

museums
copyright
group



For the attention of Mr Kenneth Fox

Clerk of the Culture, Media and Sport Committee
House of Commons
7 Millbank
London SW1P 3JA

By email: cmscom@parliament.uk

28 February 2006

Dear Sir

**Submission to Culture Media and Sport Committee
Inquiry: New media and the creative industries
Due by: 19 January 2006 - extended to: 28 February 2006**

The Museums Copyright Group (MCG) thanks the CMS Committee for the opportunity to respond to the inquiry into new media and the creative industries. MCG was formed in 1996 to answer an increasing number of concerns about copyright expressed by professionals working in the museums and galleries community. These concerns were prompted by:

- the increasing need for museums and galleries to raise income;
- an awareness that museums and galleries were acting in isolation with the result that expertise was not shared and resources were wasted;
- changes in legislation;
- the spreading use of digital technology, including the Internet.

MCG now has over 100 members primarily representing museums and galleries, including national and regional institutions, and those attached to universities and local authorities as well umbrella organizations representing the broad interests of a number of museum-related organizations and copyright specialists.

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Although the MCG includes a number of libraries in its wider membership, its primary focus is the UK museum community. MCG also works in partnership with LACA (Libraries and Archives Copyright Alliance) on areas of mutual interest to museums, libraries and archives.

New technologies, electronic tools and digitisation offer real potential for museums to increase virtual access to their collections, to develop new audiences and to introduce e learning remotely or using in-gallery systems. Many museums already have extensive virtual collections and on-line programmes. The DCMS consultation 'Understanding the Future: Museums and 21st Century Life' (2005) specifically addressed the opportunities and challenges for museums' use of ICT.

Like many other content-driven businesses in the creative industries, museums are involved in both management and exploitation of rights, both as *creators* of content and materials for interpretation of collections, and as *users* of content. For example, for art works in copyright they seek licences from artists or collecting societies such as the Design and Artists Copyright Society (DACS), for the use of images and reproductions of works in collections and exhibitions. Acquisitions of works of art transfer physical title, but the copyright in the work remains with the artist until licensed to the museum. The increasing volume of new media activities and projects increases the complexity and scale of the licensing environment for museums.

However, the public benefit mission of museums plays a critical role in the formulation of museum policies in this area. Educational and access objectives are paramount in the achievement of this mission, and there can be tensions between these objectives and the purely commercial objectives of raising revenue. Museums therefore occupy a very particular place in the creative content distribution chain, and are uniquely positioned to negotiate the potential conflicts between a non-profit making ethos and the commercial imperative.

We welcome this inquiry because it provides us with an opportunity to present this unique position of museums, but also to articulate that the present legislation and cultural environment does not fully cater for the wide ambit of contemporary activities in the museum sector. Copyright law as it stands imposes constraints on the use of museum-derived content which can clash with the achievement of the public benefit objectives of museums.

Whilst we will be making a separate and more detailed contribution to the Gowers Review, we would wish to point to several issues in response to the specific questions raised by the CMS Committee:

- **The impact upon creative industries of recent and future developments in digital convergence and media technology**

Digital convergence offers huge opportunities for increasing access and engaging new audiences. Museums are having to adapt accordingly in terms of ensuring they are operating legitimately within the copyright framework in pursuing their non-commercial and educational functions, while also developing licensing mechanisms for revenue-generating potential. This has revealed problems in the copyright regime as it applies to museums. However, museums recognise the potentially huge role and impact of new media in engaging new audiences and fulfilling their public access remit.

- **The effects upon the various creative industries of unauthorised reproduction and dissemination of creative content, particularly using new technology; and what steps can or should be taken – using new technology, statutory protection or other means – to protect creators**

Because of the nature and capability of new technology, we acknowledge its benefits in providing greater access to our collections for more people. However, criminalizing certain activities of infringement, and the use of Digital Rights Management systems which can lock down access to content in contravention of the ‘permitted acts’ regime in copyright legislation, is in the view of the museum community, harmful and counter-productive and may in future have negative effects upon museums use of this content. Best practice in our sector concentrates instead on “educating the user” to be more responsible regarding our rights and those belonging to third parties.

We are also concerned that the current legislation (as outlined in the *Copyright and Related Rights Regulation 2003*) restricts legitimate circumnavigation of technological measures to protect content and this can be to our detriment when we need to have the freedom to be able to interact with content for the purposes of fulfilling our core missions.

- **The extent to which a regulatory environment should be applied to creative content accessed using non-traditional media platforms**

The lack of exceptions in the digital environment is seriously challenging museums in their basic collections management, in a way that was not the case for traditional media. The MCG sees a good case for a review of exceptions and uses of digital material. Many museums are paying for permission to reproduce their own collections for use in non-profit making and educational contexts. This does not seem justifiable in the context of the balance of interests that has developed over a long period of time between owners and users of copyright material.

- **Where the balance should lie between the rights of creators and the expectations of consumer in the context of the BBC's Creative Archive and other developments**

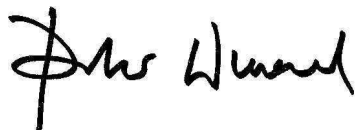
The museums community welcomes the initiatives of BBC's Creative Archives and also the flexible licences offered by Creative Commons, especially if this serves to make material more widely available on relatively unrestricted terms. However, although these licences may offer museums the ability to license out some content produced by them (especially content whose creation has been paid for with public funds), they are not uniformly fit for all purposes:

- (i) Unlike other organisations operating across the public private divide (such as the BBC) museums have not had in the past (and still today lack) the resources to commission large quantities of third party material on terms that the rights belong to museums, or on terms giving museums freedom to determine how this content is licensed on to users and other third parties. Many museums manage collections in which the rights are retained by the original creators. This does limit the usefulness of Creative Commons to this material.
- (ii) As indicated above, the current funding model for museums requires them to trade in order to make good use of their intellectual property and to generate the revenue required (inter alia) to continue investing in new means of engaging with their audiences. Creative Commons is problematic in this context.

Therefore, from a museum perspective, initiatives such as Creative Archive and Creative Commons do need to take into account that many institutions operate a number of access models for different audiences and one size does not fit all.

We hope that these comments are useful and look forward to making a more detailed response to the Gowers Review. We would be happy to respond to any specific queries which the Committee may have on this submission.

Yours faithfully



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