



## Statement by the International Council of Museums Concerning Exceptions to Copyright

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### **Why Reproduction and Distribution of Collections?**

Institutions that harbor collections of cultural heritage, loosely defined, have the opportunity to play a broad role in modern society. In keeping with the pressures of modern society, apart from the educational, scholarly and preservation objectives well known to many, cultural heritage institutions are now very much concerned with the ability to communicate globally. Their collections have not diminished in importance, nor have their mandates and their prominence changed. Instead, the issue before them now is the means by which cultural heritage institutions remain relevant in an ever-changing communications based society.

For millennia, libraries, archives and museums, institutions included under the cultural heritage umbrella, were concerned with tangible collections. With the advent of new technology and means of communication, how, where and by what means cultural heritage is communicated has changed dramatically. It is not sufficient to circulate or provide access to physical collections. Cultural heritage institutions cannot expect scholars, educators, patrons and visitors to make physical visits their only means of accessing collections. The expectation now is that museums and other like cultural heritage institutions must also facilitate access using modern means of communication to reproduce and distribute material, art and artifacts in their collections.

### **Why Exceptions to Copyright for Museums?**

Libraries and Archives have been effective in elaborating their respective positions concerning exceptions to copyright. It is not for the International Council of Museums to elaborate upon their respective positions further. Instead, the International Council of Museums endorses the position taken by the library and archive communities in seeking exceptions to copyright. The International Council of Museums does, however, seek to elaborate upon the need for specific exceptions relative to museum oriented activities, in addition to those already advocated by the library and archive communities.

The International Council of Museums in 2009 redefined its definition of a museum. Generally speaking, a museum can now be, "...either the institution or the establishment or the place

generally designed to select, study and display the material and intangible evidence of man and his environment.”<sup>1</sup>

This means, of course, that the display, selection and study can happen remotely or at the physical site where the collection is situated. This expanded definition follows a 2007 formal redefinition by the International Council of Museums in its formal statutes:

“A museum is a non-profit, permanent institution in the service of society and its development, open to the public, which acquires, conserves, researches, communicates and exhibits the tangible and intangible heritage of humanity and its environment for the purposes of education, study and enjoyment.”<sup>2</sup>

The purpose, therefore, in modernizing the definition was to address the importance of communications, conservation, research and exhibition as part of the museological mandate and that both tangible and intangible heritage comprises museum collections for those purposes.

Turning to copyright law, the Berne Convention<sup>3</sup> allows for certain limitations and exceptions to economic rights in copyright law. However, generally speaking, international legal standards suggest that exceptions should be strictly construed so as not to allow for broad but rather restrictive interpretation so as to remain consistent with the letter and spirit of copyright law designed to protect rights holders interests. Given this generally accepted restrictive approach to prescribed limitations to copyright, given the communications expectations of society, enabled by new technologies, and given the broadened mandate that museums have to communicate for the purposes of education and study, museums are faced with a heightened frustration, and in certain respect, an inability to perform their functions. This is particularly true where performance relates to their mandate driven activities. On this basis, the International Council of Museums is now advocating for limited exceptions to copyright to assist museums in carrying out their scholarly, educational and exhibition related activities in an environment where museums are expected to carry out such activities both online and on site.

## **Proposed Exceptions and Limitations to Copyright**

### **I. Limitations on Scope**

Notwithstanding a call for exceptions to copyright relating to museum activities, certain limitations must be applied to exceptions in this regard in keeping with the traditional restrictive approach to interpretation mentioned above.

First, should museums be granted exceptions to copyright, the exceptions should relate directly to the museum’s mission and mandate. If an activity does not relate to a museum’s mandate, then it should not be undertaken as an exception to copyright.

Second, exceptions should apply universally both to electronic and analog media but in both instances in carrying out a reproduction or distribution of a copyright protected work, the reproduction of the work should be limited to only the amount of the work that is absolutely necessary to carry out the museum function. With respect to images of art works or artifacts, this means that if a museum can perform its function with a lower resolution image, or with thumbnails, then it should choose to do so in keeping with the restrictive interpretation of

exceptions to copyright law generally.

Third, while museums are defined as not-for-profit institutions, museums are also places of great beauty, discovery and scholarly pilgrimage. The definition prescribed by the International Council of Museums acknowledges that museums can be places of enjoyment. Given this facet of museum programmatic activity, and given the generally accepted principles in defining exceptions to copyright, exceptions to copyright for museums should apply only to those activities relating to education, exhibition and museological scholarship. In this context, the International Council of Museums defines “education” to mean activities in a museum environment, whether online or on site, where the main purpose of the activity is to impart knowledge, information, skills, or attitudes.<sup>4</sup>

Specifically, exceptions should not apply to museum activities related to the production and distribution of merchantable products.

Fourth and finally, in keeping with scholarly standards, any reproduction or distribution of a copyright protected work by a museum, within the context of any exception should be carried out with full attribution to the author (in keeping with scholarly standards and moral rights) and the copyright owner.

## II. Proposed Exceptions

With the above limitations in mind, the International Council of Museums proposes the following exceptions to copyright:

1. An Exception to the reproduction, display and distribution of copyright protected work for the purposes of the museum publishing a scholarly work, including critical analysis or a catalog raisonné, in either electronic or analog format where the publication by the museum of the scholarly work is for educational purposes.
2. An Exception to copyright to allow a museum to reproduce a copyright protected work, make it available and display it for the purposes of exhibition, giving a lecture, or for carrying out museum educational programming. For the purposes of clarity, this activity can be carried out by the museum on site or made publicly available on the Internet.
3. An Exception to allow a museum to reproduce copies of a copyright protected work in any format or media in the course of carrying out the preservation of a work in a museum collection.
4. An Exception to copyright that will allow museums, libraries and archives to interchangeably avail themselves of exceptions to copyright in each of their respective disciplines where their programmatic activities overlap.

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#### Endnotes

1 Andre Desvallees, Francois Mairesse, Eds.; "Key Concepts in Museology"; International Council of Museums, Armand Colin; 2009;  
[http://icom.museum/fileadmin/user\\_upload/pdf/Key\\_Concepts\\_of\\_Museology/Museologie\\_Anglais\\_BD.pdf](http://icom.museum/fileadmin/user_upload/pdf/Key_Concepts_of_Museology/Museologie_Anglais_BD.pdf)  
;p.56

2 Ibid; p.57

3 [http://www.wipo.int/treaties/en/ip/berne/summary\\_berne.html](http://www.wipo.int/treaties/en/ip/berne/summary_berne.html)

4 Ibid, footnote 1; p. 32

## **About the International Council of Museums (ICOM)**

The International Council of Museums (ICOM), created in 1946, is the world organisation of museums and museum professionals. ICOM is committed to promoting and protecting natural and cultural heritage, present and future, tangible and intangible.

With more than 30,000 members in 136 countries, the ICOM network is made up of museum professionals from a wide range of museum- and heritage-related disciplines. ICOM promotes standards of excellence in the museum field, in particular through its ICOM Code of Ethics for Museums, a standard-setting tool for museums, which includes basic principles for museum governance, the acquisition and disposal of collections, and rules for professional conduct. In order to carry out its activities, ICOM partners with entities such as the World Intellectual Property Organization, INTERPOL, the World Customs Organisation, ICCROM, and maintains its long-standing collaboration with UNESCO.

ICOM's activities include fighting illicit traffic in cultural goods and promoting risk management and emergency preparedness to protect world cultural heritage in the event of natural or man-made disasters. The UNESCO-ICOM Museum Information Centre, created in 1946, gathers the most comprehensive collection of ICOM publications including ICOM News, ICOM Red Lists, publications by ICOM's committees, and conference proceedings. ICOM's commitment to culture and knowledge promotion is reinforced by its 30 International Committees, which are dedicated to a wide range of museum specialities and conduct advanced research in their respective fields for the benefit of the museum community.

The organisation's International and National Committees, Regional Alliances and Affiliated Organisations hold conferences and symposiums worldwide that revolve around pre-defined themes with a view to fostering exchange among museum professionals of all nationalities. In addition, ICOM organises International Museum Day each year, a worldwide event held around 18 May, to increase public awareness of the role of museums in developing society.

Website: <http://icom.museum>

## **About the ICOM Legal Affairs Committee**

The Legal Affairs Committee (2014-2016) is a Technical Committee of ICOM to advise the Executive Council and the Advisory Committee of ICOM.

The purpose and missions of the Committee are to provide expertise on legal issues of interest to the museum community, such as but not limited to cultural heritage, intellectual property and information technology laws.

The Committee assists ICOM in advancing and promoting knowledge, best practices and informed action focusing on legal issues for museums and museum professionals.