



## COPYRIGHT GUIDANCE ON THE USE OF IMAGES

This guide aims to provide The Arts Society's network of local Societies with a general overview of UK copyright law and its applicability to the use of images in local Societies' print and online publications.

The information in this guide is for general guidance on copyright only and does not constitute legal advice. If you require legal advice on what course of action to take in a specific situation, please contact The Arts Society House in the first instance.

### **What is copyright?**

Copyright is an intellectual property right assigned to the creator of any piece of original work. This could be one person, multiple people, or a company.

Photographs, illustrations, and other images will generally be protected automatically under UK statute by copyright as artistic works. In general, copyright in photographs, illustrations, and other images lasts for the life of the creator plus 70 years from the end of the calendar year of their death.

This means that a user will usually need the permission of the copyright owner(s) if they want to perform certain acts, such as copying the image or sharing it on the internet. This also applies:

- to older works of art, as those works of art and/or any photographs of those works of art may still be protected by copyright; and
- to any images sourced from lecture materials, as it may be that either the lecturer has not obtained the relevant permission in the first instance or the lecturer's own use of any images falls under one of the permitted exceptions to obtaining copyright permission.

Images include:

- digital photos taken on mobile phone and digital cameras;

- images that were first generated on photographic film and any digital images created from them; and
- images such as artwork, diagrams, and charts.

The copyright symbol does not have to be present for copyright to exist. So just because there is no name or copyright symbol associated with a photograph or image does not mean the image is not protected by copyright.

The overall point to remember is that the vast majority of images, even on the internet, are likely to be protected by copyright, so it is only safe to use an image if you have specific permission to do so.

### **Why is it important to have permission to use an image?**

Copyright infringement arises when you use an image without permission. Various courses of action can result from copyright infringement.

The copyright holder (whether it's the owner or someone who administers the copyright) could ask the user of the image to purchase a licence and a commercial arrangement may be reached, after which no further action is taken.

The copyright holder may also ask the user of the image to pay compensation for any unauthorised past usage.

Alternatively, the copyright holder could take legal action by bringing a claim in court which could mean going to court for a hearing. A court case could result in the user of the image paying the cost to use the photograph plus the legal costs of the user as well as the copyright holder and possibly other financial compensation (an award of damages or account of profits arising from the use of the image). The user could also be asked to take down the image and permanently remove all copies of the image from websites.

Lastly, deliberate copyright infringement on a commercial scale could result in a criminal prosecution.

The overall point to remember is that the cost of obtaining a licence from the copyright holder prior to your use of an image will very likely be cheaper than not obtaining the relevant permission from the copyright holder to use an image in the first instance.

### **How can I ensure an image is safe to use?**

The Arts Society has developed a bank of images free to use by the Societies which can be found in the Resources Area of The Arts Society website, which is:

<http://theartsociety.org/resource/sourcing-images>

If you would like to use an image that you have found elsewhere, you must seek the copyright holder's permission to use the image prior to using the image.

There are two ways to approach the copyright holder:

- use their direct contact details, or
- approach a body that represents them for rights administration purposes.

A majority of websites and individual web pages do carry a general copyright notice indicating who owns the content shown.

However, there are also individual online images which will not have a notice identifying who owns the copyright in them. In such a case, it may be possible to identify the copyright holder in one of the following ways:

- WHOIS search: if the image was posted by the registrant of the website's domain name (the address shown in the browser), so for example by the website operator as part of its homepage, then it is possible to look up the registrant's details in the WHOIS database. Please note that due to recent EU and UK legislation on data protection, information about registrants is no longer available to the public via the WHOIS database for .UK domains unless the registrants have expressly consented to this. For information on those registrants who have not consented to such information being available to the public, a form will need to be submitted to Nominet (the official registry for .UK domain names) requesting disclosure. Nominet says that the response time to such requests will be one day.
- A reverse Google search: right-click on the image and select "search Google for image" from the dropdown menu. A list of website pages on which the same image appears will be generated, as well as a further list of pages on which a similar image appears. This might help to trace the copyright holder.
- Consult [www.copyright.org](http://www.copyright.org): a website set up by representatives of the creative industries
- Undertake a search of a national copyright register like the US copyright office (<https://cocatalog.loc.gov>)
- Consult a private copyright registry, many of which are listed in Annex 1 to the Survey of Private Copyright Documentation Systems and Practices published by the World Intellectual Property Organisation in 2011
- UK's Intellectual Property Office (IPO) has guidance on how to undertake a "diligent search" to find out who owns copyright in a still image ([https://assets.publishing.service.gov.uk/government/uploads/system/uploads/atta](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/444444)

[chment\\_data/file/474403/orphan-works-still-visual-art.pdf](chment_data/file/474403/orphan-works-still-visual-art.pdf))

- If an owner can be identified but no contact details are available, it may be helpful to speak to one of the following organisations to see whether that owner is a member and therefore contactable through them:
  - Design and Artists' Copyright Society (DACS)
  - The British Association of Picture Libraries and Agencies (BAPLA)
  - The PLUS Registry (a free global non-profit registry based in California)

### **Do I have to pay the copyright holder to use the image?**

Not necessarily. Some copyright holders may give their permission to use their image free of charge or contingent on a copyright credit (see below). Other copyright holders may ask the user of the image to purchase a licence.

### **What if it is not possible to find out the identity or address of the copyright holder?**

Works whose copyright ownership cannot be traced through a “diligent search” (see below) or where an owner is identified but there are no contact details available for them are considered “orphan works”.

A “diligent search” means a search of:

- The orphan works register maintained by the IPO (<https://www.orphanworkslicensing.service.gov.uk/view-register>)
- The orphan works register maintained by the EU Intellectual Property Office (<https://euipo.europa.eu/orphanworks>)
- The sources listed under Part 2 of Schedule ZA1 of the Copyright, Designs and Patents Act 1988 (these sources include books, newspapers and periodicals, journals and magazines, and databases belonging collecting societies and picture agencies)

If the diligent search fails to identify the owner, or identifies the owner but cannot be contacted, then an application to the IPO for an orphan work licence to use the image on a non-exclusive basis can be made. These licences can be given for commercial or non-commercial use. An application fee and a licence fee are payable.

Before applying for an orphan work licence though, please check whether the image to be used has already been licenced as an orphan work by the IPO or EUIPO. If a licence has already been granted to use that image, it is possible to rely on the previous licensee's diligent search. A new search will not be need to be done until seven years after the first

orphan work licence was applied for.

### **Once I have permission to use an image, how do I give copyright credit?**

Some examples of photo credit lines include:

- Photo by [name of source/creator of the image]
- Drawings provided by [name of source/creator of the image]
- Image courtesy of [name of source/creator of the image]
- © [year] [name of source/creator of the image]
- “[title of image]” by [name of source/creator of the image]

Photo credit lines may appear next to the image, as part of the caption, or elsewhere on the page.

In the case of web use, linking to the creator’s website or the website of the source of the image may be required or suggested.

### **Can I use my own images in my Society’s print and online publications?**

The answer depends on the circumstances.

If you have created the images yourself, you are generally free to use them as you wish. This includes taking photographs of animals, landscapes or works for which copyright has expired. In such instances, it will not be an infringement of copyright to use such an image.

However, if the images you have created are of a third party, you must have that third party’s permission to use them. As an example, if you took photos of children as part of a Young Arts project, you must obtain permission from that child’s school and/or parents to use that image. For further guidance please see:

<https://theartsociety.org/resource/child-protection>

With respect to buildings, sculptures and similar works on public display in public spaces, you do not need permission to photograph them. You are free to use them as you wish. However, please note this does not apply to two-dimensional graphical works such as posters or commissioned murals which are located in public spaces. Taking photographs of such works and/or making copies of such works could harm the interests of creators, and could be an infringement of copyright.

With respect to artworks in a museum or a gallery, you need to be careful about copyright infringement as those artworks may be protected by copyright. You are allowed to take a photograph of a room of artworks, provided the inclusion of such artworks in the photograph was merely incidental. However, if you take a photograph of a specific artwork, and that specific artwork forms an essential part of the image, this could result in your photograph itself being an infringement of copyright. Furthermore, using that photograph on the internet is likely to be an infringement of copyright as well. Therefore, it would be prudent to contact the museum in question to enquire about the copyright of that particular artwork as well as their copyright and permissions policy in general.

Further reading on copyright can be found on the UK government's website:

<https://www.gov.uk/topic/intellectual-property/copyright>