



# Copyright Clearance Handbook for Public Domain Publication of Digital Collections

Guidance and checklists for applying public domain statements to digital collections of public domain works for organisations in the US, UK and EU Member States

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v. 1 | October 2024

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## About the GLAM-E Lab

The GLAM-E Lab is a joint initiative between the Centre for Science, Culture and the Law at the University of Exeter and the Engelberg Center on Innovation Law & Policy at NYU Law to work with smaller and less well-resourced UK and US cultural institutions and community organisations to build open access capacity and expertise.

The GLAM-E Lab provides legal counsel to GLAM institutions and cultural organisations as they develop open access programs. The solutions created for those institutions are then integrated into model internal policies and external terms of service that can be adopted by others. The goal of this approach is to use lessons learned from directly representing individual institutions to create self-serve model policies that work “off the shelf” for as many organisations as possible. We supplement these model policies with additional guides and resources to address common challenges.

## Acknowledgements

Francesca Farmer, Research Fellow  
Andrea Wallace, Co-Director  
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The original version of the charts incorporated into this handbook were created by student clinicians Xanthia Hargreaves, Lindsay Harris, Batya Kemper, and Talya Whyte at the NYU Law Technology Law & Policy Clinic. That work, as part of representation with GLAM-E Lab collaborators, forms the foundation for this generally applicable guidance.

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Please cite as: The GLAM-E Lab, “Copyright Clearance Handbook for Public Domain Publication of Digital Collections,” CC BY 4.0.



This project is funded by the UKRI's Arts and Humanities Research Council.

## About the GLAM-E Lab Open GLAM Toolkit

This handbook is part of the GLAM-E Lab Open GLAM Toolkit for cultural heritage organisations. The toolkit includes:

- [Onboarding Document](#), to introduce you to the GLAM-E Lab method of building an open access programme. It will give you a clearer picture of what open means in practice for you, your institution, your collections, and your community.
- [Internal Open Access Policies](#) will help you identify works in your collection that may be good candidates for your open access programme.
- [Assessing and Mitigating Risk](#), an overview of how to set and apply risk tolerances and takedown procedures for your images and data.
- [Copyright Clearance Handbook for Public Domain Publication of Digital Collections](#) and [Copyright Clearance Log](#), which guides you through the process of clearing copyright with the goal of assigning the [CC0 1.0 Universal Public Domain Dedication](#) when it is appropriate and lawful to do so. Once you have cleared copyright, you can then add the creator or work to the Copyright Clearance Log to document that process.
- [Image and Metadata Handbook for Wikimedia Commons](#) and [Sandbox Template for Wikimedia Commons Metadata Management](#), which guides you through the process of organising your images and metadata for upload to Wikimedia Commons.
- [Selecting an Alternative License or Label](#) addresses which machine readable statements to use when CC0 cannot be applied.
- [External Open Access Policies](#), which contains a model open access policy you can modify and use on your website or other communications.
- [Glossary](#), a list of terms used in this handbook and other GLAM-E Lab resources.

Together, these materials will help you identify, prepare, and publish your digital collections for open access using public domain statements or other machine readable statements.

Before using this handbook, you will likely benefit from reading the [Onboarding Document](#) and [Assessing and Mitigating Risk](#). These resources will help you to understand open access and how to clear copyright in digital collections.

**This toolkit is not intended to be legal advice. You should always contact a qualified professional for legal support.**

# Copyright Clearance for Public Domain Publications of Digital Collections

## Using this handbook

This handbook takes you through the process of **clearing copyright in collections**. Below, we refer to these as 'works'. Please note that the handbook only covers copyright clearance in the limited types of objects addressed below, such as paintings, natural specimens, graphic prints, diagrams, maps or photographs. It does not cover copyright clearance for objects like sound recordings, broadcasts or films. These types of objects are less likely to be in the public domain, and therefore less likely to be 'easy' places to start your open access programme.

The design of this handbook is informed by copyright laws of the **United Kingdom, United States, and EU Member States**, including provisions that:

1. Contain negative obligations on the use of in-copyright materials (e.g., for the public and cultural heritage organisations alike);
2. Deny copyright or related right protections to non-original materials generated during an act of reproduction (e.g., images, data, metadata); and
3. Recognize rights held by third parties, such as personal data or contractual rights.

Accordingly, it helps organisations first confirm if materials lack any rights or restrictions such that the [CC0 1.0 Universal Public Domain Dedication](#) can be applied. In many instances, that rights assessment process will identify factors that restrict use of the materials. For our purposes, this means your organisation: (1) might remove those materials from the open access program; (2) identify another machine readable statement to apply in place of CC0; or (3) may be unable to publish those materials to Wikimedia Commons.

**This handbook is not intended to be legal advice. You should always contact a qualified professional for legal support.**

## Copyright clearance at a glance

Identifying the copyright status of works in your collection is an important part of building your open access programme, often referred to as **rights clearance**.

When you clear the rights of a work, you are determining that copyright law does not act as a barrier to its inclusion in your open access program. There are two general strategies for clearing copyright: **in bulk or by item**.

Clearing copyright **in bulk** allows you to use categorical rules to group works in your collection, and then to approve works that meet those rules. Done properly, this will identify works for your open access program much more efficiently than an item-by-item review, with a minimal increase in incorrect copyright status assessments. You will find guidance on this approach in the section on [Bulk Copyright Clearance Overview](#).

Clearing copyright **by Item** involves reviewing each work individually. While this approach may moderately decrease the likelihood of an incorrect copyright evaluation, it can be more time consuming. Moreover, an item-by-item review is unlikely to be necessary for many works in your collection. You will find guidance on this approach in the [Item Copyright Clearance Checklists](#).

This document contains three checklists. They can be used to evaluate the copyright status of works individually, or categories of works in bulk. If you use them to clear works in bulk, make sure that all the works in the group share the same characteristics relevant for the checklist (you can learn more about this in the Bulk Clearance Copyright Overview).

- [Checklist 1](#) provides a step-by-step guide for clearing the **underlying work**.
- [Checklist 2](#) provides a step-by-step guide for clearing the **digital surrogate**.
- [Checklist 3](#) provides a step-by-step guide for clearing the **accompanying metadata**.

The handbook can be used in conjunction with the [Copyright Clearance Log](#) to record the copyright clearance process.

## Using public domain statements




Public domain statements indicate that **materials are unprotected by copyright and related rights and can be freely used without permission or restriction**. It is best practice to use a standardised machine readable statement than to use a descriptive free text statement, like “public domain,” because they ensure that any materials offered under their terms are easy to search for, discover, and use.

Two standardised sets of machine readable statements are commonly used for cultural heritage materials:

- **Creative Commons licences and tools.** [Creative Commons](#) (CC) provides six licences for marking creative content that offer certain usage rights to the public, while reserving others. They also provide two tools for marking materials as public domain, as discussed below. Both are available in more than 40 languages.
- **RightsStatements.org labels.** [RightsStatements.org](#) labels describe the copyright status of a work, even in instances where that status is unknown.

RightsStatements.org labels are intended for use when Creative Commons licences are either not appropriate or cannot be applied.

Both organisations provide machine readable statements for **public domain materials**. These include:

	<b>CC0 1.0 Universal Public Domain Dedication (<a href="#">CC0</a>)</b> . CC0 is a legal tool used to dedicate materials to the public domain. ( <a href="#">Legal Code</a> )
	<b>Public Domain Mark 1.0 Universal (<a href="#">PDM</a>)</b> . PDM is a legal tool used to identify materials that are free of known restrictions under copyright law, including related and neighbouring rights. ( <a href="#">Legal Code</a> )
	<b>No Copyright - United States (<a href="#">NoC-US</a>)</b> . NoC-US should be used for items that are free of copyright under the United States.

## Why you should use CC0

Creative Commons [recommends using CC0](#) for faithful reproductions of public domain works. This is because CC0 is the most legally-interoperable statement for cross-border users, reassuring these users that the materials can be reused for any purpose, regardless of any copyrights or related rights recognised in the country of use. CC0 also communicates to users that **if** any copyright or related rights arise in the materials, **your organisation has waived those rights and will never enforce them**. Lastly, CC0 reassures users that **any metadata accompanying the image has also been released as public domain**. Taken together, CC0 clearly communicates that the asset as a whole is in the public domain and freely available for anyone to use as they see fit.

In most cases, you will not have any copyright to waive. This handbook mostly addresses instances where the object itself was created by others and is in the public domain, and no new copyright interest arises in its reproduction due to UK, US, and EU copyright law. Nonetheless, applying CC0 ensures that copyright laws in other countries will not prevent the use of that object, reproduction, or metadata **for users within those countries**.

## When to apply CC0

Two main criteria must be satisfied to apply CC0:

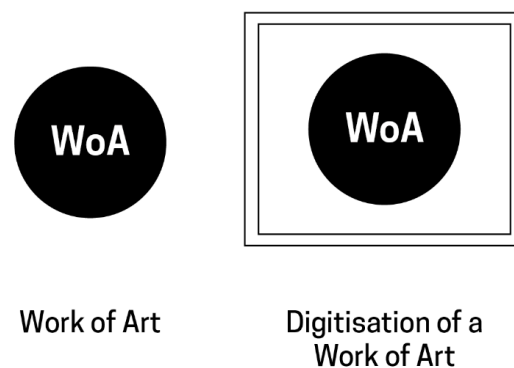
1. The **object is in the public domain** based on its copyright status; and
2. The **reproduction of the object is in the public domain** based on its copyright status, **or** any copyright in the reproduction is owned by your organisation, such that **your organisation has the power to dedicate the reproduction to the public domain**.

This means there are at least two layers of copyright to clear: copyright in the **underlying work** and copyright in the **digitisation**. Both layers must be free of copyright to apply CC0.

For example, for a digitised public domain artwork, this includes:

1. A **work of art** in the public domain; and
2. A **digitization of the artwork** made by your organisation (see *Figure 1*).

If both criteria are satisfied, you can apply CC0.



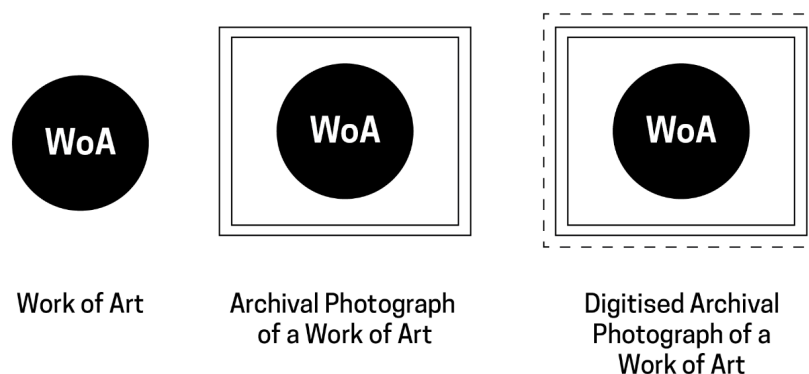
*Figure 1. Showing a two-criteria rights clearance scenario*

You should also consider whether **any text or other information in the image** requires its own copyright analysis.

If **the object in your collection is itself a reproduction**, you will need to review the copyright in that reproduction in addition to the underlying work.

For example, for a digitised archival photograph of an artwork, this includes

1. A **work of art** in the public domain;
2. An **archival photograph** of a work of art made by your organisation; and
3. A **digitization of the archival photograph** made by your organisation (see *Figure 2*).



*Figure 2. Showing a three-criteria rights clearance scenario*



Whether you publish the digitised archival photograph and under what conditions may depend on other information, such as:

- If the underlying work is outside of your collection
- The archival photograph was produced by someone outside of your organisation
- If you do not have enough information to conclude that CC0 is appropriate for the digital asset

If you are unable to apply CC0, the section on alternative licences, labels, and tools will help you identify the appropriate rights statement.

### When *not* to apply public domain statements without additional review

Below are examples of works that you should not apply **any** public domain statements or open licences that permit commercial use and modification, at least initially:

- Unpublished works or works lacking information to assess copyright (*i.e.*, “orphan works”), such as 20th or 21st century painting by an unknown author
- Works that are in the public domain in some jurisdictions, but under copyright or unknown in others (where the country does not follow the “rule of the shortest term,” discussed in Checklist 1)
- Materials created by third parties, like volunteers or commercial image libraries, which may or may not be subject to a contractual agreement
- Information or images of living individuals protected by privacy or data protection laws
- Images of living children, young people and vulnerable adults
- Artefacts, knowledge or memories of sensitive or sacred significance to their communities of origin
- Ancestral remains, spiritual works or funerary objects
- Research, data or other media produced around the above examples

If you are at an early stage of rights clearance, we recommend excluding these materials because they will likely require additional, more complex review.

### How to ask users for attribution

Although public domain statements include no legal requirement on attribution, you can tell users how you would like to be credited by providing guidance on attribution:

- Europeana’s [Public Domain Usage Guidelines](#) encourage users to give credit where credit is due and show respect for the original work and creator, along with other good practice tips on use of public domain materials.
- Creative Commons recommends [a simple framework](#) to support behavioural change by nudging users reference organisations when using public domain materials.

## Bulk Copyright Clearance Overview

The goal of bulk copyright clearance is to identify works with shared characteristics that can be treated identically for copyright review purposes. Of course, there are many characteristics that could be used to categorise works in your collection, such as the location where it was produced, the dominant colour of the work, or the year in which it was acquired. As discussed below, only a few of these categories are relevant for a copyright analysis.

The most important prerequisite for bulk copyright clearance is having accurate metadata about the work. Accurate metadata will make it easier to quickly sort your collection and identify works that fall into specific categories. Without this information, you may still be able to categorise works for bulk clearance. However, it may reduce the overall accuracy of the assessment or result in lower volumes of works that can be cleared according to that category.

### Identifying categories

Below you will find examples of categories that support bulk copyright clearance. The specificity or accuracy of details for each category becomes less important as the underlying works in question get older. For example, the year that a creator died is highly relevant to determining the copyright status of a work created in the 20th century. In contrast, simply knowing a work was created before the 19th century will allow you to perform a similarly accurate analysis of its copyright status. Categories useful for bulk copyright clearance might include:

- The date of creation (in some cases, you can use the date a work was acquired or entered your collection, e.g., if the creation date is unknown but the work was acquired in 1870)
- The date of the creator's birth
- The country where the work was created and/or first published
- Whether the work falls within copyright subject matter (e.g., a painting, photograph, or sculpture) or is generally excluded from copyright (e.g., a purely functional object or natural specimen)
- How the digital version of work was made (e.g., institutional staff, third parties)
- Who owns the underlying work (e.g., public institution, a private individual, Indigenous community)
- How many intermediary reproductions are included in an image (e.g., in the case of a digital scan of an analogue photograph of an object, if the analogue photograph was created by institutional staff or third parties)

## Item Copyright Clearance Checklists

The checklists in this section will guide you step-by-step through the process of clearing an item in your collection for release under a [CC0 1.0 Public Domain Dedication](#). Once you have cleared copyright in an item, consider whether it forms part of a larger category of works that can all be included in the open access program, such as if there are multiple works by the same author. **If you are unable to move to the next step in the process, remove the work from the open access programme for further review.**

**Checklist 1** provides a guide to determining the copyright status of the **underlying work**. This work may or may not be in your collection. It also might be a building or other publicly accessible 3D work. If that work is itself an **image or reproduction of a work**, start by **first clearing copyright in the work** depicted in the image. For instance, for a photograph of a painting held outside your institution, start with the **painting, not the photograph** of the painting. Use **Checklist 1a** (UK & EU Member States) or **1b** (US) to analyse both the underlying work (the painting) and the reproduction in your collection (the photograph). Once you have identified the work as being in the public domain, move to Checklist.

- Step 1.** Is the underlying work eligible for copyright protection in your jurisdiction?
- Step 2.** Who created the underlying work? (UK & EU)  
Was the underlying work published and, if so, when? (US)
- Step 3.** Was the underlying work published? (UK & EU)  
Is the underlying work a domestic or foreign work? (US)
- Step 4.** What is the creator's date of death? (UK & EU)  
Does the work meet notice requirements? (US)
- Step 5.** Is the underlying work a foreign work? (UK & EU)  
Does the work meet registration and renewal requirements? (US)

**Checklist 2** provides a guide to determining the copyright status of the **digital surrogate** of the underlying work. Once you have identified the digital surrogate as being in the public domain, or that any rights in the digital surrogate are held by your organisation and can be waived using CC0, move to Checklist 3.

- Step 6.** Is the digital surrogate a faithful reproduction of the underlying work?
- Step 7.** Did digitization incorporate sufficiently creative choices of its maker?
- Step 8.** Who made the digital surrogate?

**Checklist 3** provides a guide to determining the copyright status of the **metadata** accompanying the work online. Once you have cleared rights in the metadata, the record as a whole can be marked CC0 and included in your open access program.

- Step 9.** What type of metadata is there?
- Step 10.** Who made the more extensive metadata.

## Checklist 1: The Underlying Work

**Checklist 1** focuses on the underlying work and any analog reproductions in your collection, the creator (or “author” in copyright law), and information known about them.

**Checklist 1a** addresses copyright in the **UK and EU Member States**. **Checklist 1b** addresses copyright in the **US**.

As a reminder, if that work is itself an **image or reproduction of a work**, start by **first clearing copyright in the work** depicted in the image. For instance, for a photograph of a painting held outside your institution, start with the **painting, not the photograph** of the painting. Use Checklist 1 to analyse both the underlying work (the painting) and the reproduction in your collection (the photograph). Once you have identified the work as being in the public domain, move to Checklist 2.

### Checklist 1a: United Kingdom & EU Member States

Both the UK and EU use the “author’s own intellectual creation” standard when assessing if a work is sufficiently original to receive copyright protection. Accordingly, this table focuses on the narrow question of whether certain creative works and their reproductions are protected under this standard used in both jurisdictions. Where relevant, it signals any country-specific rules that should also impact copyright clearance.

<p><b>Step 1</b></p> <p><b>Is the underlying work eligible for copyright protection in your jurisdiction?</b></p> <p><i>Works that are not eligible for protection are in the public domain</i></p>	<p>Copyright protects <b>creative works that are original</b> in the sense that they are the “<b>author’s own intellectual creation</b>.” Examples include a painting, drawing, diagram, map, chart or plan, engraving or other graphic print, photograph, sculpture, letter, music sheet, or manuscript. These works are <b>eligible</b> for copyright protection.</p> <p>Works that are <b>primarily functional</b>, such as machines or tools, or the <b>result of natural processes</b>, such as fossils, minerals, and natural specimens, are <b>not eligible</b> for copyright protection.</p> <p>If the work is <b>eligible</b> for copyright protection, or you are <b>unsure</b> of its eligibility, <b>proceed to Step 2</b>.</p> <p>If the work is <b>not eligible</b> for copyright protection, the work is in the public domain. <b>Proceed to Checklist 2</b>.</p>
<p><b>Step 2</b></p> <p><b>Who created the underlying work?</b></p> <p><i>Knowing the creator’s identity will</i></p>	<p>If you <b>know the identity</b> of the creator, as well as when they died, <b>proceed to Step 3</b>.</p> <p>If you <b>do not know the identity</b> of the creator, but you do know the <b>work’s date</b> of creation or publication, you can use a <b>risk assessment</b> approach: the older the work, the more likely it is that copyright has expired. If the work was published and is over</p>

<p><i>help you calculate the term of copyright.</i></p>	<p>120 years old, it is likely to be out of copyright because the author probably died at least 70 years ago.</p> <p>Depending on your organisation's preferences, you may decide to include the work in your open access program. If so, <b>proceed to Step 3</b>.</p> <p>If you <b>do not know the identity</b> of the creator, but you have reason to believe that the work was published within the past 120 years, <b>seek professional advice or remove the work for further review</b>.</p>
<p><b>Step 3</b></p> <p><b>Was the underlying work published?</b></p> <p><i>The publication date can impact whether the underlying work is in-copyright or public domain</i></p>	<p>A work may be in the public domain <b>based on the date it was published</b>.</p> <p>To determine whether publication occurred, you must identify the date <b>at which copies of the work were issued to the public by sale or another transfer of ownership, or other qualifying act</b>. Examples of publication include if a work has been sold, offered for sale, or made available to the public through an electronic catalogue. Please note that this might change from one country to the next. For example, for <b>artistic works in the UK</b>, a public exhibition or communication to the public does not constitute publication.</p> <p>If the work has been <b>published</b>, <b>proceed to Step 4</b>.</p> <p>If the work is <b>unpublished</b>, <b>it may remain protected by copyright under country-specific rules</b>. Review these rules for your country or remove and set the work aside.</p> <p>If you are unable to determine the date of publication, <b>seek additional advice or remove the work for further review</b>.</p>
<p><b>Step 4</b></p> <p><b>What is the creator's date of death?</b></p> <p><i>This information will help you calculate the copyright term</i></p>	<p>For most relevant creative works published in the UK and EU Member States, copyright lasts from the <b>date of the creation until 70 years after the author's death</b>.</p> <p>To calculate if copyright has expired, <b>add 71 years</b> to the creator's date of death. Because copyright survives a creator for 70 years, <b>it does not expire until the 71st year</b>. If the calculated amount is equal to a calendar year that has since passed, copyright has expired. For example:</p> <ul style="list-style-type: none"> <li>• 1867 + 71 = 1938 (copyright has expired)</li> <li>• 1942 + 71 = 2013 (copyright has expired)</li> <li>• 1975 + 71 = 2046 (copyright has not expired)</li> </ul> <p>If copyright has expired, <b>the work is in the public domain</b>. <b>Proceed to Checklist 2</b>.</p> <p>If you are <b>unsure where the work was published</b>, <b>proceed to</b></p>

	<p><b>Step 5.</b></p> <p>If the <b>copyright has not expired</b>, remove the work from the open access program.</p>
<p><b>Step 5</b></p> <p><b>Is the underlying work a foreign work?</b></p> <p><i>Foreign works require further copyright analysis</i></p>	<p>Not all countries have the same term of protection for copyright. For example, in Japan, copyright expires 50 years after the creator's death. In Mexico, copyright expires 100 years after the creator's death. In all EU countries, copyright for most relevant creative works expires 70 years after the creator's death.</p> <p>Some countries follow the '<b>rule of the shorter term</b>' when calculating copyright in <a href="#">foreign works</a>. That means if the country of publication recognises a <b>shorter term</b>, users can <b>rely on that country's term</b> for your copyright calculation. For example, for a work published in Japan (Life + 50 years), an organization in the UK can apply the shorter term of 50 years after death under Japanese copyright law.</p> <p>On the other hand, if that country recognises a <b>longer term</b>, users can <b>rely on their own country's shorter term</b> of copyright to calculate expiration for those foreign works. For example, for a work published in Mexico (Life + 100 years), an organization in the UK can apply the shorter term of 70 years after death under UK copyright law.</p> <p>If copyright has expired, <b>the work is in the public domain</b>. <a href="#">Proceed to Checklist 2.</a></p> <p>If the <b>copyright has not expired</b>, remove the work from the open access program.</p> <p><i>Note:</i> For foreign works, you can either review <a href="#">copyright terms by country</a> to see if the rule of the shorter term applies or use the default UK term of Life + 70 years discussed in <b>Step 4</b>.</p>

Once you have cleared [Checklist 1](#), you can **record any creators cleared of copyright in the [Copyright Clearance Log](#) spreadsheet**.

Because the copyright status is based on the creator's death in these jurisdictions, all works by that creator will share the same copyright status. Logging this information will help you keep up-to-date records for future reference, and potentially clear other works by the creator more efficiently.

You can find recordkeeping guidance below in [Logging Copyright Clearance](#) and in the '[About this spreadsheet](#)' tab of the Copyright Clearance Log.



## Country Specific Considerations for Checklist 1a

The following considerations about public domain works are applicable **only to organisations within these jurisdictions**. In other words, organisations outside of these jurisdictions need not adhere to these rules.

Please note that this list is not exhaustive. These examples are illustrative to help your organisation identify any public domain works that may require additional review within your jurisdiction.

<p><b>France</b></p> <p><i>On images of publicly owned buildings</i></p>	<p>Under section L. 621-42 of the Heritage Code, the commercial use of <b>an image of buildings and immovable property that constitute the national domains</b>, in any medium, also requires permission from the building's manager. The Heritage Code (L. 621-34, 35) defines "national domains" as "real estates with an exceptional link with the history of the nation and of which the State is, at least in part, the owner," and goes on to say that "immovable property belonging to the State, local authorities, public institutions or private persons"</p> <p>Because no direct or indirect commercial use is allowed, this makes CC0 difficult to apply to reproductions of these types of in-copyright works or national domains. <b>If you suspect the work in the photograph falls into one of these categories, seek additional advice or remove the work for further review.</b></p>
<p><b>Italy</b></p> <p><i>On publicly owned art and cultural heritage that is held by public institutions</i></p>	<p>The Italian Cultural Heritage Code <b>prohibits the commercial use of public domain art and cultural heritage held by a public institution (by users located in Italy) without first obtaining permission and paying a fee</b> (Decreto Legislativo 22 gennaio 2004, n.42, § II, art. 108). The public domain material must possess archival, historical, archaeological, or ethno-anthropological value. No fee is due for reproductions requested by private individuals for private use or study, unless service fees are appropriate.</p> <p>If you suspect the public domain work in the photograph is subject to the Italian Cultural Heritage Code, <b>you may use the <a href="#">No Copyright - Other Known Legal Restrictions</a> label from <a href="#">RightsStatements.org</a></b>. You must link to a page explaining what reuse restrictions apply to any commercial use for users located in Italy. Users outside of Italy will not be restricted by the Italian Cultural Heritage Code, unless they plan to circulate their use of the work within Italy's borders.</p>

<p><b>United Kingdom</b></p> <p><i>On unpublished works</i></p>	<p>If the work is <b>unpublished</b>, it may remain protected by copyright <b>until the year 2039</b> (the '2039' rule). This might include:</p> <ul style="list-style-type: none"> <li>• Literary, dramatic and musical works unpublished at the end of 1988, where the author died before 1969</li> <li>• Engravings unpublished at the end of 1988, where the author died before 1969</li> <li>• Unpublished photographs taken between 1 June 1957 and 1 August 1989</li> </ul> <p>If the work falls into the above categories, <b>remove the work from the open access programme until 2039</b>.</p>
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### Checklist 1b: United States

<p><b>Step 1</b></p> <p><b>Is the underlying work eligible for copyright protection?</b></p> <p><i>Works that are not eligible for protection are in the public domain</i></p>	<p>Copyright protects original <b>creative works</b>. Examples include a painting, drawing, diagram, map, chart or plan, engraving or other graphic print, photograph, sculpture, letter, music sheet or manuscript. These works are <b>eligible</b> for copyright protection.</p> <p>Works that are <b>primarily functional</b>, such as machines or tools, or the <b>result of natural processes</b>, such as fossils, minerals, and natural specimens, are <b>not eligible</b> for copyright protection.</p> <p>If the work is <b>eligible</b> for copyright protection, or you are <b>unsure of its eligibility</b>, <b>proceed to Step 2</b>.</p> <p>If the work is <b>not eligible</b> for copyright protection, the work is in the public domain. <b>Proceed to Checklist 2</b>.</p>
<p><b>Step 2</b></p> <p><b>Was the underlying work published and, if so, when?</b></p> <p><i>The publication date can impact whether the underlying work is in-copyright or public domain</i></p>	<p>A work may be in the public domain <b>based on the date it was published</b>. To determine when a work was published, you must identify the date it was <b>first publicly displayed or made commercially available</b>. Examples of publication include if it has been sold, offered for sale, or displayed to the public (17 U.S.C. §101). If you are unsure when the underlying work was first published, use the oldest date of recorded sale or public display.</p> <p>If you are unsure whether the work was ever published, <b>remove the work for further review</b>.</p> <p>If the underlying work was published <b>on or before December 31, 1929,* the underlying work is in the public domain</b>. <b>Proceed to Checklist 2</b>.</p> <p><small>*Note: This date advances each year and is correct for an analysis done in 2024. For example, see the list below to identify</small></p>



	<p>the current public domain date, which will include more works each year.</p> <p><b>Current Year – Public Domain if Published in This Year or Earlier</b></p> <ul style="list-style-type: none"> <li>• 2024 – 1929</li> <li>• 2025 – 1930</li> <li>• 2026 – 1931</li> <li>• 2027 – 1932</li> <li>• 2028 – 1933</li> <li>• 2029 – 1934</li> <li>• ...and so on</li> </ul> <p>If the underlying work was published <b>after January 1, 1978</b>, you should <b>assume it is in-copyright and remove the work for further review</b>.</p> <p>If the underlying work was published between January 1, 1928, and January 1, 1978, <b>proceed to Step 3</b>.</p>
<p><b>Step 3</b></p> <p><b>Is the underlying work a domestic or foreign work?</b></p> <p><i>Foreign works require additional copyright analysis</i></p>	<p>If the underlying work was first published in the United States, or was published in the United States within 30 days of the first foreign publishing, <b>it is a domestic work. Proceed to Step 4</b>.</p> <p>If the work was first published outside of the United States and it was not also published in the United States within 30 days, it is a <b>foreign work</b> (see Copyright Office, <a href="#">Circular 38B: Copyright Restoration</a>). You will need to refer to the copyright laws of the <b>work's country of origin</b> to determine the copyright status.</p> <p>If the work was first published outside the United States or you are unsure where it was first published, <b>you should seek additional advice or remove the work for further review</b>.</p>
<p><b>Step 4</b></p> <p><b>Does the work meet notice requirements?</b></p> <p><i>Works from this time period published without a copyright notice are in the public domain</i></p>	<p>The underlying work must have <b>appropriate copyright notice affixed</b> to it to receive copyright protection.</p> <p>Proper notice requires inclusion of:</p> <ol style="list-style-type: none"> <li>1. The copyright owner's name;</li> <li>2. One of the following: "Copyright," "Copr.," or © upon each copy of the work; and</li> <li>3. The year of publication.</li> </ol> <p>For example, "© The GLAM-E Lab 2024."</p> <p><i>Note:</i> If you cannot see the underlying work from every angle, you should assume that it may contain notice.</p> <p>If the work <b>has or may have a copyright notice affixed</b> to it, <b>proceed to Step 5</b>.</p>

	<p>If the work <b>does not have notice</b> properly affixed to it, <b>the work is in the public domain. <a href="#">Proceed to Checklist 2.</a></b></p>
<p><b>Step 5</b></p> <p><b>Does the work meet registration and renewal requirements?</b></p> <p><i>Works from this time period without proper registration or renewal are in the public domain</i></p>	<p>A work created <b>before January 1, 1978</b> must be appropriately registered with the US Copyright Office. Additionally, if the copyright registration date was before <b>January 1, 1964</b>, the registration must have been renewed within the 28th year after its original registration (see Copyright Office, <a href="#">Circular 15: Renewal of Copyright</a>). If the registration was not renewed at that time, the copyright term expires after that 28th year (see Copyright Office, <a href="#">Circular 15A: Duration of Copyright</a>).</p> <p>If you know the type of work, the approximate year of registration, and either the title of the work or the name of the copyright owner, it is possible to <b>search the Copyright Office's public records to find historic registration details</b>. You can do this on the <a href="#">Copyright Public Records Portal</a> by clicking the link to <a href="#">The Catalog of Copyright Entries (1891-1978)</a> (located in the first tab, Online Records Collections). This will let you filter by type of work and year of registration, so you can search the appropriate index for the filing records.</p> <p>If the work has been properly registered (and registration renewed, if applicable) with the Copyright Office, <b>the work is under copyright. Remove the work for further review.</b></p> <p>If the work has not been properly registered (or registration was not renewed, if applicable), <b>the work is in the public domain. <a href="#">Proceed to Checklist 2.</a></b></p>

## Checklist 2: The Digital Surrogate

**Checklist 2** focuses on the digital surrogate and its relationship to the underlying work for the **US, UK, and EU Member States**.

<p><b>Step 6</b></p> <p>Is the digital surrogate a faithful reproduction of the underlying work?</p> <p><i>Faithful reproductions of existing public domain works do not receive a new copyright protection</i></p>	<p>In the US, UK, and EU Member States, a <b>faithful reproduction of an existing work does not receive an independent copyright</b>. This is because the reproduction is not sufficiently “original” to attract copyright protection.</p> <p>An example of a <b>faithful reproduction</b> includes a faithful photographic reproduction of an existing painting, print, drawing, or sculpture. This includes <b>post-production editing decisions</b> to touch up the image, such as enhancing colour balance, removing shadows, or adjusting contrast.</p> <p>If the <b>digital surrogate</b> is a faithful reproduction of the underlying work, the reproduction is in the public domain. <b>Proceed to Checklist 3</b>.</p> <p>If you are unsure whether the digital surrogate is a faithful reproduction, <b>proceed to Step 7</b>.</p> <p>Note: <b>Step 8</b> addresses the impact of the employee-employer relationship on copyright ownership in more detail.</p>
<p><b>Step 7</b></p> <p>Did digitisation incorporate sufficiently creative choices of the person who made it?</p> <p><i>Digitisations that are sufficiently creative works in their own right, rather faithful reproductions of the underlying work, may be protected by their own copyright</i></p>	<p>A digital surrogate <b>may attract a new copyright that is separate from the underlying work</b>. This requires a person to make <b>creative choices</b> that result in the digitization being a stylized reproduction rather than a faithful reproduction of the underlying work.</p> <p>This is not usually the case. The goal of most digitization processes is to depict the underlying work as faithfully as possible. This typically involves making <b>technical decisions</b>. Making creative choices that result in a stylized reproduction would undermine its intended purpose. The <b>ability to make creative choices may not even arise</b>, such as with a digital scan of a 2D or 3D object.</p> <p>By contrast, some photographs may incorporate creative choices about lighting or angles, such as with a stylized photograph of a 3D object. <b>Creativity is more likely to be expressed if photographs intentionally depart from industry standards</b> on lighting, angles, and background selection. Similarly, 3D models of works that reproduce a work by hand and result in <b>a stylized departure from the source object</b> may also incorporate sufficient creativity.</p>

	<p>If the digitization is a <b>faithful reproduction</b> of the underlying work, <b>it does not have an independent copyright and is in the public domain. Proceed to Checklist 3.</b></p> <p>If the digitization incorporates creative choices by the person who made it, <b>proceed to Step 8.</b></p>
<p><b>Step 8</b></p> <p><b>Who made the digital surrogate?</b></p> <p><i>If your organisation made the surrogate, you can release the copyright to the public domain</i></p>	<p>If the digital surrogate was made by an <b>employee</b> of your organisation or a <b>contractor</b> who assigned rights in the digital surrogate to your organisation, <b>your organisation owns the copyright and can release CC0. Proceed to Checklist 3.</b></p> <p>If the digitization was <b>performed by a contractor</b> for your organisation, you will need to review the contract to see if the agreement:</p> <ul style="list-style-type: none"> <li>• <b>assigned the rights</b> to your organisation</li> <li>• <b>imposes limits</b> on its use or release or</li> <li>• <b>rights were retained</b> by the contractor</li> </ul> <p>If the rights <b>were assigned to your organisation</b>, you can include and mark the image CC0. <b>Proceed to Checklist 3.</b></p> <p>If you are unsure of the creator's identity or rights owner, <b>you should seek professional advice or remove the work for further review.</b></p>

## Checklist 3: The Metadata

**Checklist 3** focuses on the metadata, which can include technical data, descriptive data, or prose providing additional context about the object for the **US, UK, and EU Member States**.

<p><b>Step 9</b></p> <p><b>What type of metadata is there?</b></p> <p><i>Basic metadata is not protected by copyright law</i></p>	<p>Metadata can include <b>factual fields</b> in collections catalogues or other records, such as the creator's name, the date of creation, the date of publication, and the title of the work. Other <b>basic metadata</b> can include image size and resolution, colour composition, medium, dimensions, short descriptions, etc. Metadata can also be <b>automatically generated</b> during reproduction or post production editing related to camera data or image editing.</p> <p>Basic metadata like factual information, short phrases and automatically generated technical information <b>are not protected by copyright law</b>.</p> <p>If the metadata <b>only includes basic metadata, the entire record is in the public domain marked CC0</b>.</p> <p>If the metadata is <b>more detailed or expressive</b>, you will need to assess copyright and who made the metadata, <b>proceed to Step 10</b>.</p>
<p><b>Step 10</b></p> <p><b>Who created the more expressive metadata?</b></p> <p><i>If your organisation created the metadata, you can release the copyright to the public domain</i></p>	<p>Metadata can be <b>more expressive</b>, such as descriptions of the work and its context, a history of the object, or other information. Expressive metadata will constitute a creative work and be eligible for copyright protection. Whether you can apply CC0 will depend on who created the expressive metadata.</p> <p>If the expressive metadata was made by an <b>employee</b> of your organisation or a <b>contractor</b> who assigned rights in the metadata to your organisation, <b>your organisation owns the copyright. The entire record can be marked CC0</b>.</p> <p>If you are unsure of the creator's identity or rights owner of the metadata, you can <b>remove or exclude this metadata</b> from the information associated with the image. <b>This will allow you to publish the entire record with the basic metadata using CC0</b>.</p> <p><b>If removing or excluding this metadata is not an option for this work, remove the work for further review.</b></p>

## Logging Copyright Clearance

Once you have identified creators or works whose copyrights have expired, you can document the information in a way that helps record why and how you cleared copyright.

In some cases, you may be unable to conclude that that copyright has expired. This and other information still is useful to record in the [Copyright Clearance Log](#) spreadsheet. Later, you can return to the spreadsheet to identify other public domain works for inclusion in your open access programme.

### Copyright Clearance Log

Save a version of the Copyright Clearance Log to your Google Drive or local drive by either making a copy or downloading an excel version of the Google Sheet.

Note that the colours below correspond to those used in the spreadsheet columns. You will find an example for each category of information below as further aid.

**Section 1 (Columns A-E):** Use this section to record **internally held information about a creator and the work.**

DATA FIELD	LOG INSTRUCTIONS	Additional clarification, with examples below
Link (A)	A link to the creator's works or profile in your collections portal or content management system, if you have one	You might also include information on a folder location
<b>Link:</b> <a href="https://rammcollections.org.uk/collections/?s=&amp;filter[cumulation.collector.summary.title.keyword][[]]=Frederick+John+Widgery++1861-1942+%28artist%29">https://rammcollections.org.uk/collections/?s=&amp;filter[cumulation.collector.summary.title.keyword][[]]=Frederick+John+Widgery++1861-1942+%28artist%29</a>		
# of works (B)	The total number of works by this creator in your collection, which may be helpful for bulk clearance	If you are in a jurisdiction that calculates the term of protection by a creator's date of death, this column can help you record the number of additional works that are suitable for public domain publication
<b># of works:</b> 213		
Title (C)	The title of the work being cleared, which may be helpful for copyright clearance at an item level	Document the date of publication and consider any jurisdiction specific rules (e.g., in the UK, the 2039 rule; in the US, clearance by publication date if

		the work was registered for copyright before 1978)
<b>Title:</b> Bowerman's Nose, Manaton Dartmoor		
<b>Date of Publication (D)</b>	<b>Date of publication, if known, or Unpublished</b>	For example: YYYY-MM-DD or Unpublished
<b>Date of Publication:</b> 1888		
<b>Publication Country (E)</b>	<b>Country of publication for the purposes of calculating the copyright term</b>	For example, United States or Japan
<b>Country of Publication:</b> United Kingdom		

**Section 2 (Columns F-O):** Use this section to record **general information about a creator**.

DATA FIELD	LOG INSTRUCTIONS	Additional clarification, with examples below
<b>Creator Full Name (F)</b>	<b>Full name of the creator as it appears in your catalogue or record</b>	Include any titles or suffixes
<b>Creator Full Name:</b> Frederick John Widgery		
<b>First Name (G)</b>	<b>First name(s) of the creator</b>	For data sorting purposes
<b>First Name:</b> Frederick John		
<b>Last Name (H)</b>	<b>Last name(s) of the creator</b>	For data sorting purposes
<b>Last Name:</b> Widgery		
<b>Birth Date (I)</b>	<b>Creator's date of birth, if known</b>	To enable chronological sorting (e.g., to celebrate a creator's birthday)
<b>Birth Date:</b> 1861/04/01		
<b>Death Year (J)</b>	<b>Creator's year of death, if known</b>	For calculating the term in relevant jurisdictions (UK & EU Member States)
<b>Death Year:</b> 1942		
<b>© expiration year (K)</b>	<b>Year of copyright expiration for creator's works, including future year if still in copyright</b>	For automated calculations in the UK and EU Member States, copy/paste the formula below into the cells in this column and edit the row information: =G[Row Number]+71
<b>© expiration year:</b> 2013		



<b>Gender (L)</b>	<b>Creator's gender, if known [ Male / Female / Non-binary / Trans ]</b>	For themed promotions (e.g., International Women's Day)
<b>Gender:</b> Male		
<b>Nationality (M)</b>	<b>Creator's nationality/ies, if known</b>	For themed promotions
<b>Nationality:</b> British		
<b>Other details (N)</b>	<b>Any other details useful for open access programming</b>	
<b>Other details:</b> Was mayor of Exeter		
<b>Wikidata link (O)</b>	<b>Link to the creator's Wikidata entry, if it exists</b>	The Wikidata entry will have additional information about the author and link to their biography and other artworks
<b>Wikidata link:</b> <a href="https://www.wikidata.org/wiki/Q5498164">https://www.wikidata.org/wiki/Q5498164</a>		

**Section 3 (Columns P-R):** Use this section to record the copyright status and whether to include the creator or works in your open access programme.

<b>DATA FIELD</b>	<b>LOG INSTRUCTIONS</b>	<b>Additional clarification, with examples below</b>
<b>Underlying Work Status (P)</b>	<b>The copyright status of the underlying work(s) [ Public Domain / US: Public Domain / In Copyright / Unknown ]</b>	Use the dropdown option to select the copyright status; add or edit categories for your jurisdiction by changing the Data Validation rules
<b>Status:</b> Public Domain		
<b>Digital Surrogate Status (Q)</b>	<b>The copyright status of the digital surrogate(s) [ Public Domain / In Copyright / Unknown ]</b>	Use the dropdown option to select the copyright status; add or edit categories for your jurisdiction by changing the Data Validation rules
<b>Status:</b> Public Domain		
<b>Include in Open Access Programme (R)</b>	<b>Your decision on whether to include the creator or work(s) in your open access programme based on the Status (N) information: [ Yes / No / TBC ]</b>	Use the dropdown option to select the copyright status; add or edit categories for your jurisdiction by changing the Data Validation rules
<b>Include?:</b> Yes		



**Section 4 (Columns S-U):** Use this section to document your **reasoning in support of the copyright status** and inclusion in Columns P-R.

DATA FIELD	LOG INSTRUCTIONS	Additional clarification, with examples below
Reasoning (S)	The reasoning supporting your conclusion on copyright and/or the decision to include the work in your open access programme if unknown	For example, the work was created in 1850
Reasoning: Artist died in 1942 and work is in the public domain		
Evidence link (T)	Link to the information that supported your Reasoning (S)	For example, link to Wikipedia biography
Evidence link: <a href="https://en.wikipedia.org/wiki/Frederick_John_Widgery">https://en.wikipedia.org/wiki/Frederick_John_Widgery</a>		
Database notes (U)	Any additional notes relevant to information in your database or collections management system, if helpful	For example, where a person's last name changed following marriage
Database notes: RAMM has paintings by William Widgery in its collection (artist's father)		

**Section 5 (Columns V-W):** Use this section to record **information about the evaluator** for good record keeping and to support any follow-up questions about their assessment.

DATA FIELD	LOG INSTRUCTIONS	Additional clarification, with examples below
Evaluator (V)	Name of person who evaluated the creator's copyright status	Consider updating this field to include a drop down of team members' names using the Data Validation rules
Evaluator: Francesca Farmer		
Date of Evaluation (W)	Date of the copyright evaluation	For example: YYYY-MM-DD
Date of Evaluation: 2024-04-01		

## Additional resources

- **Working With Open Licences: A guide for projects.** Written by Andrea Wallace and Mathilde Pavis for The National Lottery Heritage Fund, [this guide](#) is designed to help heritage organisations understand copyright and implement the Heritage Fund's open licensing requirement.
- **For Faithful Digital Reproductions of Public Domain Works Use CC0.** Written by Jane Park for Creative Commons, this [blog post](#) recommends that institutions use the CC0 public domain dedication for their digital reproductions where there might be any element of originality that might give rise to doubt.
- **Lessons from cultural institutions and libraries that went open access in 2020-2021.** Written by Giovanna Fontenlle, this [blog post](#) includes interviews with several GLAMs that have gone open access to learn from their experiences.
- **How to Select an Accurate Rights Statement.** Europeana has [a guide](#) on how to identify the most accurate and adequate rights statement for digital collections, which includes a flowchart of Creative Commons licences and tools and RightsStatement.org labels.

## United Kingdom

- **Creative Commons Licences: A Guide to Data Protection & Copyright.** Written by Naomi Korn Associates for The National Lottery Heritage Fund, [this guide](#) explores issues surrounding Creative Commons licences, copyright and data protection.
- **UK Intellectual Property Office.** The UK IPO website has a section on [Intellectual Property: Copyright](#) which includes information on how to manage copyright, [copyright in digital images, photographs and the internet](#) and [the duration of copyright](#).
- **The National Archives.** The National Archives has a guide on [Copyright and Related Rights](#) in UK law in addition to:
  - **Flowchart: Duration of Copyright.** Two versions of this flowchart are available online to help you assess the copyright term for literary, dramatic and artistic works ([v1](#))([v2](#)).
  - **Flowchart: Duration of Crown copyright.** If a work is created by a UK government employee within the course of their employment, the work is subject to Crown copyright, which [this guide](#) covers.
- **Copyright Cortex.** Copyright 101 in [The Copyright Cortex](#) covers a number of topics, including ones related to digital cultural heritage.
- **Copyright User.** The 'Understand' section of the [Copyright User](#) resource provides an introduction to Rights and Permissions and Copyright Exceptions.
- **Copyright Rights Clearance Checklists.** Written by Naomi Korn Associates, [this resource](#) contains some helpful tips for where to search when trying to clear copyright in creative works.

## United States

- **Digital Copyright Slider: Is it Protected by Copyright?** The American Library Association has created a helpful [online copyright clearance tool](#) for users to identify whether a work is protected by copyright in the US.
- **Circular 22: How to Investigate the Copyright Status of a Work.** The US Copyright Office has published a Circular offering [practical guidance](#) on what to look for when investigating the copyright status of a work.
- **Search Copyright Records: Copyright Public Records Portal.** The US Copyright Office hosts [a search portal](#) for finding copyright records held by the Copyright Office.
- **Guide to Implementing Rights Statements from RightsStatements.org.** The Society of American Archivists has [a guide](#) to support the use of Rights Statements labels among archivists and other cultural heritage professionals making digital materials available online in the US.
- **Finding Balance: Collaborative Workflows for Risk Management and Sharing Cultural Heritage Collections Online.** Written by Melanie Kowalski, Sarah Quigley, and Jody Bailey, [this open educational resource](#) offers guidance for “creating scalable, cross-functional workflows using a risk-management approach.”
- **No One “Owns” That Metadata, Copyright, and the Problems with [Library] Vendor Agreements.** Written by Kyle Courtney, Kathleen DeLaurenti, Matthew Kopel, and katie Zimmerman, [this article](#) asserts that the vast majority of bibliographic metadata is simply not copyrightable, and recommends that institutions should release the records using CC0.

## European Union

- **Copyright Management: Guidelines for Cultural Heritage Institutions.** Written by the Europeana Copyright Committee, [these guidelines](#) are designed to support best practice in copyright management, including risk management.
- **3D Models & Rights Management: A Report on Copyright and Other Rights Assessments for 3D Models in Europeana.** Commissioned by Europeana, [this study](#) by the GLAM-E Lab maps out the legal frameworks and rights management practices that apply to reproduction media produced around cultural heritage collections and sites.