Chapter 22
Addressing Legal Issues in Online Research, Publication and Archiving:
A UK Perspective

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ABSTRACT

This chapter provides background to, and a broad understanding of, the legal (and ethical) risks that researchers face in their utilisation of online mechanisms, in terms of the collection and analysis of research data, the communication of research results, and the retention and archiving of data generated by researchers and third parties. While researchers may understand the legal rules in the off-line research environment, research, dissemination and archiving on the Internet can pose more complex, and sometimes entirely novel, issues. The highly visible and accessible nature of the medium also means that existing legal risks may be significantly magnified in comparison to the off-line environment. Researchers should always seek advice specific to those jurisdictions they are targeting with their research, and particularly the jurisdiction in which they are located. Practical advice may be obtained from fellow researchers, institutional research support officers, or legal professionals. This chapter identifies activities that are likely to raise legal issues, or which are likely to require consideration of appropriate means of review, oversight and audit by researchers and ethical committees. Reference is thus primarily made to the law in the author's home jurisdiction, with some comparative references to other jurisdictions.

INTRODUCTION

It is a truism that, over the last 25 years, innovations in information technologies have significantly changed the:

- environments in which research can take place, e.g., the Internet, mobile communications;
- tools that are available to conduct that research and to collect data; e.g., e-mail, social networking tools; and,
- ways in which resulting data can be presented and preserved, e.g., web journals, blogs, digital archives.

Equally, the speed of change in information technologies has often outpaced the law's ability to assimilate and adapt to the social and economic consequences that stem from those changes, e.g., intellectual property in digital works, privacy and data mining.

The first of these issues, technological innovation, can provide researchers with significantly expanded abilities for accessing and collecting traditional and new forms of research data, and presenting them to an international audience. By doing so, however, it also potentially exposes researchers to an expanded range of legal risks, a greater number of legal and regulatory authorities and, in some cases, to cross-jurisdictional liability, i.e., exposure to the legal systems of countries other than their own. Detailed knowledge of such issues has tended to be, and often still remains, the province of legal specialists. Non-specialist researchers may struggle to interpret the implications of particular laws for their research; to successfully navigate the restrictions and requirements of those laws to ensure their research is in compliance; and to understand the nuances of, and utilize effectively, legal or administrative processes and guidance.

A consequence of the second issue, pressure on legal systems to adapt to the consequences of new technologies, is that laws relating to, or affected by, information technologies are in a constant state of flux. Legislators and judges are called upon to provide new legal solutions to perceived problems, in relative haste, often under pressure from vocal interest groups, and without time to ponder on the wider-reaching consequences. The impact such new jurisprudence might have upon the practices and methodologies of academic researchers is rarely, if ever, going to be a significant consideration to those making and interpreting the law. However, whether those solutions take the form of the adaptation and re-interpretation of old laws and judgments, or the creation of *sui generis* laws, designed specifically to handle new developments, they constitute an evolving body of rules of conduct with which researchers will have to engage.

Thus, researchers seeking to engage in online research and publication find themselves in a position where, more than ever, they must be cognisant not just of an increasing body of national (and possibly foreign) laws, but also of the on-going development of such laws, and their likely impact on research strategies and methodologies. Equally, as online publication and access to electronic resources increases, researchers' methodologies, data and outputs have become increasingly publicly accessible, and open to greater peer scrutiny, public criticism and legal oversight/regulation. In the UK, this process is likely to be given greater impetus by freedom of information legislation, which treats UK universities as 'public authorities' with an obligation to disclose information that they hold, including research data, to members of the public on request (subject to certain exemptions). While FOI requests relating to research remain rare at present, it is not hard to envisage areas of scientific and social research where journalists and public interest groups will be interested to scrutinize not just the research data generated, but also researchers' methodologies and practices.

Of course, from a research dissemination perspective, such broadening of access to research

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