

Museums Association - copyright seminar

Changes in legislation

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Why is copyright important to museums?

- Museums are about communicating information
- Text, photographs, sound, video, web pages – all vehicles for communication
- All are protected by copyright
- An increasing proportion of objects in collections is affected:
 - the longer period of copyright protection (70 years after the **author's** death)
 - even on low budgets museums still acquire material and a lot of it is within the ambit of copyright
- Museums cannot engage with audiences beyond their walls without thinking about copyright

Issues facing museums

- Museums both:
 - *use* others' copyright works – on postcards, in publishing, on websites; and
 - *create (or commission)* copyright works – transparencies, catalogues etc
- Copyright for museums is both:
 - an obstacle – to communicating information about the collection: owning the object does **not** confer ownership of the copyright
 - an asset – that can be licensed and traded
- These create tensions within the museum which need to be resolved
- Relationships with third parties need to be regulated
- Increasing use of IPR policies
- Need for museum professionals to become familiar with copyright

Museums as users of copyright

- Many reasons for reproducing items in collections
- Traditional reproduction: photography to serve the purposes of conservation, archiving, advertising, publishing, picture library use, licensing
- Now also website and digitisation projects:
 - huge quantities of material involved
 - difficulties of finding owners
- Can be facilitated by:
 - sharing information about ownership
 - exceptions and limitations
 - rights clearance mechanisms eg licensing schemes

New regulations - background

- Copyright and Related Rights Regulations 2003 (SI 2003/2498)
- Implements EC Directive
- Purpose of Directive:
 - Implement WIPO Treaties – to deal with digital uses of copyright works
 - Harmonise EU Member States laws
 - Toughen copyright in dealing with digital infringement
- Succeeded in achieving first of these and the jury is out on the last
- Harmonisation did not extend to exceptions and limitations
- But where the Directive narrowed exceptions UK has to follow

Exceptions

- Reproducing an 'insubstantial' part: no change
- Fair dealing with a literary, artistic, musical or dramatic work for the purposes of research **for a non-commercial purpose, provided sufficient acknowledgement** (and no multiple copies)
- Corresponding changes to provisions allowing librarians to supply copies for the purposes of research (but not necessarily museum staff)
- Fair dealing with a work for the purpose of criticism and review provided that it has **been made available to the public** (and acknowledgement)
- Non-reprographic copying in the course of instruction or of preparation for instruction - provided that this is **not for a commercial purpose**

‘Minor exceptions’

- Sculptures and works of artistic craftsmanship permanently in a public place or in ‘premises open to the public’ – no change (s 62 CDPA 1988)
- Advertising sale of artistic work **on-line** (s 63 CDPA 1988)
- Incidental inclusion: no change (s 31 CDPA 1988)
- ‘Anonymous’ works (s 57 CDPA 1988) – can still be copied but not if:
 - possible to identify author by ‘reasonable inquiry’
 - author is known but owner of copyright is unknown
 - author (probably) died less than 70 years ago
- Unpublished works over 100 years old and in a museum – no change
 - but only literary, dramatic or musical works - Sched 1, para16, CDPA 1988

Non-implemented exceptions

- The EC Directive contained other *non-mandatory* exceptions
- Reproduction by museums for non-commercial purposes (eg conservation, insurance – compare Irish law) – though *not* on-line communication
- Advertising exhibition of artistic works
- Communication or making available of works, for the purpose of research or private study, to individual members of the public by dedicated terminals on the premises of museums

New regulations - other provisions

- Circumventing ‘technological measures’ - encryption, scrambling or other methods of controlling access
- Civil remedies and criminal penalties
- What if the purpose of downloading comes within one of the exceptions?
- Voluntary measures – but could be undermined by terms of access
- Removal or alteration of rights-management information
- New criminal offences – including communicating a work to the public knowing that copyright is infringed

Implications of the new regulations

- No improvement of the position of museums without further lobbying of UK government
- Digitisation projects still require full copyright clearances
- Outside the (limited) scope of the exceptions, no answer to the perennial problem of tracking down the copyright owner
- Underlines need for licensing schemes – this is emphasised in the Directive

Clearance and licensing schemes

- CLA scheme for photocopying
- DACS slide library scheme
- Few schemes yet for on-line display (but see HE and FE sectors)
- Tate / DACS deal
- ARLIS discussions
- EMII (mda)
- Resource feasibility study: report due to be submitted to Resource by the end of the year and reflects initial (positive) discussions with DACS and the CLA

Museums as owners of copyright

- Traditional publishing and image licensing to generate revenue
- New media: interactives, CD-Roms, DVDs, websites
- IPR policies and guidelines
 - securing ownership when commissioning independent contractors
 - relevance of copyright to acquisitions
 - tighter staff management
 - balancing revenue-generation against public access
- Enforcement

Enforcement Directive

- Proposal: seeks to harmonise rules on disclosure of evidence and remedies (injunctions, orders for seizure and destruction, damages)
- Article 20 requires 'serious infringements' (ie where intentional and committed for commercial purposes) to be criminal offences – has raised some concerns in the user community
- Says nothing about ease of access to the courts or the cost of proceedings
- UK Patent Office consultation open until 12 January 2004

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