

Museum Development Yorkshire IPR Advice Sheet 3

Securing IPR as Part of Good Museum Collections Management and Documentation

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

This advice sheet is about ensuring that intellectual property rights (IPR) within a museum are **managed and fully documented** in order to allow a museum to be able to make full and clear use of the asset in question. Good attention is usually paid to the physical objects within a museum collection, whereas the intangible assets that arise under intellectual property laws, such as copyright and trademarks, are sometimes not so carefully documented. This can lead to confusion for colleagues further down the line.

Related Topics

Advice Sheet 1

Guidance on IPR in museum image collections

Advice Sheet 2

Exploiting the museums cultural assets for financial benefit

Advice Sheet 4

Working with film and television productions at your museum

Advice Sheet 5

Further information on Intellectual Property Rights ('IPR')

- **Who is it for?**

It is for **anyone** who has responsibility for managing or caring for the museum and its collections. This includes trustees, all museum staff and volunteers. Potentially it affects collections managers, curators, registrars, volunteers or anyone who procures assets governed by IP laws. For example, if you ask external photographers to do project work for you, or if you regularly commission authors to write pieces for the museum, or if you have non-staff educators to generate learning materials for the museum, this advice sheet is for you. It will also be important for you if you acquire a photographic collection from an amateur photographer or their executors and/or acquiring a collection work from any other third party and are responsible for completing the documentation.

- **Why is it useful?**

It is often misunderstood that owning a photograph, picture or other created work also gives the owner the copyright. This is not so and **in acquiring such objects the museum also needs to secure some ability to reproduce the object through a transfer of copyright or a licence with the with copyright owner.** This will only be possible if the person or organization from whom you are acquiring the work has the authority to grant you the necessary permissions. If they are not the rights holder, then you will need to identify and trace the rights holder in order to seek either an assignment of rights or permission. Remember that that through a licence, you may gain limited permissions to be able to make use of the work for the purpose intended, but additional use further down the line will require additional permissions. .

Under previous Copyright Acts in 1911 and 1956, commissioning certain works for 'valuable exchange' (i.e. money or money's worth) also bought you copyright. The current Copyright, Designs and Patents Act 1988, effective 01 August 1989 onwards, reversed this. What this means in practice is that, **whenever you commission or procure a copyright work, it is absolutely essential that copyright is addressed as part of the transaction.**

Although generally the best position is that the museum owns the copyright or other IPR, this is not always the case. For example, if it could upset relations with an ongoing supplier or be prohibitively expensive to acquire the rights as part of a commission, another arrangement might be more appropriate. The essential point is that the arrangement should be clearly documented to prevent confusion in the future.

- **What do I do first?**

Consider whether you are commissioning or acquiring a copyright work, or one protected by other forms of IPR (such as a new logo for the museum, which could be protected as a trade- mark as well as a copyright artistic work).

If commissioning a work, for example from an external designer, wherever possible try to have copyright assigned to the museum. Incorporate a clause into the written contract saying that the supplier agrees to ***"irrevocably assign to [the museum] copyright and any related rights in [insert details of the work(s) in question] absolutely throughout the world for the full period of copyright and all renewals, revivals and extensions thereof"***. Always use written agreements, although a full legal contract can sometimes be overkill and harm relations with suppliers.

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If acquiring a work, securing an assignment of copyright at the time of acquisition is also a good idea. Retrospective assignments are possible, but they are often more time demanding. You can use the same wording as above if the assignment does not form part of a broader agreement, such as commissioning agreement, but you will need to ensure that there is some kind of 'valuable exchange' for the assignment to be enforceable in a court of law. The minimum amount for a 'valuable exchange' is £1, but it could take another form such as goods in lieu of fees (for example, a set of postcards from the museum shop) or a promise to promote the supplier's work in some way. Another option might be to use the following wording ***"in consideration of the sum of one peppercorn, which I hereby acknowledge has been discharged"***.

Remember that **copyright in works created by museum employees as part of their ordinary job usually belongs to the museum**. Sometimes very senior staff such as curators or directors negotiate to own (a share of) their own copyright, although nowadays this is not usually the case. If the work is created by a non-employee, copyright at law rests with the individual, NOT the museum. Non-employees can take many forms: trustees, volunteers, interns, consultants, contractors, external photographers, students, external researchers and those gaining work experience.

- **What do I do next?**

If an outright assignment of copyright in the above scenarios is not possible, try to come to an agreement with the copyright holder about how you can make effective use of their work. This is sometimes simply referred to as getting a 'licence' from someone, in other words, getting written permission from them to do something that would otherwise be illegal.

Licences can be very complex, so try to keep things as simple as possible.

- What do you need permission to do?
- Is it enough?
- Are you asking for too much, or for too 'wide' a licence?
- What about the future? Can you anticipate other things you might want to do with the copyright holder's work in future? Might you want to 're-purpose' some teaching materials for use in another context?

Whatever the answer, ensure the agreement is embedded into your written agreement with the supplier.

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If embarking on a large-scale IPR audit or copyright clearance project (for example, if putting your museum's collection on-line), it is worth exploring how to get assignments or licences retrospectively via a structured and systematic approach. You might have a standard letter or email which you can resubmit to multiple copyright holders.

Get written assignments retrospectively (worth doing for large-scale projects or if a regular, systematic approach is taken) and when commissioning all kinds of work whether for the collection or for project / marketing / consultation purposes.

Another suggestion is representing creators as their licensing agents, securing good (free!) licences with them for core museum use – which nowadays might include 'commercial use' such as for the sale or prints, postcards, use in publications etc. – whilst also being able to 'sub-license' (i.e. make available to third parties, for a fee) their works. Such an arrangement, perhaps set up on a 50/50 basis, would benefit both parties.

It is essential to set up a system for recording the agreements you have made. This doesn't need to be an electronic database, but this certainly helps. See Collections Trust's SPECTRUM for suggested ideal fields that should form part of such an IPR database <http://www.collectionstrust.org.uk/spectrum>

Finally, ensure you are able to explain in a clear way the role of museums as the custodians of the nation's cultural heritage and the importance of ensuring that their collection works and associated rights are safeguarded for the public interest.

Public Sector Information (PSI)

When getting an assignment of copyright to the museum, (or when licensing the museum's copyright or licensing public domain images) the museum should think through the requirements of Public Sector Information laws which from July 2015 will apply to publicly funded museums. The law requires a publicly funded museum to operate level-playing field licences, and avoid exclusive agreements other than for privately funded digitisation projects. In the case of an assignment of copyright to the museum, the museum may want to think through whether this is the best option as the work will become subject to PSI. If you are keen to avoid PSI, it may be better to leave the copyright with the creator and simply get a licence to freely reuse the copyright works, as this would mean the work would fall outside PSI laws.

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- **Where can I find out more?**

Please refer to the other Advice Sheets in the series as well as the following templates: Filming Contract Template; Fee Charging Sheet for Images and Filming and Licence and Terms and Conditions for Image Licensing.

- **Checklist**

1. **Ideally acquire copyright or permission when a work is acquired into your collection and/or a new work or piece of content is created**
2. **Ensure all agreements are in writing**
3. **Negotiate the permissions you need. Sometimes, you may need to be flexible**
4. **Leave yourself time to negotiate permissions**
5. **Develop a system for recording the rights and permissions that you have cleared.**

- **Final point to remember**

Whatever agreement you come to – and robust agreements are always the result of healthy and candid negotiation – ensure it is fully and clearly documented for the lasting benefit of current and future museum colleagues.

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