989 designating the National Film & Television Archive and the Scottish Film Archive (now Scottish Screen) as the two institutions licensed to make such recordings. British terrestrial broadcasters are obliged to archive their programmes and this is achieved through a contract with the NFTVA. To date, it has amassed 210.000 television programmes.

Many of Britain's national institutions have been established, or their constitutions modified, through acts of Parliament. Of the list of public archives previously mentioned, the National Maritime Museum, the Victoria and Albert Museum, the Science Museum, the Imperial War Museum and the British Film Institute have all been subject to specific legislation. The Imperial War Museum was set up by an Act of Parliament in 1920 as was the National Maritime Museum in 1934. The British Film Institute was originally established as a company in 1933 and received public funding from the Cinematograph Fund set up under the Sunday Entertainments Act 1932, which levied a tax on tickets sold by cinemas on Sundays. Following the

Radcliffe Report on its remit and constitution, the British Film Institute Act 1949 was passed, allowing the BFI to receive money from the Treasury.

While both the Science and Victoria and Albert Museums were originally part of the government's Science and Art Department set up in 1857, a formal separation took place in 1909. In 1983 both Museums, along with other government-run institutions, including the Botanic Gardens at Kew and the Royal Armouries, were constituted as independent bodies governed by Boards of Trustees. The National Heritage Act 1983 sets out the museums' purposes and functions and the power of the trustees.

Such legislation is specific to those institutions and applies to the actions of those photographic and moving image archives that are part of those bodies. The National Heritage Act 1983, for example, obliges the museums to:

- ?? care for, preserve and add to the objects in their collections
- ?? ensure that the objects are exhibited to the public
- ?? ensure that the objects are available for study or research
- ?? promote the public's enjoyment and understanding of the subjects

It empowers the museums to acquire, and lays down strict conditions for the disposal of objects. Briefly, these allow disposal of the object if it:

- ?? is a duplicate of one already in the collection
- ?? is disposed of without detriment to the interests of students or other members of the public
- ?? is transferred or exchanged with another approved institution
- ?? has deteriorated to a state where it is no longer useful to the collection

These principles are broadly in line with other legislation governing similar public sector institutions. However, such institutions must be careful where they wish to dispose of objects donated to their collections, as the issue of ownership has a particular interpretation:

‘The basic principle upon which the law rests is that when private persons give property for public purposes, the Crown undertakes to see that it is devoted to the purposes intended by the donor and no other. When a work of art is given to a museum or gallery for general exhibition, the public therefore acquires rights to the object concerned and these rights cannot be set aside. The authorities of the museum or gallery are not the owners of such an object in the ordinary sense of the word: they are merely responsible, under the authority of the Courts, for carrying out the intentions of the donor. They cannot sell the object unless authorised to do so by the Courts...because they have themselves nothing to sell.’<sup>[13]</sup>

The situation where a collection has acquired a work by purchase is seen to be different and such objects may be sold if the statutes of the institution permit.

One aspect of legislation that occasionally has a direct impact on the acquisition of material by public-sector photographic archives is that relating to export. The Import, Export and Customs Powers (Defence) Act 1939 empowered the Department of Trade to regulate exports, including cultural objects over 50 years old. This function is now undertaken by the Department for Culture, Media and Sport and there has been an update in the legislation, the Export Control Act 2002. Broadly, an licence has to be obtained if an owner of a photograph over 50 years old and worth more than £9,100 wishes to export it. The application is submitted to an expert advisor and if the object is considered to be of national importance it is referred to a Reviewing Committee on the Export of Works of Art. Out of 3-5,000 applications, only 25 to 50 are referred to the Committee each year. This considers the cases on the following grounds, established in 1950 by a committee chaired by Lord Waverley and known thereafter as the Waverley Criteria:

1. Is the object so closely connected with our history and national life that its departure would be a misfortune?
2. Is it of outstanding aesthetic importance?

3. Is it of outstanding significance for the study of some particular branch or art, learning or history?

If a licence is refused, the Committee sets a period within which a public institution can attempt to raise the money to purchase the work, provided the owner wishes to sell. In recent years, the National Museum of Photography Film and Television has been successful in preventing the export of prints and negatives by Lewis Carroll and subsequently purchasing a number of them in partnership with the National Portrait Gallery with money from the National Art Collections Fund. Such courses of action are rare – they require considerable effort within a restricted timescale and with no guarantee of the outcome.

If we move from the complex issues governing intellectual and cultural property and the governance of institutions to matters of public safety, there is specific legislation regulating how we handle and store nitrate material in archives. This is a major safety hazard and there have been numerous, disastrous fires at archives and film stores over the years. The last nitrate fire in Britain was in 1993 at the specialist laboratory, Henderson's, in south London.<sup>[14]</sup>

The first cinema legislation in Britain was the Cinematograph Act 1909 which laid down the requirements for cinema premises to be licensed by the local authority. Its primary aim was to make such premises safe for the public, following a number of fatal nitrate fires. The legislation was further strengthened by the Celluloid and Cinematograph Film Act 1922 which required all cinemas and other places where film was handled, such as laboratories and distribution depots, to notify the local authority, provide fire escapes and make other safety provisions. The Act also granted local authorities the powers of entry to remove film samples for testing. One of the oddities about this legislation is that it did not apply in Glasgow nor in Liverpool, which both had their own local legislation. Further legislation such as the Cinematograph Act 1952 and the Fire Precautions Act 1971 followed

and those Acts, together with the 1909 Act, were rolled up into the Cinema Act 1985, which is the current legislation.

The storage of nitrate cinema film has always been seen as a job for a specialist archive such as the National Film and Video Archive, which has 140 million feet of nitrate film in storage. It is usual practice for regional film archives to send nitrate film that comes into their collection to the NFTVA for transfer to safety stock and retain the copy in their stores.

But it is not just film archives that hold nitrate film: it was used by photographers as well. What are the implications for a photographic archive that has still nitrate negatives rather than movie film? All archives have to comply with a range of regulations designed to minimise the risk of fire, ranging from the Building Regulations 1991, the Fire Precautions Act 1971 and the Control of Substances Hazardous to Health Regulations 1988. These are some of the many regulations controlling workplaces in Britain. With so many different regulations, how can an Archive ensure that it is fully complying with legislation? Advice on good practice is contained in *Standards in the Museum Care of Photographic Collections* (Museums and Gallery Commission, 1996):

‘Permission to store nitrate film (movie or still) should be sought from the local authority. The local Fire Authority will wish to inspect the premises. Normally it is not worthwhile for a non-specialist museum to keep nitrate film. It would be better for the curators to satisfy themselves that they are not holding nitrate stock and any that they do is copies and then disposed of, or transferred to be cared for by an organisation which has suitable facilities. In Northern Ireland, the keeping of nitrate film contravenes the Prevention of Terrorism Act.’ [15]

The accepted practice is to store nitrate film away from other material in a specially designated area that has been approved by the local Fire Officer.



An archive, like any other workplace or public facility has a responsibility for the health and safety both of its visitors and to those who work there. The kinds of hazards associated with photographic and film archive, apart from the risk of fire, include:

- ?? cuts from broken glass negatives
- ?? dermatitis from old negatives
- ?? throat and skin irritations from deteriorated filmstock
- ?? allergic reaction to fungal spores
- ?? mercury from daguerreotypes
- ?? injury from moving parts of machinery
- ?? injury from lifting boxes of negative, films or videotapes

The law governing health and safety appears in a range of legislation that applies to all workplaces in Britain, not specifically to archives. This legislation includes:

- ?? Health and Safety at Work Act 1974
- ?? Health and Safety (General Provisions) Regulations 1992
- ?? Management of Health and Safety at Work Regulations 1992
- ?? Provision and Use of Work Equipment Regulations 1992
- ?? Manual Handling Operations Regulations 1992
- ?? Workplace (Health, Safety & Welfare) Regulations 1992
- ?? Personal Protective Equipment at Work Regulations 1992
- ?? Office, Shops and Railway Premises Act 1963
- ?? Control of Substances Hazardous to Health Regulations 1988
- ?? Transport and Works Act 1992
- ?? Environmental Protection Act 1990
- ?? Factories Act 1969

This is quite a daunting list and the range of applicable legislation grows longer when it comes to matters such as building regulations, which apply if you are building or adapting premises for the purpose of an archive. These are areas where the archivist needs to call on relevant professional help.

Many archives and Museums are also registered charities, which brings considerable financial advantages. Charities do not normally have to pay income or corporation tax, capital gains tax or stamp duty. They pay no more than 20% of normal business rates on the buildings that they use and occupy, and can get special Value Added Tax treatment in some circumstances. Gifts to charities are free of inheritance tax. For such advantages, charities must conform to the legislation laid down in the Charities Act 1993, which governs the responsibilities and suitability of trustees and lays down rules about the presentation of annual accounts and reports. In England and Wales, charities are regulated by the Charities Commission though certain charities, including a number of the national museums referred to in this paper, are exempt. There is draft legislation for a new Charities Bill for England and Wales, which will be set before Parliament in due course, and also for a Scottish Charities and Trustee Investment (Scotland) Bill that will establish a new Office of the Scottish Charity Regulator.

So far, I have reviewed the range of legislation that can impinge directly upon audio-visual archives in Britain:

- ?? Legal deposit
- ?? Copyright
- ?? Governance
- ?? Export
- ?? Health and Safety

Of these, legal deposit has, until now, had no impact – it has never applied to photographs or moving images. Even now, it will not apply to photographs and we do not know exactly when it will come into force for moving images.

In the final part of this paper, I shall look at matters such as codes of practice and standards – not legislation as such, but guidelines that inform aspects of day-to-day professional practice in archives.

In 1996, the Museums and Galleries Commission published *Standards in the Museum Care of Photographic Collections*. This was the outcome of consultations with a group of curators, archivists and conservators from photographic collection and archives throughout Great Britain. It aimed to 'distil current professional consensus on what constitutes best practice in caring for museum collections'.<sup>[16]</sup> The document covers a wide range of archive practices, including:

- ?? Collecting
- ?? Curation and Conservation
- ?? Documentation
- ?? Access
- ?? Protecting collections
- ?? Storage and Handling
- ?? Buildings and Environment
- ?? Protecting People

Each section lays down guidelines for managing a collection of photographs, whether large or small, in a professional manner. The section on Collecting, for example, recommends that there should be a collection and disposal policy; that the collection acquires legal title to the material it collects and that it establishes who owns copyright. The section on Protecting Collections lays down procedures for guarding against theft, pollutants, pests, fire, flood and disasters.

The British Standards Institution, which was founded in 1901 and granted a Royal Charter in 1929 was the first standards-producing body in the world. It has published a number of standards that are applicable to archives.

*Recommendations for the Storage and Exhibition of Archival Documents*

BS5454 gives general recommendations, ranging from the site of the building, its construction (including fire precautions and security), the storage environment, lighting and the packing and exhibition of artefacts. Under

'Modern Media', BS5454 gives broad recommendations for the handling and storage of photographic materials, film and magnetic media. Other British Standards give more detailed specifications for photographs:

- ?? BS ISO 3897 Photography – processed photographic plates – storage practices
- ?? BS ISO 5466 Photography – processed safety photographic films – storage practices
- ?? BS ISO 6051 Photography – processed reflection prints – storage practices
- ?? BS ISO 10214 Photography – processed photographic materials – filing enclosures for storage

And, for the moving image:

- ?? BS ISO 10356 Cinematography – storage and handling of nitrate-based motion picture films
- ?? BS ISO 12606 Cinematography – care and preservation of magnetic audio recordings for motion pictures and television

There are also codes of practice laid down by professional bodies such as the International Federation of Film Archives (FIAF) to which the four national archives and one regional archive belong. Member archives subscribe to the Code of Ethics that effectively lay down the philosophical and professional standards by which such bodies approach their tasks. A similar code of ethics governs those members of the Museums Association, a body that has both individual and institutional members. The Museums and Galleries Commission introduced a registration scheme for museums and galleries in 1988. Now operated by the Museums, Libraries and Archives Council, registration is a minimum standards scheme that measures museum performance against accepted professional standards. The aims of registration are to:

- ?? Encourage all museums and galleries to achieve agreed minimum standards in museum management, collection care and public services
- ?? Foster confidence in museums as repositories of our common heritage and managers of public resources
- ?? Provide a shared ethical basis for all bodies involved in the preservation of the heritage which meet the definition of a 'museum'

The benefits of registration include public recognition that a museum meets approved standards and is a suitable repository of objects or collections from potential donors. It is also recognised by a wide variety of grant-giving bodies, such as the Heritage Lottery Fund.

I pointed out at the beginning of this paper that the overall picture of photographic and moving image archives in Great Britain was complicated, due mainly to the considerable number of such collections. When one looks at the legislation affecting them, the picture seems just as complex. Just as the media we collect is changing under the impact of the digital revolution, so too is legislation, in order to adapt to changing circumstances. The important question is how does it affect our work? Does it make it easier or harder? Is there a danger that legislation is running ahead of our capacity to cope with it? Certainly those of us who manage or work in archives will need to be increasingly aware of the relevant legislation in all the areas of activity in which archivists and curators now work.

## **References**

- 1 John Wall *Directory of Photographic Collections* (Royal Photographic Society/Heinemann, 1977)
- 2 James Ballantyne (ed.) *The Researcher's Guide: British Film, Television, Radio and Related Documentation Collections* (British Universities Film & Video Council, 2001)
- 3 See Mark Haworth-Booth *Photography: An Independent Art. Photographs from the Victoria and Albert Museum, 1839-1996* (Princeton University Press, 1997) for a full account of the history.

- 4 See Malcolm Rogers *Camera Portraits: Photographs from the National Portrait Gallery 1839-1989* (National Portrait Gallery, 1989) for an overview of the collection.
- 5 Luke McKernan *A Short History of Film Archiving* (British Centre for Film and Television Studies at <http://www.bftv.ac.uk/events/archhist.htm>)
- 6 UNESCO *Recommendation for the safeguarding and preservation of moving images* (adopted by the General Conference at its twenty-first session, Belgrade, 27 October 1980)
- 7 *Report of the Working Party on Legal Deposit* at <http://www.bl.uk/about/policies/workreplegdep.html#Introduction> paragraph 1 (iii)
- 8 *ibid* paragraph 3.9
- 9 *ibid* Appendix A (iii) paragraph 1
- 10 *ibid* Appendix A (iii) paragraph 3 (ii)
- 11 *ibid* Appendix A (iii) paragraph 5
- 12 *Legal Deposit Libraries Act 2003. Elizabeth II. Chapter 28.* (HMSO, 2003) Section 6
- 13 Lord Cottesloe *Report of the Committee of Enquiry into the Sale of Works of Art by Public Bodies* (HMSO, 1964) paragraph 30
- 14 See 'A Calendar of Film Fires' in Roger Smither and Catherine A Surowiec (eds) *This Film is Dangerous: A Celebration of Nitrate Film* (FIAF, 2002), pp 429 – 453.
- 15 *Standards in the Museum Care of Photographic Collections* (Museums and Gallery Commission, 1996) p40
- 16 *ibid* p6