WELCOME TO THE UUK/GuildHE COPYRIGHT WORKING GROUP SUMMER EVENT

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EXCEPTIONS, LICENCES
AND GENERAL CONFUSION
NO PERMISSION IS NEEDED

PERMITTED ACTS (EXCEPTIONS)

PERMISSION IS NEEDED

PERMISSION GRANTED (LICENSING)
Note: assume the image is an ‘embedded work’ and so falls within the scope of the Directive, as well as OWLS. Which route should you choose?
Diligent Search activity:

- The Orphan Works Register
- Internet-based reverse image searches (Google, PicScout and Tineye)
- Association of Photographers
- British Association of Picture Libraries and Agencies
- British Institute of Professional Photographers
- 25 minutes, in one day
EXCEPTIONS and CONTRACT OVERRIDE
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To the extent that a term of any contract purports to prevent or restrict the doing of any act which, by virtue of this section, would not infringe copyright, that term is unenforceable (s.29(4B))
PROTECTED EXCEPTIONS

- non-commercial research and private study (s.29(4B))
- text and data analysis for non-commercial research (s.29A(5))
- quotation (s.30(4))
- caricature, parody or pastiche (s.30A(2))
- enabling access and use for disabled persons (s.31F(8))
- illustration for instruction (s.32(3))
- copying by librarians (ss.41(5), 42(7), 42A(6))
- recording of a broadcast for archival purposes (s.75(2))
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**NOT TRUE FOR:**
- research and private study
- text and data analysis
- quotation
- parody
- enabling access and use for disabled persons
- illustration for instruction
- certain copying by librarians
- archiving broadcasts
CONTRACT OVERRIDE and STATUTORY FRAUD
FRAUD ACT 2006

Introduced a single, broadly based offence of statutory fraud which can be committed in three different forms:

- fraud by false representation
- fraud by failing to disclose information
- fraud by abuse of position

Is this an example of fraud by making a dishonest false representation? (Is the representation dishonest?)
DIGITISING THE EDWIN MORGAN SCRAPBOOKS
digitisingmorgan.org
Edwin Morgan (1920-2010), the first Scots Makar (National Poet of Scotland)

- 16 Scrapbooks, created between 1930s-1960s
- 3,600 pages full of third-party copyright material
- 30 page sample from Book 12 (10% sample), 1954-1960
- 380 individual cuttings, with 432 literary or artistic works (some cuttings contained multiple works)
- 52% of the cuttings were orphan works
- diligent search = 8 years and approximately £180K
Helpful? A resounding YES! I would definitely consult this myself and would recommend it to others

Language and tone: very succinct, clear and helpful for the non-expert reader

DIGITISATION AND THE MORAL RIGHT OF INTEGRITY
Ronan Deazley and Kerry Patterson

1. Introduction
When undertaking a digitisation initiative, it is important to have a clear idea as to when the right of integrity is relevant or not to works held within a collection, as well as when your use of a work might trigger liability. This briefing note explains the protection which UK law provides for the moral right of integrity - the right to object to the derogatory treatment of a work. It considers the implications of this right for non-commercial digitisation initiatives, explores the definition of ‘derogatory treatment’ and addresses a number of related questions.
- Forbidding / Intimidating
- I want an ‘in a nutshell’ summary ... [I] want answers that are easy to find
- Very legalistic and wordy: terms like ‘proviso’ are off-putting
- Be cautious with [the] mention of cataloguing as this is worrying
- After reading, I was worried about things I hadn’t been concerned about before
- Please reinforce that archivists ARE NOT SENT TO PRISON
- Works that we deemed to be insubstantial and so did not require permission (84 works in total)
- For only 10 of the 226 identified orphans did we make use of the Directive or OWLS (five each)
- 19 works for which permission was offered subject to a fee, from £15 to $2000 (no fees paid)
- No response from five copyright owners (we were confident of contact details for only two of these five)
Regarding copyright material for which we could not secure express permission - either because we could not identify the owner concerned or because permission was contingent upon payment of a fee - we reproduce it here in accordance with sections 29 and 30 of the Copyright Designs and Patents Act 1988 (the CDPA) permitting use for non-commercial research and for the purposes of criticism, review and quotation ... 

If you are the owner of any material that remains in copyright, and you consider that our use of the material does not fall within the scope of the copyright exceptions referenced above, or is not otherwise lawful, then please contact us so that we can discuss this issue and hopefully address any concerns you may have.
Is Digitising the Edwin Morgan Scrapbooks lawful?

We don’t know

We can’t know

... but it probably is
LICENSE WHEN
YOU NEED TO
LICENSE WHEN IT MAKES SENSE
FLEX YOUR COPYRIGHT MUSCLES
LOVE UNCERTAINTY
LOVE EXCEPTIONS
LOVE COPYRIGHT
Welcome to the Copyright Cortex

Recently Added Items

- **Policy & Evidence**
  - Towards a modern, more European copyright framework
  - Item Author

- **Research**
  - Museums’ claims of copyright in digital reproductions of public domain works of art - a conflict with the right to access culture?
  - Item Author

- **Tools & Resources**
  - Item Author

- **Research**
  - How Copyright Keeps Works Disappeared
  - Item Author

- **Tools & Resources**
  - Slowly improving Copyright clarity
  - Item Author
THE COPYRIGHT CORTEX IS TWO THINGS:

A CATALOGUE. It collates material relating to copyright and digital cultural heritage – scholarly publications, practical guidance, policy documents, and real world case studies – organised under three broadly defined headings: (i) Research; (ii) Tools & Resources; and (iii) Policy & Evidence

A BOOK. A comprehensive introduction to copyright law for memory institutions, focussing specifically on how copyright impacts access to and use of digital cultural heritage materials within and across national borders
We did not seek permission to make use of any of the surrogates included in the exhibition, or in the accompanying materials. Instead, we relied on the copyright regime, specifically the exception permitting use for non-commercial research purposes. Not everyone will agree with our approach. For example, one could argue that our use does not fall within the scope of the exception at all perhaps, it is not the right kind of research, or the exception was never intended to enable our type of use. Alternatively, even if it is the right kind of research or the right kind of use, one might argue that our use is not fair, and, if our use is not fair, the exception will not apply. We have considered these (and other) arguments but on balance we believe we can avail of the exception. However, we do not know that we can. In this respect, the best we can say is that we have a high level of confidence that the project is probably lawful. We cannot make any stronger claim than that. Nor should we need to. But, inevitably, this means we must assume a certain amount of risk in making our project available online. We have considered the risk, and we are comfortable with it.

We encourage others to take a similar approach to copyright management. Don’t ask: who do I need to ask for permission? Don’t ask: do I need to ask anyone for permission? Don’t ask: can I be sure that this activity is lawful? Ask: how confident am I that this activity is probably lawful? Ask: what is the nature of the risk involved in this activity, and am I comfortable with it? Ask: is this an appropriate risk to take so that I can deliver on my institution’s public mission? Ask: how are my colleagues in other similar institutions managing these issues?

Incidentally, since launching Display At Your Own Risk, we have received no complaints from any institutions that feature in the exhibition, only compliments, thanks and encouragement. Some institutions have even been prompted to revisit and review their policies and practices in response to the exhibition. You can view Display At Your Own Risk here.
THE COPYRIGHT CORTEX IS WRITTEN FOR:

- Librarians, archivists, museum curators and other information professionals
- Researchers and academics who work in the digital humanities
- Researchers with an interest in copyright and digitisation practices
- People who are anxious about copyright
THE COPYRIGHT CORTEX
COMING SOON TO A
SMALL SCREEN NEAR YOU