

## Culture and Commerce on Demand

**The picture libraries of major museums and galleries have smartened up their act over the last few years, shedding their fusty reputation and creating enticing online services for commercial picture buyers. After years of relative neglect there is now an awareness at the top that material in the vaults is a valuable asset, both for public access and commercial markets. Bringing that material into currency, however, is another matter, and the issue of copyright, and its management, lies at its heart.**

**Sarah Saunders reports on the issues raised by 'Connecting Culture and Commerce' a conference organised by Kings College London and the Museums Copyright Group, held in London in January.**

It's an on demand world. This was the theme introduced in a discussion between Alan Yentob Creative Director of the BBC and Sandy Nairn, Director of the National Portrait Gallery. The BBC is an interesting model for the cultural sector, with its requirement to balance a public service brief with the creation of an income stream, and the fact that it is both creator and user of copyright works. The younger generation no longer watch TV said Yentob. In the on demand future people will watch programmes at times of their own choosing, on computers and mobile phones. There are implications here too for the cultural and educational sector.

Speakers were united in their view that managing intellectual property is about delivering on the core aims set out in the Museums and Galleries Act of 1992, to increase the knowledge understanding and enjoyment of art for the public. 'We lose 3 million pounds a year' said Alex Beard deputy Director of the Tate, 'and we're jolly proud of it'. Museums, he said, are custodians, creators and users of IP, and their role is educational, artistic and innovative and increasingly goes beyond the walls of the institution. But the mission needs supporting, and technology is now the driver for change. He admitted that knowledge of IP issues within the sector needs improving - the Tate is now investing in rights training for its employees. But he also maintains that aspects of copyright can represent a barrier to exchange of ideas, and is looking for better ways to manage rights. The Creative Commons licence which allows users to specify free usage for non-commercial purposes, is a start, and Beard is looking for other collective ways to manage rights in the interests of the non-profit sector.

The demands on image libraries in the publicly funded cultural sector have always been difficult to manage. Required to create income with one hand and distribute images for free with the other, picture librarians have struggled with the contradictions for years with no framework to support them.

The dilemma is now more widely recognised. As core funding comes under threat, and admission charges limited to special exhibitions, using visual and

digital assets to create income is an imperative. The possibilities opened up by the digital age have also increased pressure to make material accessible to the public and the education sector for free. There is a recognition that managing IP is part of the core work of the sector.

Peter Wienand Chair of Museums Copyright Group and Head of IP at Farrers Law firm introduced the conference by noting that copyright law represents a balance between the rights of the owner and the public interest in dissemination, access and exchange of ideas. He raised the subject of orphan works, those for whom the copyright holder cannot be found. These are the subject of intense debate both here and in the US where there are attempts to reframe the law to make it easier to use and disseminate these works.

The recent Gowers Report in the UK called for views on the orphan rights issue. Ben White, Copyright Compliance and Publisher Licensing Manager at the British Library explained the BL position. The British Library estimates that 40% of creative works in existence are 'orphans', and calls for changes to the law along the lines of the proposed US model. Photographers and image libraries on both sides of the pond are strongly resisting change along these lines, which they see as weakening their rights and damaging their business.

Orphan works, says Peter Wienand are in copyright limbo. Many commercial picture libraries have been successfully operating in this limbo for years, relying the practice of due diligence backed up by funds to pay copyright holders if they turn up. Museums have to take a stricter line, and hence the support for clarity in the law. The problem is, as the debates in the US over Orphan Works legislation indicate, if the legal framework is loosened, the door opens to commercial interests who immediately use it for their own ends. Copyright abuse is already routine in areas of the UK press. Picture libraries spend huge sums of money employing people to seek out unauthorised use of images.

BAPLA's response to Gowers reminds us that orphan works in the commercial world are not always what they seem. The creators are in many cases alive and well, but simply hard to find, or in other terminology, uncredited. In the UK publishing environment where 68% of newspaper images are uncredited, and digital metadata is often either missing or ignored, a large number of images could potentially come under the orphan umbrella.

Ben White pointed out that the law of contract is often the defining factor in a transaction, rather than the law of copyright, and argues that the law of copyright should take precedence. This opens a can of worms for the picture library industry, which relies on the law of contract, especially in grey areas of UK Law. The copyright status of photographic copies of a work of art was called into question by the US judge in the *Bridgeman vs Corel* case 1999. Although some lawyers maintain the judgement would not stand in the UK, it has not been tested in British Courts. The trade in images of out of copyright paintings is therefore

underpinned to a large extent by the law of contract, and this affects the museums and galleries particularly.

The education sector will be a significant user of digital content in the future. Charles Oppenheim, Professor of Information Science at Loughborough University described an environment where, with staff and students both using and creating content, there is still a lack of knowledge and respect for copyright. Learning, like broadcasting will become personalized, with delivery by a variety of new methods; podcast, wifi and virtual reality The National Educational Network, which provides a broadband network for educational users, will drive production.

The pick-and-choose culture means that content needs to be highly relevant, as Alan Yentob noted. Narratives will be needed, he said to make the content relevant and help people navigate their way through it. Image libraries are well aware of the work required to create well documented content; many are run by specialists who are contributors to the knowledge in their field.

While the museum sector receives funding for its documentation and research, commercial image libraries do not. The V and A has raised eyebrows recently by announcing it will give free reproductive usage to works used in limited print runs for academic or educational publications. This is reasonable for the V&A given its public service role, but for specialist libraries not supported by public funds, the issue would take on a different aspect. There is an argument, forcefully put by David Ferguson, Chair of the British Academy of Composers and Songwriters, that copyright holders should be paid for their contribution to cultural pool of knowledge, and that a licensing structure should be set up for this purpose.

However the copyright debate falls out, the services of professional researchers will be needed for public access as well as commercial image sales. This was the message from Catherine Draycott from the Wellcome Institute and Chairman of BAPLA. The same infrastructure is needed and the work of organising content contributes to ease of access on both sides of the commercial divide. The balance is based on synergy as well as resolving conflict.

As many of the participants in the conference noted, it is important now that information is exchanged between all parties who have an interest in IP and copyright. Mutual understanding is needed as a base for what will be a delicate balancing of interests in the years to come. It's not going to be an easy ride, but new technology is making changes unavoidable and there are gains to be made on all sides.

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