

Rights management

Definition

Managing the intellectual property rights and data protection rights associated with objects, reproductions and information.

Scope

Copyright is the commonest of the 'intellectual property rights' you may need to deal with, but there are others (including publication rights, trademarks, patents and designs). You can also use this procedure to manage the data protection rights that may be associated with photographs of living people in some circumstances.

Owning something does not automatically mean you own the copyright or any other associated rights. So the first step in rights management is to work out what rights might apply to a given object, who might hold them, and how long the rights will last. Note that the law applies equally to physical works (eg a 35mm transparency) and to born-digital works (eg an image file from a digital camera). You also need to work out who, if anyone, has rights in any existing reproduction of that object, or whether you can claim copyright (or, potentially, publication right) in any new reproduction you make.

This procedure cannot tell you when material in your collection might be subject to one or more rights, only how to manage rights you have identified through your research. Many situations will be straightforward once you have grasped some basic legal principles; others will be more complex and may rely on law that has not yet been tested in court. Your rights management policy should set out your approach to risk in situations where potential rights holders are unknown or untraceable.

The Collections Trust website has links to resources that can answer many of the most frequently-asked questions about copyright and related rights. If in doubt, you should seek specialist advice and proceed with due diligence and common sense.

The Spectrum standard

You should have a **policy** covering rights management. This could either be a standalone document or part of a wider collections management policy. Either way, in deciding your policy you will most likely need to consider these questions:

- What steps will you take to establish who holds any rights associated with new acquisitions or loans?
- If applicable, will you seek to acquire copyright, or a licence to use the material, in new acquisitions?
- Will you seek to acquire copyright, or a licence to use the material, in reproductions or other work carried out on behalf by volunteers or contractors?
- What steps will you take to research the rights associated with objects and reproductions already in your collections, and how will you prioritise this work?
- What is your policy on using material that is likely to be in copyright but whose rights holders are unknown or untraceable?
- To what extent will you help enquirers make contact with third-party rights holders, and how will you protect any personal data involved?
- What is your policy on licensing material for which you hold rights for use in different situations (eg commercial publication, re-use of online material)?

You should also have a written **procedure** that explains the steps to follow when managing rights associated with your collection. Spectrum's suggested procedure is a useful starting point, but however you do it, your own procedure should meet the following minimum requirements:

| Minimum requirement | Why this is important |
|---|---|
| Where known, you record details of rights held by you and others in respect of your objects and reproductions - and reference this information from the relevant catalogue records. | You can quickly see from its catalogue record that an object or reproduction is subject to rights - and who the rights holder is. |
| You document rights associated with new acquisitions, and with new reproductions or other content created or commissioned by you, as soon as possible. | You do not build up a new backlog of material with poorly-documented rights information. |
| You keep rights holder contact details as up-to-date as practical, in line with your data protection policy. | You can contact rights holders (or their estates) if you need to, potentially up to 70 years after the original creator dies. |
| You document all agreements with rights holders that clear you to use their material - and reference these from the relevant catalogue records. | You can find written proof of permission to use copyright material if you need it (eg if a dispute arises in future). |

| Minimum requirement | Why this is important |
|---|--|
| Before using objects or reproductions likely to be in copyright, but where the rights holders are unknown or untraceable, you make reasonable enquiries and document these. | You can demonstrate due diligence if you decide to use the material anyway. |
| You document all licences allowing others to use material for which you hold copyright or publication rights - and reference these from the relevant catalogue records. | Where applicable, you can control how your rights-protected material is used. |
| Your system allows you to see when rights or licences have expired. | <p>You are able to use material freely as it comes out of copyright.</p> <p>You do not use material under licence for longer than allowed.</p> |

Suggested procedure

Researching rights associated with your collections

Research the rights associated with objects, reproductions and information in your collection.

It is very unlikely that your museum will have complete and up-to-date information about the rights associated with material in your collections. Your rights management policy should set out the steps you will take to address the backlog, and how you will prioritise the work (eg focus on material you know you want to use in a forthcoming exhibition or online project).

It is important you do not build up a new backlog of material with poorly-documented rights information. Therefore one priority should be to research and record the rights associated with new acquisitions as soon as possible. Another priority should be to record the rights associated with any new reproductions or other content (eg publication text) created by your museum or commissioned by it (eg from freelance photographers, who might retain copyright in their work but license you to use it).

For each right, record information about the right and its holder.

After research, for each right, record the:

Object identification information

- Reference number of the object with the right - *Object number*.

And/or

Reproduction information

- Reference number of the reproduction with the right - **Reproduction number**.

And/or

Object use information

- Reference number of rights-managed text - **Text reference number**.

Rights information

- A reference number for the right being described - **Right reference number**.
- Type of right - **Right type** (use a standard term source).
- Name and contact details of the holders of the right (there may be more than one):
 - **Right holder** (use a standard form of name).
 - **Right holder's contact** (use a standard form of name).
 - **Address**.
- Start date of the right - **Right begin date** (use a standard format).
- End date of the right - **Right end date** (use a standard format).
- Reference to any documentation associated with the right, including licences or waivers granted to and by you - **Right note**.

Reference information

- The **Document location** of any filed documentation, so that you and others can find it in future.

If the rights holder is not known, record them as 'unknown' and keep a due diligence file of your research.

Record:

Rights information

- Details of the holders of the right - **Right holder** (with 'unknown').
- Summary of your due diligence research - **Right note**.

The due diligence file should contain details of your research, and copies of all enquiries you have made. Record:

Reference information

- Location of the file - **Document location**, so that it can easily be found and referred to.

Maintain your rights records.

Review this information on a regular basis, and update when necessary (eg when copyright expires or rights holders change).

Getting permission from other rights holders (Rights in)

This will usually be prompted by a proposed use of an object or reproduction (see **Use of collections**) when you know who holds the relevant rights and are able to contact them or their representative (eg an agent or the relevant collecting society, such as the UK's Design and Artists Copyright Society, DACS).

Ask the rights holder, or their agent, for permission to use their material in the way you want.

If they refuse, or propose terms you cannot meet (eg a licence fee beyond your budget), you may not use the material in question.

Record information about the permission (which might be a formal licence).

If the rights holder does agree to the use, you should always get this in writing. This might be anything from a brief exchange of emails to a formal licence agreement signed by both parties. For each permission or licence granted record:

Object identification information

- Reference numbers of the objects covered - **Object number**.

And/or

Reproduction information

- Reference numbers of the reproductions covered - **Reproduction number**.

And/or

Object use information

- Reference number of rights-managed text - **Text reference number**.

Rights information

- Name and contact details of the holders of the right (there may be more than one):
 - **Right holder** (use a standard form of name).
 - **Right holder's contact** (use a standard form of name).
 - **Address**.

Rights in information

- The reference number - **Rights in reference number**.
- The rights being acquired by you - **Rights in type** (use a standard term source).
- The start date of the permission or licence - **Rights in begin date** (use a standard format).

- The end date of the permission or licence - *Rights in end date* (use a standard format).
- Other details - *Rights in note*. (See **Note 1**)
- Status of the record - *Rights in consent status* (use a standard term source).
 - *Rights in consent status date* (use a standard format).

Reference information

- Location of the licence agreement - *Document location*, so that it can easily be found and referred to.

Authorising use where the rights holder is unknown

In some cases you may want to use material likely to be in copyright, but do not know who the rights holders are or how to contact them, even after reasonable attempts to find out. Your rights management policy should set out what to do in such circumstances, and who within your museum should authorise any use of such material. (See **Note 2** for additional guidance).

If the use is authorised, record the following information:

Object identification information

- Reference numbers of the objects covered - *Object number*.

And/or

Reproduction information

- Reference numbers of the reproductions covered - *Reproduction number*.

And/or

Object use information

- Reference number of rights-managed text - *Text reference number*.

Use of collections information

- The person who authorised this use - *Use authoriser* (use a standard form of name).
 - When the use was authorised - *Use authorisation date* (use a standard format).

Licensing your rights to others (Rights out)

These steps apply if someone wants to reproduce material for which your museum holds some kind of intellectual property right, or if you decide to make such material available (eg by publishing digitised collections online). This might be the case when:

- Copyright has been explicitly assigned to you when acquiring an object.
- You have images of objects and claim copyright or publication right for those reproductions (ie rather than in the original objects).
- You have text for which you claim copyright.
- You have an agreement to act on behalf of relevant rights holders.

Remember that:

- Owning an item does not automatically mean you own the copyright.
- While you normally own rights in material created by paid employees during the course of their work, this is not automatically the case with material created by contractors (eg freelance photographers) or volunteers. Your contracts and volunteer agreements should either assign copyright to your museum, or grant you a licence to use the material (and to sub-license it to others).
- There may be separate rights (and different rights holders) in an original object and a reproduction of it.
- It is currently unclear whether exact reproductions of two-dimensional objects (eg photographs of paintings or scans of documents) would meet the 'originality test' needed for copyright to apply. However, in some circumstances you may be able to claim a 'publication right' in such reproductions.

Do you agree to the proposed use?

If not, or if the relevant rights are not yours, you should inform the person requesting the use in writing. Your rights management policy should set out the extent to which you will help enquirers make contact with third-party rights holders, always following your data protection procedures.

Propose the terms of the licence you offer.

If you agree to the proposed use, you should also inform the person requesting it in writing, setting out the terms of the licence offered. These might include any fee proposed, any specific limitations (eg print run or period of time for online use) and other conditions (eg the credit to be given).

If the proposed use comes from within your museum (eg for online publication of digitised collections) your rights management policy should set out how you will license such use (eg a bespoke licence or an off-the-shelf one such as one of the Creative Commons options). Note that some of the off-the-shelf options (including Creative Commons) are irrevocable, so should be properly authorised by your governing body to avoid inadvertently giving away rights you might later wish you had kept.

Record information about the licence.

For each licence record:

Object identification information

- Reference numbers of the objects covered - *Object number*.

And/or

Reproduction information

- Reference number of the reproductions covered - *Reproduction number*.

And/or

Object use information

- Reference number of rights-managed text - *Text reference number*.

Rights information

- Name and contact details of the holders of the right (there may be more than one):
 - *Right holder* (use a standard form of name).
 - *Right holder contact* (use a standard form of name).
 - *Address*.

Rights out information

- The reference number of the licence - *Rights out reference number*.
- If applicable, name and contact details of the organisations or persons being granted by the licence:
 - *Rights out requester* (use a standard form of name).
 - *Address*.
- The rights being granted by the licence - *Rights out type* (use a standard term source).
- The start date of the licence - *Rights out begin date* (use a standard format).
- The end date of the licence - *Rights out end date* (use a standard format).
- Other details - *Rights out note*. (See **Note 1**).
- Status of the record - *Rights out consent status* (use a standard term source).
 - *Rights out consent status date* (use a standard format).
- Who authorised the licence - *Rights out authoriser* (use a standard form of name).
 - When the licence was authorised - *Rights out authorisation date* (use a standard format).

Reference information

- Location of the licence agreement - *Document location*, so that it can easily be found and referred to.

Guidance notes

Note 1: Rights in/out notes

These might include:

- The copyright status of the original work where a reproduction is being created (eg a photograph of a modern art work).
- Sub-licences granted to third parties.
- Warranty and indemnity clauses in the licence.
- Past history (eg date previous rights granted).
- Restrictions to the rights licence granted.

Note 2: Using material when you cannot trace potential rights holders

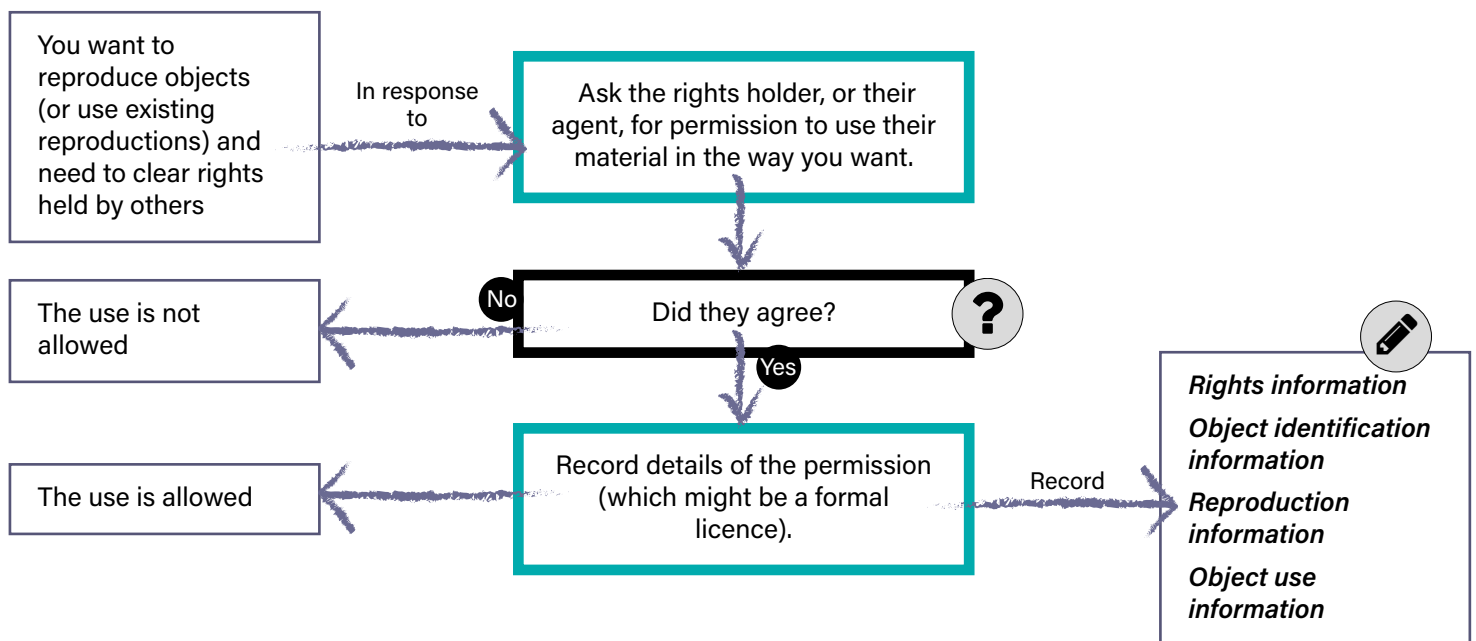
It is worth noting that, although there is a potential risk attached to using so-called 'orphan works', you may be able to insure against any financial liability that might arise if a rights holder successfully challenged the use. In the UK there is currently an official Orphan Works Register that licenses the use of such material, though it has been little used to date.

Rights management

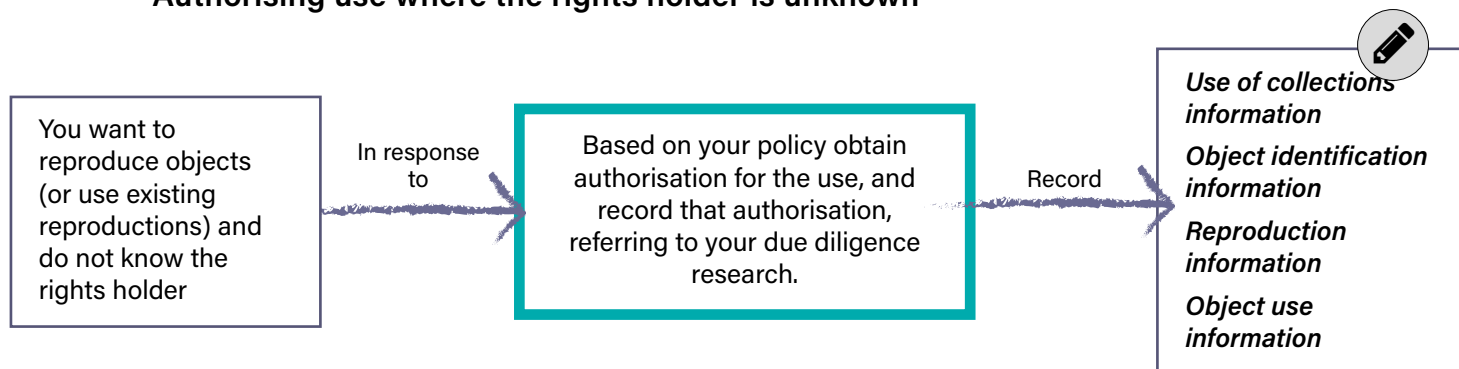
Researching rights associated with your collections



Getting permission from other rights holders (Rights in)



Authorising use where the rights holder is unknown



Licensing your rights to others (Rights out)

