

Exceptions for the 'GLAM' sector

If you are a gallery or museum curator, conservator, librarian, archivist, historian, documentation manager, or manager of an academic special collection in a cultural institution, then this workshop session is for you. The Copyright Act provides a number of exceptions to facilitate certain functions of libraries and archives (eg copying and issuing to the public). We'd like to hear your views on the current exceptions and better understand how these affect your organisation, or unreasonably prevent your organisation from providing certain services.

Conversation-starters:

Mass digitisation

- › What is the impact of the exceptions on mass digitisation projects and your organisation, in particular?
- › What changes should be considered and why?

Works 'born digital'

- › What problems do you experience with works 'born digital'? Can you give a specific example?
- › What changes should be considered and why?

Exceptions for galleries and museums

- › How does the lack of exceptions for galleries and museums affect your work, and what is the impact on New Zealanders? Please provide a specific example.
- › What changes should be considered and why?

Notes recorded by workshop groups

Theme/sub-topic	Feedback
Definitions	<ul style="list-style-type: none"> › Definition of 'digitisation' is too narrow › Copying of works occurs daily for work purposes, not just as part of 'digitisation' › [institutions are] forced to 'break the law' – [as there is] uncertainty about copying for collection management purposes › Issue raised regarding the size of image when reproduced – quality issue



Theme/sub-topic	Feedback
	<ul style="list-style-type: none">› Experiences – challenges -> digitising for databases› Digitising 2D images of 3D works (not on public display)› Reproducing a digital work – is it a new copyright?› A faithful reproduction of a second work – is that a new copyright› ‘digital’ – what it means in the Act – definition issues› Published vs unpublished – weird terms in the digital world – putting online is publishing
Enforcement issues	<ul style="list-style-type: none">› Enforcement of the use of collections is very difficult (eg follow-up to ensure file deletions) despite being included in contracting by GLAM institutions› Photography within galleries and museums: difficulty/impossibility of enforcement› Find easier way to enforce infringement of cultural aspects and user-generated content› Issue re when works are passed on legitimately, some strip metadata (ie all information as to ownership etc.). Too easy to do› Embedding permanently not feasible
Risk and risk aversion	<ul style="list-style-type: none">› Library users use collection with library staff help. 3D printing: recording studio – are users re-using copyright material?› Risk aversion is a default position often; and also the opposite – turn a blind eye› Tension for GLAMs over sharing collections but also controlling how they are used› ‘safe harbour for GLAMs’ would be great:<ul style="list-style-type: none">› Show due diligence in searching for rights holder› [‘safe harbour’ would be] good especially for smaller GLAM institutions with little / no access to legal advice – [smaller GLAMs] are scared to digitise› [‘safe harbour’ will] provide immunity to manage collections› [there should be] a balance between risks and benefits› Add requirement for due diligence: good or bad? [Would this requirement be useful or not?]› How to measure acceptable due diligence?<ul style="list-style-type: none">› [introduce an exemption for GLAMs similar to] fire service levy from which GLAM is exempt [exemptions for collection items of public museums and public galleries]› Digitisation of GLAM is being a member of ICOM [international Council of Museums Aotearoa New Zealand]› Immunity for galleries and museums?› Principle is whether rights owner can forbid to have works copied or not



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	<ul style="list-style-type: none">› Risk management: museums, libraries, sound archives› Uncertainty: legal risk, public perception› Safe harbour/lower fear factor for GLAM. Eg 3D scans to make tailored storage to shift stuff overseas – functional / preservation copy› Record keeping function/organisational administration – digitisation risk – tension with public purpose – staff using images
Clarity	<ul style="list-style-type: none">› [there is] lack of public understanding about copyright:<ul style="list-style-type: none">› ‘it’s for personal use’ – [no clarity what constitutes personal use]› ‘it’s over 50 years old’ – [no clarity on how copyright term applies to different types of copyright works]› Mass digitisation of legacy documents: who owns copyright if many components? Eg NZ Potter / Broadsheet› Current ambiguity maybe OK?› Benefits of international harmonisation› [are] thumbnails [considered] as metadata or reproductions?› Obsolescence of library exceptions – they need expanding and simplifying› Complexity of the exceptions – hard to apply in real situations, extent of what is okay. Law needs to be capable of being understood. Cover exceptions without having to spell them all out› Issues of ambiguity (hard to identify)-> less likely to produce› Clear guidelines for each type of use› Performers’ rights should be further defined› Whose responsibility [is it] to ensure people understand copyright?› Cultural copyright? Tapu?› More consistency needed across GLAM sector› Definition of the Act = what is a ‘work’, “course conducted by corresponding” affects libraries› What is reasonable amount of work by the GLAM sector [in relation to due diligence]?› There are things we don’t do because [there’s] no clarity (chilling effect)› What is the definition of ‘substantive amount’› Distinction between digitisation for preservation and digitisation for access› Fair use and fair access are not the same thing. Both need clear definitions under the Act› Trade trumping public interest should not be stopping our copyright law› Distinction between copying for knowledge (personal) and commercial distribution› Items that are gifted to GLAMs don’t gift copyright along with the objects so clarity over further uses isn’t there



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Accessibility	<ul style="list-style-type: none">› Users expect everything free and now› Enlarge single personal use exceptions so that inter loans can be shared› Underfunded institutions can't get high-cost journal articles hidden behind Jstor / ProQuest [these are examples of digital libraries which provide access to academic journal articles, books and other sources] etc., and copyright prevents copying of articles› Expectations by public can access both libraries and museums [the public expect to be able to use the same exceptions for both libraries and museums]› Total lack of interest from business that has gone through an evolution/changes› Works born digital – [there are] a variety of lending models› Nice to have exception for copying obsolete media where artist/creator is dead or untraceable:<ul style="list-style-type: none">› Obsolete formats, don't wait till it's too late eg VHS tapes are accepted as being 'unplayable' by 2025 – clock is ticking on many forms (AV)› Little time to 'go through the hoops' getting permission to digitise such collections› Transferring files to new software/versions/platforms› Libraries can loan electronic works for research/private study but still need permission to reproduce from author/s› Exemptions› New Zealanders don't have access to huge amount of information› A lot limited to National Library and only in Wellington and not on Saturdays› Small museums have no hope / no resources to grapple, which:<ul style="list-style-type: none">› Reduces access to small collections› Has a national and international impact› Online catalogues for access are hard› Obligation to provide access<ul style="list-style-type: none">› Want digital copies without being explicitly asked› How do users know they want it without seeing it?› Researches need to get a full picture of data



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GLAM Functions	<ul style="list-style-type: none">› Public institutions have goals / KPIs that require mass digitisation› Unifying of current exceptions into one: currently there are libraries within museums, education and libraries; art collection and education priorities – bring these together as ‘of public good’› Some exceptions [are] for libraries but not museums – [this is an] anomaly in the law, need some alignment. Why treated differently when [it] comes to copyright?› In Australia, [rules/exceptions are the] same for both [libraries and museums]› Libraries will copy for preservation purposes but limited in number› Systemic problem regarding what type of organisation rather than work purpose and purpose of copying. Library vs museum vs educational institute› Status of the GLAM institution – the financial capacity w/ regards to its status› Umbrella / exceptions not applied to all› Cultural aspects/background: locating owners/ interested parties: what is ‘best practice’› Preservation for media, for equipment, cost efficiencies – going broader than section 55› Don’t want restrictions which inhibit accumulation of new knowledge and collaboration› Format blind archiving [a stakeholder suggested this approach to archiving material regardless of what format a work has been created in]› Fundamentally same rules apply› Libraries no longer print archives› Obligation of GLAMs to protect Mātauranga Māori under Wai 262› Exhaustive clearance is expected by GLAMs as best practice + NZ citizens expect us to be able to clear use when we don’t offer› Process, due diligence GLAMs already being practiced (ie metadata standards) so can make material available with permanent link to authors› Recognition of the social value of GLAMs› Socially responsible vs commercial use [this refers to the idea that GLAMs operate for the public benefit/good, not for commercialisation]› We are not driven by money. It’s our national heritage, [and therefore GLAMs should be able to do the following]: preservation, access, reuse› [exceptions for] library/archive – restrictive as to who owns cultural material, ie Museum



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	<ul style="list-style-type: none">› Bad user experience especially for organisations where some staff can use exceptions and others can't [this comment refers to situations in which two GLAM organisations operate as one and therefore may have different access to exceptions. Eg: libraries operating within museums]:<ul style="list-style-type: none">› Conducting business through organisation's library to get at the exceptions› Historic distinction [within GLAMs]. Museums and galleries used to do different things (see purpose similarities now in Acts)› Collection care has evolved› Want a copy when it's in good nick:<ul style="list-style-type: none">› Not having a copy can be "destructive"› All [legislation] written with books in mind (eg Copyright Act)› We have preservation methods now that didn't exist – standards change› Using our content to help support ourselves isn't the same as commercial exploitation› Preservation copy:<ul style="list-style-type: none">› Original has to be withdrawn/hidden/destroyed› Things that aren't damaged – rather do it at acquisition› Distinction between not for profit (charity – high bar, crown, local government) and commercial organisation. Eg:<ul style="list-style-type: none">› Artist letting institution assume preservation with their expertise – monetisation – "the selling, not the digitisation is the issue"› Creators want their work preserved
Copyright Law issues	<ul style="list-style-type: none">› [GLAMs] prioritise collections that can be digitised, so [digitisation is] not necessarily based on value. Easily sourced [copyright works are] more likely to be digitised› Difficulties in clearing rights for 100,000 items; 3-400 files open at any one time for clearance searches› National Library has plan to digitise pre-1968 [works] because [they are] out of copyright, but [it] also involves licensing issues regarding music: 2 different licences [are required]: master recording and composer/s of composition› Libraries looking to digitise older material out of copyright or likely to be out of copyright. Eg broadsheets digitised but thousands of different authors in each of those publications. Couldn't afford to research to clear so advertised for authors and published without permission in each case



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	<ul style="list-style-type: none">› Financial impacts – staff to find people/ resource› Time factor› Huge amount of work› Libraries produce materials ->Fairfax pays-> Fairfax charges more› Digital books – licensing cost is a factor for libraries, [which] limits the number of copies available› For libraries, electronic books subject to overseas copyright law› [works] ‘born digital’ [are] not considered by the current act:<ul style="list-style-type: none">› New act must be format neutral› Government data must be open by default including large data bases› Licensing models<ul style="list-style-type: none">› APRA + Screen rights – educational use models, another section to accommodate this› Commercialisation should be a focus of the Act› Exemptions should be on type of use, not type of institutions. Eg:<ul style="list-style-type: none">› Making material available within organisations that don’t meet current definitions› National Library and Te Papa have legislation that don’t help them access exceptions› Purpose of these institutions should be accounted for› Need new Copyright Act to align with Wai 262, not contradict it› Please retain difference for unpublished [works]› Acquire fair use for artists› Exceptions for artistic use please› Format-shifting must be allowed› Should GLAM have an exception for post-death pre-50 years period?› Need mechanism to share rights holder information or notification› Need exceptions for artistic use under GLAM or education› The law has driven works underground. Previously on web put once preserved by National Library have to view in person.› Current exception re preservation is good› Readers making copies for research – only the person copying can rely on fair dealing. Need to initiate a request for someone to copy on behalf. Proxy copying falls between the cracks› NZ engaging with our heritage: conflicts with Acts› We use thumbnails as a descriptor [in internal database] now:



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	<ul style="list-style-type: none">› Physical degradation› “ivory comb” [an example of a descriptor used in a GLAM database] is not enough description in CMS¹ / DAMS²› Preservation motive in conflict with copyright restricted acts (cf Te Papa)› Law shouldn’t impede cultural preservation purpose› Section 55/3a<ul style="list-style-type: none">› Lots of organisations have to be for preservation, “ambulance at bottom of cliff”› What [poses] is at risk? If it’s in, eg, prone building, is it at risk?› Current exceptions still in physical form only [this may imply that current exceptions are only applicable to hard copies, not digital copies]› Exceptions should cover public sector and state sector when recording decision making process› Nice if new Copyright Act acknowledged the existence of creative commons and relationship to fair use› Section 45 currently prevents mass digitisation› Not just digitisation but digital reuse and ongoing digital access, copyright needs to work for all ongoing use› What can changes to the Copyright Act do to give us a more effective, more internationally recognised GLAM sector?› The Act should be format-neutral› Make clear how licence limitations can affect public interest/innovation/wellbeing/development› Should there be a difference in length of copyright for non-commercial vs commercial work in the GLAM sector? Does the current rate of innovation alter this?
GLAM and copyright holders/creators	<ul style="list-style-type: none">› Balance between organisations’ and creators’ needs› Digital artworks: even copying for preservation would first go back to artist to discuss; format change could have implications for integrity of work› Photographers need control because otherwise S21(3) Commissioning work<ul style="list-style-type: none">› Split between when copyright runs – author v commissioner anomaly› Commissioning rule extremely unfair: client has use of work w/o paying as under Act only need to agree to pay for rule to apply› Compensation [is it fair?]. Doing it for exposure [the author of the comment implied that GLAMs help creators demonstrate/show their creations]› No commercial detriment to author if could legitimately do that› Accountability – by corporations and individual use – more ability for copyright holders to not be superseded

¹ A CMS manages editorial content with the aim to publish it on websites, blogs and e-shop pages.

² A DAM system organises content such as documents, images and videos in the form of media files, eg PDFs