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— COPYRIGHT CONSULTANCY —

Copyright FAQs



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Copyright

1. What is copyright?

Copyright is mainly based on the *Copyright, Designs and Patents Act 1988*, subsequent revisions including the *Copyright and Related Rights Regulations 2003*, *Copyright Rights in Performances Regulations 2014*, previous Copyright Acts (1911 and 1956), Directives, Treaties, Conventions and Case Law. Copyright is an exclusive economic right granted to the creator of original work to permit or prevent other people from copying it. Copyright does not protect an idea, only the material expression of the idea. More about copyright, and the duration of copyright is provided in the Appendix. Good sources of further information include: the Copyright User website¹ as well as the UK's Intellectual Property Office². Museums will be users of others copyright works as well as creators and commissioners of their own!

2. What does “All Rights Reserved” mean?

“All rights reserved” is the default position if content is reproduced (in print or in digital format) without a licence for users to re-use and re-use of the content can only be made under the exceptions and limitations to copyright *(see question 2. below). The normal manifestation of this would be “© All rights reserved”, which is used as a credit line. It would seem therefore that the bulk of online UK-derived content is still on an “All Rights Reserved” basis – which is the default even if there is no credit line (since copyright protection is automatic and does not require registration).

3. What are exceptions and limitations to copyright?

Exceptions and limitations to copyright mean that users, including museums, of any copyright content can use such content for non commercial personal use, or for use in certain educational activities. This is currently the default position of most websites, unless noted otherwise. Crucially, content can only be reused under any exceptions and limitations to copyright which are relevant in the legislation of the country in which the user is based. This means that the use of copyright works in one country will vary from country to country, because the exceptions to copyright are not universally homogenous. More information about the role of the copyright limitations and exceptions in the UK can be found here: www.ipso.gov.uk/copyright.

It should be noted that statements along the lines of “All rights reserved. No part of this publication may be reproduced in print or digital form without the written permission of the copyright owner” are invalid in

¹ www.copyrightuser.org

² www.ipso.gov.uk



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— COPYRIGHT CONSULTANCY —

so much as people CAN copy such materials if their use falls within an exception to copyright enshrined in the law.

4. What are Orphan Works?

Orphan Works are works in copyright (the lifetime of copyright is usually 70 years from the end of the year when the creator died, but there are numerous exceptions to this rule) where the rights holders are either unknown or cannot be traced. The lack of provenance information associated with the billions of new pieces of digital content uploaded onto the web and/or created on an annual basis³ (either because it does not exist or has been stripped out by sites like Facebook, Twitter, etc), creates instant orphan works. This issue is a growing problem for digitisation projects as well as projects engaging with digital outputs, such as those providing interfaces for users to upload their own content, whereby the digital content is uploaded without associated provenance information.

For museums, galleries, libraries and archives, the problem of orphan works is even more acute. In 2009, it was estimated that there were also over 50 million orphan works across the UK's cultural heritage sector⁴ alone. This is a mere drop in the ocean today, and across the sectors in which HLF grant recipients are drawn, as well as the variety of digital projects which are funded, orphan works will present significant issues, specifically:

- The extent of the time and associated costs taken to try and trace rights holders.
- Possible risks encountered if rights holders cannot be traced.

Possible solutions, which depend on cost, risks and benefit considerations include:

- Do not use (high risk)
- Use under the Orphan works exception (text based and/or audio visual works including embedded orphan artistic works)
- Use by purchasing a licence from the UK's Intellectual Property Office

More about orphan works can be found here: www.ipo.gov.uk/copyright

³ <https://en.wikipedia.org/wiki/Zettabyte>

⁴ https://sca.jiscinvolve.org/wp/files/2009/06/sca_colltrust_orphan_works_v1-final.pdf



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Orphan Works Exception and the UK-wide Orphan Works Licensing Scheme

	Orphan Works Exception	Orphan Works Licensing Scheme
Who?	Publically accessible museums, libraries, archives, educational establishments	Anyone
How?	Non commercial online use	All commercial and non commercial uses
What?	Text based works and audio visual works. Embedded artistic works. Free-standing artistic works are not included	All works
Obligations?	Self-certified due diligence and recording the name of the work etc and how it will be used on the European-wide OHIM Orphan Works database	Approved due diligence, as part of the licence application
Duration	Until copyright expires or until rights holder turns up, whichever is the sooner	For a maximum of 7 years or until the rights holder turns up, whichever is stipulated in the licence
Cost	Free	Licence fee and admin charge
Coverage	European-wide	UK only

Creative Commons

5. What are Creative Commons licences?

Creative Commons licences are template licences provided by Creative Commons, a not for profit established over 10 years ago - see www.creativecommons.org. So far, more than one billion items are available online under various flavours of Creative Commons Licences. An item, whether text, artistic, sound recording, music, film or other type of work, which is the subject of a CC licence is free of charge to use, as long as the user follows the ground rules imposed by that licence (see below). Depending upon the “flavour” of licence selected, they enable users to reproduce and potentially adapt content licensed in this way.

There are seven main flavours of Creative Commons Licences (see the Creative Commons website for more information).

6. What are the differences between Creative Commons Licences?

The following are based on the definitions provided by Creative Commons of their seven licence types at <https://creativecommons.org/licenses/>

Creative Commons Licences can only be granted by the rights holder of a copyright work or with specific permission from the rights holder.



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1. CC Zero

This licence lets others distribute, remix, tweak, and build upon a work, even commercially, without any restrictions. This is the most accommodating of licences offered. Whilst it acts as a licence in the UK, in the US, for example, it enables a work to be placed in the public domain.

2. Attribution (CC BY)



This licence lets others distribute, remix, tweak, and build upon a work, even commercially, as long as they credit.

3. Attribution-ShareAlike (CC BY-SA)



This licence lets others remix, tweak, and build upon a work even for commercial purposes, as long as they credit and license their new creations under the identical terms. This licence is often compared to “copyleft” free and open source software licences. All new works will carry the same license, so any derivatives will also allow commercial use. This is the licence used by Wikipedia, and is recommended for materials that would benefit from incorporating content from Wikipedia and similarly licensed projects.

4. Attribution-NoDerivs (CC BY-ND)



This licence allows for redistribution, commercial and non-commercial, as long as it is passed along unchanged and in whole, with appropriate credit.

5. Attribution-NonCommercial (CC BY-NC)



This licence lets others remix, tweak, and build upon the work non-commercially, and although their new works must also acknowledge the rights holder and be non-commercial, they don't have to license their derivative works on the same terms. Note that this is the licence which the Heritage Lottery Fund (HLF) requires grant recipients to make their digital content available under.

6. Attribution-NonCommercial-ShareAlike (CC BY-NC-SA)



This licence lets others remix, tweak, and build upon the work non-commercially, as long as they credit and license their new creations under the identical terms.

7. Attribution-NonCommercial-NoDerivs (CC BY-NC-ND)





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— COPYRIGHT CONSULTANCY —

This licence is the most restrictive of the seven licences, only allowing others to download the works and share them with others as long as they credit, but they can't change them in any way or use them commercially.

7. What are some of the benefits of Creative Commons Licences?

- I. Creative Commons Licences are free to use, enable reuse and are becoming more widespread and recognised in their adoption internationally. Currently, over a billion items are available online with some kind of Creative Commons Licences.
- II. Creative Commons Licences grant global permissions, which means enable anyone to reuse the work which is licensed, for as long as copyright lasts (after which point it will enter the public domain).
- III. Once granted, Creative Commons Licences cannot be retracted, so that the user can enjoy the permissions granted without fear that the licence will be revoked and their usage stopped.
- IV. Creative Commons Licences are available in 3 formats: a legal code, an easy to understand human-readable summary and machine readable code. The machine readable code enables the terms of the licences to be embedded within the digital item, so that the licence terms are discoverable even if the digital item is used elsewhere on the web, other than where it originated.
- V. Creative Commons Licences are contractually robust and have been successfully tested in court in variously jurisdictions.
- VI. Creative Commons Licences are non exclusive, so that a rights holder who grants permissions under the terms of any Creative Commons Licence, can allow anyone body else (including use themselves) permissions on the same terms.
- VII. Creative Commons licensed materials can be blended together (as long as the licences are compatible), creating a commons of creative works.

8. What are some of the disadvantages of using Creative Commons Licences?

- I. Creative Commons Licences are irrevocable, which provides assurances for users of the content made available in this way, that once the licence has been granted, it cannot be retracted. The downside to this that if a rights holder, or an organisation who is making content available under a Creative Commons Licence, changes their mind after they have attached a Creative Commons Licence, permissions already granted cannot be retracted and users are free to continue to use the content as per the terms of the specific Creative Commons Licence.



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— COPYRIGHT CONSULTANCY —

- II. Rights holders may be apprehensive about granting HLF recipients with permissions which enable them to re-license their content⁵.
- III. Creative Commons Licences do not “protect” users of content licensed under these terms if the rights being so licensed have not been properly cleared and/or there is any doubt about the legitimacy of source of the Creative Commons-licensed content. This means that users of Creative Commons licensed content could be held liable for copyright infringements even if they use content in good faith.
- IV. Creative Commons licensed content does not deal with other legal issues, such as Data Protection/privacy, libel, etc., and so the organisation wishing to make content available under Creative Commons, must deal with these issues separately.
- V. The seven flavours of Creative Commons Licences means that if content licensed under one specific CC Licence is mashed together with content made available under a different Creative Commons Licence, the terms of each specific Creative Commons Licence may mean that the “mash-up” is not allowed. For example, Creative Commons licensed content with an “ND” restriction cannot be changed or altered, whilst content licensed with any “SA” component, can only be mashed together with content which enables the mashed content to then be made available under the same SA terms.

9. What existing tools are available to help museums with issues associated with Creative Commons and copyright?

It is recommended that each recipient organisation nominate one or more individuals to be the centre of copyright advice and commentary for that organisation (as well as any other roles they might have). Such a person should undertake basic training in the subject.

There are numerous introductory texts on the topic as well; Facet Publishing offers an extensive range of such works, which are more accessible than formal legal textbooks, and *Korn, N and McKenna, G 2015. A Practical Guide to Copyright*. Collections Trust is also very relevant.

In addition, there are various web sites. These include:

- I. Intellectual Property Office www.ipo.gov.uk provides the basics to copyright and other intellectual property rights

⁵ The Society of Authors (SoA), in particular, has expressed deep concerns regarding the permissions sought by certain organisations in the cultural heritage sector wishing to digitise and make available journals containing works by their members. SoA believes that the complexity of copyright and licensing, means that authors do not always know what the implications are regarding the Creative Commons Licences, particularly as the permissions outlined in Creative Commons Licences are passed on to any user any where in the world and not just to the organisation seeking permission. Certainly, other societies representing rights holders, such as the Design and Artists Collecting Society (DACS) will not grant permission on this basis, as even Creative Commons Licences which are restricted to non commercial uses, will cut across the commercial licensing exploitation activities of their members



SHARE Museums East

a network of know how

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— COPYRIGHT CONSULTANCY —

- II. Creative Commons www.creativecommons.org for everything to do with CC licences
- III. Copyright User www.copyrightuser.org for information, diagrams, games and hands on resources about copyright
- IV. The www.web2rights.com web site provides numerous tools for understanding copyright, and for risk management.
- V. It is worth noting that a Creative Commons Compatibility Wizard was created by the Jisc funded OER IPR Support Project; this can automate the complexities of working out the compatibility of content licensed under one Creative Commons licence or another <http://www.web2rights.com/creativecommons/>
- VI. Strategic Content Alliance IPR and Licensing Toolkit <http://sca.jiscinvolve.org/ipr-publications/> is also helpful.
- VII. Museums Development Yorkshire have led on an area of work looking at how museums can generate income from copyright and other intangible assets, and some useful factsheets are available here: https://docs.google.com/folderview?pli=1&id=0Bx_M1cS1YkDyck1weFNlaDN0WEk&tid=0Bx_M1cS1YkDyYWo2dFVNM0R0U00

10. What are some the common terms used relating to copyright and what do they mean?

Assignment	The transfer of copyright from the owner of the copyright to someone else.
Copyright	Copyright is an exclusive economic right granted to the creator of original work to permit or prevent other people from copying it.
Creative Commons	Free to use licences which the rights holder (or someone authorised by the rights holder) can attach to a work to enable reuse of the work under various licence terms.
Intellectual Property Rights	The rights which protect the fruits of the human mind. These are intangible assets and include copyright, trade marks, patents etc
Licence	Permission, usually from the rights holder, to enable use of their copyright work under certain conditions.
Open	The term used to describe the licence conditions associated with a copyright work which enable



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Naomi Korn[®]

— COPYRIGHT CONSULTANCY —

	reuse. Hence, the more “open” a work, the more it can be reused by others.
Public Domain	A work which is either no longer in copyright because the copyright has expired, or whereby the item is not one that would attract copyright, such as a fossil. In the UK, it is legally impossible to give up copyright or place works in the public domain, unlike the US.
Rights Holder	The person who owns the copyright in a copyright work, and so is entitled to grant licences for its use.

11. What are some basic facts relating to copyright?

What is copyright?

- Copyright is mainly based on the *Copyright, Designs and Patents Act 1988*, subsequent revisions including the *Copyright and Related Rights Regulations 2003*, *Copyright Rights in Performances Regulations 2014*, previous Copyright Acts (1911 and 1956), Directives, Treaties, Conventions and Case Law.
- Copyright is an exclusive economic right granted to the creator of original work to permit or prevent other people from copying it.
- Copyright does not protect an idea, only the material expression of the idea.
- Works are protected regardless of artistic merit, although they need to be original and/or show skill and judgement.

What does copyright protect?

- Copyright only protects certain things specified by the Copyright Act - if it does not fall within one of the eight categories – it will not be protected
- These categories are: Literary works, Dramatic Works, Musical Works, Artistic Works, Broadcasts, Sound Recordings, Films and Typographic Works

How are works protected?

- There is no need to register copyright in the UK: it exists automatically as soon as a work in one of the above categories is fixed
- There is no need to use a copyright symbol in the UK, if a work is protected by copyright, it will be protected anyway
- For most works, copyright protection in the UK lasts 70 years from the end of the year in which



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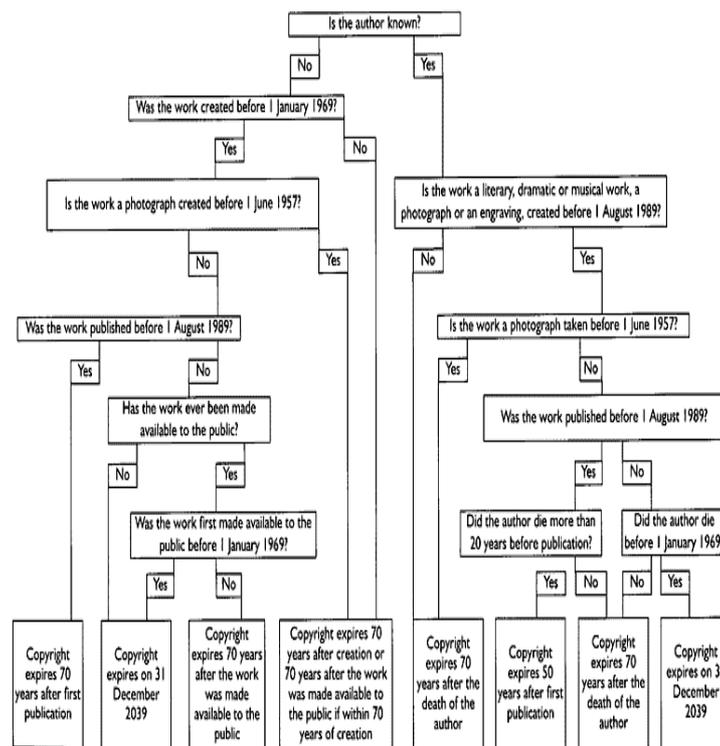
— COPYRIGHT CONSULTANCY —

the artist who created the work dies. When the artist dies, copyright normally passed to their estate unless they specify otherwise.

- As a general rule, the first owner of copyright in a Work(s), the “Copyright Holder” will be the artist who produced the work unless it was made by an employee in the course of his or her employment.
- A Copyright Holder is able to transfer the legal ownership of that copyright to a third party (also called an "assignment") or grant permission to use it under licence.

12. How long does copyright last?

Courtesy of Tim Padfield: Copyright for Archivists and Record Managers (4th edition) 2015



Duration of copyright (excluding Crown copyright): literary, dramatic, musical and artistic works



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— COPYRIGHT CONSULTANCY —

More Detailed FAQs

1. If items are digitalised via a HLF or other public grant that need to be made available under CC BY NC) – assuming the museum held the copyright for the object that has been digitalised - could the museum still make commercial products using these digitalised images as long as a copy of the digital image is made available under the above terms?

Yes, but in accordance with HLF's terms and conditions - you will need to ask their permission to do so (they are unlikely to say no). Also, you have to clear third party rights for their purposes as well.

2. I know that we discussed that each country has their own copyright laws – if we had works in our collection by an overseas artist / were commissioning work by an overseas artist etc – do we have to research and follow copyright law in their country as well as UK law?

The laws vary between countries however the principles are the same. So, the duration of copyright will be based upon where the creator was born or resident. The use of the work will be based on the country where the work is being used - i.e the U.K. So if it is only be used in the UK - the U.K. Exceptions to copyright will apply. Otherwise, you need to get permission.

3. If the copyright is purchased by another institution during the time a work is still in copyright, that time – will the 70 years after artist's death the copyright expires no matter who owns it? Or can copyright be purchased for perpetuity?

Copyright will nearly always be based on the lifetime of the creator plus 70 years until the end of the calendar year in which they died or 70 years after creation of the author is not known (unless the country where the creator has been born/practising is lifetime plus 50 years). Even if the copyright is created by a company or purchased by someone else, the duration of copyright in the object will not be affected. The only way to start copyright again, will be to create another new work (like an image of an object).

4. What happens if a company commissions an artistic work and states in the agreement that they are also purchasing copyright – does the artwork stay in copyright for as long as the company in existence, over-riding the x number of years after creator's death rules?

See the answer above. So the answer is no.

5. We would like to produce a map of our local area which shows were all of the pupils at a particular time were living. We would like to do this using an OS Map of the area first published in 1898. We would then commission a designer to highlight and colour the streets and buildings where pupils lived. There would be



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— COPYRIGHT CONSULTANCY —

accompanying text around the map. Is this type of alteration to a map permitted? I understand that OS maps go out of crown copyright 50 years after first publication. Is this correct? Although the map is from 1898 the edition we have been looking at currently was republished in 1990.

You are quite correct about the duration of copyright in OS maps. If you use an edition older than 50 years, you can do what you want with it without the need to ask permission. However, if you are using the 1990 version, you must go back to OS and ask permission. Expect a fee and possibly even for them to say no. The copyright in any maps created by OS subsequent to 1 April 2015, will last for lifetime of the creator plus 70 years until the end of the calendar year in which they died. <https://www.ordnancesurvey.co.uk/business-and-government/licensing/crown-copyright.html>

6. I would like to have some sounds playing within our exhibition to create atmosphere such as generic street noises such as a horse and cart. Would you be able to advise about where I can find some, preferably somewhere with reasonable usage fees?

You should be able to get a load on line. Try <http://freesound.org/> and particularly those under a CC Zero licence.

7. Much seems to depend on knowing if/when a photograph was published when trying to work out its copyright duration. Is that always the case?

I agree about whether it was published or not, but then if you don't know who was the creator, you will be a bit stuck, because then ultimately you don't have anyone to ask for permission! I would not say that the book would have lengthened copyright at all- if anything, if the photographers were unknown, then 70 years after creation would be certainly sensible to discount many from being in copyright, with perhaps careful thought about what you should do about those later than that if you can't locate the author. You might certainly want to try Google Advanced Search and Tin Eye <https://tineye.com/> and their reverse image searches to help.

8. Donors of images in our collection have let us have them on the basis of a shared wish to 'save' them – allowing me to scan, restore and then return the original prints on the basis that the resulting electronic image may be used by the Trust for any of its charitable and educational purposes. The have signed a Collections Trust template form and I wondered if that means we can use the images online and for all our other purposes?

The problem is that whilst many of your donors of the photos may well have legal title to the ownership of the actual photo, which would mean that they comply with the form's legal requirement in that respect, but at the same time, they may not have legal ownership of any associated copyright – which will vest with the creators of the photos or their heirs normally. The problem is that if the donor of the photo was given the photo, it does not mean they took the photo, or even have any direct connection (in terms of being a family member) with the person who did. This ultimately means that even if we get everyone who donates items to you to sign the form you have attached, it won't deal with the extra research and permissions you will need to deal with the



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— COPYRIGHT CONSULTANCY —

copyright. This means that you will need to seek permissions for online use, and look to using the exceptions to copyright for other uses where possible www.copyrightuser.org

9. A copyright issue has arisen with regard to our use of the Picasso name in the exhibition title, and the Picasso Administration via DACS (Design and Artists Copyright Society) are quite strict about the use of Picasso name, and assert control over the name 'Picasso' as well as his artwork, and images of Picasso himself. Is this correct?

DACS are right for several reasons:

- The name Picasso is extensively trade marked and so this will prevent at least some, if not all your uses
- The terms and conditions of using Picasso images will probably also stipulate that you can't use the name without an image

10. If we want to play clips of preservation copies of footage or recordings from our AV collections on a screen in a public exhibition, could this be described as a Dedicated Terminal and therefore we wouldn't need to clear use? Does it make a difference if the material is a commercial film? No contract exists with the rights holders – it's a commercial film which the archive has purchased on DVD.

I'm afraid not. A dedicated terminal is normally one user at a time. Also, with the dedicated terminal exception, if you have signed a contract with the rights holder which prevents this use, you can't do it. It needs to be formally part of your collection and no terms or conditions on the film itself that would preclude it being shown in public such as those that you might find on the back of the DVD cover etc.

11. We have been told that displaying just newspaper headlines, with no other written content or images, should not have any copyright implications and does not require clearing. Is that correct? Does it make a difference if we show an image of the headline rather than quoting the words of the headline (ie without the formatting)? Conversely, if we want to reproduce an entire front page, presumably we need the paper's permission?

It depends. There have been court cases which have judged that 11 words can be a copyright work. Also the mast heads in many cases will be trademarked, so the context of use would be important. The reproduction of a whole page will require a licence from NLA Media Access, although you may find that you have a licence with them already.

12. If we want to quote part (a reasonable amount – a line or two) of a copyright published article or book in an exhibition, in what circumstances might this/might this not come under the fair dealing: quotation exemption?

The quotation would not apply in either situation if:



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- don't credit
- use more than you need
- don't use the quote within the context of it being used to provide evidence for a point you are making
- use unpublished material

In other words, if you do all these things, it would be ok in both situations

13. We hold a large number of photographs where the photographer is unidentified. We often get requests from third parties to make use of these. Should these photographs of unknown origin be treated as Orphan Works, as the copyright holder can't be identified/traced? If so, should we direct users to the Orphan Works Licensing Scheme? <https://www.gov.uk/guidance/copyright-orphan-works>

If these are by unknown photographers – they are Anon, first and foremost, rather than orphans. As Anon, I would treat the duration as 70 years from creation for a pragmatic way forward - so many of them are likely to be out of copyright. For the ones that are not Anon., yes, the orphan works licensing scheme would be a good approach for your clients. No matter what, they need to take the risk whether they are in copyright or not and whether they can find the rights holders or not. This should be supported by robust terms and conditions in your contracts.

14. Do we need to gain permission from the estate of the person who wrote the letter in order to display it in public – not reproduce it?

The Intellectual Property Office has clarified that we don't need permission to display original text based works, like letters - so you won't need permission. You would only need permission to reproduce them if a copyright exception does not apply. <https://www.gov.uk/government/publications/copyright-notice-public-exhibition-of-copyright-works>

15. If we wish to make a facsimile copy of the original letter for display in an exhibition, so it looks like the original letter (this way we protect the original from light and handling), would we need permission to make a copy?

You can display the original. You can also digitise the original and put the digital copy on a computer screen without permission. You will need to get permission to display the facsimile!

16. Our curator there is keen to look at creating some retail products that feature works from the collection and is particularly interested in producing printed items such as postcards and posters of some of the posters within their collections. We need to be 100% confident on whether we have the rights to reproduce the posters as retail product lines and wanted to understand what we need to do next?

You are right to sort out the copyright due to the high risk associated with commercial products. I would recommend the use of Tin Eye and Google Advanced Search to help try and trace rights holders and also make sure that a proper business case was put together to avoid commercial loss.



SHARE Museums East

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— COPYRIGHT CONSULTANCY —

17. Can we take photos and reproduce our stained glass windows?

Yes, if the windows are permanently located in premises open to the public. It's based on an exception to copyright which is called "right of panorama". However, when stained glass windows have been removed from these contexts and become part of a museum collection different copyright law applies. The exception would no longer apply as the works are no longer in a public place! Similarly, the owners of the windows could restrict public photography through terms and conditions of access.

18. We have an album in our collection which contains sketches and paintings, photographs taken by herself, photographs taken by others, some known and some unknown to us, and those reproduced in the newspaper, plus other scraps, which you would expect to find in a scrap book. What can we do with it?

Displaying the original work would be fine. You could even create a touch screen turn the pages without permission as long as you have accessioned it. Reproducing it however to sell, or putting online etc would require permission from the artist, and for all the content in the scrap book.

19. How can we find wills to try and establish who owns the copyright in items in our collection?

<https://www.gov.uk/search-will-probate>

20. We have objects, adverts, catalogues etc relating to different brands, some in existence still like Colmans, Rowntree Mackintosh, Van Dal, Startrite and Caleys, and others that no longer exist like Norvic shoes and Boulton and Paul. How do we stand in terms of copyright in using photo reproductions of these items in displays, promotional material like leaflets, on the web for our collections website, e postcards or on twitter, or on post cards for sale?

Big issue here will not only be copyright – but also trade marks. These are the legal devices to protect signs, symbols and names from being used without permission. Colmans, for example is still an active trade mark, and its use will almost certainly require permission. You can carry out trade mark checks here:

<https://www.gov.uk/search-for-trademark>

Please note: These FAQs are based on the assessment of Naomi Korn Copyright Consultancy Ltd and are intended as an overview of the broad issues rather than legal advice. If such legal advice is required, the opinion of a suitably legally qualified professional should be sought.



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