

**Fear and Loathing in Glasvegas:
Contemporary approaches to the
copyright clearance headache**

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SLIDE 1:



SLIDE 2:

Constant shifts in Intellectual Property legislation and growing expectations from users to make our content available online and for free coupled with problems such as anonymous works, and ever-present, sector-wide, financial and operational constraints mean that for cultural institutions, copyright can be a potential minefield.

Despite ongoing attempts to influence alterations to legislation in order to make providing access to our holdings more simple, as archive professionals copyright remains one of the biggest headaches we have to deal with in our work.

Today Victoria and I hope to alleviate some of the worries and concerns surrounding this issue *by talking about it – something which so often, I've found at least, people seem reluctant to do!*

Firstly I'm going to talk you through The Glasgow School of Art's approach to copyright clearance, and Victoria will contextualise this with some other examples.



SLIDE 3:

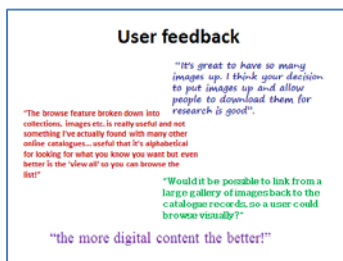
Last year I managed a project to create an online catalogue for The Glasgow School of Art's archives and collections. Some of you may be aware that there was also a major fire at GSA in summer last year, and this project started just a couple of months before that happened, and finished in November 2014.

Our main aim was always to make the catalogue as user-friendly as possible. *We understood that academic users generally require detailed descriptions, and in that sense the catalogue is still very traditional.*

However, based on research already undertaken about how our students like to browse for information; how important images are for them, and the role that luck and serendipity play in their research, from the outset it was important for us to:

- Include as many images as possible
- Find ways to allow users to browse, and to do so visually

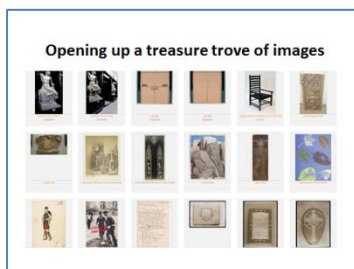
This helps users to navigate the collections in a number of different ways, helps guide them to collections or items they may not otherwise have discovered, and hopefully doesn't place less or more importance on any one collection, artist or period of the School's history.



SLIDE 4:

As part of the project we also set up a focus group to garner feedback on what users wanted the catalogue to be. We tried to include a wide range of users, from students and staff, to architects, researchers, curators, and so on.

After an initial questionnaire was sent out and feedback was received, members of the focus group were invited to attend a discussion on the points raised. Feedback influenced many of the decisions we made about the design and functionality of the catalogue, and many of the points raised were related to the provision of images and digital content.



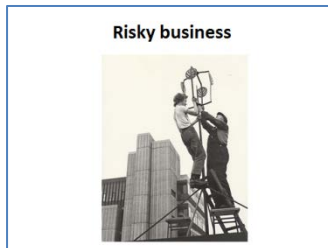
SLIDE 5:

As a result, one of the most exciting features of the catalogue is that it's full of images of material from our collections.

As an art school, we have been keen to make the catalogue as visual as possible, so have added images of material from our collections alongside the relevant catalogue entries to help illuminate descriptions.

In the interest of making our collections more accessible, low resolution versions of the images are available to download free of charge. This is something we've found is nowadays expected from our users, and in the past we've actually had complaints about the fact that you couldn't download images from our Flickr page, and that the images we had online were obscured by watermarks.

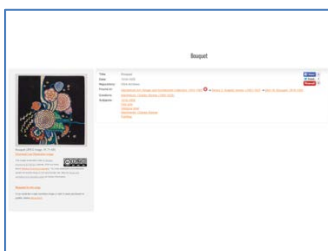
Museums and archives have traditionally been resistant to providing open access to digital content. But through this new, open-access policy, we join a growing number of archives and museums that provide free access to images of art and archives, and who are doing so because the demand is most definitely there.



SLIDE 6:

Obviously there are risks involved in making content so freely accessible, however we have taken a number of measures to limit these risks:

- There is some material we simply wouldn't put online: i.e. anything which is less than 10 years old (unless we have already cleared permission for use)
- Only low resolution images are available to download – these are not suitable for printing to scale or for commercial purposes, and are available to download only for personal and academic use (i.e. for private study, teaching, criticism and review) under a [Creative Commons BY-NC-SA Licence](#) (Attribution-NonCommercial-ShareAlike 4.0 International License).
- Users are still bound by UK copyright law. If anyone wants to order high resolution copies for commercial purposes or any other purpose not considered as personal or academic use, they must get in touch with us and submit a [copy request form](#). *We would then get in touch with the rights holder to grant permission in the usual way.*
- If anyone wants to publish an image, they need to fill in a [reproduction request form](#) to seek permission to do so, and, if other rights holders are involved, we would contact them to grant permission.



SLIDE 7:

- We've tried to be transparent, to be clear about the rules involving image use, and to make as much information as possible available to users. For example, a copy of [our terms and](#)

[conditions governing access to our online content](#) is available on our website, along with further details of [Creative Commons licensing](#).

- We have a takedown policy in place should anyone have any issues with any of the material we've made available.

- I will also say that research around the topic of archives and copyright has been key is making sure we are fully aware of the implications involved. Becoming familiar with other examples of best practice, like the Wellcome Trust's Codebreakers project and the Tate's Archives and Access project, has helped inform our thinking and our approach. Attending any training available, such as the workshops run by Victoria in collaboration with the Scottish Council on Archives has also ensured we are navigating a more familiar landscape.



SLIDE 8:

Diligent search

Initially, pre-fire, it was intended that the online catalogue project would last for just three months, with just one dedicated member of staff, *and would involve, amongst other things, designing the catalogue and a new website based on gathered user feedback; exporting and importing all existing catalogue descriptions from CALM into new Archon software; and reformatting, proofreading and re-indexing every collection from scratch.* In the end, and perhaps taking up more time than we had, perhaps naively, envisaged it would, a major part of the *Online Catalogue* Project turned out to be the diligent search for rights holders *in order to limit the risks associated with making material available online.*

The diligent search involved reviewing our accessions data, conducting a large scale research project for rights holders and liaising with the Public Cataloguing Foundation to harness contact details for artists and rights holders from them (we realised they would have had to clear copyright for all the works on the BBC Your Paintings website, so there was no point in duplicating their efforts and they were very happy to share this information with us).

Copyright Clearance Process

- Internal accessions documentation was our starting point
- Because much of the material in our collections has been generated by former staff and students, an alumni/staff database held by the School's alumni relations officer has also been of use
- Artists tend to publicise themselves well so that was helpful
- The internet
- Word of mouth – the art world is a small world. Local knowledge is often key too.
- The WATCH file
- Other resources such as Who's Who and The Dictionary of National Biography



SLIDE 9:
EXCEPTIONS

I think it is important to stress what has been included in this search, and also what has not.

To be clear, in order to limit the requirement to complete further rights clearance in the future, as part of this project we have tried to complete a search for rights holders of **all** the material in our collection where there are copyright issues, not just for those associated with material already digitised. The first step was to go through our holdings and determine which material was still in copyright. This we worked out quite simply by applying the 70 years after death rule. This involved a fair amount of research in the first instance simply to research life dates for each creator represented in our collections, however following this initial research, we concluded that any material where the creator has died pre-1944 was not to be included in the diligent search.

While creators of textiles/designs/objects have generally been included in the search, we have been less worried about tracing rights holders for this type of material as on reflection I think it could be argued that these are not artistic works, but rather domestic and utilitarian items.

Applying broad strokes has also been of use in limiting the search – for example, we’ve decided that any photographs or posters in our institutional records, though perhaps created by students or staff, were probably commissioned by the School, so we have not, (so far), attempted to trace rights holders for this sort of material.



SLIDE 10:
Spreadsheets

You can see in the screenshot here the different fields of information we record for each creator in our collections. The most important are *1) whether there is a copyright issue or not and therefore whether or not to include the work in the diligent search, 2) the name of the creator, 3) the name of the rights holder and their contact details 4) The date we got in touch with them 5) If they responded 6) and, if so, whether their response was positive or negative.*

We file copies of all sent correspondence attempts, and, even if permission is granted during a conversation, we make sure that all replies are in writing, and keep hard copies as well as PDFs of all replies.

We also record how much time is spent researching each creator, so that we can work out how much the diligent search has cost in terms of staff time. *(78 hours so far – this is the time spent on research only, and does not include for example, the time working out whether material was to be included in the search or not in the first place; the time taken to draft correspondence or to manage replies; the time to discuss the issue with rights holders in person and on the phone, or the time taken to work out which rights holders were able to be contacted via the PCF, which obviously amounted to considerably more hours in total.*

Rights clearance: results of diligent search		
Number of creators identified within framework	281	100%
Number of creators within framework with copyright issues	281	70% of creators within framework
Total permission requests sent (relating to 235 creators)	253	84% of those identified
Contact details found: emails sent	85	34% of those contacted
Contact details found: letters sent	168	66% of those contacted
Contact made via the PCF	10	6% of those contacted
Total replies	97	38% of those contacted
Permission granted	97	100% of respondents
Permission refused	0	0% of respondents
Did not respond	156	62% of those contacted
Number of creators where no rights holders or contact details were found	46	17% of those identified

SLIDE 11:

Assistance from the Public Cataloguing Foundation

As previously explained, our first port of call was to seek assistance with identifying rights holders from the Public Cataloguing Foundation. We identified that 103 of the creators featured in our holdings also feature on the BBC your Paintings website, and as such that the PCF would have already completed a diligent search and may have held relevant contact details. However, in the end, the PCF were only able to provide contact details for 4 rights holders, as well as forward 6 emails and 10 letters to rights holders on our behalf.

Statistics

Total no of creators identified within our framework: **401**

Total no of creators within our framework with copyright issues: **281**

So far, in total 253 emails and letters have been sent to rights holders or potential rights holders relating to 235 creators in an attempt to secure permission to make material available online. This can be broken down as follows:

Letters sent to named rights holders: 77

Letters sent to potential rights holders: 81

Letters sent via the PCF: 10

Total letters sent: **168**

Emails sent to named rights holders: 59

Emails sent to possible rights holders: 20

Emails sent via the PCF: 6

Total emails sent: **85**

Combined total of attempts: **253**

There have been **97** responses to our requests for permission to make material available online so far and the responses have been overwhelmingly positive – in fact **all 97** of those who have responded have granted permission. This is a **41%** success rate.

Nevertheless, despite undertaking a systematic copyright clearance process for all creators, we have still been unable to identify rights holders or contact details for **46** creators.



SLIDE 12:

Speculative Analysis of results

All rights holders who got back in touch have said YES. Why have we had such positive results? Is this just a case of goodwill or did the fire create sympathy?

We are a not-for-profit, educational institutional and our collections are primarily used for education purposes, so making material available online for these reasons could be seen as a good cause. On the other hand, many of the right holders who granted their permission mentioned the fire and how they were only too happy to help with the recovery process in any way they could – did they see providing their permission in this way?

Is there something to be said about the specificity of art-related collections? Surprisingly, considering a lot of the material in our collections is art-related, very few rights holders had any questions or hesitated to provide their permission. All of the few that did were practising artists and their concerns were about representation. I.e. their apprehension related to the fact that the work in our collections (generally student work) was perhaps not representative of their current practice. Further dialogue, explanation and providing clear links to the artists' current websites alleviated any concerns.

Or is there generally an atmosphere of positivity about making material online amongst ALL rights holders of ALL types of material? I think there is perhaps some interesting research to be undertaken here to examine the motivations behind decisions about rights...



SLIDE 13:

Ongoing considerations – Orphan Works

In the legislation, an orphan work is defined as:

s.3(4); (4) A relevant work is an orphan work where, after a diligent search made in accordance with regulation 4, one or more of the right holders in the relevant work have either not been identified or, if identified, have not been located.

...which unfortunately means all of our identified but un-contactable rights holders fall within the scope of the licensing scheme.

The Intellectual Property Office's Orphan Works licensing scheme came into being in summer last year, right in the middle of the project. We haven't yet had the staff time to focus on the issue of Orphan Works, but soon we will have to think about how we deal with this problem. How will we engage with the Intellectual Property Office's Orphan Works registration scheme? Personally I feel that the scheme is unlikely to work for collections like ours, which contain many Orphan Works.

OR, will we try and do something along the lines of what The Tate has done as part of their Archives and Access project, by deliberately highlighting Orphan Works online as a way of seeking information about rights holders? This is a clever approach, and I suspect will be more along the lines of what we decide to do.

The Building Committee of the Board of Governors of The Glasgow School of Art, by GSA Director Francis Newbery, 1913-1914 – though we have identified a rights holder we've been unable to get a response – so technically, if we were playing by the rules, we wouldn't be able to have this painting online.

In any case, we have come up with one loophole. The Orphan Works legislation states that unpublished material deposited before 1989 is copyright protected until 2039 and will therefore qualify as an Orphan Work. There wasn't an archivist or a curator at The Glasgow School of Art until the mid-1980s, so even if works were located at the School prior to that, they weren't officially deposited until then. Hopefully this will limit the number of Orphan Works in the collection under the 2039 rule to those accessioned in the 1980s.



SLIDE 14:
Recovery Project underway

As most of you will know, and I've already touched upon this earlier, there was a fire in The Glasgow School of Art's Mackintosh Building in May last year. The Archives and Collections office and stores were located in the building and as such were affected by the fire. During the next 3 years a programme of collection management and collection development work will take place to stabilise and rebuild our holdings following the fire last year.

Learning at first hand how important digitisation can be for preservation reasons; in terms of providing virtual access while physical access is not possible, and for generating surrogates as a record of what has been lost or severely damaged, means that, as part of our fire recovery project, we have ambitious plans to digitise significant parts of the collection.

As such, making sure we have permission to make this newly digitised material accessible online will continue to be an important aspect of our work. In my view, a diligent search will never be a once in a lifetime activity - there will always be changes in legislation, new acquisitions to consider, and newly discovered sources to enable contact with rights holders...



SLIDE 15:
GOING FORWARD

I think we've learned a lot from undertaking this copyright clearance project, and I think it will really influence how we do things in the future.

For example, *The copyright aspect of the online project, and* the requirement for a diligent search *for rights holders especially*, has led us to seek to avoid this task in the future by altering our existing accessions processes to make sure copyright is discussed at the point of accession into our collection rather than at a later date.

So, as you can see in the slide, we've recently added a section on copyright to our Transfer of Title form.

We also hope to ingest all of the results of our diligent search *and any information about rights* into our online catalogue and collections management software at some point in the near future too, so that all information for all collections is in just one place, *meaning no more spreadsheets (hurrah!), and further transparency.*



SLIDE 16:

A POSITIVE EXPERIENCE

The online catalogue project has been an overwhelmingly positive experience.

The positive response we've had to our requests *for permission to make images available online* shows that creators, rights holders and donors share our desires for material to be accessible and well used. Artists and donors especially are excited about the publicity the catalogue will generate for their work or the work they have donated to the School.

The necessity for a diligent search has also provided us with a great reason to get back in touch with depositors. As such it's really boosted our relationship with this audience, in a variety of ways.



SLIDE 17:

TOP TIPS

KEEP CALM AND CARRY ON - Don't panic. Treat a diligent search as you would treat anything else you do – as archive professionals, you all know how to be logical and methodical...

If you don't already, LEARN TO LOVE SPREADSHEETS – Recording the process and results of your diligent search is key and will form the backbone of any future rights related work.

EDUCATION, EDUCATION, EDUCATION – Seek training and research examples of best practice. *In general*, be risk aware, but remember that copyright is not a barrier to access.

PASS THINGS UP THE CHAIN - Get your decisions approved by your organisation's executive – In an ideal world, getting a lawyer to look over your procedures may provide you, and your organisation, with peace of mind.

THINK POSITIVE AND TALK TO PEOPLE – There are definitely benefits to what may seem like an arduous task – *communication especially*. Having a reason to get in touch with donors, creators or rights holders can not only solve the rights clearance problem, but can also, sometimes, provide an opportunity for new conversations – about acquisitions, research projects, exhibition opportunities, funding, or reveal information about the material in question or about who created it, to help inform catalogue descriptions. *Communication in this way is also key to maintaining/fixing/ or beginning positive relationships with this important section of our audience.*

LISTEN TO PEOPLE’S CONCERNS – People may be sensitive about the rights in their work. Take time to understand their concerns and seek to find ways to reassure them. *We don’t want to pin people down until they give their permission*. If they say no, however disappointing this may be, we have to respect the decisions of others.

KEEP IT SIMPLE - *Unless you’re a lawyer*, copyright can be difficult to understand. In writing and in person, be clear about why you’re getting in touch. Use simple language. Provide all the facts. Provide copies of your terms and conditions, your takedown policy (if you have one), and information about your licensing. Be open and transparent, explain the benefits of making material available online, but also be clear about the risks involved so that rights holders have all the information they need to come to a decision they are happy with.

As archive professionals, it’s unlikely that your reasons are anything other than genuine. So REMEMBER WHY YOU’RE DOING ALL THIS IN THE FIRST PLACE: To facilitate wider access. To promote your holdings. For education. To reveal the hidden collections. To democratize content. These *are all genuine, morally sound aspirations, and* are often the values at the very core of why we have ended up in this profession in the first place. Thank you. And now I’ll pass you over to Victoria...