

# Intellectual Property Rights and Data Protection legal compliance at your museum – Guidance

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*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 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 York Museums Trust.*

## What is this Advice Sheet about?

Within the context of their work for museums, there are some important legal compliance issues that volunteer managers and volunteer-led museums need to understand. These include copyright and data protection and privacy laws. This factsheet provides an overview of the key issues within the context of volunteers and their role within museums.

**Copyright** protects creators who make original works. This allows creators and copyright owners to decide how their work is used, including who can make copies of it and re-use it. Copyright typically lasts the creator's lifetime plus 70 years after the end of the year they die, or if the creator is unknown, the date of creation plus 70 years.

Copyright needs to be considered from both an owner and user perspective. The museum can exploit the copyright that it owns, for example by licensing out its images, but you need to ensure you do not infringe others' copyright when making use of their material, particularly if photographs are taken of works which are in-copyright or taken by people who are not members of museum staff.

More information about copyright for museums and galleries can be found here:

<https://www.copyrightuser.org/educate/intermediaries/museums-and-galleries/>

There is also a series of 11 Museum Development Yorkshire IPR Advice Sheets which can be found at: <https://www.museumdevelopmentyorkshire.org.uk/resource-category/intellectual-property-rights/>

**Data Protection** law is in place to protect people's privacy and ensure that organisations that collect people's personal data do so fairly and responsibly. Personal data includes names, contact details and bank details, as well as other sensitive information such as their religious beliefs, their sexual orientation, details about their health and so on. These types of details

are often collected by museums, both during volunteer management and engagement with visitors.

Museums are allowed to collect and store personal data, but only if there is a legitimate reason to do so. Museums must also make sure that data is stored securely and used responsibly, and not in a way which may cause upset or harm.

More information about data protection and privacy can be found in the data protection resources here: <https://naomikorn.com/resources/>

## Who is this information for?

It is for any person or department responsible for **managing or supervising volunteers** at your museum and the museum's trustees who are ultimately responsible. Sometimes the responsibility might be split between different staff and departments, depending on the volunteer role. In the case of volunteer-run museums, all volunteers may share these responsibilities. Ultimate responsibility lies with the museums trustees.

## Why is this information useful?

A good understanding of legal rights and responsibilities around copyright data protection are integral to managing many volunteer roles in museums.

Some roles may involve **volunteers creating copyright works** which your museum would like to use in exhibitions, catalogue records, social media posts and on the museum's website. In these cases, it is important to know who owns the copyright and how this can be assigned to your museum if needed.

Some roles may involve **volunteers using copyright works created by others**, such as copying artworks for exhibition literature, adding images to your museum's website and photocopying material for members of the public in the search room. In these cases, it is important to make sure volunteers are aware of copyright limitations and exceptions so they do not accidentally infringe copyright when copying and using third-party works.

Volunteer managers will **collect and store various pieces of personal information about volunteers** that are protected by data protection legislation. Museums often **collect and store personal data from visitors**. Some museum **collection items and records also contain personal data**. In these cases, it is important for volunteers and staff at your museum to understand and comply with data protection legislation.

## What do I do first?

First you should **look at your museum's volunteer roles** and see if they involve creating or using copyright works and/or collecting or accessing personal data from visitors. If a role does involve any of these activities, you should **check your museum's current policies or processes to see if they comply with the law**. If you find that any activities do not comply with the law, if you are unsure whether a current practice is acceptable, or if you don't currently have a policy or process in place you should halt these activities while new processes are developed and introduced.

The following points should be considered while considering particular activities:

### For volunteers that **create copyright works**:

- Has the volunteer assigned their copyright to your museum, either in their volunteer agreement or in a separate deed of copyright assignment?
- If not, would they be willing to assign copyright retrospectively?
- Will the volunteer want to use their work outside of your museum, for example on their own website or for their portfolio, and is this something you would be happy with?

### For volunteers that **use third party copyright works**:

- Do they have good knowledge of copyright and the exceptions for museums?
- Do they share other people's works on social media, for example artworks from your collection, or popular memes?
- Do they know how to calculate if a work is still in copyright, or how to search for the copyright owner to ask for permission to use their work?

### For volunteers that **handle personal data**:

- What kind of personal data are they collecting and how is it collected?
- Where is this data stored and who can access it?
- Why are volunteers asked to collect this data and how will it be used?

## What do I do next?

Where volunteer roles need to be compliant with the law, your museum should **introduce or update policies and processes** to make sure that your museum is acting legally and responsibly. These should include processes around:

### Managing copyright works created by volunteers:

- Copyright protects all sorts of day-to-day works that volunteers might create such as emails, text for catalogue records, copy for exhibition panels, and information sheets for reading rooms and other museum services. Volunteers may also create works that are more artistic or creative, such as photographs of events, short films for exhibitions or sound recordings of oral history interviews.
- It is important to remember that **volunteers always own the copyright in their work** in the first instance, even if they are making it specifically for your museum. If your museum wants to own the copyright, the volunteer must **assign their rights to the museum**. This can be written into their volunteer agreement or given in a separate deed of copyright assignment.
- When copyright is assigned to your museum it means the works can be used freely in the future without needing to contact volunteers for their permission. This can save time and resources and will stop your museum from accidentally infringing copyright.
- If your museum is a **legally incorporated body**, such as a charitable trust, copyright can be assigned to the museum itself. If your museum is **unincorporated and run by volunteers and/or trustees** copyright will need to be assigned to a person, or group of people. Those involved will need to discuss a mechanism in which they grant each other permissions to reproduce any content that is created, or consider perhaps appointing a third party, for example one Trustee, 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.
- Creating policies and processes around volunteer copyright assignment will help volunteers understand their rights whilst ensuring museums can fully utilise their volunteers' output

## Managing third party copyright:

- Museums care for many types of copyright works made by many different people. These might include paintings, photographs, films, music, books, letters and other types of archive records. Being able to share these collections is integral to publicising your museum and attracting new audiences, and is sometimes a condition of project funding.
- Whenever copyright works are used online or in print you should include a **short copyright statement** that gives at least the name of the work and the name of the creator, for example, “*A Bigger Splash* © David Hockney”. If the creator and the copyright owner are not the same, you should also include the copyright owner, for example “*Henry Moore’s Recumbent Figure* © The Henry Moore Foundation”.
- When making photographs and other digitised copies of in-copyright collection items available online you should get permission from the rights holder first. If the copyright owner cannot be found to ask for permission your museum may take the decision to make them available on your website **under a risk-based approach**. This involves assessing both the work and the way you want to use it, and considering how likely it is to cause someone to complain. In this case, there should be a **notice and takedown policy** in place. This policy will allow copyright infringement claims or complaints to be dealt with efficiently.
- A good **social media policy** is important to keep your museum’s communications on-message, and make sure that staff and volunteers communicate to the public in a professional and appropriate manner. Copyright limitations (and data protection responsibilities) should be worked into a wider social media policy to make sure third party rights are respected and that your museum is seen to be compliant with the law.
- If your museum has a search room, members of the public may ask to make photocopies or take photographs of collection items. If your museum deals with these kinds of requests you should introduce or update **copyright and copying policies** to help search room staff and volunteers make informed decisions about if making copies is legally compliant. If members of the public are able to make their own copies, **copyright notices** outlining what copying is allowed should be displayed.
- Museums can make copies of parts of published works, and whole unpublished works, for private study and non-commercial research without getting permission from the copyright owner. The researcher must **sign a declaration form** to confirm that they will only use the copies for these reasons. Your museum may charge a reasonable fee to cover the costs needed to make the copy.
- If a researcher would like to copy a work for any other reason, for example to publish in a book or share on their website or social media account you may need to do some research and clear the copyright before you make the copy. If your museum does not have the time or resources for this, you could ask the researcher to **sign a declaration form and an indemnity form**, confirming that they will take responsibility for clearing the copyright before they use it. Again, you can charge a reasonable fee to cover the costs of making the copy.

- Creating policies and processes for these types of activities will make decision-making easier and help search room staff and volunteers to provide a fair and standardised service to researchers.

## Managing volunteer, visitor and collection personal data:

- Every museum will collect and store personal data in some form so it is very important to develop good data protection and security policies to respect people's privacy and protect your museum from computer viruses and data breaches.
- Museums need to collect and store personal data for volunteers and other staff, such as names, contact details and equal opportunities data. Depending on the staffing and structure of your museum this may be the responsibility of a HR representative, a volunteer manager or one or more volunteers.
- Museums will also collect personal data from visitors, for example in visitor books, feedback forms and CCTV footage. It is recommended that access to personal data is password protected and limited to only those who have a legitimate need to see and use it.
- In some museums, the collection items themselves may contain personal data, for example diaries, letters, photographs and oral history interviews. For records over 100 years old this is unlikely to cause a problem. However, for particularly sensitive items and documents about people that may still be alive it may be necessary to check the item before allowing a researcher to consult it and possibly close some collections to the public.

## Some important rules to follow include:

### Data storage

- **Do not replicate data** – try not to keep personal data, such as volunteer contact details, in more than one place unless absolutely necessary. The less data that is stored the better, as it will be easier to look after
- **Limit access to network drives and folders** – where personal data is stored on shared drives consider who can access them and who really needs to. For folders or documents that contain sensitive information you may wish to use password protection. If your museum keeps paper versions of documents, store them in a lockable unit and limit access to keys
- **Do not keep data longer than you need** – for example, if a volunteer leaves, someone in your museum may need to keep their contact details for a while longer. However, if you do not need to contact the volunteer you should not keep them on your own desktop or in your own personal files

## Data security and privacy

- **Clean desk policy** – if you do need to keep personal data in paper form, make sure this is locked away when not in use and make sure your desk is clear at the end of the day. Always lock your computer screen when you leave your desk
- **Password security** – do not write down or share passwords with un-authorised staff or volunteers. If passwords are shared make sure they are changed regularly, particularly when a volunteer or member of staff leaves your museum
- **Email security** – take care when forwarding emails or replying to multiple recipients. Consider using the BCC function when emailing multiple people whilst keeping their names and email addresses private.
- **Anti-virus software and phishing** – make sure your computers and laptops are protected with anti-virus software, and keep track of when updates and renewals are needed. Be aware of suspicious emails which ask you to click links which may open up your museum to computer viruses and hacking

## Other considerations

- **Social media** – you or volunteers may update your social media channels with news about volunteer work, public events and so on. Consider what kind of information is posted and whether it may include sensitive data. This is particularly important when posting photographs or videos of volunteers or members of the public
- **Taking photographs and filming** – if you take photographs or film your volunteers or members of the public, for example at public events, you must inform them and allow them the opportunity to opt out. This can be achieved by including information about photography and filming in invitations, press releases and leaflets created for the event, as well as signage on the day and asking people to sign release forms
- **Search room access** – if volunteers help in the search room, they may be asked to help members of the public access records and items that contain sensitive data

## What are some other pointers?

You may find that **volunteer roles may need to be altered, renamed or redefined**. You may wish to do this formally by editing or creating a new role profile or volunteer agreement which outlines the tasks and responsibilities of the role. In some cases, it may be enough to meet with the volunteer to discuss the changes to their role. Either way, both the volunteer and your museum should be clear about why changes are necessary and how this will affect the volunteer's output.

You may find that you need to **introduce or update policies** to cover your volunteer activities. These might include:

- Volunteer policy (which includes copyright assignment)
- Notice and take down policy
- Privacy policy
- Data storage policy
- Cyber security policy
- Clean desk policy
- Social media policy (which includes copyright and data protection considerations)

Volunteers should be given relevant training if their role involves creating or using copyright works, and/or handling personal data.

## Checklist

1. Ensure you are aware of copyright and data protection legislation and issues as they relate to your museum
2. Audit your volunteer roles to assess which ones involve creating or using copyright works, or handling personal data
3. Update any policies and processes that are not currently legally compliant
4. Change volunteer activities, role profiles and/or volunteer agreements to reflect legal responsibilities
5. Provide volunteers with relevant training to carry out their roles legally and effectively
6. Monitor volunteers to make sure they are confident in their roles. Ask for feedback and provide support and/or make changes to roles where needed

## Final point to remember:

No one can ever be expected to remember everything about copyright and data protection, so this fact sheet and the resources listed above are useful to keep to hand. Copyright and data protection legislation can be daunting, but with good training and support, volunteers and staff at your museum can be confident that they are complying with the law.

## Where can I find out more?

Accompanying Volunteers and Intellectual Property Rights (IPR) Frequently Asked Questions (FAQs) 2020,

Museum Development Yorkshire IPR resources-

<https://www.museumdevelopmentyorkshire.org.uk/resource-category/intellectual-property-rights/>

Intellectual Property Office (IPO) copyright resources

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

Information Commissioner's Office (ICO) Guide to Data Protection

<https://ico.org.uk/for-organisations/guide-to-data-protection/>

Naomi Korn Associates copyright and data protection resources -

<https://naomikorn.com/resources/>

Naomi Korn Associates blog posts and news updates about compliance issues

<https://naomikorn.com/news/>

Copyrightuser.org - <https://www.copyrightuser.org/>