

REPORT TO EXECUTIVE

Date of Meeting: 28 November 2023

REPORT TO COUNCIL

Date of Meeting: 12 December 2023

Report of: Director of Culture, Leisure and Tourism

Title: Public Access to Images of RAMM Collections

Is this a Key Decision?

No

Is this an Executive or Council Function?

Council

1. What is the report about?

1.1 This report concerns access to digital images of objects in RAMM's collections. Currently, the museum routinely photographs objects for use on its online collections database. These images are not downloadable by the public. It also licences images to members of the public and commercial entities for personal use or in websites and publications at rates set out in ECC's fees and charges document. However, the income generated from these sales has stagnated to £2,378 (£1,500 direct to Exeter City Council, the remainder is made through Bridgeman Images) annually. Reasons reflect significant changes to Intellectual Property Office guidance on photographs of public domain works and the rise of 'open access' (the release of public domain works for free public reuse) among more than 1,600 cultural institutions around the world. Funders, such as the National Lottery Heritage Fund and the Higher Education Research Councils, are now precluding new rights from being claimed in photographs of public domain works and other commitments to open access principles as a condition of funding.

1.2 Some of RAMM's collections are protected by copyright while others are free of copyright and therefore in the 'public domain'. The Open Access Strategy outlined in this report applies to only public domain works. Examples range from artworks for which copyright has expired (ie, 'out-of-copyright' works) to creative works created before copyright laws existed or recognised protections in them.

1.3 This report was written in collaboration with the GLAM-E Lab project based at the University of Exeter, which provides cultural institutions and community organisations with support on aspects of law and digitisation. GLAM-E Lab (Galleries, Libraries, Archives and Museums - Exeter and Engelberg Law Schools Lab) explores key questions related to the legal status of cultural materials, ethical approaches to digitisation, open access and new business models. Working with RAMM, the GLAM-E Lab has offered specialist legal advice and guidance in drafting the Open Access Strategy (Appendix 1).

2. Recommendations:

That Executive recommends to Council that:-

2.1 The Council adopts an 'Open Access Strategy' in relation to digital copies of public domain works and other materials which are out-of-copyright (see Appendix 1); and

2.2 That authority to determine the digitised public domain works and other out-of-copyright materials to be published online in accordance with the Open Access Strategy is delegated to the Museums Manager (or subsequent equivalent post) and the Portfolio Holder for Culture and City Centre Strategy (or subsequent equivalent post);

2.3 That the Museums Manager (or subsequent equivalent post) will report on the progress of the Open Access Strategy on a quarterly basis to the Director for Culture, Leisure, Tourism and Communications (or subsequent equivalent post) and Portfolio Holder for Culture and City Centre Strategy (or subsequent equivalent post);

2.4 As detailed in the fees and charges schedule to allow the free reuse of digitised public domain collections up to 300 dpi when printed at A5 ('medium resolution') and retain the high resolution versions for commercialisation and restrict reuse through contracts.

2.5 That the fees and charges schedule attached to this report be adopted and reviewed on an annual basis.

3. Reasons for the recommendation:

3.1 RAMM is an active partner in the GLAM-E Lab project, a joint initiative between the Centre for Science, Culture and the Law at the University of Exeter, NYU Law and the University of Reading to work with smaller and less well-resourced UK and US cultural institutions towards building open access capacity and expertise. GLAM-E Lab is funded by the Arts and Humanities Research Council (AHRC). RAMM has had the opportunity to work with the GLAM-E Lab for a year to learn about and investigate these complicated issues surrounding open access, as well as pilot an Open Access Strategy. The project has provided funding for RAMM's participation including a fully-funded Postdoctoral Researcher to support this project. There is a dedicated pot of funding from the University to carry out any associated open access work as part of the project. As such, 2023-2024 is the best time to open collections as the project ends in 2024 as will the funding. This report will put forward recommendations based on RAMM's work with experts at the University of Exeter.

4. What are the resource implications including non-financial resources

4.1 All costs related to digitisation and expert support from the University of Exeter Law School are covered by the AHRC. The work has been guided by Dr Andrea Wallace, Associate Professor of Law and Technology at the University of Exeter. Dr Wallace is a licensed attorney in the United States and regularly consults cultural institutions on aspects related to copyright, digitisation and collections management. Her research studies open access engagement by cultural heritage institutions on a global level, and nationally in the United Kingdom. In 2022, she was commissioned by the AHRC's Towards a National Collection project to undertake an empirical study on open access to digital cultural heritage collections in the UK. The GLAM-E Lab project also funds the

Post doctoral Research Fellow's position at RAMM to spearhead the museum's participation and collaboration with GLAM-E Lab experts to guide the process. The grant also covers any additional costs necessary for the implementation of RAMM's Open Access Strategy. The Postdoctoral Research Fellow (Dr Farmer) and RAMM will also develop a communications strategy which will be funded by the project. Resources from the University of Exeter will also be used, including digitisation services provided by the Digital Humanities Lab.

4.2 Implementation of the Open Access Strategy will result in the removal of the annual £5,990 income budget, which has not been fully achieved in recent financial years. It is anticipated that the financial impact will be mitigated by enhancing future funding applications to bodies with whom it is a requirement or score positively.

5. Section 151 Officer comments:

5.1 The financial impact is noted and work will be undertaken to ensure that the reduction in the income budget is offset as suggested.

6. What are the legal aspects?

6.1 This report sets out the work that has been carried out by RAMM in conjunction with experts from the University of Exeter Law School and New York University Law School. The UK IPO has issued guidance on whether a new copyright arises in digitised copies of older works (UK IPO Copyright notice: digital images, photographs and the internet). Although there is no conclusive legal precedent on this issue, the position of the UK IPO is that 'it seems unlikely that what is merely a retouched, digitised image of an older work can be considered as "original". This is because there will generally be minimal scope for a creator to exercise free and creative choices if their aim is simply to make a faithful reproduction of an existing work.'

6.2 The UK Copyright, Designs and Patents Act 1998 does not explicitly recognise a rights holder's ability to waive copyright, RAMM can apply an open licence to its images to achieve the same result.

6.3 The open access movement for cultural heritage institutions is referred to as Open GLAM (Galleries, Libraries, Archives and Museums). Around the world, more than 1,600 cultural institutions have published their digital collections of public domain works for free reuse. In the UK, there are almost 100 participants in open GLAM. So far, only 7 cultural institutions have adopted an Open Access Strategy similar to the one proposed here. These include: Wellcome Collection; Birmingham Museums Trust; Royal Pavilion and Brighton Museums, Brighton and Hove; Aberdeen Art Museums & Galleries; York Museums Trust; Newcastle Libraries; and National Library of Wales. Almost all of these institutions reserve high resolution images for commercialisation while publishing lower-resolution images online for free reuse.

6.4 For the avoidance of doubt, the proposals in this report are restricted to public domain materials owned by RAMM, for which no copyright or other rights subsist. Any materials protected by copyright will not fall within the Open Access Strategy.

6.5 Finally, the retention of high resolution images by RAMM enables the museum to support the Council's interests in commercial exploitation of works of art by licensing the

high resolution images. The hybrid model proposed releases medium resolution images without charge for free reuse. High resolution images are retained to generate revenue and reuse will be subject to resolution by contract.

7. Monitoring Officer's comments:

This report raises no issues for the Monitoring Officer.

8. Report details:

8.1 This report has been written by the GLAM-E Lab Postdoctoral Research Fellow, RAMM's Content Management Lead and Dr Wallace with the support and resources from the GLAM-E Lab project. GLAM-E Lab provides free legal and digitisation support directly to US and UK lab participants working to implement open access programs and release digital collections online. The Lab then uses the lessons learned from that practical support to co-develop best practice guidance and tool-kits for the wider heritage community. GLAM-E Lab brings together UK and US practitioners, academics, and students from Law, Digital Humanities, and Museum Studies to overcome the legal and cultural obstacles to digitisation and open access programs.

8.2 As part of the GLAM-E Lab project, the Postdoctoral Research Fellow set up a working group. RAMM was selected as a project partner for a number of reasons including the breadth and significance of its collection, its size and its relative inexperience in the open access landscape. The GLAM-E Lab Postdoctoral Research Fellow initially identified the image licensing strategy already employed by RAMM. RAMM's collections include antiquities, costumes, natural sciences, fine and decorative art, and ethnography. RAMM licences images of objects upon request directly through museum staff and indirectly through Bridgeman Images. Large scale commercial image licensing occurs through Bridgeman Images, a specialist company in licensing fine art, cultural and historical media for reproduction; smaller research or personal image requests go through museum staff. Images are licensed to both the public and commercial entities for a number of uses. Further information on the fees and charges of image licensing at RAMM can be found on ECC's Fees and Charges Document.

8.3 As part of the GLAM-E Lab, an informal roundtable was organised in November 2022 with contacts from the seven open access museums and libraries referenced above. Each of these institutions has undergone the process of releasing digitised images of public domain collections. Each participant was asked why they had adopted an institutional open access policy, how this decision was made and which collections they had initially released. While the approaches taken differed depending on the governance structure of the institutions, each institution essentially focused on the losses of running the service as the perceived licensing value of digital assets declines. This is reflected in existing data, which shows the effort in providing direct licensing services significantly outweigh the actual profits to GLAMs. Recent data also indicates licensing income is shrinking as more GLAMs shift to open access and users shift to works released into the public domain. By contrast open GLAMs see new opportunities flow from commercial licensing of the brand and new international attention to their open access collections.

8.4 The roundtable participants suggested that RAMM should pilot their Open Access Strategy with a small number of thematic images that were easy to process, making sure

the release was simple and easy. In January 2023, RAMM uploaded 63 paintings depicting historic places in Exeter onto Wikimedia Commons. Since the release they have been viewed over 4.7 million times. Over 10 months, 41 of the images have been added onto 60 different Wikipedia pages including Richard III's page, the English Civil War and the Baedeker Blitz. Since the upload, 5% of visits to South West Collections Explorer and RAMM's collections database are referred from Wikimedia Foundation websites (see Appendix 3 for greater analysis into the trial).

8.5 The data generated by the RAMM open access trial is evidence that in releasing images open access, RAMM can reach a wider audience. There are also a number of additional benefits and income generating opportunities that need to be considered in deciding if RAMM's Open Access Strategy should be adopted. In releasing medium resolution images for free and retaining high resolution images for commercialisation, other museums saw a steady increase in commercial revenue from image sales. Any decline in overall revenue was attributed to income previously collected from academic and educational uses, which has been increasingly criticised as being a tax on individual researchers who must pay out-of-pocket for image licensing fees. The outcome was a significant increase in educational use in these sectors and more research and attention to the collections. Other museums that adopted open access strategies also saw an increase in visitors both online and in person which could lead to an increase in donations. Open access strategies have been found to boost the profile of museums that have adopted them, raising ECC/RAMM's public profile. Finally, open access strategies also lead to increased funding opportunities with the majority of large-scale funders such as the National Heritage Lottery Fund which is making open access both a requirement for recipients and a factor in assessing fundability. This type of funder also requires that outputs generated as a result of the funding are published open access.

8.6 Finally, a key detail in deciding if RAMM's Open Access Strategy should be accepted is to understand the legal debate. In the UK, copyright arises in 'original' works and lasts for the lifetime of the author plus 70 years after their death, after which the work then enters the public domain. However, UK courts have not considered the specific question of whether a new copyright claim occurs during the digital reproduction of public domain works. Even so, the Intellectual Property Office (IPO) released guidance in 2015 ('Copyright notice: digital images, photographs and the internet') that advised that a digitised image of a public domain work would unlikely to result in a new copyright. A 2018 House of Lords debate centred on whether cultural institutions were justified in interpreting copyright law differently than the IPO. There was no resolution to this question. The most recent version of the IPO Copyright Notice from 2022 reinforces the 2015 conclusion.

8.7 RAMM's Open Access Strategy has been informed by each of these legal mechanisms as well as evidence from the open access pilot study. It has also received support and resources from the GLAM-E Lab Project. As a result RAMM is recommending a hybrid approach where medium resolution images are released free of charge and high resolution images are retained to generate revenue.

9. How does the decision contribute to the Council's Corporate Plan?

9.1 Adopting open access for RAMM would contribute to the Thriving Culture and Heritage priority encompassing Exeter citizens' shared histories, personal identities and stories and the city's heritage. It would significantly contribute to this priority in a low-cost manner as the University of Exeter's GLAM-E Lab project is leading the project and covering its financial costs. Moreover, releasing digitised collections would raise the profile of the city while also promoting Exeter as a liveable, happy and healthy place to live for everyone. By releasing these images ECC will be giving the images back to the community to use in ways that support inclusion and stimulate local economic and social growth.

10. What risks are there and how can they be reduced?

10.1 There is limited risk. First, image licensing has stagnated to an annual average of £2,378 (£1,500 direct to Exeter City Council, the remainder is made through Bridgeman Images) annually. In releasing medium resolution images, staff time can be redirected to other activities, such as public engagement, collections management and exhibitions. Second, there is limited risk related to ongoing relationships with third-parties, like Bridgeman Images. RAMM will only publish the images it has created through in-house digitisation to ensure there is no risk of infringing third-party rights or contractual agreements.

10.2 In light of the number of institutions opening up their collections there are growing public expectations for free image use of collections out of copyright. Digital engagement and access is critical to the museum; by not releasing medium resolution images, RAMM risks alienating a range of audiences and stakeholders.

11. Equality Act 2010 (The Act)

11.1 Under the Act's Public Sector Equalities Duty, decision makers are required to consider the need to:

- eliminate discrimination, harassment, victimisation and any other prohibited conduct;
- advance equality by encouraging participation, removing disadvantage, taking account of disabilities and meeting people's needs; and
- foster good relations between people by tackling prejudice and promoting understanding.

11.2 In order to comply with the general duty authorities must assess the impact on equality of decisions, policies and practices. These duties do not prevent the authority from reducing services where necessary, but they offer a way of developing proposals that consider the impacts on all members of the community.

11.3 In making decisions the authority must take into account the potential impact of that decision in relation to age, disability, race/ethnicity (includes Gypsies and Travellers), sex and gender, gender identity, religion and belief, sexual orientation, pregnant women and new and breastfeeding mothers, marriage and civil partnership status in coming to a decision.

11.4 In recommending this proposal potential impact has been identified on people with protected characteristics as determined by the Act and an Equalities Impact Assessment has been included in the background papers for Member's attention. Publishing these images in open access removes both physical and digital barriers to access of RAMM's public domain collection and advances equality by encouraging participation and removing disadvantages. It enables disabled audiences and users to create their own accessible format copies of RAMM's collections. RAMM also undertakes a range of activities to support inclusion and diversity of its audiences. An Equalities Impact Assessment has been included in the background papers for Member's attention.

12. Carbon Footprint (Environmental) Implications:

12.1 No direct carbon/environmental impacts arising from the recommendations.

13. Are there any other options?

13.1 To not adopt the Open Access Strategy. However the GLAM-E Lab project is a unique opportunity for RAMM which will end in March 2024 and if RAMM opts to wait the guidance and funding from the project will no longer be available.

Director of Culture, Leisure and Tourism, Jon-Paul Hedge

Authors: Camilla Hampshire (Museums Manager), Dr Julien Parsons (RAMM Collections & Content Manager), Dr Andrea Wallace (Associate Professor of Law and Technology) University of Exeter, Dr Francesca Farmer (Post-doctoral Research Fellow) University of Exeter.

Local Government (Access to Information) Act 1972 (as amended)

Background papers used in compiling this report:-

Public Access to Images of RAMM Collections

Appendix 1: RAMM's Open Access Strategy

Appendix 2: What is Open Access and Why Should RAMM Do it?

Appendix 3: RAMM's Informal Open Access Roundtable Event and Wikimedia Commons Trial and Results

Appendix 4: Proposal for ECC Fees & Charges 2024-25 (excluding inflation)

Contact for enquires:

Democratic Services (Committees)

Room 4.36

01392 265275