

## Appendix 2 - What is Open Access and What Does it Mean for RAMM?

### 1. What is Open Access?

Galleries, libraries, archives, and museums have a fundamental role in supporting the advancement of knowledge, creativity, and culture. As custodians of our cultural heritage, they hold important records and creations of humankind.

Providing open access to heritage materials is one way that cultural institutions can fulfil their public and educational missions. By openly sharing their collections and metadata online, cultural institutions make it easy for society to access, engage with, and learn from our shared cultural heritage.

The Open Definition helps establish a common understanding of what “open” really means:

*“Open means anyone can freely access, use, modify, and share for any purpose (subject, at most, to requirements that preserve provenance and openness).”*

This type of openness serves as a guiding principle for constructing a meaningful open access programme. Understanding this definition helps institutions resolve many decisions involved with making heritage materials open access.

A growing movement called Open GLAM (Galleries, Libraries, Archives, and Museums) has led to more than 1,600 GLAMs publishing digital collections for unfettered reuse. UK GLAMs have released at least 10,491,926 of these open and public domain assets (12.2% of the global total volume). Only six UK GLAMs have so far complied with the IPO’s Copyright Notice by adopting policies to not claim new rights in all digitised public domain collections published online. These are Birmingham Museums Trust, National Library of Wales, Newcastle Libraries, Royal Pavilion & Museums Trust, Brighton & Hove, Wellcome Collection and York Museums Trust. Another 84 UK GLAMs have published small selections of digital collections under open licences and public domain tools.

In the UK, museums releasing collections have done so in various creative ways that reflect individual needs. The most successful programmes release medium resolution images under the Creative Commons CC0 public domain tool (e.g., at least 300 dpi when printed at A5). Such images can be downloaded directly from the online collections or other platforms.

## 2. Understanding Copyright and the Public Domain

Materials are deemed in the “public domain” when copyright does not apply or has expired. Materials in the public domain can be used freely by anyone for any purpose without permission.

For collections, here are three main roads to the public domain.

- **First, the copyright can expire or may have never existed.** In the UK, a work enters the public domain on January 1 of the calendar year following the expiration of a 70-year term of protection that begins upon the creator’s death. For example, the works of creators who died in 1952 pass into the public domain on January 1, 2023. Of course, some older works precede copyright protection and so they have always been in the public domain.
- **Second, the works might not be eligible for copyright protection.** Copyright primarily protects works of creative expression. That means copyright does not protect natural phenomena or objects such as insects or geological specimens. Nor does copyright protect functional objects, such as machines, short phrases or facts. From a copyright perspective, these materials are in the public domain from the start.
- **Third, materials can also be dedicated to the public domain by the copyright owner.** This can be done by displaying a public domain dedication mark or notice alongside the work.

## 3. Copyright and Digitisation

Digitising collections raises two main copyright questions. Each is addressed below.

### **Do you need permission from the owner of the copyright before digitising the materials?**

If the material is still protected by copyright, you will likely need permission from the copyright holder before digitisation. If the material is in the public domain, no copyright restrictions prevent digitisation and reuse.

Accordingly, it is recommended that open access programs and digitisation focus on works that are already in the public domain. While it is certainly possible to create a digitally accessible collection of in-copyright works, doing so will involve additional steps.

### **Do the digital reproductions of the materials attract copyright themselves?**

Faithful reproductions of public domain materials – such as those created by digital scanning – do not receive new copyright protections in many jurisdictions. That means simply digitising a public domain work would not create a new copyright in the digital surrogate owned by the digitising institution. This rule is less clear in the UK as there is no clear law answering this

question. The Intellectual Property Office (IPO) released guidance in 2015 that advised that a digitised image of a public domain work would unlikely to result in a new copyright; however, no new laws have been made. The Freedom of Information Act (FOI) and the Re-use of Public Sector Information Act (RPSI) both make public domain works digitised available free-of-charge to anyone requesting copies. However, when challenged the Information Commissioner's Office (ICO) recommended that the Imperial War Museum was justified for exceeding government guidelines for re-use of public sector information. As such, the law is not settled on whether a new copyright claim occurs during the digital reproduction of public domain works nor has it been tested by case law.

## 4. Creative Commons and Open Licensing

Licences, public domain tools, and labels help communicate to users how digital surrogates can be used, but they are not always interchangeable.

**Open licences** communicate that new rights arise, but the rightsholder permits use and modification for any purpose with minimal conditions on reuse. **Public domain tools** communicate that no rights exist in the underlying work or digital surrogate, and that the item can be used for any purpose, without permission, or any new reuse conditions.

Creative Commons licences can be a useful tool for GLAM's releasing digitised works of collections. However, if the existing work is in the public domain only the Public Domain Mark or the CC0 public domain dedication tool should be applied to confirm public domain status. This is because in the vast majority of jurisdictions there is no originality involved in making a faithful digital reproduction of a creative work. It should also be mentioned that when creating these reproductions there are very well-established industry standards for preservation purposes. Even if the digitised copies are the result of skilled labour, they may still lack sufficient creativity to be granted copyright protection.

The remaining CC licences can only be applied to works within copyright as only the copyright holder is the only person that can apply a CC licence to a work. CC licences are designed to only operate where copyright exists and as such the application of a CC licence is ineffective.

Is it better to use CC0 1.0 or the Public Domain Mark?

National standards for copyright or related rights may render materials public domain in one jurisdiction while subject to protection in another. For users in the more restrictive jurisdiction, this creates risks during cross-border reuse.

The legal code of CC0 1.0 Universal Public Domain Dedication recognises this uncertainty and ensures users that if any rights are recognised in the jurisdiction of use, the rightsholder waives them or will never enforce them and agrees to a fallback licence (hence the "Universal"). Creative Commons recommends CC0 for reproduction media of public domain works for this reason.

The Creative Commons website provides more information on open licences and public domain tools.

## 5. Open Access and the Future?

As the movement towards Open Access increases, so do public expectations of the same. For institutions Open Access offers a number of benefits from opening up collections. It has:

- Removed barriers across systems and within operations, including the “copyright delay” embedded in collections management and public engagement;
- Positively impacted their ability to attract research funding, including funding for digitisation (notably, for some with more developed open access programmes, the amount of funding attracted by the programme far outweighed the revenue generated by commercial licensing on an annual basis).
- Positively impacted internal and external researchers’ abilities to pitch new projects and publish on topics that require images; resulted in greater overall public interest in collections, positive attention and good will;
- And increased the brand value and public profile of the institution. When asked the value of opening up their collection, Birmingham Museums Trust estimated hundreds and thousands in free media coverage when they launched their collection.

Current licensing arrangements for images of public domain works does not appear to be a present or future revenue scheme with potential for growth, and its administration is frequently a financial burden on the GLAM sector. Data strongly suggests commercial licensing services are unsustainable and have been for some time (see Wallace, A (2022) ‘A Culture of Copyright report’). Providing these services incurs loss for the majority of UK GLAMs; few are profitable, and those that are, are primarily national museums.

These limited income sources also appear to be shrinking. UK GLAMs operate within a global marketplace for image licensing where high-resolution images are increasingly released to the public domain by other GLAMs. As one participant commented, “You can’t compete with free.”