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Demystifying rights: Data protection

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Demystifying rights: Data protection

Data protection legislation lays out how we can use and share personal data about people. During digitisation projects you are likely to collect, store and share personal data, whether that's in the material you're digitising, or in the paperwork and metadata around the material. This brief introduction should help clarify what you can and can't do with your sound collections.

Data protection – key facts

- Data protection laws protect a person's **right to privacy**
- The most recent legislation in the UK is the **Data Protection Act 2018**
- It is concerned with personal data that can be used to **identify living people**
- Particularly sensitive data, called **special category data**, is given additional protection
- In order to process data, organisations must have the **legal basis** to do so
- **Processing** includes any use of the data, including collecting, storing, sharing and deleting
- Organisations can be fined if they process a person's data without a legal basis, or in a way that causes them **substantial damage or distress**
- Organisations must have **safeguards** in place to avoid causing damage and distress.

UK data protection law

The Data Protection Act 2018 is heavily based on the EU's General Data Protection Regulations (GDPR) which were in use before the UK left the EU in 2020. This legislation applies to organisations, business and governments and includes cultural heritage organisations.

Data protection and sound collections

The amount of personal and special category data found in sound collections varies widely. For example, recordings of music or fictional literary works are unlikely to pose many issues, whereas oral histories, unedited interviews and recordings of private events may include personal and sensitive information about interviewees and others they are talking about.

Personal and special category data can also be found in catalogue records, asset management databases and supporting documentation such as permission forms.

Personal and special category data

When digitising your collections it is important to assess what types of data they contain. Below are examples of what to look out for. When two or more bits of data can be linked together, it becomes identifying data.

For example, knowing someone is called 'Donald' alone may not be enough to make someone identifiable. However if we also have a description of his appearance, know his occupation and know he likes playing golf, he becomes much more identifiable.

Personal data	Special category data
Name	Race
Address	Ethnic origin
Contact details	Politics
Unique reference numbers	Religion
Occupation/salary	Trade union membership
Appearance (descriptions or images)	Health
Relationships to other people	Sex life
Hobbies	Sexual orientation

Legal basis

In order to process **personal data** your organisation needs a legal basis to do so. Most cultural heritage institutions will be able to process data as part of a '**public task**'. Where storing and sharing personal data is integral to your public task, for example preserving and cataloguing collections, and keeping supporting documentation, this legal basis will apply.

If an organisation wants to process special category data it must have an additional legal basis. This is because special category data can be particularly sensitive and has more potential to cause someone damage and distress if it is shared. Most cultural heritage institutions will be able to process this data under '**archiving purposes in the public interest**'. For example, it is integral for archives to preserve whole recordings, including sensitive information, in order to keep an accurate historical record.

These two legal bases only cover preservation and curation of collections. If you would like to collect data for marketing, for example, you would need to get consent from your visitors to do so.

Damage and distress

The law does not say exactly what constitutes 'damage and distress'. It may include financial loss, physical or psychological harm, reputational damage or an adverse effect on a person's family life. The potential for harm will depend on the content and age of your collections. Data protection law only applies to personal data about living individuals but in some cases – from an ethical point of view – harm caused to immediate family members may be taken into account

Safeguarding

Even with legal bases, organisations must put safeguards in place to make sure that the way you are collecting, storing and sharing data won't cause harm to the subject of that data.

For data contained within audio, the best way to do this is to listen to the recording in full. This way, you can make decisions on whether this should be shared or not, or if editing is required. However, this is time consuming and expensive and you may decide to listen to samples, consult with curators or specialists, or read transcripts where they are available.

The law does not advise how these safeguarding procedures should look, so you should work with colleagues to create a robust policy. You should have a clear process of how to assess potential damage and distress, and record your finding and decision making.

You should also consider what data should be included in catalogue records, and ensure that supporting documentation around the collection is stored securely, and only used in a way allowed under the legal basis.

Next steps

This is a very brief overview of how data protection may affect your audio archival project. Next steps to consider might include:

Check funding requirements – do funding bodies require you to publish your digitised material? Could data protection law stop you from doing this?

Seek specialist advice – does your organisation have a data protection officer who can offer advice? Are other institutions and partners working with similar material? How will you store paperwork like permission forms and email correspondence?

Other legal requirements – are there other cultural sensitivities or copyright issues in the collection?

Calculate resource – will you need extra staffing to help listen to recordings? Are you able to edit recordings if needed? Do you require legal advice to carry out your project?