

## Museum Development Yorkshire IPR Advice Sheet 6

### Carrying out an Intellectual Property Rights Audit

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

This advice sheet is about what you need to know about carrying out an **intellectual property rights (IPR) audit**. 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. IPRs underpin most activities that take place in a museum context, so this advice sheet provides guidance regarding the types of rights which might arise in association with collection works and other content, how long they last and what is important to consider. An IPR Audit is a key part of effectively managing the rights in material in a museum's collections and the created works which the museum produces or has produced for it.

- **Who is this information for?**

This information is for anyone who has **responsibility for managing or caring for the museum's collections and/or is likely to use collection works and/or content created by third parties and/or wishes to use and exploit any other IPRs associated with your museum**. This includes trustees, staff and volunteers working within the following departments: curatorial, collections, loans, digitization, exhibitions, communications, marketing, press, development, learning / education, new media, image licensing, retail, publications and legal.

- **Why is this information useful?**

Museums need to be aware that even though they may own IPR assets themselves which will potentially have intrinsic commercial and reputational value, at the same time, they should be aware that owning an object such as a letter, a sound recording, a painting or a photograph does not necessarily allow them to freely reproduce, use and exploit it. In these cases, exploiting any IPR assets without consent from any rights holders could land the museum in trouble with unexpected fees, damage to their reputation or in a possible legal dispute.

The use of all collection works will be dependent upon the creation and updating of any information about rights and permission associated with these works. Therefore, it is vital that staff are familiar with the importance and techniques of carrying out an IPR Audit to ensure that they identify:

- The types of rights issues which may subsist in the works that they wish to use
- The likelihood that rights may be owned by entities other than museums for whom permission to use the works will be required
- The duration of any rights
- The likelihood that there may be several different rights, belonging to different rights holders, existing in the same object, work or piece of content
- The rights that belong to the museum and how they might be protected, used and exploited
- Any permissions/restrictions associated with the use of their collection works
- Time and resource implications associated with seeking permission and/or renewing existing permissions
- The types and levels of risks associated with the use of any Orphan Works and how these might be mitigated

#### Related Topics

Advice Sheet 1  
IPR in Museum Image Collections

Advice Sheet 2  
Exploiting the museum'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 need to do to carry out an IPR Audit?

### Step 1

Create the appropriate records on your collections management system or similar databases and/or create a paper template to record important rights and licensing information about your collection works and works which are commissioned. The types of data fields which might be used for a basic audit are based on SPECTRUM compliant data records and include the following:

**Ref. No:** The reference number of the content for which rights clearance is required, if appropriate (patent number, an internal reference number, etc.).

**Object Name:** The type of piece of content for which rights clearance is required.



**Title:** The title of the piece of the content; this might be the name of painting, title of a book, etc.

**Content description:** Reference to specific born-digital image on a website etc., or another piece of content if it does not have a name or formal title.

**Right(s) type:** The type of right for which permission is required.

**Right(s) end date:** The date that the right expired or is due to expire (the date when the patent was first applied for plus 20 years; the expiry date of copyright in an image, in an unpublished piece of text, etc.).

**Right(s) holder:** The name of the rights holder (where known).

**Org. address:** The address of the rights holder (where known).

**Rights in begin date:** The date from which any permissions to use content have been granted.

**Rights in end date:** The expiring date of any permissions to use content (e.g. whilst some permissions might be granted in perpetuity, others may be time or product limited).

**Rights in note:** Field for recording any extra information, such as any 'due diligence' carried out in order to trace the rights holder etc.

**Rights in consent status:** The status of the rights clearance – i.e. cleared, permission pending, permission refused, rights holder not found, etc.

**Author record:** The name and job title of the person who created the record.

**Date record:** The date that this record was last updated.

## Step 2

Audit the different types of IPR. This will include the rights which might subsist in the content you wish to use, as well as any registered IPRs such as trade-marks.

- o **Copyright:** is an exclusive the right to control the copying of certain kinds of creative works for a limited time. Copyright needs to be considered from both a user and owner perspective. You can exploit the copyright you own, for example by licensing out your museum's images, but you need to ensure you do not 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.



- o **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.
- o **Performer's rights:** For performer's rights and sound recordings they last currently from the date of performance / sound recording, or its publication (whichever the later) plus 70 years. People who are recorded in any type of audio recording, such as performers of music, people who are interviewed or interview for the purpose of oral history recordings as well as those who give lectures and are recorded etc. receive this right. Please note that the sound recording / performance right made in 1962 or before has expired.
- o **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 through the renewal of the registration, they can exist for as long as the organization does, and sometimes beyond.

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

### Step 3

If a work is likely to be protected by copyright, identify the specific category of work in which it falls.

There are 8 categories of works which can be protected by copyright, which include the following.



<b>Type of work</b>	<b>Example</b>
Literary works	Published and unpublished text-based works such as: journals, books, letters, diaries, letters, manuscripts, web-based text etc.
Artistic works	Drawings, paintings, sculptures, maps, photographs, digital images, works of artistic craftsmanship etc.
Music	Performed music, music scores
Sound Recordings	Oral history recordings, recordings of music and other sounds etc.
Films	NB: Film stills and film clips will be treated as films
Dramatic works	Choreography etc.
Broadcasts	Material meant for transmission at a specific time
Typographic Arrangements	The arrangements of words on page, layout of a website etc.

#### **Step 4**

If the work comprises of elements which fall within one (or more) of the eight categories of works protected by copyright, ascertain how long copyright lasts according to the chart below and whether the work is still in copyright or not.

<b>Type of work</b>	<b>Duration of copyright</b>
Literary works	Lifetime plus 70 years until end of calendar year of death of the creator, unless creator is unknown - then date of creation plus 70 years. Unpublished text based works can be in copyright until the end of 2039.
Artistic works	Lifetime plus 70 years until end of calendar year of death of the creator, unless creator is unknown - then date of creation plus 70 years. Please note that the duration of copyright in photographs can be more complex
Music	Lifetime plus 70 years until end of calendar year of death of the creator,
Sound Recordings	Date of creation plus 70 years. Sound recordings from 1962 and before, however, are in the public domain for the sound recording and performance right.
Films	Lifetime plus 70 years until end of calendar year of death of the main director,

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	producer, script writer and the composer of the film score.
Dramatic works	Lifetime plus 70 years until end of calendar year of death of the creator, unless creator is unknown - then date of creation plus 70 years.
Broadcasts	50 years
Typographic Arrangements	25 years from publication

### Step 5

If the work is still in copyright, identify the rights which the museum owns, as well as the rights which your museum does not own.

### Step 6

Understand the value that is associated with the IPR which your museum owns, such as copyright and brands, and devise suitable strategies to protect it, provide access to it, as well as business models to exploit it.

### Step 7

Identify the rights holders associated with the content that you wish to use if you do not own the rights and seek permission where you can. Rights holders are likely to include:

- Freelance workers
- Students
- Volunteers
- Commercial content suppliers
- Rights holders representatives, such as the Design and Artists Copyright Society (DACS) and the Bridgeman Art Library
- Other creators

### Step 8

You might be able to find the contact details of any rights holders by:

- Searching in acquisition files, entry forms and other registries
- Looking in archival files
- Discussing work with staff
- Searching on the internet
- Checking online databases, such as the WATCH file: <http://tyler.hrc.utexas.edu/>
- Checking trade journals and/or exhibition catalogues
- Liaising with owners of works by the same creator, such as other museums
- Checking with relevant collecting societies and other rights holders, such as DACS at: [www.dacs.org.uk](http://www.dacs.org.uk)
- Checking the Bridgeman Art Library at: [www.bridgeman.co.uk](http://www.bridgeman.co.uk)



- Checking related material on the BBC *Your Paintings* website produced in association with the Public Catalogue Foundation at: <http://www.bbc.co.uk/arts/yourpaintings/>
- Checking Wills at: The registry of births, deaths and marriages (to check wills): Probate Department, Principal Registry of the Family Division, First Avenue House, 42-49 High Holborn, London, WC1V 6NP

Don't forget to document your efforts to try and trace any rights holders.

Negotiate permissions and keep records of permissions which have been granted.

### **Step 9**

Devise risk management strategies in cases where you cannot trace the rights holders or they are unknown (Orphan Works). Please see separate Advice Sheet No 7.

### **Step 10**

Once the audit process is completed, archive the IPR Archive if it exists as a paper document, and also save the information about rights and permission on the appropriate fields (as per Step 1) on your collections management systems or similar databases. Regularly review the information from the IPR Audit and add to it as new information is found about rights in existing collections, as well as new acquisition and commissioned works.

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

1. IPR Audits can take time, so make sure that you take this into account as part of your rights management procedures.
2. Some content is likely to comprise of more than one layer of rights, so ensure you that you carefully identify all the various elements.
3. You will not be able to exploit your IPR, if you don't understand what rights you own, nor the rights which you do not own!
4. If you own any trade-marks, these are valuable assets and require specific strategies in terms of protection, developing brand identities and exploitation.
5. If you are uncertain about who owns the rights that you identify in your IPR Audit, you might wish to consider developing a risk managed approach (and mitigating strategies) within the context of using these rights.



- **Checklist**

1. **Understand the different layers of rights associated with the museum's collections and other content**
2. **Work out how long copyright lasts for each layer**
3. **Establish who owns the rights in each layer (your museum and/or other third parties)**
4. **Consider the value associated with IPR which your museum owns and devise strategies to protect and exploit it**
5. **Unless your use is enabled by a copyright exception, you should seek permission to use any content in which your museum does not own the rights and/or devise strategies to deal with any Orphan Works. This may include using them under the new Orphan Works solutions.**
6. **Document your efforts to try and trace any rights holders in case you cannot find them!**
7. **Don't forget to record the information from your IPR Audit on your collections management systems or similar databases and ensure that you keep this information up to date!**

- **Final point to remember**

Digital content will be protected by copyright in the same way as analogue works, so an IPR Audit will need to take digital and analogue content both into consideration.

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