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How "open" are Australian museums? A review through the lens of copyright governance

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ABSTRACT

Museums are increasingly employing innovative digital techniques to curate, link, and market collections, enabling new kinds of public engagement to better connect with popular culture. By embracing contemporary modes of delivery to open access to their collections, museums are signalling a drive toward greater democratisation of knowledge and information through increased interaction and accessibility. Yet with this has come a series of copyright and legal complexities. This paper reviews current copyright barriers for museums in Australia and examines how international examples offer potential models and ways forward. The authors conclude that recent copyright modernisation reviews offer the museum sector an opportunity to restructure its strategies. As online formats evolve, there is an urgent need to explore how amendments to copyright laws in some countries have allowed for more fair and flexible use of cultural artefacts and orphan works.

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Introduction

Digital technologies and networks have dramatically changed the ways we find, disseminate, and use information. This has impacted access to research and new ideas as well as public assets including museum objects and cultural collections. By digitalising collections, galleries, libraries, archives and museums (GLAMs) have expanded access to cultural works through the use of online databases that can be reached far beyond their physical locations (Coad, 2019). Opening access to these collections can connect more diverse audiences to collection items, enable contributions to data by a broader range of people, and offer virtual display of objects otherwise inaccessible due to physical barriers such as limited space or conservation concerns.

The Rijksmuseum was a pioneer in the move toward open or unrestricted access to digital surrogates in the cultural heritage sector—sometimes referred to as the OpenGLAM movement. From 2011 the museum digitalised thousands of high quality

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copies of artworks, making images openly available to anyone for download and use without limitations (Terras, 2015; Valeonti et al., 2019). Since then, numerous digital tools, software, infrastructure, and social media platforms have been designed. Projects such as Europeana and Google Arts & Culture have been developed to provide virtual views of renowned institutions including the New York Museum of Modern Art, the Louvre, and the Tate galleries.

Fundamental to the open access movement has been a call for greater social inclusion. The United Nations Educational, Scientific and Cultural Organization (UNESCO) promotes international laws that guarantee all individuals the right to participate freely in cultural life; engage in forms of cultural expression; have access to arts, humanities and cultural heritage; and acquire cultural knowledge (UNESCO, 2017; United Nations General Assembly, 1948). By enhancing visibility and unlocking access to digital repositories of books, artworks, photographs, music, diaries, letters, maps and other artefacts, the GLAM sector has the capacity to empower individuals and groups to preserve, document and share material culture, enriching communities through diverse cultural exchange (Tennant et al., 2016). Efforts to democratise access to and engagement with collections can also encourage a sense of public ownership and belonging (Arthur, 2018; Navarrete, 2020). Expectations around social inclusion are particularly pronounced in publicly funded and run spaces. In Australia, most cultural institutions are almost wholly funded through public investment and as such have a duty to provide open access to their work for the broader community wherever possible for public benefit. As this paper explores the case of Australia, its primary focus will be on these public institutions, though future research might broaden the scope to examine private collections.

Although open access to GLAM material is increasingly considered central for a more democratic society, many collections are still siloed across discrete institutions and remain largely inaccessible to many. Moreover, neither the GLAM sector nor national or international legislative bodies could have anticipated the impact of COVID-19 and its sudden move to make online services the norm. These rapid changes have highlighted numerous barriers to opening access, including the inadequacies of current copyright laws and the need for more flexible licensing systems (Australian Libraries Copyright Committee, 2020). GLAM materials face a series of copyright limitations, with current laws ill-adapted to an ever-changing environment in which digital collections can be instantly found, obtained, modified, mixed and re-used.

This paper begins with the history of copyright law, and in particular its implications for, and contradictions to, national and international calls for greater democratisation of open access to knowledge and government data. The authors analyse international regulations that have been developed to unify access to and preservation of living and cultural heritage, including new international charters and conventions, or "soft" laws, around digital resources. They then review current Australian copyright law that protects and accredits the creators and curators of artefacts, and critique how this is creating a "permission culture" among the Australian museum sector and limiting public access and digital advances. By looking at what can be learnt from successful international examples, this paper points to models for the Australian GLAM sector. Specifically, it recommends recognising and building on recent reviews to modernise the Copyright Amendment Bill, and providing linked digital resources aimed at enhancing the usability and value of artefacts, opening new possibilities for

education, interpretation, and participation in presenting cultural heritage. Throughout this article the term GLAM is used broadly, but our observations focus primarily on public memory institutions and museums that collect, store, capture, exhibit and share human knowledge and cultural heritage.

The evolution of copyright law

Successive waves of political, economic and social revolution have significantly shaped thinking around the use and ownership of material culture (Vrdoljak, 2006). Throughout much of their history, museums have housed and safeguarded artefacts in private collections available only to the wealthy and privileged. During the Renaissance period, museums became more open to the public for the wider sharing of knowledge, aligning with a growing drive toward technical and scientific inventions for social advancement. With this came mounting concerns around legal ownership and protection of new inventions. The first modern copyright laws were introduced in England in 1710, under the *Statute of Anne*, named after Queen Anne (Eve & Gray, 2020). These laws sought to grant authors of books and other writings the sole right to decide and consent to whether and by whom their work could be printed, re-printed or published (Deazley, 2006). Known as *An Act for the Encouragement of Learning*, this statute gave authors this right for 14 years, and 21 years for the protection of those writings already in print, after which time the work would enter into the public domain. This was seen as a legally binding agreement for the protection of authors' works while also encouraging the advancement and spread of knowledge and new ideas.

Building on this English copyright law, the *Berne Convention for the Protection of Literary and Artistic Works* of 1886 (hereafter referred to as the *Berne Convention*) was introduced to Europe and their North American partners for the protection of literary and artistic works. This was followed by the *Universal Copyright Convention* of 1952, which sought to incorporate a greater number of countries into the international "copyright community." Today these copyright laws, with minor changes, are enforced by countries that are signatories to the Trade Related Aspects of Intellectual Property (TRIPS) Agreement, under the General Agreement on Tariffs and Trade (GATT), and are overseen by the World Trade Organisation (WTO) and the World Intellectual Property Organisation (WIPO). These laws seek to protect ownership and promote the progress of science and arts by securing their work for a limited time. The *Berne Convention* stipulates that copyright protection lasts for 50 years after the death of the author or producer, although this varies from country to country—for example in Australia it is life plus 70 years. This law applies to both published and unpublished works and automatically covers literary works; music and lyrics, dramatic works and music; pantomimes and choreographic works; photographs, graphics, paintings and sculptural works; motion pictures and other audiovisual works; video games and computer software; audio recordings; and architectural works.

International cultural heritage conventions

Although forms of legal protection for cultural heritage have existed since the Renaissance period, it was following World War II and with it the looting, destruction

and theft of antiquities and cultural artefacts that led to the creation of UNESCO in 1945. Since then, a plethora of international cultural heritage conventions for the protection of artefacts have been developed under the auspices of UNESCO. The *Hague Convention 1954* was the first and most comprehensive multilateral treaty dedicated exclusively to the protection of cultural heritage in times of peace as well as during armed conflict. This was followed by the *World Heritage Convention 1972*, a landmark for the protection of the world's cultural and natural heritage considered to be of outstanding value to humanity. These conventions outlined a series of obligations that states should undertake to protect and safeguard cultural heritage (Lixinski, 2019). They represented both an expression of decolonisation and the right of the nation-state to protect its own culture, together with that of "cultural internationalism," or the right of the international community to protect components of common human culture, past and present (Burri, 2014).

These early international conventions focused on tangible cultural materials that could be moveable or immovable. But as cultural heritage can also be characterised through oral traditions, practices, performances, and representations of a nonphysical character, the *Convention for the Safeguarding of the Intangible Cultural Heritage* was introduced in 2003. This recognised intangible cultural heritage as representations, expressions, knowledge, and skills transmitted through generations which:

> is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity (UNESCO, 2013).

These treaties have highlighted the links between cultural heritage and human rights, mutual respect and sustainable development, and the importance of safeguarding living cultures by ensuring the right of access to cultural materials (Lixinski, 2019). For example, the *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* (2007) defines concepts and principles around human rights for the protection of cultural diversity and the multiplicity of cultural and artistic expressions of diverse people—especially cultural minorities and Indigenous people—to counterbalance powerful forces of economic globalisation and colonisation, including return of cultural artefacts to their countries of origin (Spitra, 2020).

These conventions have also traced a shift in emphasis from "property" to "heritage," with the focus moving beyond the protection of physical sites, objects, and artefacts, to the protection of the relationships that these represent. As such, cultural heritage is now defined as belonging to the whole of humankind, and hence something to be protected for those communities more connected to it, as opposed to individuals in possession of material items (Lixinski, 2019). Yet in practice, questions remain around what constitutes heritage, what is worthy of being protected, how it should be protected, and for whom. Moreover, many of these conventions have involved "soft" laws, which include legal instruments set out for each state but without legally binding obligations. Thus, while these international treaties play a fundamental role in the development of legal principles that provide customary rules and guidance, they require refining to ensure compliance and to better serve the global public good (Burri, 2014).

Arguably the most significant barriers to international heritage laws stem from nation states' diverse and often conflicting views on trade, culture, media, intellectual property (IP) and human rights (Burri, 2014). Although UNESCO has promoted laws that foster greater social inclusion, IP enforcement and protection standards introduced in 2005 by the WTO and WIPO have distorted the balance in copyright law on matters of trade and protection, limiting open access to information and culture (Broad, 2013). The constraints of these international treaties on the IP rights of GLAM materials have led museums to focus more on "hard" national laws, with growing calls for changes to the drafting of domestic exemptions, especially for cultural works (Wallace & Euler, 2020).

Open digital access for GLAMs

The digital revolution of the second half of the twentieth century provided a remarkable scenario for the future of free, open, global access to and preservation of artworks, history, archives, manuscripts, and all forms of knowledge (Schnapp & Battles, 2014). With the mass production of personal computers from the 1970s, the development of worldwide telecommunications systems connected through networked infrastructure, and the birth of the Internet in the 1990s, it became possible to communicate, search for and use information quickly and in real time over much greater distances, allowing individuals to draw on digital content to generate new ideas and distribute them to ever-wider audiences. Aligned with this was the emergence of the open access movement: a range of initiatives offering in digital format immediate, online, free-of-charge access to information, data, content, and materials, also free of most copyright and licensing restrictions.

An important precursor to the open access movement was the Free Software Movement (Stallman, 2002). This led to Creative Commons, established in 2001 by Lawrence Lessig as a non-profit organisation aimed at providing the legal tools to make a range of creative works available to others (Anderson, 2018; Tennant et al., 2020). Creative Commons licenses gave authors and creators rights to designate and communicate to users how their work could be used or shared, and allowed authors to grant more or less freedom of use of their works by the public (Eve, 2014). It has sought to counter what was considered an increasingly powerful and restrictive permission culture (Lessig, 2004).

Numerous groups and organisations have played a central role in the open access movement, but arguably it was the Budapest Open Access Initiative in February 2002 that cemented the drive for a more collaborative international move to align rules and regulations around open digital access. Policies soon emerged to make public sector information more openly available (Suber, 2012; Willensky, 2006), followed by steps to capitalise on software development systems to preserve and share data, content and outputs in more Findable, Accessible, Interoperable and Reusable (FAIR) ways (Wilkinson et al., 2016). While many early initiatives were focused primarily on the sciences and academia, open access to cultural heritage soon became part of this broader open access movement (Valeonti et al., 2019). GLAM leaders were called upon to put "high-resolution digital files of works of art in their collection online, for use by anyone, for any purpose" (Kelly, 2013, 4).

The role of museums and cultural heritage institutions is to identify, collect, and preserve past and contemporary experiences, knowledge and ideas to engage the public with collections for curiosity, education and enjoyment (Hamilton & Saunderson, 2017). By digitalising their collections, GLAMs can open access to the enormous trove of information in the public domain, enabling wider and deeper engagement with existing materials, fostering cultural understanding and connection, and eroding physical barriers (Sanderhoff, 1970; Terras, 2015). This includes sharing collection content and communicating with audiences *via* websites, email and social media. Online tools are being used to display digital objects in collections, and enable the sharing and linking of data across collections and projects.

Despite these benefits, some warn of uncritically embracing the digitisation of GLAM materials. The transformation of the physical museum collection into a digital database is not a neutral process of democratising content (Pepi, 2014). Databases are not culturally autonomous or free of ideologies but built on the biases of their architects. Therefore the digitisation of museum materials, if not done carefully and through early collaboration of diverse groups, can perpetuate colonialist structures and power inequalities rather than resolve them (Kaiser et al., 2023). Certain materials may require special privacy considerations or may not be appropriate for digitisation and open access. Differing cultural values, language issues and methodological challenges can mean that for certain individuals and groups, standard methods of digitisation create more harm than good (Kugara & Mokgoatšana, 2022). What is more, digitisation of collections does not necessarily translate to access for all audiences. Political and material inequalities manifest through the "digital divide," including unequal access to resources such as computers, Internet, and digital education (Gibson & Turner, 2012). These challenges and considerations around open access inform some of the recommendations made at the end of the paper.

Copyright laws in Australia

While it has become easier to digitalise and share cultural works to preserve and promote access, numerous overlapping copyrights are triggered as users download, copy, reproduce, print, adapt, re-use, and re-mix content (Dunn, 2020; Garvin, 2018). In this environment, national laws have played a central role in limiting the uptake of open policies. Australia is one such case.

The first Australian copyright statute enacted at the federal level was the *Copyright Act 1905*, which formed part of the *British Imperial Copyright Act 1911*. Yet it is the *Copyright Act 1968* that pertains today, with minor amendments. The first amendment to this law was introduced in line with the signing of the Australia-US Free Trade Agreement in 2004 to accord with the IP standards of the WTO and the WIPO. As a signatory of the WTO international treaties, the Australian Government agreed to comply with bilateral and multilateral obligations, including the Berne three-step test. This resulted in stronger enforcement and protection standards, which curbed access to and use of copyright works of national collections for public interest (Broad, 2013). To offer "specific case" exceptions, section 200AB of the *Copyright Amendment Act 2006* outlined "fair dealing" exceptions, allowing some copyright materials "to be used for certain socially beneficial purposes, while remaining consistent with Australia's obligations under international copyright treaties."

Copyright in Australia is automatic; in other words, the author or creator does not need to publish or register their work for copyright—instead it is protected from the time it is first written down or recorded in some way. Copyright protects a range of materials and expires after 50 years in the case of broadcasts, and 70 years for artistic, literary, musical and dramatic works, and film and sound recordings (see Australian Copyright Council Information Sheet, February 2014 https://mgnsw.org.au/wp-content/uploads/2019/01/Galleries_and_Museums_-_Intro_to_Copyright_G068v0.pdf). Under fair dealing exceptions, the *Copyright Amendment Act 2006* allows the use of some of these materials without a license for the purposes of research or study, criticism or review, library and archival copying, among other intentions that serve the public interest (*The Copyright Act 1968* (Cth), sections 40, 41, 48–53). While this implies museums and galleries could put copyright material online for public benefits, and that the public could use these materials for copying, digitising, uploading to a website or emailing, in practice users need to gain permission from the owner and the museums unless copyright has expired or the user has a special exemption (Hudson & Kenyon, 2007). Although a further *Copyright Amendment (Disability and Other Measures) Act 2017* introduced changes regarding unpublished works, this had limited influence on access to and use of museum materials.

Though fair dealing does offer exceptions to copyright restrictions and permission to use copyright materials, it has been critiqued for using overly detailed and prescriptive rules (Australian Law Reform Commission, 2013). In contrast, Europe, the United States, and many other jurisdictions have introduced a "fair use" test, which sets out principles to judge against infringement rather than specifying particular uses. The fair use test has the aim of keeping pace with technological change and the creative opportunities this brings, allowing new and resourceful uses of materials as long as they have no adverse effect on the market for the copyright material (Deloitte Access Economics, 2018). Several European and US court cases have illustrated how reasonable personal use of digital works has been allowed under their fair use laws (Garvin, 2018; McCutcheon, 2017; Petri, 2014), which would not necessarily have been permitted under Australia's fair dealing laws (McCutcheon, 2017). The narrow scope of fair dealing provisions in Australia has meant new digital uses of copyright material must occur outside of any clear legal framework, thus limiting the transformative uses of creative materials such as *via* text and data mining, and digital remixing. This has made public institutions including museums open to litigation, and hindered innovation and creativity (Deloitte Access Economics, 2018). The terms fair and flexible use of resources have also caused confusion (Australian Libraries Copyright Committee, 2018).

To address the narrow scope of the fair dealing provisions, in 2013 the Australian Law Reform Commission released a report entitled *Copyright and the Digital Economy*. This recognised that one of the main shortcomings of cultural institutions in fulfilling their public service mission was the provision of public access to their materials (Australian Law Reform Commission, 2013). This was followed by the Productivity Commission's inquiry into Australia's Intellectual Property Arrangements, which alongside the Australian Law Review Committees' Digital Economic Review recommended substantial changes to increase the flexibility and adaptability of copyright law to better meet Australia's digital needs, suggesting "Australia's exceptions are too narrow

and prescriptive, do not reflect the way people today consume and use content, and do not readily accommodate new legitimate uses of copyright material" (Commonwealth of Australia, 2017). In response to these recommendations, the Copyright Modernisation Review was launched in 2018. This called for consultations to develop a more effective, efficient and accountable system, acknowledging that fair dealings need to keep pace with their international counterparts and adapt to future changes (Commonwealth of Australia, 2018).

During the COVID-19 pandemic, the mandatory closure of Australian museums' physical facilities resulted in skyrocketing demand for online services, encouraging cultural institutions to advocate for copyright reform which would give them greater freedom to engage in the digital delivery of public assets (Australian Libraries Copyright Committee, 2020). Perhaps most recognised was the Australian Virtual Storytime agreement that gave temporary permission to stream children's books online—an approach recognised and replicated internationally (see ALIA Negotiates Special Agreement on Copyright, 18 March 2020, http://alia.org.au/copyright-during-covid-19). Yet despite efforts to modernise the Copyright Act to allow more flexible exemptions for the preservation of data, few changes have been made to allow remote access to collections (Australian Libraries Copyright Committee, 2018).

Today, galleries and museums globally are digitalising significant collections of cultural and heritage materials, providing deep mapping, language and translation technologies, data visualisation and modelling, and many other applications, to make information more widely accessible (Arthur, 2018). In addition to storing or archiving data for the museum's primary use, free open access is allowing the wider public to copy, use, re-use, and transform existing works in a variety of ways, blurring the boundaries between purpose and use and making it difficult to specify the precise reach of the fair dealing exceptions. This creates uncertainty for all involved in the production, distribution and preservation of cultural materials (Deloitte Access Economics, 2018). In an era of rapid digital change, fair dealing has constrained the digital delivery of public assets that do not fall readily within existing exceptions (Australian Libraries Copyright Committee, 2020). Text and data mining are an important case in point—this area remains in legal limbo in Australia, as there are no specific provisions around it under Australia's fair dealing exceptions (Deloitte Access Economics, 2018).

Confusion regarding copyright law, concerns around litigation, and the constraints of fair dealing have given rise to a permission culture in Australian GLAMs. A study of five state art galleries in Australia illustrated the institutions' perceived entitlement to exclusive copyright and their misconceptions around control of access to their digital collections, including digital surrogates (McCutcheon, 2017). While museum directors and curators are keen to protect the integrity of their collections, receive recognition for their works, and encourage researchers and communities to attend their exhibitions, the guarding of cultural works and the overcontrol of digital collections can have a negative effect on public access and engagement. Despite significant government resources dedicated to encouraging the broadest possible open access to Australia's national collections, particularly through digitisation projects such as Trove and the GLAM Peak initiative, the ability of the public to use or creatively engage with museum resources remains limited. As stated by Universities Australia,

> Australia cannot hope to achieve world-leading status as an innovative nation when it is not legally safe, for example, to operate a search engine; when cloud computing, text and data mining, and machine learning technologies are at the mercy of inflexible and anti-quated copyright exceptions (Universities Australia, 2018, 7).

Copyright barriers for GLAMs

Digitisation is offering significant new pathways and support for the documentation and safeguarding of cultural heritage, the systematic collation and linking of data, and the dissemination of heritage artefacts and sites (Hou et al., 2022). In addition to online repositories, increasingly powerful, accessible and useful 3D reconstruction, visualisation and augmentation of cultural works are opening up new frontiers for GLAMs. Yet while the GLAM sector views digitalisation as a priority, most museums have only a small percentage of their collections openly available online for general use (Benhamou & Ferland, 2022). Even today as museums try to expose their collections, many still do not fully abide by their open access principles, allowing only a small part of their collection to be accessible for re-use (Valeonti et al., 2019; Wallace & Euler, 2020). Legal issues—including acquisition, copyright, ownership rights, authenticity, access, use and re-use—are seen as the primary obstacles (Dunn, 2020; Garvin, 2018).

Digitalisation of cultural heritage works involves making direct and indirect copies or replicas of an object or material, giving the museum copyright to the reproductions and enabling them to engage in a number exclusive economic rights (Coad, 2019). Yet similarly the replication, sharing and dissemination of these assets online can result in "mass, centralized infringement" of copyright, patent, trademark and customary laws (Dunn, 2020). One of the challenges now faced is that users around the world often access and use digital information without seeking permission or full information about copyright ownership. Data and metadata can become detached or replaced, and works become "orphaned" or separated from their owners, with multiple interpretations and meanings (Dunn, 2020; Garvin, 2018). Moreover, digital objects may have intrinsic and financial value in their own right, with uncertainty around whether they are "surrogates" for or "enhancements" of the original object (Bayne et al., 2009, 111). Misinterpretation of digital creation and re-use creates copyright challenges for museums to clarify ownership. Maintaining the balance between open access and control in the online environment is difficult, and even with Creative Commons and trademark licences, the enforcement of these rights in the virtual world is extremely costly and time-consuming for museums (Dunn, 2020; Pessach, 2007).

In Australia and many other countries, copyright exemptions are limited to the copying of museum archives for research, education, and archival preservation, and even then, only a "reasonable proportion" may be copied. Most current laws are not sufficiently broad to encompass full open access, with mass digitalisation falling outside the scope of these copyright exemptions. For example, artistic works, photographs, sculptures, and literary works require direct copying, or identical reproduction, and cannot be made available to the public without permission. Similarly, the digitalisation of films, music, and sound recordings involves indirect copying and cannot be played

without consent (Coad, 2019). Thus, when digitalising their collections, curators and collection managers must identify the copyright status of each item. Providing open access to digitalised cultural heritage materials depends on who these primary sources belong to, as although they may reside in museums they may be owned by others or form part of private collections. Museums must therefore seek authorisation for a large percentage of their works if they are to make them open to the public domain, and this can be difficult especially with archival materials, including diaries, photographs and maps or orphan works, where the authors cannot be found or contacted.

To deal with this, GLAM institutions are increasingly obtaining non-exclusive licences from copyright owners to cover themselves while digitalising material and making it openly accessible. But obtaining these can be costly as it requires time and resources to locate the owners, negotiate acceptable fees, and deal with disputes that may arise (Hudson & Kenyon, 2007). The resources required can vary significantly across different institutions. For example, the copyright fees faced by galleries to display and reproduce images of renowned artworks can be extremely high, compared to the costs of reproducing images of mass-produced items held in museums. On the other hand, museums may hold more unprovenanced items that demand much greater time spent tracing the original owners. Many GLAM institutions avoid digitalising orphan works to minimise risk (Coad, 2019). Another complicating factor is the growing presence of commercial groups that manage GLAM databases. While such groups can assist in the digitisation of collection items, they can also obtain long-term and exclusive IP rights (Pessach, 2007). The involvement of these third parties creates additional layers of copyright between institutions and original owners of materials, and raises new sets of questions and negotiations when determining the current and future management of public collections.

In addition, GLAMs often have to adopt protective measures, for example by inserting digital watermarks on their copies, publishing with low-resolution images, requiring forms to be filled in, or adding downloading buttons and tracking functionalities (Valeonti et al., 2019). Moreover, the digitalising of cultural works is arduous and the maintenance of these through new information management systems requires running costs and ongoing staff training (Coad, 2019). Thus, despite all their benefits, digitisation and open access have required museum and gallery management to find new sources of revenue and expertise at a time when financial support for the cultural heritage sector has steadily declined (Arthur, 2018).

While museum practices are seeking innovative participatory approaches and initiatives to open up their data, barriers to this are manifold. Fears of copyright infringement skew museums' choices of works to digitalise (Coad, 2019). Though copyright remains governed by national laws, the online environment is global. Copies are spread across borders, and collections can be located across multiple museums. While international conventions provide principles and rules, and in Europe moves are underway for the alignment of copyright laws, these tend to favour control rather than open access to digital public domain works (Dunn, 2020). As long as the safeguarding of cultural heritage remains within the exclusive domain of the state, the incentive for adopting international laws for the sharing of information will be restricted (Lixinski, 2019). Currently legal issues represent a major operational tension for cultural heritage institutions. Digitisation and open access requires institutions to take on new commitments and acquire new expertise at a time when finding new funding sources is limited (Wallace & Euler, 2020).

Ways forward in managing copyright

Motivated by national and international calls for greater open access, many museums have consciously moved from a restrictive approach toward one that empowers the global public to visit museums online. Major funding bodies have supported this shift, for instance the Andrew W. Mellon Foundation supporting research into the issues faced by museums when creating open access to images (Kelly, 2013). Museum mission statements have moved in line with broader calls for social inclusion, emphasising their role not merely to preserve and illustrate the plural realities of communities, but also to provide greater public access to and engagement with digital works in their collections (Coad, 2019). The National Gallery of Art, Washington; the Yale Center for British Art; the Rijksmuseum; and the Los Angeles County Museum of Art offer immediate downloads of high-resolution images that can be used for any purpose (Kelly, 2013; Valeonti et al., 2019). Others, like the British Museum and the Metropolitan Museum of Art, provide rapid downloads for personal, scholarly, and academic purposes only but charge for commercial use (Kelly, 2013). Although many of these museums still claim copyrights for some materials, they request merely an acknowledgement for reproductions or further use.

These operational changes have been supported through new digital tools offered by groups like Europeana, Art UK and OpenGLAM. By enabling museums to promote and provide access to their collections on shared global platforms beyond the boundaries of their individual websites, these groups are creating a collaborative interface or "safe harbour," which is helping reshape the contours of copyright laws within the GLAM sector and easing copyright liability in favour of public good (Coad, 2019). Although they do not provide full copyright immunity, safe harbours offer a balance between the interests and goals of museums sharing their collections and the rights of owners to be protected (Coad, 2019). In doing so, they create legal mass access to materials (Pluszyńska, 2021). Moreover, in today's environment where financial support for museums is dwindling, safe harbours offer a sustainable approach for copyright management through the sharing of resources and solutions across GLAM networks (Pluszyńska, 2021).

With safe harbour systems addressing some of the obstacles to online accessibility, GLAMs have the opportunity to work together to develop policy and management plans (Benhamou & Ferland, 2022; Pluszyńska, 2021). This work would benefit from a number of principles:

- ***Revise and clarify the overall mission of museums***, recognising the importance of greater social inclusion and aligning with international laws that guarantee individuals the right to freely participate in and have access to cultural life (United Nations General Assembly, 1948). Museums have traditionally had as their core mission the preservation, interpretation and protection of artefacts. By declaring their mission to be fostering the right for everyone to participate freely in cultural knowledge regardless of their physical location, museums can influence reshaping of the boundaries of traditional copyright laws that have focused primarily on protection to include human rights (Hudson & Kenyon, 2007).
- ***Promote the importance of open access.*** Changing the permission culture and encouraging cultural institutions to relax restrictions over collections requires

education and training around copyright and free licencing. Consultation with key stakeholders in the field of open access to navigate digital IP issues is central to formulate a carefully considered, coordinated copyright management strategy for museum resources, such as an open data policy statement (Bayrou, 2022; Pluszyńska, 2021). This includes clarifying which acts of reproduction conducted as part of a museum's public interest mission do not infringe copyright and how. In the absence of clear legal exceptions permitting the reproduction of copyrighted works, safe harbours can facilitate effective collective licensing of rights, through for example an extended collective licensing system (Bayrou, 2022).

- ***Clarify principles, laws, and codes of conduct for safe harbouring***. The scope and practices of safe harbouring should be formulated around clear codes of conduct for sustainable and FAIR (Findable, Accessible, Interoperable, Reproducible) sharing of materials and data (Wilkinson et al., 2016). The foundations underlying these principles are mostly agreed, but the pathway to implementing them is still being developed, and systems for classifying and organising the vast and growing materials and data must also be established (ALLEA, 2020; Champion & Rahaman, 2020).
- ***Embed regulations of cultural care, agency and flexibility in open access policies.*** As part of ongoing efforts to decolonise museums, open access and digitisation policies must represent and respect the differing needs and values of diverse cultures. Rather than being unilaterally developed by authorities who often represent ongoing colonial ideologies and Eurocentric views, these policies must be developed and open to revision through deep exchanges between different cultural representatives. The CARE (Collective benefit, Authority to control, Responsibility, and Ethics) principles offer one framework to guide the sharing of Indigenous data, whereby the sovereignty and governance of data is held with and determined by Indigenous custodians (Gupta et al., 2023).
- ***Include opt-out policies and ongoing protection.*** Rather than a one-size-fits-all solution, there may be cases where copyright could violate understandings around human rights, such as sacred rights in the case of Aboriginal paintings and artefacts (Lixinski, 2019). Creating an opt-out mechanism allows flexibility for copyright owners to exit the safe harbour, placing the responsibility on copyright owners to object to their work being made openly available (Coad, 2019).
- ***Adopt a collaborative extended collective licensing model.*** By working together, museums can develop a collaborative "extended collective licensing" (ECL) model as a channel to ease the digitisation of all categories of copyrighted works. This involves working with collective rights management organisations (CMOs) to negotiate terms for open digital access with copyright owners. In the case of orphan works, protections are qualified once a diligent search has been conducted in good faith to locate the lost rights holder (Coad, 2019). To be supportive, the ECL must include at least the three categories of copyrighted works (orphan works, out-of-print works and out-of-commerce works, published and unpublished), and cover all rights relevant to mass digitisation

internationally, with any remuneration fee being adapted to the category of materials and their users (Bayrou, 2022). While the endorsement of ECL is being considered under legislation in the European Union, this model is still new to most other parts of the world, therefore collaborative efforts among GLAM safe harbours are imperative.

- ***Develop clear legal guidelines to relieve lawyers who serve cultural institutions.*** By developing an overarching legal framework spelling out the copyright norms of the safe harbour, with a checklist of all the important IP-related considerations, it is possible to alleviate the responsibility on museum directors and lawyers by instead providing them with legal flexibility around the use of orphan works and access to collections (Bayrou, 2022). For example, the Digital Public Library of America and Europeana provide a statement outlining a set of standardised rights that can be used to communicate the copyright and re-use status to the broader public (https://rightsstatements.org/). Formalising these statements ensures users are also aware of any copyright protection that may exist.
- ***Introduce international agreements and harmonisation***. In addition to the modernisation of national copyright laws, there is a need to develop international agreements to allow the harmonisation of laws, including recommendations, resolutions, declarations, guidelines and treaties. This should include the development of an international framework supported by international organisations like the International Council of Museums (ICOM), UNESCO and WIPO, outlining which materials fall within a museum's primary mission of public inclusion, which fall into "commercial merchandising," and which fall into clear exceptions under the safe harbour rights statements (Bayrou, 2022).
- ***Work with all stakeholders to help coordinate support for open access efforts.*** These include groups like Creative Commons, Europeana, Internet Archive, Wikimedia Commons and others promoting worldwide open access initiatives. Together they can support efforts to improve open standards by introducing international law and regulations to unify access and change copyright protection and IP regimes, aligning these with the governance frameworks of open access repositories (Arthur & Hearn, 2021).
- ***Develop initiatives to broaden open access to new and more diverse audiences***. As part of developing open access policies, GLAMs might also establish tangible means to ensure this access reaches diverse audiences. For example, by establishing physical Internet resource centres in remote communities (Gibson & Turner, 2012).
- ***Develop international alternative dispute resolution processes for museums.*** As digital technologies continue to evolve and change, so too will new disputes around ownership and copyright. By developing an international alternative dispute resolution for museums (such as arbitration, mediation, negotiation, and conciliation), the GLAM sector can share the economic and intellectual costs of IP challenges. Disparities in museum resources across jurisdictions may severely impact their ability to become and remain relevant in the global digital environment. Through membership to an international alternative dispute resolution entity, public museums around the world could better access legal frameworks supporting digital development (Bayrou, 2022).

Conclusion

With rapid advances in digital and online content and engagement, it is easier for the public to access, appreciate, and participate in cultural heritage. However, national and international copyright laws around ownership have created much ambiguity around making collections freely accessible on digital platforms. Fears among some curators and museum managers relating to re-use and modification, loss of intellectual control, lack of acknowledgement, commercialisation through alteration, and adaptations posted on social media have created tensions, resulting in a culture where public users must request authorisation to reproduce, modify or re-use materials (Aufderheide et al., 2016). The lack of clear management plans and policies for copyright and licensing of digital assets has led to concerns around the re-use or enhancement of surrogates, and requests for permission limited to the use of any materials (Aufderheide et al., 2016).

Museums have an opportunity to address tensions between the ongoing evolution of digitalisation and this permission culture, as well as uncertainty about policies on licensing, how many digital objects can and should be made openly available, and which should be protected (Aufderheide et al., 2016; Conway et al., 2016). By addressing concerns around copyright laws and becoming more flexible and open, museums can make their collections significantly more valuable to the public. This will require working together with all key stakeholders to develop safe harbours and explicit policies around open data, standardisation and licencing needs. Ideally such work will allow for more fair and diverse use of cultural materials, and the participation of much wider audiences.

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