



Institute guidance on copyright

Use of images of exhibits in museums and galleries

This note has been prepared for the assistance of Blue and Green Badge Guides. A number of guides are giving talks or virtual tours on social media and want to use images from the web sites of relevant museums or galleries, or photographs which they have taken in those museums or galleries. Questions have been raised about copyright.

Disclaimer

This document covers some aspects of copyright but it does not constitute legal advice. It only deals with some copyright artistic works; special cases may apply and in case of doubt appropriate legal advice should be sought. The Institute and the authors of this note will not be liable for anything stated in this note.

Guidelines

It is desirable for guides to follow the following recommendations.

1. Guides should make sure that they can demonstrate they have the right to use an image.
2. Do not take an image from the internet or elsewhere and assume that you can use it. Make sure you know who owns the original image.
3. Any image that you take outside in a public place can normally be used, but there can be limits on use of pictures taken on private property.
4. Images taken inside a gallery/museum/site should not be used commercially without the permission from the gallery.
5. It's a good idea to use Creative Commons licences. Make sure you use them correctly and give credit.
6. Works where the author has been dead for more than 70 years are in public domain. But a photograph made of that object in the last 70 years can have copyright.
7. Guides should not commercialise on-line tours of a site or attraction unless they are sure that they have permission to use the images of that site in their presentation.

This note addresses three matters: does it have copyright; can I still use it; and practicalities.

Does it have copyright?

Copyright in pictures and writings lasts for 70 years after the death of the artist or writer. Most works or artefacts in galleries and museums (apart from Modern and contemporary art museums such as Tate Modern) are therefore out of copyright.

However, there is also copyright in photographs; and museums and galleries normally own the copyright in the photographs on their web sites. NOTE: in the United States and many



other countries, there is no copyright in a photo of a two-dimensional object (eg a painting). You may well see on United States web sites that images of, for example, Old Master paintings are “public domain” (i.e. free to be copied); this is not necessarily the case in the UK. UK law’s protection of photographs of pictures is arguably out of step with recent decisions of the European Court of Justice, but once the Brexit transition ends, that will not matter.

If you take a photo in a gallery or museum, you own the copyright in the photo. However, galleries and museums give permission for photos only on condition that they are used for private and non-commercial purposes.

Can I still use it?

UK Copyright law sets out a number of circumstances where a copyright work can be used without permission, known as “fair dealing exemptions”. These include things like “research and private study”, backup copies of software, and photographs of buildings or permanent public sculptures.

The two possibly relevant for guides are “Criticism and Review” and “Illustration for Instruction”. Both of these exemptions require that there is “fair dealing”. This means that the use of the works does not undermine the interests of the copyright holder (probably not a problem for guides) and that the copying is limited in extent – a rather vague expression but clearly wholesale copying is not allowed.

Criticism and review

Copyright works may be used for the purposes of criticism or review without the copyright owner’s permission, provided that a “sufficient acknowledgement” is given (usually © plus the name of the copyright owner – which can be found, usually, if you google the word “copyright” and name of the museum/gallery).

There is no definition of “criticism and review”, but they probably involve more than just providing information about the work and its background; there needs to be some sort of comment or expression of opinion, or possibly drawing attention to aspects of the work (composition, colour, handling of paint etc) or comparisons with other works, to enable the reader to form an opinion. Thus it does not squarely cover a standard “Blue Badge” presentation, but you may be able to rely on this exemption if you express your own views or draw attention to aspects on which you invite your audience to form a view. However, trying to dress up a tour as “criticism” by including value judgments on each work will probably not constitute “fair dealing”.

Illustration for instruction

This is one of the “educational” exemptions, but (unlike the other “educational” exemptions) it is not limited to schools and universities. It covers the use of an illustration in order to make a teaching point. It probably does not cover instruction about the work in question, but using images of several paintings to



illustrate a talk on e.g. a particular style or period, or developments in style, would be permissible.

There are three conditions (in addition to the overarching requirement that the use is “fair dealing”).

1. The use of the image is for non-commercial purposes.
2. The use is by a person giving or receiving instruction.
3. There is a “sufficient acknowledgement” of the copyright owner.

“Non-commercial purposes” is quite a loose expression. A purpose is “commercial” (and not covered by this exception) if you charge for the particular presentation in which you use the copies. Use in advertisements, or in preparation for commercial activity is also “commercial”. Keeping your hand in during lockdown (i.e. maintaining the skills which you use commercially) or keeping yourself in front of your public (in the hope of getting business when business returns) are also probably on the wrong side of the line between “commercial” and “non-commercial”.

Limited permission from gallery / museum

Most museums and galleries permit use of the images on their web sites (and photos taken by visitors) for personal and/or non-commercial purposes. Again, you can find out the gallery/museum’s particular rules if you google the word “copyright” plus the name of the gallery/museum. The Wallace Collection, for example, is quite restrictive – use on social media is not allowed – and most do not go much beyond the legal fair dealing exemptions anyway. They will usually specify what copyright notice or “sufficient acknowledgement” they require, which can be helpful.

Creative Commons and Wikipedia Commons

Images on Wikipedia and some other web sites have automatic permission to use them on varying terms. It is usually necessary to give credit to the original copyright owner, and sometimes you are taken to agree that others may use your version of the image. You need to check for each image what the “Commons” terms are. It would be sensible to check the original source; I have found one image on Wikipedia, marked as “public domain” which was uploaded from the National Gallery web site. While the image may be “public domain” in the United States, it may still be protected by copyright in the United Kingdom (see “Does it have copyright”, above).

Practicalities

Businesses which rely on copyright royalty fees for a significant part of their income (for example, picture libraries like Getty or Alamy) police their images quite carefully, and are unlikely to waive their fees (which can be over £100 per image) if an image is used without permission. Others can be more accommodating – one guide told Google Maps that she



was using StreetView for virtual tours; the reply came from Google's PR department, asking to refer to her tours on their official blog!

You need to be sensitive about using images of exhibits in museums and galleries. Badged guides have privileged access to many sites, and we do not want to annoy them by misusing their images. Site liaison representatives are currently speaking to their sites about permission for badged guides to use their images for virtual tours.

And finally, if you do get a "take down" request from a museum or gallery, it is best to respond promptly and do what they ask.

Further information

If you have any questions, you can contact Rowan Freeland (rowanfreeland@aol.com).

Before qualifying as a Blue Badge Guide, Rowan spent over 37 years as a solicitor specialising in intellectual property. Since he no longer has insurance, you rely on this note and on anything he says to you at your own risk!