

Museum Development Yorkshire IPR Advice Sheet 1 Guidance on IPR in Museum Image Collections

• **What is this advice sheet about?**

This advice sheet is about **intellectual property rights (IPR)** in relation to museums' **image collections**. IPR is part of the law that governs intangible assets such as copyright, trade-marks and databases. These intangible assets are property rights, which means they can be bought, sold, hired out for use, bequeathed and owned.

Image collections can include:

- Photographs of collection works
- Documentary and fine art photographs forming part of your collection works
- Digital images supplied by third parties, such as those provided by other museums/lenders when lending works for exhibitions
- Photographs of staff and members of the public attending museum events/workshops etc.

• **Who is this information for?**

This information is for anyone who has **responsibility for managing or caring for the museum's collections**. This includes trustees, staff and volunteers working within the following departments: curatorial, collections, loans, digitization, exhibitions, communications, marketing, press, development, learning / education, image licensing, retail, publications and legal.

• **Why is this information useful?**

Museums and their staff need to be aware that **owning an object such as a photograph does not necessarily allow it to be freely reproduced** and use it, particularly if they either did not take the photograph and/or if the photograph is of an artistic work which is still in copyright. In these cases, reproducing a photograph in print or on-line without consent from any rights holders could land the museum in trouble with unexpected fees or in a possible legal dispute.

However, museums can exploit any IPR that they own (i.e. where they have been assigned the rights or created the content themselves); IPR which they have been granted permission or a "license" to use and/or where IPR has expired (see below) for the benefit of the organization. This can then be used to help generate income, make the collection accessible to new audiences or for public relations purposes.

A museum could however use a photograph as an art work under the new Orphan Works legislation, or potentially under the quotation or criticism and review exceptions. (See separate Advice Sheet No. 7)

Related Topics

Advice Sheet 2

Exploiting the museums's IPR and cultural assets for financial benefit

Advice Sheet 3

Securing IPR as part of good museum collections management and documentation

Advice Sheet 4

Working with film and television productions at your museum

Advice Sheet 5

Further information on Intellectual Property Rights (IPR)

- **What do I do first?**

Be aware of the **different types of IPR** relevant to museum image collections, those that the museum owns and those that are owned by third parties – and appreciate their value as assets:

- 1) **Copyright:** the right to control the copying of certain kinds of work for a limited time, currently the creator's lifetime plus 70 years after the end of the year they die, or if the creator is unknown, the date of creation plus 70 years.

Copyright needs to be considered from both a user and owner perspective. The museum can exploit the copyright that it owns, for example by licensing out its images, but you need to ensure you don't infringe others' copyright when making use of their material, particularly if photographs are taken of works which are in-copyright or taken by people who are not members of museum staff.

- 2) **Moral rights:** protect the creator's reputation and integrity of their work. They give the creator various rights such as to be named as the creator of the work ('paternity right') and to be able to object to derogatory treatment of the work ('integrity right'). Owning copyright does not necessarily also mean owning the moral rights, which always rest with the creator or, after their death, their representatives. So, if a creator assigns copyright to a museum, the museum will be free to reproduce the



work but it will still need to ask the creator's permission to crop the image or use it in ways that might call into question the work's integrity.

- 3) **Database right:** arises from obtaining, verifying and presenting the contents of a database. A museum image database and/or collections management system is likely to enjoy such protection, as a great deal of painstaking work is likely to have gone into collecting and arranging the images contained within the database. Any confidential information on a database – for example, potential sponsors' details or copyright holder's names and addresses – is also likely to have its own value.
- 4) **Publication right:** is similar to copyright, acquired by the first person to publish a previously unpublished literary, dramatic, musical or artistic work or film after copyright has expired. Certain criteria have to be met before publication right applies. Museums need to ensure other publishers or TV companies don't inadvertently acquire publication rights that would otherwise belong to the museum, for example by broadcasting images of a newly acquired, previously unpublished old painting.
- 5) **Trade-marks:** words, names, symbols or devices identifying and distinguishing the source of goods or services. Often said to be an organization's most valuable asset, trade-marks can be registered (®) or unregistered (™). The aim of trade marks is to indicate quality and reliability and thus reassure the customers or visitors of the viability of the product or service. Museum names and those of their trading arms would be regarded as trade-marks. If they are registered, they need to be renewed and they can exist for as long as the organization does, and sometimes beyond.
- 6) **Artist's resale right:** entitles the creator of an artwork to a royalty each time the artwork is resold by an art market professional. Museums need to be aware of this, because both vendor and purchaser of applicable artworks are jointly liable for ensuring the royalty is paid (although in practice it does tend to be the vendor who takes care of this part of the transaction).

More detailed information on all these IPRs can be found by consulting Advice Sheet 5: *Further information on Intellectual Property Rights ('IPR')*.

- **What are some specific things I need to know?**

Firstly, the museum needs to be clear on the copyright status of the material in its collection. Ideally this should be clear from the collections documentation. If this is not the case the museum may need to review copyright by undertaking a copyright/ IPR audit.

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IPR audit

Undertaking a copyright / IPR audit. The sorts of issues that you might consider are likely to include the following:

- What intangible assets are in your collection?
- What might be their potential value, including from a public relations perspective?
- Who owns the rights in these assets?
- How might the museum want to make use of the assets?

If rights are not owned by the museum, consider getting a retrospective assignment of rights or retrospective permissions from the creator or their representatives or a favourable, long-term, written agreement of benefit to the museum.

Although large scale IPR audits need careful planning, resources and time, the results can be of ongoing benefit to the museum. They can also help foster beneficial relationships with rights holders, demonstrating that the museum is striving to do the right thing.

Commissioning new works

When commissioning works, whether they are new artworks for the collection, photographs of the museum's collections, or specialist reports, always ensure copyright is covered in the written contract between your museum and the supplier. Ideally, get an assignment of copyright to the museum before the work is carried out. This ensures the museum is able to make full and unrestricted use of the commissioned work without having to seek additional permission or pay unexpected fees to the creator in the future. If an assignment is not possible, at the very least ensure that you get a generous licence, (such as a worldwide royalty-free, irrevocable licence) so that the museum can make very wide, core use without paying additional fees. There are various template agreements which you can use to seek the necessary assignments or permissions that your museum needs. These can be found in *Advice Sheet 5: Further information on Intellectual Property Rights ('IPR')*.

Always ensure agreements are properly documented and easily accessible to key staff, for example on a shared network, held by a core department and the originals deposited safely in your museum's archive. You may wish to ensure that if you have a records management policy, this also covers any copyright-related agreements.

Photography of the museum collection and within the museum

If your museum primarily contains works whose copyright has expired, or works to which copyright does not apply, consider photographing the objects which will create a fresh copyright in the photograph of the work and so ensure copyright in the photograph belongs to the museum, particularly if your museum has a restricted public photography policy. Such



authoritative photographs or scans will have their own intrinsic value, especially when coupled with authoritative captions or metadata written by museum curators or other experts. Don't underestimate the value of the museum's name and expertise!

Consider also whether public photography within the museum should be permitted.

- Could allowing public photography threaten a potentially valuable income stream?
- Could it make the museum more visitor-friendly?
- Could you differentiate between amateur *ad hoc* photography and that which is professional and commercial?
- Could you render yourselves liable for secondary infringement by inadvertently allowing photographs to be taken of other people's copyright works?
- Might there be dedicated areas where photography is permitted whilst being restricted in others?

Remember that if you do allow unrestricted public photography of your collection works, members of the public will own the copyright in any photographs of works in your collection. Be aware of the delicate balance needed between the needs of providing access to collections and effective exploitation of the museum's image assets and the need to protect them. Be prepared to shift this balance from time to time depending on the circumstances.

For example, if publicising a new acquisition or opening exhibition, the emphasis is likely to be more on allowing and encouraging press interest rather than being restrictive. However, do ensure that copyright captions include the museum's name and are suitably robust to reinforce association between the museum and the object in future.

Consider how your web media team provide (or are planning to provide) access to your image collections and make sure your museum has a consistent approach in terms of free public access and charged for access.

Digitisation of museum images

If your museum has been funded to digitise your images by an external funder, such as the HLF (Heritage Lottery Fund) or ACE (Arts Council England), you need to check carefully your terms and conditions of funding to make sure that you understand what is expected of you in terms of rights clearance. Normally, you will need to seek any third party permissions so that your funder can use the images themselves. You will also be expected to make the images available on your website under a Creative Commons Licence, such as the Creative Commons Attribution Non Commercial Licence. This means that you will need to seek permissions that enable all these uses of your works. If rights holders do not consent to this, you will need to let your funder know and discuss an alternative.



- **What do I do next?**

Consider setting up a non-exclusive agreement with a **commercial licensing partner like a picture library or agency**. Such arrangements can be mutually beneficial, where the commercial partner has the licensing know-how, infrastructure and contacts, whilst the museum holds expert knowledge on the objects. Sometimes this can be a more cost effective option than setting up your own operation in-house. In many cases, the commercial licensing partner will cover all the costs of marketing and price negotiation in return for sending you a share of any licensing fee that they negotiate. Please note that as a publicly funded organisation any agreement with a third party from July 2015, that includes public domain or images which the museum owns the copyright in will have to be non-exclusive to be compliant with Public Sector Information Laws. The only exception to this is if the private company is paying for the digitisation of the images, which otherwise would not have taken place.

If the museum is planning on setting up your own in-house licensing operation, ensure first you consider the costs and benefits within a business plan. The museum will need to develop and make use of robust licences that are legally watertight and set up systems to make the service as efficient and effective as possible in meeting external client needs.

The museum may wish to consider a mixed model whereby you license out images yourselves whilst also providing images to a commercial licensing partner.

Finally, don't give content away without first considering what the museum will get in return and whether your actions are in line with the museum's mission and aims.

Look at other advice sheets in this series to get an overview of the activities and advice associated with this area, including Further Resources and sources of help.

- **Checklist**

- 1. Understand the different layers of rights associated with your image collections**
- 2. Negotiate assignment of rights and/or permission to use photographs taken by third parties in writing BEFORE the work is undertaken**
- 3. Consider how any licensing activities that you plan is affected by your public photography policy**
- 4. Understand how access and use is made of your image collection across your museum and ensure that discussions to held to ensure consistency in approach.**

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- 5. Assess the costs and benefits associated with setting up your own image licensing activities and/or using the services of a commercial licensing partner**
- 6. Make sure you understand what your funders require of you in terms of rights clearances!**
- 7. Understand the parameters of the exceptions to copyright and how they might be of help to you!**

- **Final point to remember**

Respect for artists, other creators and contributors is essential in the fostering of good relations and in maintaining fairness and balance in this important area.

Rev. 8/ 2015

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