

## IPR Advice Sheet 12 a

# Volunteers and Intellectual Property Rights (IPR) Frequently Asked Questions (FAQ)s

May 2020

*Disclaimer - The contents of this document are based on the assessment of Naomi Korn Associates and are intended as an overview of the broad issues relating to volunteers and IPR in museums rather than legal advice. If such legal advice is required, the opinion of a suitably legally qualified professional should be sought.*

*This resource was developed by Naomi Korn Associates as part of a project commissioned by Museum Development Yorkshire.*

### Related Topics

#### *Advice Sheet 1*

*Guidance on IPR in museum image collections*

#### *Advice Sheet 3*

*Exploiting the museum's IPR and cultural assets for financial benefit*

#### *Advice Sheet 4*

*Securing IPR as part of good museum collections management and documentation*

#### *Advice Sheet 5*

*Further information on Intellectual Property Rights ('IPR')*

## What copyright works do volunteers create?

This will depend on the volunteer role in the museum. Volunteers whose roles include activities such as writing blogs, taking photographs, making short films for marketing and social media, and recording interviews for exhibitions and events in undertaking their tasks will create new copyright works. In museums that are fully volunteer-run, day-to-day administrative outputs such as writing emails and reports are also protected by copyright.

## What should a volunteer-run museum do about owning copyright in work created by its volunteers?

If your museum would like to freely use work created by your volunteers it is important to have a formal agreement in place. One way of doing this is to include a transfer of copyright in your standard volunteer agreements. This may be suitable for volunteers that create copyright works only occasionally within their volunteer role, or for volunteers who create works as a result of administrative duties.

If your museum engages volunteers to create work that is intended to be used in an outward-facing capacity, for example in marketing, on social media, or creative output such as film making, a separate deed of copyright assignment would be more suitable for specific pieces of work or projects.

If your museum is not a legally incorporated body, and is run by volunteers and/or trustees, copyright cannot be assigned to the museum itself. Instead those involved will need to discuss a mechanism whereby they grant each other permissions to reproduce any content that is created, or consider perhaps appointing a third party who can hold any copyright for them on their behalf.

As well as copyright, creators have 'moral rights' connected to the works they have created. These rights relate to the creator's honour or reputation. The most important moral right related to volunteer work is the right to be named as the creator of the work (called the paternity right).

Unlike copyright, moral rights cannot be assigned to another person or organisation, but they can be waived. This means that even when the copyright has been assigned to your museum, volunteers keep their moral rights unless you ask them to waive them, which is not recommended. Where possible, you can agree to include the volunteers' name alongside their works if they consent to this. This is a great way to acknowledge the volunteers' valuable contributions to your museum. The protection of such rights might be of particular importance to volunteers who provide creations that are deeply personal to them and/ or their heritage. If you are utilising volunteer content that is particularly sensitive or if the volunteers are vulnerable people the way in which you protect their moral rights is especially important during the process of co-curation.

## What is a deed of copyright assignment and why should it be used with volunteers instead of an ordinary assignment?

A deed of copyright assignment is used to transfer copyright from one party to another, in this case from the volunteer to your museum, trustees or a third party. Volunteers do not have the same rights as employees, so it is important to treat their work differently and to remember that your museum does not automatically own the rights in their copyright work.

Under UK copyright law, an employer owns the copyright in works created by their employees. This is, in part, because employees are paid for their work – for example, with wages and other benefits such as sick pay and pension contributions. This is not

the case for volunteers and it is important not to imply that volunteers have the same employee-employer relationship.

**What options do volunteer managers have if their volunteers don't want to transfer their copyright in works created as part of their volunteer duties?**

If a volunteer is not sure about assigning their copyright, sit down with them and discuss what the assignment means and how it benefits their contributions to the museum. You may wish to add extra clauses to the volunteer agreement or deed of copyright assignment to benefit the volunteer. For example, your museum could include a clause to grant the volunteer a licence to use their work too, without having to ask your museum for permission.

If volunteers do not want to transfer their copyright at all, an agreement could be made for your museum to licence the work from the volunteer instead. If a licence is used, the agreement should be written in a way that lets both the volunteer and your museum use the copyright work in a meaningful way, and that both parties understand and are happy with how the work will be used.

For example the licence should be non-exclusive, and not stop the volunteer from using their work in the way they would like. Ideally the licence term should last for the full term of copyright, rather than a shorter set period, so as to avoid the time and resource needed to renew licences at a later date.

**How can a volunteer-run museum protect their rights when they work with contractors?**

When working with contractors and freelance staff it is important to ensure good copyright agreements are in place. A copyright transfer, or a robust licensing agreement, should be in place and signed before work begins to make sure all relevant rights, terms and conditions are understood.

**Who is legally responsible for copyright infringement in a volunteer-run museum?**

Using a copyright work without permission carries the risk of litigation and reputational damage to your museum. If somebody does complain about a copyright infringement the responsibility will not lie with any one volunteer - the Trustees of a volunteer-run museum will be liable for any damages.

## How can a volunteer-run museum protect its Trustees if there is a copyright infringement?

The best way to protect yourself from litigation and reputational damage is to develop policies and procedures around the use of copyright work, for example creating a copyright statement and a notice and take down policy for your website and social media channels.

All staff and volunteers that create copyright work for your museum should be made aware of their rights, and those who work with third party copyright work should have a good understanding of copyright limitations and exceptions.

Providing relevant training will ensure staff and volunteers are aware of their rights and responsibilities and will encourage confidence in dealing with copyright throughout their roles.

Trustees' liability insurance can cover potential copyright infringement, as well as potential data breaches.

## What should we do if something goes wrong?

You may receive a complaint of copyright infringement if you have used a copyright work, for example on your website or in an exhibition, without getting permission first. It is important to have a notice and take down policy in place as this will help you deal with these complaints in an efficient manner.

Complaints should be acknowledged in a timely manner, with the work in question being taken down while the complaint is investigated. During the investigation, check to see if your use of the work is allowed under copyright law. For example, displaying an original painting from your museum in an exhibition is allowed. However, using photographs of the same painting on leaflets and posters for the exhibitions may not be.

If you find that you have not infringed copyright, for example if the work is out of copyright or the way you used it is covered by a copyright exception, explain this to the person who complained in a clear and accessible way.

If you find that the complaint is valid it is important to try to minimise potential legal and reputational damages. You should remain calm and professional throughout these discussions – in many cases, complaints can be settled with an explanation and an apology. This is another situation where good policies are useful, as you can show that your museum understands their rights and responsibilities and has made every effort to comply with the law.

Complaints do not always have to be a negative experience, as they can present an opportunity to improve your processes. You may be able to use the opportunity to connect with the person who has complained, find out more information about the work or artist in question and re-instate the work with an attribution. You may wish to appoint someone who is confident in dealing with difficult situations to deal with these kinds of complaints.

## Data protection and privacy FAQs

### Are volunteers allowed to handle personal data?

Yes, but specific wording around the volunteer's responsibility to adhere to data protection policies and processes should be included in their volunteer agreement.

If a volunteer role involves regular handling of personal data, or the possibility of accessing particularly sensitive personal data, you may wish to use an additional confidentiality agreement to emphasise the volunteer's agreed role and responsibilities. Volunteers that handle personal data should receive relevant training and ongoing supervision throughout their placement.

### What are the data privacy issues in visitor books and how much data should you be collecting?

Museums are allowed to collect and store personal data, but should not collect more than is necessary. Because the book is public and can be seen by other visitors, contact details such as phone numbers, home and email addresses should not be requested.

When collecting personal data, less is better. The most valuable aspects of a visitor book are the comments and the visitor's home country or hometown, which would likely be enough to fulfil a museum's requirement but not be enough to constitute "personal data". The visitor's name, age and more specific address is certainly interesting and does add value to the book as a record of the museum. However, in requesting these details the individuals in the book become more identifiable, and so the risks of holding and sharing that information increase.

Any more data that is collected whereby an individual could be identified should be reflected in the museum's privacy statement. A notice should be provided next to the book explaining how the information will be used alongside a form written in plain English to ensure that such information is captured on a consent basis. Finally, the museum should ensure it stipulates how long such data is stored on a retention schedule.

## Should a volunteer-run museum register with the Information Commissioners Office (ICO) as a data controller?

All museums that collect and store personal data should register as a data controller with the ICO. However, if your museum is part of a group or consortium of organisations or charities, there may be another governing body who acts as the data controller.

## What is a 'data breach'?

A data breach is an unlawful processing of personal data, which could be the result of an accident, done deliberately or unknowingly. This could include making personal data publicly available, giving someone unauthorised access to a spreadsheet containing personal data, losing a laptop which includes personal data, or emailing personal data to the wrong person.

## Who is legally responsible for a data breach in a volunteer-run museum?

Mishandling personal data can lead to fines or public rulings from the ICO, as well as reputational damage to your museum. Much like copyright infringement, the responsibility will not lie with any one volunteer - the Trustees of a volunteer-run museum will be liable for any damages.

## How can a volunteer-run museum protect its Trustees if there is a data breach?

The best way to protect yourself from fines, public rulings and reputational damage is to develop policies and procedures around the use of personal data, for example creating a privacy policy and limiting who can access files containing personal data.

All staff and volunteers that work with personal data should read and understand your museum's data protection and privacy policies during their inductions (and preferably at refresher sessions throughout their time at the museum) and should be informed when policies and procedures are updated.

Providing relevant training will ensure staff and volunteers are aware of their rights and responsibilities and will encourage confidence in dealing with data protection throughout their roles.

Trustees' liability insurance can cover both data breaches and copyright infringement.

## What should we do if something goes wrong?

If you believe a data breach has occurred you should contact your data protection officer or, if your museum does not have one, whoever deals with data protection within your museum. They will be able to assess how serious the data breach is and decide on further action.

For serious data breaches, such as email accounts being hacked, or a laptop containing personal data being stolen, your museum must inform the ICO as soon as possible and within 72 hours of becoming aware that the breach has occurred.

Many data breaches will not cause a security risk or compromise the confidentiality of the personal data, but should still be assessed and recorded in-house. For example if a spreadsheet containing volunteer contact details is accidentally deleted but the information has been backed up and can be replaced, this is not serious enough to report to the ICO. However it is important to learn from this error to make sure it doesn't happen again in the future.