

Technical Review: Copyright Exceptions

This submission to the technical review on copyright exceptions is made by the National Museum Directors' Council (NMDC). The NMDC represents the leaders of the UK's national and larger non-national collections. For a full list of the NMDC membership, please see www.nationalmuseums.org.uk/members. It is also submitted on behalf of the Museums Association, the Association of Independent Museums and the Collections Trust. The Museums Association is a UK membership organisation for museum professionals, cultural heritage institutions and corporate partners. It has 5200 individual members, 600 institution members and 250 corporate members. The Association of Independent Museums (AIM) represents the interests of the independent museum sector. There are 1200 independent museums in the UK. The Collections Trust is an independent UK organisation which works with museums, libraries and archives to improve the management of their collections. As this submission is made on behalf of these four organisations, it represents the collected view of the museum sector on the proposed copyright exceptions.

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1 Research, Libraries and Archives

Research and private study: Section 29

We support the proposed wording of the statutory instrument (SI), and specifically the replacement of "literary, dramatic, musical or artistic" with "copyright" as this will allow for the inclusion of all copyright works for research and private study and leaves no room for confusion. We also support the inclusion that this exception cannot be over-written by contract arrangements as this would seriously undermine the impact of the SI. This exception is applicable to the museum sector because many of the larger or more specialist institutions also have a library and/or reference collection which is used for research and/or private study. The Natural History Museum Library looks after one of the world's most comprehensive collections of natural history literature, artworks and manuscripts with 350,000 books and 500,000 artworks. Although the library primarily supports research and private study by earth scientists and PhD students, many members of the general public use it for their own private study. The National Coal Mining Museum Library has a 15,000 strong collection which covers all aspects of coal-mining (including material relating to coal mining communities) and is open to the general public.

Provision of copies by librarians and archivists: Sections 37 and 43

The IPO may wish to consider expanding the provisions of the revised Section 37 to include archives as well as libraries. Archives include a significant proportion of published works and to restrict these provisions just to libraries may make this exception unnecessarily restrictive. That a work resides in an archive collection or a library collection may only be a quirk of circumstances. Furthermore, many local public library and archive services are integrated and many large and national museums will have both a library and an archive which are open to the public. The Research Library at the National Museum of Scotland includes 320,000 monographs, 450 periodical titles and archive material relating to the history of the National Museum of Scotland. The provisions clearly outlined in Section 37 will apply to that service but not to the Scottish Life Archive based within the same organisation. However, the Scottish Life Archive contains published works including books, plans, maps, trade catalogues, leaflets and films made by the East of Scotland College of Agriculture. It would

also be curious if the provisions made in Section 43 regarding unpublished works included archives, but Section 37 regarding published works did not.

The inclusion of the phrase "reasonable proportion" with reference to "any other published copyright work" allows for the copying of a the proportion of a work that will put the content in context and not distort the meaning or intention of the content. It will also allow for the copying of a useful proportion, particularly in an artistic work or a piece of short text.

The wording, including the removal of the requirement for a physical signature, is welcome. Section 37(4) and (5) make it clear that should the applicant submit false information unbeknown to the librarian, the librarian bears no liability for any infringement of copyright.

The wording of Section 43 makes clear that the exception includes all classes of unpublished works. However, the word "archives" seems to have been omitted from section 43(1)(f) after "general expenses of the library", and similarly the words "or archivist" from section 43(2).

Archiving and Preservation: Section 42

The draft SI refers to "items in the permanent collection" of the library, archive and museum, that the item is wholly or primarily for reference only, and cannot be loaned to the public. We welcome the ability for museums to be able to make multiple copies. This is particularly important with the pace of technological change and for ensuring that culturally significant content as well as the original objects can be preserved. It is imperative that museums are able to make decisions about the basic preservation and care of the objects in their collection, particularly those which are delicate, in vulnerable formats or which have suffered damage.

The exception is particularly important for museums and will allow them to better execute their duty to care for their permanent collections. The exception as drafted, and specifically the phrase "copy any item in the permanent collection", will allow museums to make casts of 3D visual artworks, take high quality digitized images of works, format shift audiovisual recordings from vulnerable media and conserve large sections of a single work without fear of copyright infringement. This will mean that museums will be able to preserve culturally significant content as well as prolong the life of the original object.

Some works are by their nature delicate and may require restricted light levels or cannot be moved regularly. Visitors, students and researchers are unable to fully study these objects if their content cannot be copied and the copies used to protect the original. Making casts of 3D objects for study purposes is a long-standing museum practice to preserve the original, as is conservation of works. Some conservation work may require large-scale restoration of a work, and it is helpful that this exception makes it clear that this definitely would not infringe copyright.

Works held on audio cassette tape or VHS will need to be format shifted as the tape become sticky and unplayable over time. Similarly LPs are notoriously fragile and cellulose nitrate discs degrade from the day of creation. Museums are unlikely to be able to afford to conduct the large-scale rights clearances presently required to format shift the content in collections of video art, music, film and sound archives held in hundreds of museum collections across the UK. This exception as drafted will allow that content to be preserved, even though the original object still also retains a cultural significance (and digitized content is no substitute for the original – these measures protect and preserve those originals). We also believe that these measures are in the interests of the rights holder(s) who would expect an object in the collection of a museum to receive appropriate conservation and preservation to protect the work.

The wording of Section 42(1)(b) may benefit from the addition of the word "recipient" between "provided that the" and "library, archive, museum or gallery", all the following "is

not conducted for profit" adequately covers both the public and independent museum sectors (as independent museums are charities and cannot therefore be operated for profit).

The wording of Section 42(2)(b) states that "it is not reasonably practicable to purchase a copy of the item to fulfill the purposes under subsection (1)(a) or (1)(b)". Whilst we do welcome this and in most cases it would be obvious as to what constitutes "reasonably practicable", this is subjective.

We strongly support Section 42(3) that the exception should not be over-ridden by contract.

Dedicated terminals: Section 43A

It would be helpful for the IPO to define what they feel a "dedicated terminal" is because the drafting is confusing. Presently there are a number of ways in which cultural heritage organisations use "dedicated terminals". These could be single terminals where researchers or members of the public can view a work or selection of works only. This is a good way of displaying additional detail of an object. A book or musical score can only be displayed to show one double page, however a dedicated terminal can show digitized images of different pages and allow closer study. Museums frequently use this method to display content where the original object is vulnerable to handling and changing environmental conditions (including light). Presently, this tends to focus on out of copyright works, such as *The Birds of America* in the Treasures Gallery of the Natural History Museum or the Admonition Scroll at the British Museum, however to be able to do this without having to clear copyright would allow museums to make much more of their publicly-funded collections available to the public to view and study. Dedicated terminals also allow the public to see a quantity of objects within a collection where it is not practical to put that number on public display. Some town museums may have comparatively large collections of photographs of the locality. They may only have the space to display a certain number, however a dedicated terminal allows visitors and researchers to fully explore the breadth of the collection.

Interpretation of museum collections for visitors has moved a long way from technical, text heavy labels next to an object in a case. Where galleries are being refurbished or newly built, they now include layered interpretation to make the collections more accessible to different age groups, physical access requirements and levels of knowledge. Many museums use tablet computers (which are the property of the museum). Tablet computers may be used by Visitor Services staff to aid visitors understanding, as is the case in the new Nature's Library galleries at Manchester Museum, or by school groups.

The term "dedicated terminals" may apply to the IT equipment provided by the cultural institution for use by readers and researchers only in their libraries, archives and study rooms to look at digital copies of works in the collection. These may be standard laptops, desktop computers or tablets that have other capabilities because museums need to use their resources as efficiently as possible.

Handheld multimedia guides allow objects to be seen in greater detail, add additional layers of interpretation, link with other objects in the collection or show objects not on public display. They will also provide information in foreign languages, and this is increasingly important as the visitor profile become increasingly diverse. These guides have also enabled museums to provide greater interpretation for deaf and hearing impaired visitors with many museums, including Tate, offering BSL multimedia guides. The British Museum encourages visitors, particularly those who do not speak English, to hire multimedia guides to enhance their experience. These devices only work within the British Museum, are available in 10 languages and detail 200 objects on public display. If this is considered a dedicated terminal, more content could be included and different parts of the collection included. A small charge (£5 at the British Museum, £4 at Tate) is levied for the multimedia guide to cover the administration of the scheme.

It would be helpful to understand how far this provision would cover all or some of the above uses.

However, we would suggest an amendment to section 43A(2)(c). Works in the permanent collections of museums have not always been purchased, but may have been legitimately acquired by museum through other routes including bequests, gifts and in lieu of tax. Therefore, we would like to suggest including the words "or acquired" so the final sentence reads "... by the terms of any licence or the terms on which the work was purchased or acquired."

2 Text and Data Mining

We support the wording of the text and data mining exceptions, and particularly support the provision that contracts may not over-ride this exception.

Most national museums, university museums and specialist collections conduct academic research. Curatorial posts at national museums require the curators to undertake original research and they are supported by PhD students, collaborative doctoral awards and researchers (focusing on an enormous diversity of subjects from molecular systems, to analysis of Old Master paintings, to the history of Liverpool Road site of the Museum of Science and Industry in Manchester). This exception is important to the museum sector because of the considerable amount of non-commercial research which is undertaken by museums themselves and the increasing use and benefit of text and data mining to understand huge volumes of data.

The Natural History Museum's science mission is to explore the diversity of the natural world and the processes that generate this diversity. They aim to use the knowledge gained to promote responsible interaction with the natural world. Fundamental to this mission is taxonomy - the theory and practice of naming, describing and classifying organisms. Over 300 scientists work at the NHM, and considerable investment is made by supporting their work through e-journal and online database subscriptions and providing access to other published scientific information. To have to then negotiate additional licences in order to perform data mining techniques on this digital content (which the museum has already purchased) is not an efficient or effective use of the public funding used to finance their research.

These exceptions will be of great assistance to the NHM's Entomology Department. All species are connected to single evolutionary tree that forms a hypothesis of their relationships to each other. However, researchers only publish small evolutionary trees relevant to their specialist expertise. By allowing data mining and not allow it to be over-ridden by contract, it will be possible to automatically combine these evolutionary trees into a single evolutionary hypothesis covering all known species. Furthermore, approximately 20,000 new species are described each year in thousands of published articles. Data mining will allow them to automatically compile lists of species described in any one year, and automatically assemble databases of taxonomic data and expertise. This will allow them to better coordinate future research and databasing efforts. Similar exercises could be conducted on the National Museums Northern Ireland's linguistic collections.

Education

Museums support the teaching of a number of subjects across the National Curriculum. There are very few subjects within the National Curriculum that cannot be supported with museum education programmes, be they visits to museums, digital resources, collaborative projects or object handling boxes sent to schools. School visits to museums accounting for about 30% of all museum visits. Museum educators are a source of respected expertise on the teaching of subjects via object and experience-based learning, and use this expertise to deliver programmes to thousands of schoolchildren. In 2011/12, the Learning Department of the Imperial War Museums delivered 3088 learning sessions.

Museums, particularly the national and major non-national museums, now play a larger role in training and professional development for teachers, and develop formal and informal programmes based around the National Curriculum.

Museums also deliver adult education programmes, through courses or study days delivered on the premises or with the support of a local FE or HE institution.

We would therefore like clarification on whether Section 32 will relate to museums. Clearly the work that they undertake is for the purpose of instruction. It is unlikely that a museum would work with publicly-funded schools on anything other than a non-commercial basis. However (and particularly in these economically challenging times), museums may make a small charge to schools for directed schools sessions to cover the costs of providing the teaching materials and the staff resource. It would be helpful therefore to clarify whether "non-commercial" means free or not-for-profit.

The IPO may consider revising Section 32(2)(a) and (b) to replace the word "and" at the end of each with "or". Not all instruction requires an examination to prove that instruction has taken place, and it presently reads as if all three subsections (including Section 32(c)) have to be met before fair dealing can take place.

We would also like clarification as to whether Section 36 would be applicable to the dedicated learning centres at museums (and most museums will have a dedicated learning space and at least one museum learning officer or educator) and the activities which take place within them. Given the amount of education activity which takes place on museum premises and led by museum staff, it would be sensible to consider them as "educational establishments".