Open Licensing for Cultural Heritage
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Open Licensing for Cultural Heritage

Gill Hamilton and Fred Saunderson
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Gill Hamilton and Fred Saunderson
Disclaimer

This book is not legal advice and should not be construed as such.
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Chapter 4

Open licensing: the logical option for cultural heritage

Introduction

In this chapter we suggest that an open approach to licensing in cultural heritage should be developed. Building on the developments in the open movement and the realities of intellectual property rights set out earlier in this book, we argue that there should be openness in the sector. We describe why organisations should consider being open, looking in detail at both the core benefits and potential risks of an open approach.

Acting with purpose: why are you making digital collections available?

Digital raison d'être

Informed and logical decision making should guide the work of cultural institutions. A visitor to an exhibition of abstract art might expect to see works there by Piet Mondrian. Conversely, if the art of J. M. W. Turner was included it would appear out of place and visitors would reasonably question the decision making and structure behind the show.

The need to act with purpose is equally present in the newer, less tangible, and more fluid realms in which cultural heritage organisations are increasingly operating. If an art gallery intends to undertake a digitisation project, it is reasonable to expect that staff make informed decisions about what material will be captured, to what quality standards, and in what format images will be retained. A gallery preparing a digital exhibition on abstract art may seek to digitise works by Mondrian. It may be questionable for the gallery to use the launch of an abstract art exhibition to digitise works by Turner.
Cultural and information organisations need to make logical, strategic and sustainable decisions before, during and after digital capture, considering why material should be captured, how it will be managed before and after capture, and who it is being captured for. In short, organisations need to consider their digital raison d’être.

Strategy

The 2013 Enumerate study of nearly 1400 European cultural heritage institutions found that most (87%) had a digital collection. However, only around a third (36%) of the institutions had a distinct digitisation policy. Slightly fewer (34%) of the organisations actually had an explicit policy for the use of their digital collections. These figures indicate that while maintaining digital collections is common and increasingly common, only about one-third of institutions have dedicated policies on digitisation. While it has become a de facto role of cultural heritage institutions to collect and curate digital material, this position has grown up faster than the structure of policy surrounding it. This structure is as important to the sustainability and viability of this work as it is to institutions’ more ‘traditional’ collecting, curating and preserving roles.

Staff in institutions must acknowledge this and ensure that digital materials are provided with a platform equitable to traditional collections. As digital collections become ubiquitous it is vital that policy and practice keep pace, so staff must understand the lifecycle of their digital materials, and manage them accordingly.

Developing a logical and strategic approach to managing the lifecycle of digital collections is not merely an exercise in policy making or governance. Without appropriate tangible collection frameworks, a library can easily stray into disjointed collecting (e.g. failing to collect works that relate to a strategic and agreed theme) or a gallery can develop exhibitions that do not have a defined target audience. These core functions must be identified and developed with logical and strategic care. Equitable diligence is needed in the digital realm. For example, ‘It is not enough to be open, it’s important to be seen to be explicitly open and easily accessible.’

Digital disruption

Digital technology has presented a host of paradigm shifts, for the cultural heritage and information sectors as well as for the wider world. It is natural that such shifts have impacted on practices and principles within the creative and
knowledge fields, as elsewhere. Nevertheless, these shifts cannot be excuses for abandoning structure or vision.

Before digital technology became ubiquitous the cultural sector had a comfortable and established role in the creative and knowledge value chains. Cultural heritage organisations have historically worked:

- to identify content where it already exists
- to collect content in line with a defined strategy (e.g. to collect primarily modern art or primarily published medical texts)
- to provide access to the collections for current generations (e.g. within a gallery or reading room)
- to preserve the collections for generations to come (e.g. by regulating temperature in storage areas and raising the funds required to keep the lights on).

Organisations nurtured and encouraged further creation, but were rarely if ever generators or promulgators of works themselves.

Digital technology has disrupted this. A significant new role for organisations is to create digital copies of physical collections and to make them available to new and wider audiences. Organisations have long promoted collections and encouraged far-flung audiences to access them. The lending and loaning of works, as well as their sale and exchange, are by no means new practices. Similarly, it has been practical for several decades to facilitate the small-scale reproduction of works, where permitted by copyright, especially in paper-based organisations like libraries and archives. However, the ability for institutions, large and small, specialist and generalist, to facilitate the extensive and occasionally even en masse digitisation of material – as well as the digital distribution of digitised and born-digital works – is recent and groundbreaking to many established methods and mindsets.

Digitisation of material works can turn cultural heritage institutions, in part, into content publishers and distributors. These are roles that, by and large, libraries, archives, galleries and museums are not historically associated with or necessarily accustomed to. It is worth stressing these organisations are only, in this respect, ‘a form’ of publisher or distributor, since we are speaking about what is effectively the re-publication or re-issuing of works in a new medium. Today a gallery can take a painting of virtually any size, or an archive can take a volume of correspondence, and transfer the data contained in the paint or the ink into digital bits. The institution is then the curator not only of an original cultural
artefact but also of its digital surrogate. Unlike the original, which the organisation rightly has a duty to retain and preserve in situ (save for occasional loans, perhaps), digital surrogates can be published, disseminated, manipulated, shared, transferred, transformed, edited and used in many other ways that a single, material original simply never could be.

This capability presents cultural organisations with a raft of exciting new opportunities as well as responsibilities and challenges. It is vital that due consideration is afforded to these responsibilities, and that benefits and challenges are assessed properly and accounted for appropriately.

Framework for the digital lifecycle

Gathering, generating, hosting, storing and providing access to and interpretation of digital material is neither free nor of marginal cost. Cultural heritage professionals and their funders would be somewhat astounded if the results of the Enumerate survey were translated to material collections. Can you imagine only around one-third of European cultural institutions having a distinct collecting policy or access policy?

Irrespective of what your organisation’s digital raison d’être is, we suggest you assess and identify it from an early stage. You should aim to provide the same structure to your digital collection lifecycle as to your material or traditional collections. This involves considering why you have a digital collection, how you will develop and maintain it, who the digital collection is for, now and in the future, and what benefits you aim to realise through your investments in digital technology.

At the core of any cultural heritage or information sector strategy is likely to be access and use. Access to material and the onward use of that material is central to the organisational raison d’être of most institutions. In the analogue world ‘access’ often means visiting galleries or reading rooms, while ‘using’ means observing, consulting, noting and sketching. Access and use are also key considerations for digital strategies and plans. In fact, in many respects the consideration and development required here is greater than for other aspects of digital collection management. This is not because digital access and use require greater investment (far from it), but because digital access – and, by extension, use – present possibly a great paradigm shift for the culture and information sector compared with ‘traditional’ access and reuse approaches.

As we will explain, actively maintaining and perpetuating an open digital access and use environment is likely to be the most logical and strategic approach for the majority of institutions. The salient point is that assessing your digital raison d’être in the round must be active and conscious. The default position for
intellectual property rights, as outlined in the previous chapter, is for maximum protection. As your collections are exposed to greater and more complex intellectual property structures in the digital sphere, the need to make clear and proactive choices is paramount. This is a stark contrast to the material environment, where routine access and use can largely be accommodated within the confines of default intellectual property positions. Therefore, it is essential that managers are able to assess their digital access and use procedures and identify their desired outcomes and benefits. We advocate that organisations do this using the established theme of ‘openness’.

**Why ‘open’?**

The logical and appropriate approach for cultural institutions managing digital content is to be ‘open’. More than other sectors or fields, the provenance of culture and information management has been open. These foundations should be built on and perpetuated in the digital environment. The proper use and application of open licences provides a fundamental bedrock to an open approach. The information and cultural heritage sectors have clear and historical associations with ‘openness’, including an emphasis on access, sharing, use and non-discrimination between parties. The ‘creation of the museum as an idea was heavily directed by the desire to make private collections accessible to and in the trust of the public domain’. The prevailing raison d’être of the cultural heritage sector is the curation, preservation and promulgation of creative, scientific, historical, social and knowledge outputs. The sector is premised on and rooted in the generation and exchange of ideas and information. The natural ethos and outlook for the sector to adopt in the digital realm is openness.

The paradigm shifts of digital technologies have widened the ‘open’ mantle, which has been seized on by fields as diverse as education, governance and manufacturing, as set out in Chapter 2. A reinjection of contemporary concepts of ‘open’ into cultural institutions is timely and necessary, and likely to benefit organisations, users and content creators.

The cultural and information sectors are seeded in content creation, access and use. Operating institutions and policies that are open is at the core of what we do. Being open, in particular within the digital sphere, is logical, practical, economic and beneficial, considerably more so than contrasting closed positions. Information and culture institutions should adopt an open approach by default, as explained in the remainder of this chapter and illustrated in the case studies.
Legal and policy context

An open approach is in part about conforming to organisational, cultural, strategic or ethical criteria. However, there are also legal and policy considerations that can make an open approach more appealing and beneficial. Although regulation and policy apply in various ways to all actors, when considering open culture and the use of open licences this is particularly relevant for public organisations and those dealing in faithful reproductions of works that are themselves intellectually in the public domain (out-of-copyright and related rights).

Public organisations

Culture and information organisations that are funded wholly or in part by public investment, including many museums, galleries, libraries and archives, naturally have a duty to ensure their work maximises, or does not inhibit, public benefit. This often leads to practices such as opening collection areas to public exhibition (whether charged or free at the point of access), engaging in collaborative research projects, or lending expertise and experience to peer organisations and communities.

There is logic to an organisation producing or maintaining digital collections at public expense, maximising potential public return. This may be through enabling online access, or through investment in digital asset management and preservation infrastructure. As with material collections, public benefit may not always be synonymous with wide, contemporaneous access. For example, an archive may retain digital records that contain sensitive personal data of living individuals. The archive is likely still to be fulfilling its public duty by preserving those records, even while limiting or denying contemporary access. That said, many materials contained in public collections are not subject to these sorts of restrictions.

Council Directive 2003/98/EC on the reuse of public sector information (the PSI Directive) and its 2013 revision are transposed into UK law by the Re-use of Public Sector Information Regulations 2005 and 2015 (the PSI Regulations). The 2005 PSI Regulations specifically excluded from their scope information held by libraries, museums, galleries and comparable cultural organisations. These institutions were brought into scope with the 2015 PSI Regulations.

The PSI Regulations place certain criteria on the ways in which public organisations can and should enable the reuse of public information – the use by any party of information (in any form and format) generated or held as part of an
organisation’s ‘public task’ for further purposes. In general, the regulations ensure that public information that is available for reuse may be reused by anyone for any purpose on equitable terms (‘non-discrimination’). The regulations do not require museums, libraries and similar organisations to make their public information reusable, but once an item is made reusable it needs to be reusable by others on equitable terms.

The PSI Regulations permit organisations to apply ‘reuse conditions’ – licence terms and reuse fees – and places particular restrictions on how these may be determined and levied. In particular, to ensure non-discrimination, ‘reuse conditions’ cannot vary between parties requesting comparable reuse of a particular piece of public information. At a basic level, for example, a library could not charge two external parties two different reuse fees for broadly the same type of reuse of the same public information (such as a digital image). Indeed, any fee the organisation chooses to charge for reuse needs to be calculated in accordance with the organisation’s costs associated with enabling that reuse, plus a reasonable return on investment if desired. Fees are not obligatory and are actively discouraged by the regulations or prohibited outright for some organisations.

Significantly, the regulations also require that libraries, museums and other public organisations comply with their own reuse terms when reusing their own public information. This does not cover use of public information for purposes that are within their public task, but does cover further activities. For example, many organisations have a public task to collect, preserve and provide access to cultural works, but often do not have as part of their public remit the responsibility to run commercial sales operations.

If a public cultural organisation is considering applying reuse restrictions on public information not subject to third party copyright or other external restrictions, it needs carefully to consider the impacts and effects of the PSI Regulations and to ensure that its reuse framework remains compliant. It is possible to comply with the regulations while maintaining a closed reuse structure, but this can become challenging and complex for the organisation and its users. An organisation needs to consider whether by imposing reuse conditions it restricts its own potential reuse. For example, if a museum decides to apply restrictive licence terms and levy reuse fees for use of images in commercial products, that museum needs to be prepared to charge itself that same fee and comply with the same licence terms if it later hopes to make and market commercial products that use its images, on the reasonable assumption that the sale of goods is beyond the museum’s public task. Additionally, organisations
need to ensure that their licensing terms and reuse fees meet the regulations’ requirements. For example, an institution should be able to demonstrate the basis on which any reuse fees have been calculated, in order to clarify that the amount charged relates to the organisation’s costs for actually enabling that reuse.

The PSI Regulations require certain information about reuse conditions to be made available publicly, for example on an institution’s website. It is important for institutions that place reuse restrictions on their public information to explain and justify this, in accordance with the regulations’ transparency requirements.

**Faithful reproductions of public domain works**

There was a discussion in the previous chapter about making faithful reproductions of public domain works from a UK legislative standpoint. There remains considerable legal ambiguity as to whether a faithful two-dimensional reproduction of a two-dimensional work meets the ‘threshold of originality’ required to obtain copyright protection. If the threshold is met, then the new surrogate work has copyright protection from the moment it is created (assuming the underlying work was not infringed in the process). If the threshold is not met, there is no fresh copyright in the surrogate. Although this uncertainty is pertinent whether or not the underlying source work (e.g. the painting) is in- or out-of-copyright, it is perhaps more pressing when the source work is in the public domain (out-of-copyright).

There are a number of possible scenarios, depending on how this originality question is answered:

- An in-copyright work is faithfully reproduced and the reproduction meets the threshold of originality.
- An in-copyright work is faithfully reproduced and the reproduction does not meet the threshold of originality.
- A public domain work is faithfully reproduced and the reproduction meets the threshold of originality.
- A public domain work is faithfully reproduced and the reproduction does not meet the threshold of originality.

In the first two cases, use of the surrogate is limited by any reuse restrictions on the source work. For example, if a gallery digitises a contemporary painting with the permission of the copyright owner, the gallery’s ability to publish copies of the surrogate, enable reuse of the surrogate copies, and otherwise use the surrogate is first and foremost constrained by the permission it has from the
owner of copyright in the painting. In this situation, it is still important to consider the legal questions around the threshold of originality in faithful reproductions, but the immediacy of the issue is reduced compared with the other scenarios.

In the second two cases, there are no rights existing in the source work. For example, if a gallery digitises a painting by Rembrandt (d. 1669) there is no copyright extant in the source work on the assumption that the work in question is a ‘published’ work in copyright terms. In these scenarios, the question of whether the surrogate copy attracts its own, new copyright protection attains greater significance. Unlike the first two scenarios, in these cases there are no intellectual property restrictions on the use and reuse of the source item. Thus, any such restriction placed on the surrogate can only relate to rights that may exist in the surrogate itself (in the digital file of Rembrandt’s work, rather than in Rembrandt’s own painting).

While it is beyond the scope or capacity of this book to rule on the threshold of originality question, it is important that the matter is taken into consideration by any organisation maintaining faithful reproductions of public domain works (see Chapter 3). Understanding this can have a major impact on how viable and sustainable your digital reuse framework may be. An organisation is more likely to develop an appropriate and durable reuse framework, with the most apt use of licences and rights statements, if this matter is addressed openly and honestly. Given the legal uncertainty, it is also prudent to remain attuned to case law and legislative developments, and to be prepared to adapt your policies or understandings accordingly if the legal position is altered or more clearly affirmed.

The arguments in favour of seeing these reproductions as not being subject to fresh copyright are strong, if as yet inconclusive. Note, in particular, the section ‘Threshold of originality’ in Chapter 3, discussing authors’ intellectual creations. Proper use of licences and rights statements are therefore important, in order to communicate clearly to third parties the rights and reuse status of content in all forms. However, an organisation that feels it should or will exert copyright control over such reproductions is best to do so with due care and consideration on the understanding that the legal position, particularly in the UK and Europe, remains debatable. It takes either a change in the copyright acquis or a judicial decision at a suitably high level (e.g. in the Court of Justice of the European Union) to begin to resolve this issue. That said, organisations should remain mindful of the direction in which peer institutions are moving, the way in which the law is liable to move, and their further obligations and objectives.
The benefits of an open approach

Depending on the depth and degree of openness adopted, the material that has been opened and the actors involved, the benefits of an open approach vary. To some, the benefits of open cultural collections may only be marginal or remote, while to others benefits may be direct and significant.

When there is openness to culture and information there are six overarching benefits that are likely to result, at least in part, relating to: impact, availability, creativity, simplicity, the advance of knowledge at marginal cost, and the promotion of understanding and respect for copyright.

Material that has a higher potential for impact has wider, more even availability and is more likely to contribute to fresh creativity. Processes that are simple maximise benefit at marginal cost and advance respect for copyright and reuse restrictions.

Impact

Openness lowers the barriers to access and reuse. Lower barriers increase the potential for access and reuse. An increased potential for access and reuse brings an increased opportunity for impact, as well as more opportunity to demonstrate the significance and value of that impact to funders, donors or sponsor organisations. Making material open is therefore pragmatic and strategic.

Use of content on Wikipedia and other Wikimedia Foundation projects is one example of how open practices can generate rapid and quantifiable increases in reach, which can in turn be used to illustrate increased potential for impact from your collections, investments and efforts. Wikipedia is in the top ten of the most visited websites in the world. The web domain of the Metropolitan Museum of Art in New York, by contrast, is ranked around 14,800th, the British Library’s domain 21,500th, and the Rijksmuseum’s 83,500th. Therefore an organisation’s content has a greater chance of access, use and impact if it is reachable via Wikipedia than if reachable by an institutional website alone. To be reached on a Wikimedia site, content must be ‘free’, either openly licensed or in the public domain.

A simple way for institutions to generate greater reach via Wikipedia is to release openly licensed and public domain images to Wikimedia Commons, the repository holding images used on Wikipedia’s articles. In 2015 the National Library of Wales began an active and concerted effort to expose open images from their digitised collection to Wikimedia Commons (see case study, Chapter 7). Over a six-month period between February and July 2015, there were an average
of 177,805 views of Wikipedia and other Wikimedia web pages containing images from the Library’s digitised collections. During the same six-month period in 2016, that average rocketed to 13,617,585, a more than 76-fold increase. The reason for much, if not all, of this increase was that more images from the Library were made available on more Wikipedia pages. This was only possible because open principles had determined the organisation’s non-restricted digitised content.

While these figures do not suggest that the Library’s images are, per se, being used and reused more, or are necessarily having a greater impact, they clearly show that the Library’s content is gaining wider exposure, and therefore has a much higher potential to generate impact. Significantly, this quantum leap in potential was obtained in a short period of time through basic principles of opening content, rather than through disruptive or costly efforts to construct new premises or develop new web features.

A higher potential for impact naturally has major and positive implications for the growth of knowledge and creativity, but can also derive more immediate benefits for the institutions that release material. In an era of contracting budgets and increased demands it is important for any public service to be able to demonstrate value and impact. Organisations hoping to secure or increase funding may wish to isolate ‘tangible proof-points’ of their demonstrable impact and value.

One way of doing this is to capitalise on the latent value in digitised collections by ensuring these are, wherever possible, made actively and purposefully open. Openness, quite simply, enables the faster and cheaper availability of information than would otherwise be possible. Organisations do not need to build a new Wikipedia. By opening content, organisations can ensure their existing works are more likely to be available through already popular destinations, and by capturing and reporting figures can demonstrate to funders that investment in making collections digital and open can reap considerable rewards in reach and potential for impact. Openness enables institutions to place existing assets where the users already are, at marginal cost and effort.

Availability

Openness allows content to be shared and disseminated more easily, seamlessly and effectively than if it remains closed. For example, limiting the sharing and use of images and other content in order to protect the ability to exploit commercial reuse is rational from a restrictive point of view. From a cultural heritage and information point of view, however, it is not rational. Withholding
the ‘best’ assets with the aim of releasing them only under bespoke licences cripples the ability to share with audiences, and potential audiences, just how exceptional the content is. The more optional barriers are erected, the more unneeded limits are placed on an organisation’s own chances of success. In an age when sharing, connectivity and choice are abundant, the logical home for non-profit knowledge and cultural organisations is at the forefront of openness, shouting loudly about collections, without concern for artificial limitations. The age of connectivity is the ideal opportunity to capitalise on technology and use it to ensure collections are as accessible and available as possible.

Europeana estimates that there are around 300 billion cultural ‘objects’ in Europe, but that only around 3.4% of these have been digitised and made available online. Incredibly, just 0.3% of these 300 billion objects have been digitised and had their digital surrogates made available openly for use and reuse. In an era that we think of as digital, it is surprising to realise that only a tiny proportion of our cultural heritage is openly reusable in digital form. Naturally, much of our cultural heritage does not lend itself to digitisation. The Enumerate study estimates around 30% of the cultural heritage in European institutions does not require digitisation. Plenty of content has been generated in recent decades and so is subject to copyright-based restrictions. Some content is subject to other restrictions, such as protection of personal data or restrictive material ownership terms. Nevertheless, there is a clear gap in the market for much greater generation of openly reusable digitised culture and information.

A persistent problem for cultural institutions has always been space and capacity. In the world of tangible information and cultural assets there is a real and low limit to the amount of data that can be imparted to visitors and users. Museums and galleries are rarely able to display all of their collections, the vast majority of works remaining for much or all of their lifetime in storage. The sector has long curated and preserved far more data and information than can be displayed or engaged with. While space restrictions persist in the digital environment, these are lower than in the physical world. Digitisation gives institutions a fresh opportunity to expose and provide access to this ‘hidden’ material, thus deriving greater value from investments already made in collection, interpretation and storage. Openness adds a further vital layer. By making digitised collections openly available organisations can expand their reach, because open collections have a greater potential to be used and shared.

Ed Rodley of the Peabody Essex Museum in Massachusetts urges us to think of the internet as a new continent, ‘rapidly being populated by all sorts of ideas and content’. He argues that survival is much the same on this new continent as
it is in evolution and depends, therefore, on the ‘widest, most promiscuous spread of the cultural seeds we steward and create’. There is an intuitive logic to this, seen for example in the boom and bust of the early world wide web. If organisations want to conquer this space and derive benefit through increased exposure, access and use, they need to narrow the gap between our billions of cultural objects and the minuscule percentage of these currently available for open, digital reuse. This requires adopting an open approach.

Creativity

The foundation of creativity is a combination of ingenuity and prior art. This is a fundamental principle on which the millennia-old establishments of schools and libraries are based. Access to material breeds creativity. Not only is creative endeavour a key foundation for cultural institutions themselves, but creativity has a vital role to play in wider society. For example, a 2010 survey of chief executives undertaken by IBM discovered that ‘more than rigor, management discipline, integrity or even vision – successfully navigating an increasing [sic] complex world will require creativity’.

Digitisation offers cultural heritage organisations the ability to expand their reach and potential to contribute to greater creativity. More people are able to access more collections, with greater ease and at lower cost (than, for example, travelling between far-flung reading rooms and galleries). Accessible content is key to fostering further innovation, and this is likely to be a core pillar in many digitisation efforts. However, access is only a part of the puzzle. It is fundamental that our cultural heritage and accumulated prior art and knowledge are usable and reusable when they are accessible, in particular when the source material is no longer protected by copyright. This is akin to the ‘free content’ and open principles that underpin the wiki movement, world wide web and internet. ‘New art rarely exists in isolation. Instead, new art is routinely built on the creative work of artists who came before. When a museum constrains the public domain, it is inhibiting new creativity and scholarly exploration.’

Making public domain collections available through digitisation is an essential first step to widening access and promoting creative engagement. However, placing restrictions on their use and reuse places undue and illogical barriers in the way of genuine and prolific engagement.

Cultural heritage organisations thrive and rely on the presence of creativity and ingenuity. Without creation there simply would be no need for collecting organisations, not to mention a considerable dearth in the degree of social development. Making digital collections openly available for access, use and reuse
greatly increases the opportunities for content to form a basis of further creativity. This acts as a mutually beneficial cog in the creative cycle, as collecting and heritage organisations enable the further creation of new works. Creativity is possible with closed material, but the barriers are greater and the opportunities lower.

Simplicity

Maintaining closed content is by default about implementing and enforcing restrictions. This requires the development of practices for authorising reuse, engagement of staff time in issuing permission and monitoring compliance, and generating procedures and policies around what may and may not be done with discrete types of content in excess of what is already required (e.g. by content depositors or third party copyright owners).

Speaking of the Rijksmuseum’s much lauded release in 2013 of free-to-download high-resolution digital images, Taco Dibbits, Director of Collections, justified the museum’s move in part by explaining ‘With the Internet, it’s so difficult to control your copyright or use of images that we decided we’d rather people use a very good high-resolution image of The Milkmaid from the Rijksmuseum rather than using a very bad reproduction.’ In other words, Dibbits and the Rijksmuseum realised that there was greater benefit in releasing their content than in forcing their users to nip around the edges, whether by copying images against the museum’s policies or making do with lower quality derivatives.

There are various benefits. For example, if copies of your institution’s works are repeatedly being used at an inferior quality, this may have negative implications on how the wider public views your collections. Seeing mostly or only poor copies of Johannes Vermeer’s Milkmaid could lead people to think that the Rijksmuseum has not been looking after the original well, or does not take digitisation seriously.

However, there are also benefits in introducing simplicity, which in turn lowers costs and barriers. Before it allowed free reuse of its images, the Rijksmuseum would have needed to regulate reuse, generate and enforce permission for reuse, identify and (at least in theory) pursue unapproved reuse. Each of these activities generates added layers of complexity and cost to an already complex environment. Crucially, as Dibbits acknowledges, these obligations were self-imposed in relation to copies of public domain works. They were not necessary. By restricting reuse beyond the degree actually required, institutions generate for themselves and their users more complexity and cost than is likely to be required.

A digital cultural heritage environment where restrictions are isolated only to
the degree and scope actually required is liable to be far simpler than one in which added layers of compliance have been added. Appropriate and concerted use of open licences and statements wherever possible is an important tool in ensuring that complexity and restriction are kept to an essential minimum. A simple, open environment should still ensure that when necessary works are protected, for example because of third party copyright, but avoids adding any further restrictions. In the Rijksmuseum example, allowing everyone to reuse the high quality copy of *The Milkmaid*, once the museum had such a copy, was simpler than making different users intending different reuses apply for or be subject to different reuse terms. Once the museum decided to allow anyone to reuse the image of *The Milkmaid* they were able to divest the monitoring, enforcing and gatekeeping responsibilities they previously hoisted on themselves of materials that could in reality be made openly available. Built into an organisational process with clarity and purpose, an open approach can enable these added layers to be dispensed with early on, or avoided from the start.

**Advancing knowledge at marginal cost**

An open approach to cultural content enables the spread of knowledge at a remarkably marginal cost. In the overall value chain of content creation, storage and consumption, the costs associated with openly sharing copies of works is extremely low. While technology advances are by no means entirely cost-beneficial or cost-neutral (e.g. while digitisation enables greater spread and stability of collections it also necessitates increased curation, management and storage as existing collections are effectively multiplied), removing unnecessary restriction layers comes at low cost and comparatively high potential for return.

Once a cultural organisation has created digital copies of a material work, the costs and obligations associated with maintaining that copy do not vary regardless of whether the derivative is made openly or restrictively accessible. Unlike analogue or tangible works, digital surrogates by their nature exist as copies, which are copied over and over again at no further cost. The organisation is not deprived of its digital copy when a user takes and uses an image, as that organisation would be deprived of a tangible object if a visitor took a painting away with them. Even in contrast to the world of mechanical copying, the margins are considerably lower with digital derivatives, as new digital copies do not require fresh ink, paper or moving parts. The added cost of open reuse, in excess of creating digital surrogates, is arguably zero for the organisation, since even the small amount of new storage space required for a fresh copy of the copy will be on the user’s device, not on the institution’s.
As with stimulating creativity, it should be in the inherent interests of a knowledge organisation to promote and foster the advancement of knowledge. In consideration that institutions by their nature undertake the immense work of collecting, storing and providing secure and sustainable access to material works and their digital surrogates, it seems entirely counter-productive to place unnecessary barriers to wide and ready use and reuse of that information at the final stage. Unwarranted restrictions on access and reuse, for example if placed unnecessarily on copies of public domain works, place a confusing and irrational block on the organisation’s very mission as expressed through the efforts invested in content selection, curation and digitisation. Conversely, enabling open access and reuse wherever possible adds no additional costs or time to the organisation’s processes, yet hugely increases the potential for those efforts to be capitalised on.

**Promote understanding of and respect for copyright**

While it is possible, through contract, to withhold and grant permission to obtain and use an item (as opposed to intellectual property that may or may not exist within that item), there has been frequent and messy tangling of material restrictions and intellectual property restrictions by organisations seeking to retain closed digital collections. Cultural institutions frequently label digital surrogates of public domain works as being the copyright of the institution, the argument being that the digital image (rather than the underlying work) is a new creative work worthy of protection (see section ‘Threshold of originality’ in Chapter 3). Even where organisations are less overt about asserting copyright control over public domain surrogates, it is common to find images released under Creative Commons licences, which are copyright licences, and in simple terms cannot be applied to works that are not in-copyright.

As discussed, it remains a matter of legal debate whether faithful reproductions of two-dimensional works are themselves worthy of copyright protection. However, irrespective of the legal conclusion, messy and confusing management of digital access and reuse by cultural institutions has wider negative implications. Poor and inconsistent use of copyright notices and licences can debase and devalue these tools in relation to works that genuinely require clear and restrictive terms (e.g. a digital copy of a contemporary work of art that has been copied under licence).

Seeking to restrict the reuse of openly accessible and available copies of works that are intellectually in the public domain, and often retained and managed at public expense, generates new and unwarranted layers of copyright complexity. Cultural heritage professionals and content creators know from experience that
copyright is already complex, and the tome that is UK’s Copyright, Designs and Patents Act 1988 is some testament to that. It is counter-productive for cultural heritage organisations to enforce fresh, unnecessary and complex barriers while trying simultaneously to encourage access to material and safe and proper use of works that contain existent third party intellectual property rights.

If cultural organisations hope to ensure their users understand copyright and are able to use contemporary collections in accordance with existing rights, then it follows logically that institutions should do all that they can to make these rights clear and to distinguish between open and closed works. It seems equally logical that organisations should attempt to do all within their power to make licences and rights statements as clear, consistent and fair as possible. This should be achieved through logical, purposeful and accurate application of openness, through proper use of licences and right statements.

The risks of an open approach

As with any practice, being ‘open’ has costs and negative risks as well as benefits. On the whole, however, the benefits outweigh the costs and negative risks.

We will not seek to outline a full range of risks that can occur through the introduction of an open approach. As with benefits, risks vary depending on the situation, the resources and the actors involved. Similarly, the degree and depth to which an open approach is embraced can have an impact. Benefits may fail fully to materialise if openness is only partly adopted, and in the same vein risks may be decreased or increased if openness is only partly pursued.

In this section we address what we feel are likely to be the most common and concerning risks. As well as outlining the sources of these risks, we explain how to mitigate these risks through purposeful and strategic action and how we believe that the negative impacts of these risks, if realised, are nevertheless outweighed by the positive impacts derived from the benefits of an open approach.

This section focuses on five sources of risk, which each derive from a potential loss:

- of income (the licensing risk)
- of control (the curation risk)
- of visits (the diffusion risk)
- of position (the competition risk)
- of aura (the dilution risk).
Loss of income – the licensing risk

Perhaps the most obvious, and possibly the most concerning, implication of removing restrictions on access and reuse is removing an opportunity to generate income. Selling downloadable images or issuing paid for licences to reuse digitised content are two of the most immediate ways in which digital content can be monetised by a cultural organisation. The practice is common. By definition, taking an open approach disrupts these streams. However, an open approach does not signify a no-income environment. Instead, with openness there is an opportunity to introduce greater nuance, justification and sustainability to income generation.

The licensing risk needs to be broken down and challenged in four distinct ways:

- **Clarity**: Digitised content sales and licensing is often messy, which derives from the shaky grounds on which the approach can often be based.
- **Income and relative loss**: It is worth considering in detail whether an organisation is generating income through restrictions and, if so, whether any of the income is profit and what the relative loss of this income would be.
- **Objectives**: It is important to understand what the objectives are for digital content and where reuse restrictions fit within those objectives.
- **Alternatives**: Reuse restrictions are not the only means by which digital content can be used for income generation – there are often viable alternatives that are less restrictive and may prove more rewarding.

**Clarity**

Generating direct income from restrictions on access and reuse of digital cultural content can be messy, especially when dealing with digitised surrogates of public domain works, because there are two things that a fee may be charged for:

- the right to obtain material (e.g. paying a fee to get a copy of an image)
- the right to reuse material (e.g. paying a permission fee to use an image in a publication).

And four sources of justification for levying fees:

- as owner of original or source material (e.g. a painting)
G as owner of derivative or surrogate material (e.g. a digital reproduction of a painting)
G as owner of intellectual property in original or source material (e.g. copyright in a letter)
G as owner of intellectual property in derivative or surrogate material (e.g. any copyright in a digital reproduction of a letter).

If a cultural organisation seeks to generate income through licensing, it must be clear to staff and customers from the outset what exactly is being licensed and under what justification(s). For example, it should avoid the befuddlement that greeted a tweet and blog post from the UK Intellectual Property Office in 2016, which purported to offer insights into how a gallery protected the copyright of William Shakespeare (who died in 1616). The less that this is defined the greater the likelihood of uncertainty and the higher the potential for added cost (e.g. though protracted discussions and explanations). Therefore, if the reduction in income-generating potential is considered a negative risk, it is essential to understand whether the organisation is in fact able to restrict content for income potential in a manner that is justified and not overly opaque.

**Income and relative loss**

The second matter an organisation needs to examine is whether restrictions on access and reuse actually are enabling it to generate income, and if so whether any of the income generated is in fact profit. This is about distinguishing between the generation of income and the potential to generate income, as well as the distinction between the generation of profit and the generation of income ‘at any cost’. This is closely linked to the matter of clarity, since the lower the degree of clarity the more likely it is that the organisation’s costs will be higher than they should be, with a resulting negative impact on income and profit.

How much does it cost your organisation to put into place, regulate and enforce restrictions? How much do licensing activities cost your organisation? As part of its decision to enable free downloading and reuse of high quality images, the Rijksmuseum took into account the fact that they were unsure how much money and resources they actually spent generating income from image sales (which in 2012 amounted to an annual total of 0.2% of their overall level of income).

The open approach does not imply that charges should never be made. For example, if an organisation needs to digitise an item or needs to reformat a digital file in order to meet a request, there are clear and tangible grounds for charging,
if the organisation so wishes. However, where the content already exists in the format required, free from external restrictions, the added cost to the organisation of enabling reuse is effectively zero, up to the point that it decides to add a licensing layer. If applying restrictions, the organisation requires time to issue licences, legal resource to generate licence agreements, capacity to monitor misuse, and technical barriers to prevent misuse. None of this cost is required in relation to content that already exists and is free from external restrictions. Therefore, an organisation seeking to restrict this type of content for the purposes of generating income needs first to consider what costs it has to introduce to generate that income and second whether it can recover in charges more than it bears in fresh costs.

As the Rijksmuseum and others have discovered, the sums are a challenge. Attempting to regulate and control digital content, which you are likely also to be seeking to provide access to (see section ‘Objectives’, below), can be complex and expensive. Therefore, it is essential to consider whether a loss of income may be compensated for by a saving in otherwise unnecessary expenditure, as well as whether investments in generating income are in fact generating profit above and beyond the fresh costs you are incurring. To assess any of this effectively it is a prerequisite that you understand what you are restricting, on what basis, and by what justification.

Objectives

Irrespective of whether restrictions may or may not provide your organisation with reasonable income or profit, consideration needs to be afforded to your reason(s) for generating digital collections in the first place. Respondents to the Enumerate survey were asked to assess the importance (on a 1 to 10 scale, with 10 being ‘most important’) of seven reasons for providing digital access to collections. Academic research (scored 8.5/10) and educational use (scored 7.9/10) were ranked highest while ‘sales and commercial licensing’ was considered by far the least important (obtaining a score of just 3.2/10).19

This gulf illustrates how organisations are thinking about their digital collections’ raison d’être, at least intuitively. This reality should call into question whether restrictions beyond those required through third party rights and contracts are indeed worthwhile. If an organisation’s digital raison d’être is to promote access, are restrictions the most strategic choice? If image sales and licensing is on an organisation’s digital agenda, but is ranked below other objectives, is the application of the restrictions required to enable sales and licensing actually inhibiting the proper exercise of its other, higher-ranked, objectives?
Alternatives

Finally, consideration of alternative methods of income generation is vital. While discussions of objectives and profit versus income are valid, these can nevertheless appear academic when there is a clear bottom line that costs need to be covered and income generated. Perhaps rightly, digital surrogates can be seen as assets, and so it may be undesirable to pass on them as an opportunity for income generation, even if at partial expense of other objectives.

However, it is unlikely that restrictions applied to enable income generation are the best or only way to cover costs or earn added revenue. Indeed, the presence of restrictions needed for generating permission fees may even preclude an organisation from properly exploiting other, less restrictive income-generating practices, especially when factors such as the PSI Regulations are accounted for. There is nothing to guarantee that every organisation will find secure or lucrative revenue streams from collections, but this can often be done to some degree. Importantly, activities such as selling items derived from collections, like books, posters or mugs, does not require that restrictions are placed on such content. An organisation has its collection from the start; it has its brand and position, and the curatorial expertise and knowledge of its staff. These are not lost when an open approach is adopted.

Loss of control – the curation risk

Being open is about relinquishing control. By placing information in the public sphere under open licences or reuse terms you are removing a layer of control that you might otherwise exert, whether through material or intellectual property, or both. The nature of the public domain is self-evident – information that is public – so no one person or actor has the right to exert monopolistic control over it.

If you have concerns about a loss or reduction in control over your collections, however, it is worth considering what this may actually mean in practice for your organisation and for others. For example, it is worth asking yourself:

- What actual control will be lost?
- What will we gain by retaining that control? What will our (potential) users gain if we retain control?
- If some control is lost, how will this damage us? Will it damage the material? The information’s veracity? The public?
- Do we have the right to maintain this level of control over this particular material?
There are some clear cases where openness may result in negative loss of control, such as a library loaning out rare books or a museum permitting visitors to touch artefacts. However, when dealing with derivative digital copies of works, the potential for harm is different. In short, enabling open reuse of digital copies of works will not pose any threat to the physical integrity of the original item or your digital copy of it (since users will be dealing with copies of the copy, after all). In this sphere, therefore, any possible negative impacts from relinquishing control will be intellectual, moral or social in nature, not physical.

This is a significant distinction, and in part calls into question the role of culture and information organisations. The preservation of the material integrity of works in our care is clear, as is the role to preserve for the future the understood meaning of the works, or at least the ability of individuals to interpret meaning from the works. Is this degraded by allowing open reuse of copies of copies? It is entirely possible that a reuser will take an openly available derivative and use it for purposes that might be considered undesirable (whether for marketing a particular product, or promoting a particular ideology, or creating a new work based on an earlier one – think, for example, of Marcel Duchamp’s *L.H.O.O.Q.*).

However, do organisations have the right to attempt to prevent this from happening, provided that the original work is intellectually in the public domain and is not materially threatened (in the example of *L.H.O.O.Q.*, Duchamp’s reworking of the *Mona Lisa* would certainly have been the prerogative of the Louvre to control had he attempted to draw a moustache onto the original as opposed to a postcard surrogate copy)?

Enabling open reuse of copies of public domain works does not necessitate giving permission, for example, to defame anyone or to generate hate material. Nor does it permit an individual to associate their work with the source organisation or imply that because the derivatives have been made openly available the source organisation in some respect endorses their efforts. However, it does allow individuals to do what they wish with the copies within the confines of the law, which is the precise intention of the public domain. It is questionable whether this reality is likely to present any genuine negative risks to a source organisation.

A separate negative impact that may be associated with a loss of control is the matter of provenance. By enabling open access and reuse, especially under fully open terms such as material given a public domain mark or dedication, organisations face the risk that content will be shared and reused without the source organisation (and/or content creator, source and so on) being attributed. This is perhaps a greater source of risk than those associated with perceived
misuse of derivatives. Nevertheless, the implications of this risk should again be approached with caution. As well as questioning whether it is correct to require individuals to attribute the source institution in cases where they are reusing surrogate copies of public domain works, the active and pragmatic use of open licences and practices gives organisations the opportunity to help users cite their sources.

Taking the example of Vermeer’s *Milkmaid*, Taco Dibbits cited his desire for anyone wanting to turn images of that masterpiece into toilet paper to at least do so with a good, high quality image. There are a couple of notable points here. The first relates to the reality that acts as undercurrent to Dibbits’ statement: users were finding low-grade copies anyway. It is unlikely that those copies had robust metadata associated with them. By giving users the museum’s own best copy, the Rijksmuseum also gave itself the opportunity to disseminate copies accompanied with good metadata (including provenance data) and to further develop the museum as the go-to source for images of the painting. The second matter to observe relates to the ‘misuse’ impact previously discussed. It is merely worth dwelling on Dibbits’ acknowledgement that someone might wish to use a copy of a Dutch masterpiece for toilet roll.

**Loss of visits – the diffusion risk**

The converse effect of invigorating fresh engagement through external channels, such as Wikipedia, is that an organisation may fail to draw as many visitors to its own destinations, whether physical or digital. There are a couple of simple ways to address and mitigate against the impacts of this risk.

First, it is not clear that opening content causes visitor numbers to decline. In fact, a study in 2013 of open practices at 11 major American and British museums found that openness led to, or at least did not prevent, the number of visits to virtually all of the museums’ websites increasing, in most cases by at least 100%.

Second, negative impacts of this risk depend largely on what an organisation considers ‘visitor success’ to look like. Even if visits are reduced – which appears unlikely – organisations may still find success in looking to where those visitors are heading instead. In the case of the National Library of Wales, this would involve capturing the impressive level of potential exposure that its digital images have had since being published on Wikimedia Commons. An element of this might also be highlighting the diversity of the types of potential audiences the Library is able to reach, which is likely to be far wider on one of the world’s most popular websites than on its own domain.

If the visitor facts and figures that matter to your organisation relate to how
large and wide an audience it reaches, having an open approach presents more of an opportunity than a threat. Provided that your organisation is willing to capture exposure of its content as a ‘visit’ irrespective of whether it occurs in your building or when an item is on loan, whether on its website or where a digital object has been reused elsewhere, being open provides more opportunities to notch up visits and diversify your audiences.

**Loss of position – the competition risk**

The impacts that may derive from this risk are closely associated with those that may arise under the loss of control risk. When content is made open the possibility is introduced that another party will take the content and legitimately set up what might feel like a competing service. For example, this could involve displaying your organisation’s digitised content on a private website or selling copies of your images.

Again, at a first pass the negative impacts of this risk appear significant. However, with greater consideration this risk is likely to be of minimal threat. In short, you should consider what a third party might be able to do with your content better than your organisation. If a third party is only liable to create a poorer version of your organisation’s service they should not be viewed as a competitor. If they are truly liable to create a rival you have a few options. It may again be worth considering what the negative impacts of this really would be. After all, this will still represent opportunities for your collections and funded work to be making impact and being accessed, not to mention adding wider economic impact. Furthermore, it may well be that if this is a real threat, it can be pre-empted since the organisation retains various advantages, including being able to act first (you have the source material, after all) and being able to use your organisation’s name and brand.

In fact, being open can provide advantages – if there is concern about competition, then your organisation’s goal should be to create the best possible offering: be the go-to source for reusable material from your collections. An easy and cost-effective way of doing this is offering material at the highest possible quality with the fewest possible barriers. In the digital cultural heritage sphere the simplest and most effective way to achieve this is by adopting an open approach. Taking again the example of the Rijksmuseum’s *Milkmaid*, Taco Dibbits felt inclined to release his organisation’s best quality imagery for free in part because users were finding it easier to get copies (albeit, of inferior quality) elsewhere. People were going with the free, easy to obtain copies, despite the lower quality. Being open wherever possible will help your organisation remain relevant and
pertinent to third parties, especially those that are liable to turn to the readiest source available.

**Loss of aura – the dilution risk**

This final risk is closely linked to the competition risk. Impacts of the dilution risk could arise through a perceived oversaturation of cultural objects or an environment wherein pervasive access to digital content, perhaps from third party sources (e.g. Wikipedia) as well as traditional or established sources, has dulled the ‘aura’ of works: ‘that which withers in the age of mechanical reproduction is the aura of the work of art’. Any direct negative impacts of this to source organisations would arise through what would effectively be a form of competition by the broader audience no longer finding uniqueness or value in the content being maintained by institutions.

The impacts of this risk seem highly unlikely to be realised, at least by applying an open ethic. In pure numerical terms, we are far removed from the cultural or information sphere being diluted by the presence of open content (e.g. given that only around 0.3% of extant European cultural objects are currently openly available in digital form). Indeed, even if we were to reach a point where this balance favoured openly accessible and reusable cultural works, it seems remote that this would have negative impact on the value, veracity or significance of the source objects or the culture and information spheres more generally. For example, as Deborah Ziska of the National Gallery of Art in the US notes, we have ‘gotten over’ the hurdle of worrying that cheaper reproduction of culture will necessarily dilute art and creativity.

**Reasons for retaining closed material**

Organisations always have valid reasons for retaining ‘closed’ material that has not been exposed through open mechanisms such as the use of open licences. These should be identified and retained as part of the due assessment processes described here. The omission of openness by information cultural organisations should be specific and isolated, and not the default position. As with the application of open principles, and under the overarching theme of this chapter, the maintenance of ‘closed’ material should be logical, strategic and sustainable.

**What does ‘closed’ mean?**

By ‘closed’, we mean simply the opposite of ‘open’. Material is ‘closed’ when it is not open for anyone to ‘access, use, modify, and share’, or, if it is, the barriers
to doing so are steeper than a requirement to preserve provenance and openness. In other words, ‘closed’ material is any material that does not fit within the Open Definition.23 It is worth distinguishing between semi-closed and fully closed material, particularly from a licensing perspective.

**Fully closed material**

Fully closed material is material that is non-accessible and/or non-reusable. Although this may stem from intellectual property rights, and by extension a licence or a lack thereof, it is more likely that fully closed status will arise through non-intellectual restrictions. These may include an item that has heavily deteriorated to the point at which access would be liable to damage or destroy it disproportionately. Fully closed status may arise in connection with intellectual property rights, the most obvious example being where a rights holder fails to issue any licences in relation to their work. Nevertheless, that work will only be fully closed if the rights holder also maintains control over the recorded or encoded information, since once the work or a copy of it is materially available to others the information will be accessible and, under exceptions to copyright, in some cases reusable.

**Semi-closed material**

The status of being semi-closed is more significant and more likely to arise in connection with intellectual property and the digitised collections of cultural heritage organisations. Semi-closed material, while at times valid and necessary, also presents the greatest danger of materials being unnecessarily restricted. Material is semi-closed when it falls between being fully closed and open. This is a wide scale, and encompasses everything from material that is subject to restrictive, exclusive licence arrangements to material that is widely available under a more restrictive form of ‘open’ licence (that nevertheless does not meet that ‘openness’ threshold).

Notably, at the more open end of the semi-closed scale is material that has been made available under a minimally restrictive licence, such as a Creative Commons licence with a non-commercial or no-derivatives element. For example, a work available under the Creative Commons Attribution NonCommercial ShareAlike (CC BY-NC-SA) licence is semi-closed, albeit far towards the ‘open’ end of that scale. The licensed material is not properly ‘open’, because, while it may (from a licensing perspective) be accessed, used, modified and shared (subject to maintaining provenance through attribution), no such
activities may occur that are commercial in nature. If a party other than the copyright owner wishes to modify the material for a commercial purpose, for example to create a textbook, they need to obtain separate permission from the copyright owner. Clearly, CC BY-NC-SA licensed material is more ‘open’ than restrictively and exclusively licensed material, which may, for example, prevent use by all but a sole party; it nevertheless falls short of being truly open, thus misses out on some of the key benefits and opportunities of openness. Figure 4.1 illustrates open, semi-closed and closed licences.

![Definitions of open, semi-closed and closed resources (CC BY)](image)

**Figure 4.1** Definitions of open, semi-closed and closed resources (CC BY)

Source: Gill Hamilton, Fred Saunderson, Creative Commons

**Reasons for maintaining closed material**

It may at times be valid and correct, even necessary, to maintain material in cultural and information institutions that is ‘closed’. It is essential that a semi-closed status is not maintained as a default, however, or without due
consideration. Reversion to closed status by default can be easily done if insufficient consideration is given to desired outcomes and intentions or without identification of digital *raison d’être*. The reasons for closing content should be specific, identified and isolated. Furthermore, the mechanisms by which closed status is maintained (e.g. the type of licence used) should be considered, specific and sustainable. Proper use of licences and rights statements, albeit more restrictive when used with open content, can be an important tool.

Material that is protected by third party intellectual property rights is the most obvious, and likely most common, reason for maintaining closed material. If an organisation is granted permission by a copyright owner to digitise and make material available, it is likely and entirely correct that the organisation may be asked that reuse restrictions are in place if the content is made available to users. In such cases, the institution has an obligation to protect the rights of the third party, and there will be a justifiable balance between the degree of access and usability that is afforded and the level of rights retention that the third party maintains.

Another instance where semi-closed status may be justified is where an organisation has created digitisations of material in the public domain, but where a third party has funded the digitisation or otherwise provided assistance. In a case like this, where the institution would be unable to make the material digitally available without external resources, there is justification for a degree of restriction to be placed on the derived copies of the material if so desired by the funding or assisting party. However, it is crucial that the institution does not assume restriction or restrict material as a default. It would not be justifiable to restrict material on third party assistance grounds if the third party never expressed a desire for restriction or was willing to provide comparable assistance without it.

**Notes**


8 Wikimedia Tool Labs, BaGLAMa 2: category details for collections of the National Library Wales, 2017, tools.wmflabs.org/glamtools/baglama2/#gid=162&month=201607.
11 Enumerate, Digitisation Activity in Europe’s Cultural Heritage Institutions.
14 Enumerate, Digitisation Activity in Europe’s Cultural Heritage Institutions.
15 Crews, K. D., Museum Policies and Art Images: conflicting objectives and


19 Enumerate, Digitisation Activity in Europe’s Cultural Heritage Institutions.


