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Copyright Essentials

What is Copyright?

Copyright is an economic right which forms part of the family of Intellectual Property Rights (IPR) which is the name of the group of rights which protect the fruits of human invention, innovation and creativity. IPR also includes trademarks, patents, design rights, database rights, performers' rights and artists' resale royalty right.

Copyright protection has been in existence in one form or another for hundreds of years to protect original, creative works from being copied without the prior consent of the creator of the works. It can also provide creators with a share of any financial gains made from copying.

In the UK, the current copyright legislation is based upon the *Copyright, Designs and Patent Act 1988*, as well as referring back to the *1956* and *1911 Acts* in specific circumstances. The legislation has also been supplemented by subsequent Directives derived from Europe and international Conventions and treaties. Recent changes in legislation include those found in the *Copyright and Related Rights Regulations 2003* and the *Copyright (Visually Impaired Persons) Act 2002*.

The legislation clearly outlines the rights relating to copyright, what you are allowed to do and what would constitute a breach of copyright. This enables you to work out where you would need to negotiate a contract or licence agreement to prevent a breach occurring and possibly resulting in litigation. It also indicates where an exception may be made and a copyrighted work could be reproduced on the basis of what is defined as 'fair use'. This is discussed more fully below.

What Does Copyright Protect?

Although copyright does not protect ideas, it does protect the expression of ideas produced in a tangible or material form. It specifically protects the following categories of creative works

- Artistic works;
- Musical works;
- Dramatic works;
- Literary works;
- Typographic editions;
- Films;
- TV/radio/cable broadcasts;
- Sound recordings.

It also defines the individual terms of protection for the different types of work. In the UK, copyright protection does not require formal registration. It automatically exists as soon as a work is created, as long as it satisfies some basic criteria. These include its having originality and/or its showing judgement and skill.

Although the symbol © will indicate that the work does have copyright protection, the symbol does not need to be present for copyright to be effective and reproductions will often appear without it. However, its inclusion is good practice and particularly if works are reproduced in international contexts, it will provide additional proof if unauthorised reuse takes place.

How Long Does Copyright Last?

The length of copyright protection will vary according to factors including:

- Whether the creator is known or not;
- Different national legislation;
- The type of creative work;
- Whether it has been published before;
- The date of publication.

Please see the copyright table below, which provides a detailed breakdown of the type of creative work and the duration of copyright protection which applies. For more detailed information, you can also refer to *Copyright for Archivists* by Tim Padfield.

In the case of artistic works created by known British, European and American artists, copyright protection lasts for the lifetime of the artist plus seventy years from the end of the calendar year in which they died. This would mean, for example, that if an artist died on the 21st May 1930, copyright in their work would extend until 1st January 2001. After this period works will have passed out of copyright but other restrictions may apply (see below).

Where a work has been created by more than one person, copyright will be shared and will extend to seventy years after the death of the last surviving creator (until the end of the calendar year in which they died), unless a statement is made to the contrary.

Who Holds Copyright for its Duration?

In the absence of other legal agreements, copyright rests with the creator/s of a work until their death. Once the original creator of the work dies, copyright will either pass automatically on to the next of kin, or be administered by a trust, executors, the Crown, or else it can be bequeathed somewhere else. This process of passing rights along will continue until the full term of copyright has elapsed. It permits all successive rights holders the original copyright protection.

Copyright Table

Type of work	Duration of copyright
Artistic works by known creators (such as paintings, drawings, prints, collages, sculpture, video art or photographs - including negatives and prints).	Lifetime of the artist + 70 years from the end of the calendar year in which the artist died.
Literary works , published, performed, broadcast or offered for sale. (Examples include: books, poems, letters, manuals, journals, song-lyrics and e-mail).	Lifetime of the author + 70 years from the end of the calendar year in which the artist died.
Literary, dramatic or musical works that have <i>not</i> been published, performed broadcast or offered for sale.	The earlier of either 70 years after the end of the calendar year in which the first of such acts took place or 31 December 2039.
Sound recordings , published, performed, broadcast or offered for sale.	50 years from the end of the calendar year in which they were made or if published in that period 50 years from the year of publication.

Sound recordings that have not been published but played in public or communicated to the public.	50 years from that event.
Musical compositions , published, performed, broadcast or offered for sale.	Lifetime of the composer + 70 years from the end of the calendar year in which the composer died.
Engravings , unpublished prior to 1 August 1989.	50 years from 1 January 1990 or 70 years from the end of the year in which the artist died, whichever is the later.
Engravings , published prior to 1 August 1989.	Lifetime of the author + 70 years from the end of the calendar year in which the artist died, or 50 years from the end of the year in which the engraving was first published, whichever is the later.
Broadcasts.	50 years from the first broadcast or delivery.
Films.	70 years after the death of the survivor of the principal director, the author of the screenplay, the author of the dialogue or the composer of the soundtrack (as long as at least one of them is a national of the European Union and the country of origin of the film is a member state of the European Union).
Crown Copyright (All works made by Her Majesty or by an officer or servant of the Crown during his or her duties)	For published work, 50 years from the end of the year when first published. For unpublished work, 125 years beyond the year it was created.
Parliamentary Copyright (All works made by or under the direction or control of the House of Commons or House of Lords).	Mostly 50 years beyond year it was created. Exceptions include bills of parliament.
Typographical arrangements (the form and layout of a typeset edition of a book/periodical).	25 years from the end of the year in which the edition was first published.
Computer generated works (in the cases where there is no human author).	50 years from the end of the calendar year in which the work is made.
Database collections (independent works, data or other materials which (a) are arranged in a systematic or methodical way, or (b) are individually accessible by electronic or other means).	Full term of other relevant copyrights in the material protected. In addition, there is a database right for 15 years.

If you are unsure of which category your work belongs to you can contact the Patent Office for further advice.

What are the Creator's Moral Rights?

Moral rights include:

- The right of the creator to be identified;
- The right to object to derogatory treatment of the work;
- The right against false attribution.

Moral rights are awarded, to the creator of original artistic, musical, dramatic and literary works. They only apply to creators alive after 2nd August 1989 but it is good practice to observe them in all cases. This means that a work must be reproduced whole and entire and the creator must be fully credited, unless you have permission from the rights holder to do otherwise.

Whilst copyright can be assigned to someone other than the creator (by means of a contract), moral rights are always retained by the creator/s of a work. The creator/s may however choose to waive (not exercise) their rights, and in case of the certain moral rights, these need to be asserted. Moral rights last for the full duration of copyright protection, apart from the right against false attribution which lasts for 20 years after a person's death.

For more information please see *Art and Copyright* by Simon Stokes.

What Type of Copying is Allowed?

UK copyright law allows for some instances of the copying and exploitation of works without the need to obtain explicit permission from the rights holder. These exceptions are generally referred to as 'fair dealing' and relate to the copying of the entire work (rather than an extract or adaptation) so that the creator's moral rights are not breached. Very few fair use exceptions relate to collecting organisations but the following may be relevant:

- **Criticism and review**

A copyrighted work may be copied solely for the purposes of directly criticising or reviewing it or another work. Press coverage of forthcoming events and exhibitions, with direct reference to works that are included, is normally covered by this exception. In these cases, the work must have previously been made available to the public and the work must be sufficiently acknowledged.

- **Current news reporting**

Works (but not photographs) can be reproduced for the purposes of reporting current news, as long as they are acknowledged where practical.

- **Non-commercial research or private study**

A single copy of a work in a collection, single copies of articles in periodicals or single copies of extracts from books, can be reproduced solely for private or non-commercial use. Like the above categories, where practical, the work should be sufficiently acknowledged. This exception is based upon the purpose of the copying as opposed to the nature of the individual or organisation carrying out the copying. For example, if a museum were to copy an article for a catalogue to be sold in its shop this would be seen as a commercial use. If, however, a commercial company were to copy an article for in-house research which had no commercial purpose whatsoever, this is likely to be seen as 'fair use'. This provision is a recent addition to the legislation. Further examples of what may constitute copying for commercial and non-commercial research can be found at:

<http://www.museumscopyright.org.uk/copyreg.htm>

- **Works on public display**

Sculptures, models for buildings, stained glass windows or any work permanently situated in a public place, or in premises opened to the public, may be freely photographed. When this is done, it is good practice to use the photograph with a caption identifying the creator/s of the pictured work. The exception does not apply to photographs on display and in this case, you would need to have permission from the copyright holder.

Library Privileges

There are a number of privileges that are granted to library staff and archivists who work in non-profit designated libraries. There allow for certain types of copying without the need to request permission from the rights holders. For more information, please refer to *Practical Copyright for Information Professionals* by Sandy Norman.

Making temporary copies

As a result of recent changes, you are now allowed to make transient copies of a work as long as the sole purpose of this copying is transmit the work between third parties by an intermediary to enable the lawful use of the work (for example, caching). Any financial gain from this copying is not allowed and would constitute an infringement. This provision excludes databases, computer programs and broadcasts.

What is the Publication Right?

Another element of copyright is the publication right. This is granted to the first person who, 'publishes', a previously unpublished work after its copyright has expired.

'Publication' in this context, can include issuing copies to the public, performing the work in public, and the exhibition or showing of a work in public. Publication right could, for example, be acquired by a museum that displays a borrowed work to the public for the first time.

This may present a danger to collection holders loaning out-of-copyright works for display elsewhere, or sending works for reproduction by third parties. To make sure the publication rights are not inadvertently given away, the following steps may be taken.

- Agree a waiver. When reproduction rights are granted or a loan agreement made, a clause can be added to make it clear that the recipient waives any claims to the publication right.
- Record copyright expiry dates. Having established these, you will know when further precautions (eg a waiver) are needed before a third party uses or publishes your item.
- The museum should ensure that, by visiting the galleries or a research room, members of the public do not inadvertently gain the right to reproduce images of objects they have been allowed to photograph. This could be done through the signing of some kind of terms and conditions or by preventing any photographs from being made.

What are Reproduction Rights?

Collections may include both items that are 'in copyright' and those where rights have expired. When works are out-of-copyright however, they can still be controlled through reproduction rights.

This works because a photograph of an item is legally categorised as an 'Artistic Work' and therefore protected by copyright legislation. Thus, where copyright may no longer exist in the work itself, (eg. with items within an archaeological collection), rights will exist in the photographs of the items. These particular photographs cannot then be used without permission and the owners are able make a charge for this.

If you wish to reproduce an image of an item belonging to a third party (eg someone else's photograph of a painting they do not own) you need to be aware that copyright may exist in the work, as well as existing in the photograph of the work and you would need permission from the rights holders for both.

Who Represents Rights Holders?

As well as representing themselves, many rights holders are represented by agencies. These administer the financial concerns of the creators and any other rights holders. In the UK DACS (Design and Artists Copyright Society), collects fees for many UK rights holders in artistic works. DACS has reciprocal arrangements with other UK and international rights societies.

DACS charges fees for the service but discounts can be negotiated for cultural organisations wanting to make non-commercial use of reproductions. The discount, which should be discussed prior to any licence agreement, will take into account the size of an organisation's budget and the quantity of copies to be made.

Agencies exist for most other types of creative works, including music and text. Some are responsible for collecting fees. For more information on these and other relevant organisations, please refer to Weinand et al, *A Guide to Copyright for Museums and Galleries*, as well as the website of the International Federation of Reproduction Rights Organisations at www.ifrro.org

With the increase in the digitisation of collections and their subsequent display on the Internet, many agencies are working towards blanket licensing schemes. This could take the form of, for example, an annual one-off fee for multiple reproductions. Although this development is in its infancy, there is clear scope for its expansion.

Where Can I Go for Advice and Further Information?

Organisations

Bridgeman Art Library

www.bridgeman.co.uk

London@bridgeman.co.uk

Tel: +44 (0) 20 7727 4065

Fax: +44 (0) 20 7792 8509

DACS (Design and Artists Copyright Society)

www.dacs.co.uk

info@dacs.org.uk

Tel: +44 (0)20 7336 8811

Fax: +44 (0)20 7336 8822

The Collections Trust provides impartial resources for all aspects of collections information management. For more information please contact:

Collections Trust, 22 Hills Road, Cambridge, CB2 1JP

Tel: 01223 316028

Fax: 01223 364658

e-mail: office@collectionstrust.org.uk

The Museums Copyright Group

www.museumscopyright.org.uk

The UK Patent Office

www.patent.gov.uk

copyright@patent.gov.uk

Tel: +44 (0)20 7596 6566

Fax: +44 (0)20 7596 6526

Has guidance on the implementation of the copyright legislation and copyright in general. Staff can be contacted by telephone and/or e-mail to answer specific enquiries.

The Patent Office also hosts:

The UK Patent Office Intellectual Property Portal

www.intellectual-property.gov.uk

This has excellent and slightly more accessible copyright information, based on frequently asked questions.

Publications

McClellan, Daniel and Schubert Karsten eds, *Dear Images: Art Copyright and Culture*, ICA and Ridinghouse, 2002.

Includes article pp227-238 by Naomi Korn and Peter Wienand, *Public Access to Art, Museums, Images and Copyright: the case of Tate*.

Collections Trust, *SPECTRUM: The UK Museum Documentation Standard*, Cambridge, 2007.

www.collectionstrust.org.uk/spectrum

Collections Trust *Copyright for Collections* factsheet.

www.collectionstrust.org.uk/get_to_grips_with_copyright/copyc

Norman, Sandy, *Practical Copyright for Information Professionals*, Facet Publishing, 2004 CILIP (Chartered Institute of Library and Information Professionals).

Thoroughly examines the copyright legislation, including recent changes in the law. It also contains sections on licensing, contracts, FAQ's and 10 useful facts about each chapter.

Padfield, Tim, *Copyright for Archivists*, Facet Publishing, 2004.

A copyright handbook for archivists and other collection owners, which provides a detailed breakdown of the copyright legislation and case law in a readable way. It is a particularly useful tool for digitisation projects involving archival material to be presented on the Web.

Stokes, Simon, *Art and Copyright*, Hart Publishing, 2001.

This book examines the intellectual property rights protecting artistic works and artists rights in the UK.

Although the focus is on the UK, international law is also discussed along with UK case law and copyright for the internet.

Wienand, Booy and Fry, *A Guide to Copyright for Museums and Galleries*, Routledge, 2001.

Indispensable reference tool outlining and dealing with copyright issues for museums and gallery professionals and anyone working with collections.

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