

Museum Development Yorkshire IPR Advice Sheet 8

New Copyright Legislation and Museums 2014/15

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

This advice sheet is about changes to the UK's legislative framework as outlined in new Copyright Regulations in 2014, amending the Copyright, Designs and Patents Act 2014¹, and their impact on the work of museums. It includes information about certain copyright exceptions which facilitate the copying of works in copyright for certain limited purposes.

- **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 freely reproduce** 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.

Changes in the copyright legislation in 2014, now enable museums to use copyright material in certain restricted ways for the purposes of education and access. These are outlined in information provided by the Intellectual Property Office <https://www.gov.uk/exceptions-to-copyright>

It is important to note that the exceptions to copyright of relevance to museums are need to be seen through the lens of "Fair Dealing". 'Fair dealing' is a legal term used to establish whether a use of copyright material without permission is lawful or whether it infringes copyright. There is no statutory definition of fair dealing - it will

¹ <https://www.gov.uk/exceptions-to-copyright>

always be a matter of fact, degree and impression in each case. The question to be asked is: how would a fair-minded and honest person have dealt with the work? Factors that have been identified by the courts as relevant in determining whether a particular dealing with a work is fair, include:

- Does using the work affect the market for the original work?
- If a use of a work acts as a substitute for it, causing the owner to lose revenue, then it is not likely to be fair.
- Is the amount of the work taken reasonable and appropriate?
- Was it necessary to use the amount that was taken? Usually only part of a work may be used. The relative importance of any one factor will vary according to the case in hand and the type of dealing in question.

What are the new exceptions to copyright?

1. Fair Dealing for *non-commercial* research or private study

This exception all types of copyright works – including sound recordings and films. It is important to remember in regards to the non-commercial requirement of this exception that the emphasis is still upon the purpose or intention of the copying itself, rather the nature of the organisation carrying out the copying. Only a single copy of a limited amount can only be made – a book chapter or up to 5% of a film for example. When users carry out their own copying, using, for example, photocopiers, scanners and their own equipment, there should be in full view, a copyright notice setting out the parameters of the copying. (This exception includes a non-contractual override provision meaning that a contract cannot override this exception.)

2. Fair Dealing for the purposes of quotation, including criticism and review

An extract of any type of work can be used under this new exception for any purpose, including use of extracts in exhibitions, publications etc. The amount used must be fair, and only as much used as is needed for the purpose can be quoted. It is very important that the copyright owners are acknowledged and that the item has been made available to the public. (This exception includes a non-contractual override provision meaning that a contract cannot override this exception.)

3. Fair Dealing for the purposes of current news reporting

A fair amount of an in-copyright work, except a photograph, can be freely copied under this exception as long as the copyright owner is sufficiently acknowledged. This does not extend to the copying and distributing of press articles for which a licence is required.



4. Fair Dealing for the purposes of data or text mining

In copyright works may copied for the purposes of computational analysis for the sole purpose of non-commercial research as long as the person has lawful access to the work, and the copy is accompanied by sufficient acknowledgement if possible. This includes not only purchased materials but the internet also. Contracts restricting anyone from benefitting from this exception are not enforceable.

5. Fair Dealing for the purposes of illustration for instruction purposes

A copy of a fair proportion of a copyright work can be used for the purpose for instruction as long the use is for a non-commercial purpose, the person making the copy is giving or receiving instruction and the copy is accompanied by a sufficient acknowledgement. This could include setting or answering questions, or museum learning activities. It is unlikely to permit reproduction online or the selling of teachers packs. Contracts restricting someone from benefitting from this exception are not enforceable.

6. Fair Dealing for the purposes of parody, caricature and pastiche

A fair dealing copy of a copyright work can be used for the purposes of parody, caricature and pastiche. Contracts restricting the licensee from benefitting from this exception are not enforceable. This removes the risk for museums now owning works which parody other works – but also provides opportunities for creative interpretations for collection items!

7. Making works available on dedicated terminals

A copy of an in-copyright work can be made available to individual members of the public via a dedicated computer terminal on the premises of libraries, archives, museums, galleries and educational establishments, as long as the work has been lawfully acquired by the institutions, it is for the public's research or private study and there are not any licensing/purchase terms which prevent this.

8. Copying for preservation or replacement

As long as it is not reasonably practical to purchase a copy², librarians, archivists, curators and those working in libraries, archives, museums, galleries and educational establishments can make or have made for them preservation copies of items in their reference collections on their premises (or permanent collection if only available for loan to other libraries, archives or museums) or if their copy is lost, destroyed or damaged. Contracts restricting the licensee from benefitting from this exception are not enforceable.

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To be decided by the Librarian



9. Incidental inclusion

A work in copyright may be incorporated within another work if its incorporation is incidental to the creation of the main work.

10. Copying by Librarians and Archivists for users

Librarians and archivists can make copies for users of all works in copyright. The copying must be for the purposes of **non-commercial research or private study and only a single copy of a limited amount can be provided**. For example, one article from a journal or a reasonable amount of any other published work.

- If a charge is made, these must be based on the costs attributable to the production of the copy.
- No signature is now required on the declaration forms.
- Librarians are legally obliged that all their users declare in writing before a single copy of a limited amount of a work can be made for them to protect the librarians against infringements and also to prevent systematic copying. Prior to 1 June 2014, a Declaration Form had to be used, but now the declaration can be in writing.
- Contracts restricting the licensee from benefitting from this exception are not enforceable.

11. Exceptions for Disabled users

New legislation now provides specific exceptions permitting copying for, or by users with a disability where the item cannot be purchased in the format that is needed. The whole or part of an accessible work can be supplied, as long as the user, or authorised body (an educational establishment or an organisation not established for profit, such as a museum) has lawfully obtained a copy of a work for which they are unable to access.

12. Orphan Works Exceptions

New legislation allows libraries, museums, educational establishments and archives to use orphan works for non-commercial purposes, as long as a diligent search has been undertaken and the information uploaded to a database managed by the Office of Internal Harmonisation. The only exception to this are paintings, or photographs that are not in books or magazines. If the rights holder turns up then reasonable compensation has to be made. More about this can be found in factsheet 10.



What other changes to the law are appropriate?

PUBLIC SECTOR INFORMATION – July 2015

From 18 July 2014, publicly funded museums will be in scope of this new body of law. This will not affect museums being able to commercially exploit their works, but instead will mean that museums will have to have clear and level-playing field terms and conditions of access and reuse of public domain collections, as well as any collection items that are the copyright of the museum. Other than where private funding is digitising collections, exclusive agreements are not allowed. As with Freedom of Information requests, PSI legislation will be overseen by the Information Commissioners Office. More about these provisions can be found here:

<http://www.nationalarchives.gov.uk/information-management/re-using-public-sector-information/>

- **Checklist**

- 1. Understand the different exceptions to copyright and how they might be useful to the use of your collections**
- 2. Using the exceptions needs to be assessed on a case by case basis.**
- 3. Your museum's approach to risk will determine to what level you can benefit from the exceptions.**
- 4. Discuss with other museums how they have benefitted from the new exceptions to copyright.**
- 5. Don't forget that most of the exceptions need to be "Fair Dealing" – this means that the use of a copyright work under an exception to copyright cannot harm the commercial interests of the rights holders!**

- **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.

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