glam-e lab

Go Open with GLAM-E

Welcome to the GLAM-E Lab

v. 1.1 | October 2024

glam-e lab

Table of Contents

glam-e lab

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 organizations to build open access capacity and expertise.

The GLAM-E Lab provides legal counsel to GLAM institutions and cultural organizations 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 organizations as possible. We supplement these model policies with additional guides and resources to address common challenges.

Acknowledgements

glam-e lab

About the GLAM-E Lab Open GLAM Toolkit

This handbook is part of the GLAM-E Lab Open GLAM Toolkit for cultural heritage organizations. 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 organizing 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.

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

Introduction

This guide will introduce you to the GLAM-E method of building an open access program. It will give you a clearer picture of what open means in practice for you, your institution, your collections, and your community. The guide contains practical explanations on open access, key words, and relevant concepts. It also considers certain technical, legal, and ethical implications of open GLAM.

The guide is designed to prepare you and your institution to implement the standard open access policies developed by the GLAM-E Lab. However, it may also be useful as an introduction to open access more broadly. Throughout this guide, we will invite you to reflect on the histories and make-up of collections to determine whether digitization and online publication is appropriate.

While open access can connect your collection to the world, the decisions you make along the way remain influenced by local laws. This guide is written for heritage materials located in and subject to the laws of the UK and the US. The good news is that UK and US laws can be very similar to each other, and to laws in other jurisdictions, which simplifies things when online collections are enjoyed by users across these borders. Where any differences arise, we discuss them where relevant.

The GLAM-E Lab generally subscribes to a "do the easy things first" approach to building open access collections. In keeping with that policy, this guide mostly focuses on open access programs for public domain materials in your collection. There are complicated and valid reasons why in-copyright collections cannot be published under open access frameworks, which remain beyond your institution's control. This guide focuses on the specific materials and layers of rights that your institution does have control over.

Finally, this guide and accompanying policies and resources are the result of the GLAM-E Lab's work with individual cultural institutions. That means they have been tested by being implemented by specific institutions. If you have questions or concerns that are not addressed by the guide, we encourage you to contact us. The GLAM-E Lab may be able to take your institution on as a client free of charge, help address those questions and concerns, and use those answers to improve these documents for everyone.

⊣ ✕ ⊢ glam-e lab

Why Go Open?

Galleries, libraries, archives, and museums have a fundamental role in supporting the advancement of knowledge, creativity, and culture. As custodians of our cultural heritage, they hold important records and creations of humankind.

Providing open access to heritage materials is one way that cultural institutions can fulfill their public and educational missions. By openly sharing their collections and metadata, cultural institutions make it easy for society to access, engage with, and learn from our shared cultural heritage.

The Open Definition helps establish a common understanding of what "open" really means:

> **Open means anyone can freely access, use, modify, and share for any purpose (subject, at most, to requirements that preserve provenance and openness).**

This type of openness serves as a guiding principle for constructing a meaningful open access program. Understanding this definition will help you resolve most decisions involved with making heritage materials open access.

Openness in Practice

Going open is not an all-or-nothing type of decision for an institution. Open access can be approached on a collections-by-collections, or even object-by-object basis. During this process you will solve problems and design safeguards to ensure that what you publish is sufficiently vetted and appropriate for public reuse.

At its core, open access allows your institution to comply with copyright laws that say no new rights arise in faithful reproductions of public domain works—in other words, recognizing that an institution that digitizes an object does not get a new copyright in that newly-created file. This central principle should inform a localized open access strategy that is based on your organization's needs. When done thoughtfully:

- **Open access means removing barriers and encouraging use.** Make it easy for others to access objects in your collection and actively encourage them to do so. Celebrate unexpected uses and understand them as wins for your open access program.
- **Open access drives an organization's mission.** Society supports cultural institutions because they help us understand ourselves and advance our knowledge. Making it easy for anyone to engage with your collection is a cornerstone of that mission-led work.
- **Open access connects collections with more communities.** It can be hard to appreciate who is not engaging with your collection until you remove the barriers

for doing so. Opening up your collections allows you to reach communities you previously have been unable to reach and to discover new communities you did not realize were eager to explore and use your collections.

- **Open access can create cost savings and helps reprioritize resources in support of institutional goals.** Limiting access to your digital collection is expensive. The costs of operating a rights and reproductions program often exceeds associated revenues when accounting for staff salaries, benefits, and inefficiencies required to administer policies and fulfill requests. The digital infrastructure required to gate and toll access to digital collections can be much more expensive than making the same digital collections freely available online for self-service delivery.
- **Open access does not prevent institutions from commercializing the collections.** Exclusivity isn't necessary to commercialize collections. Some institutions publish digital collections in open access on the website and deposit those same assets with commercial image libraries for users who prefer a license for its legal certainty. Open institutions continue to merchandise collections, and many see their brand value increase alongside the new commercial opportunities that flow from open access.

Openness as a Community

Cultural institutions are home to, and part of, a wide range of communities. Building an open access program allows a cultural institution to join a robust community of peers called "open GLAM" (Galleries, Libraries, Archives, and Museums). This informal network of open institutions helps one another build new systems, avoid problems, and share successes as they grow together.

Things to Understand Before Making a Decision

Materials marked as open access can be freely accessed, used, modified, and shared for any purpose.

Legal restrictions or limitations on use come in the form of rights connected with the materials in your collections, in one or more ways. These rights stem mostly from the law, although they also may stem from private contracts (for example, an agreement between a donor and your institution) associated with your collections or a specific item.

Copyright is the main right to consider before going open access. Other rights will also come into play, such as privacy and data protection. These other rights are more likely to vary depending on the location of the materials (UK or US). We will highlight these where relevant.

glam-e lab

Copyright is the Biggest Legal Factor that Governs Open Access

What is copyright?

- Copyright is an intellectual property right. Copyright can attach to materials such as literary and artistic works, as well as films, sound recordings, broadcasts, and computer programs.
- Copyright allows the person who owns the right to allow or condition access to the protected work. Copyright requires users to seek permission from the owner before using the materials. For example, a publisher needs the permission of the author of a book before producing and selling copies of the book.
- Copyright first belongs to the creator or producer of the materials. That creator can give permission for various uses of the work in the form of a license, or transfer control of the copyright in the work to someone else entirely.
- Copyright lasts a long time. Depending on the type of materials, copyright will last as long as the lifetime of the creator or producer, plus seventy years after their death.
- Copyright controls many ways of using and commercializing a work, irrespective of technology or the scale of the use. For example, the owner of a copyright can control whether their work is reproduced physically or digitally, performed on stage, or shared on social media.

Having said that, copyright laws also allow certain activities known as "permitted acts," "fair dealing" or "fair use." Under certain circumstances these exceptions and limitations make it possible to use a protected work without asking for the copyright owner's permission. For example, this might enable a user to copy a work for personal study, produce a parody of the work, quote the work, or engage in non-commercial research.

Copyright and the public domain

Materials are deemed in the "public domain" when copyright does not apply or has expired. Materials in the public domain can be used freely by anyone for any purpose without permission. That is why we usually recommend starting open access collections with objects that are already in the public domain. Doing so allows you to sidestep many copyright questions.

For collections, here are three main roads to the public domain.

- First, the copyright can expire or may have never existed. In the US, as of 2023, the copyright on works created in 1927 and earlier has expired. Each year that expiration window advances. For example, as of 2024, works created in 1928 enter the public domain, and so on with each passing year. In the UK, a work enters the public domain on January 1 of the calendar year following the expiration of a 70-year term of protection that begins upon the creator's death. For example, the works of creators who died in 1953 pass into the public domain on January 1,

2024. Of course, some older works precede copyright protection and so they have always been in the public domain.

- Second, the works might not be eligible for copyright protection. Copyright primarily protects works of creative expression. That means copyright does not protect natural phenomena or objects such as insects or geological specimens. Nor does copyright protect functional objects, such as machines, short phrases, or facts. From a copyright perspective, these materials are in the public domain from the start.
- Third, materials can also be dedicated to the public domain by the copyright owner. This can be done by displaying a public domain dedication mark or notice (such as the [CC0 mark](#)) alongside the work.

Copyright in/and the digitization

Digitizing collections raises two main copyright questions. Each is addressed below.

Do you need permission from the owner of the copyright before digitizing the materials?

If the material is still protected by copyright, you will likely need permission from the copyright holder before digitization. If the material is in the public domain, no copyright restrictions prevent digitization and reuse.

Accordingly, we recommend focusing open access programs and digitization on works that are already in the public domain. While it is certainly possible to create an open access collection of digitized in-copyright works, doing so will involve additional steps.

Do the digital reproductions of the materials attract copyright themselves?

Faithful reproductions of public domain materials – such as those created by digital scanning – do not receive new copyright protections in the UK or US. That means simply digitizing a public domain work does not create a new copyright in the digital surrogate owned by the digitizing institution. Because no new copyright exists, institutions cannot use copyright to require users to follow specific rules, such as only using the digital file in non-commercial contexts. This rule about copyright in digitizations is less clear in many countries outside of the UK and US. For these reasons, licenses, public domain dedications, and other labeling tools are important parts of the open access digitization process.

Metadata can be automatically generated during the digitisation process, such as information about how digitization occurred. Metadata can also be added and edited to enrich digital materials, such as to describe the content represented in the digital materials.

Recently-created metadata about a work in the public domain may itself be protected by copyright. This will be the case when the metadata is creative enough to be original. As

such, it is important to think about how you publish your metadata in addition to the digitization itself.

Other Factors to be Aware of

Besides copyright, other rights or limitations should be considered before publishing collections as open access.

Performers' rights and image rights

Performers' rights, publicity, and image rights must be considered in addition to copyrights arising in the materials. Fortunately, copyright's long term of protection means these newer types of rights are likely to be less common when digitizing public domain works. This is because, if present, they typically expire before the copyright expires in the recording. Nonetheless, it is important to remain aware of these rights, especially if your collection includes objects from the beginning of the 20th century that depict individuals.

In the UK, performers' rights can arise in materials fixing someone's speech or movement, like a sound recording or a film. These rights first belong to the performer recorded in the materials and last for a fifty-year period that begins when the recording is made. The performer's consent is needed to make such materials available during the period of protection. Performers' rights do not exist under US law.

In the US, publicity or image rights can arise in materials capturing someone's voice or likeness, like photographs, sound recordings or films, especially if that voice or likeness are going to be used commercially. Publicity or image rights first belong to the person represented in the materials. Their consent may be needed to make this type of content available as open access. In some countries, publicity or image rights survive the death of the person in the materials. Publicity and image rights do not exist in the UK.

Database rights

Databases are collections of data or works arranged in a methodical way. In the UK, databases are protected by rights related to copyright, called "database rights." Databases that are sophisticated enough to be original are also protected by copyright.

Database rights first belong to the maker of the database. Database rights last for fifteen years from their creation or publication. Database rights do not exist in the US.

In the context of collection digitization, database rights are most likely to be important with regards to databases created by the digitizing institution that relate to the digitized objects. In those cases the institution itself will often control the right, which will give it more flexibility in incorporating information from the database into any open access offering.

| × | glam-e lab

Privacy and data protection

Some materials may contain personal data or private information. These materials may be protected by rights recognized in privacy or data protection laws.

Privacy and data protection rights are owned by the individual connected to the information. These rights apply during the individual's lifetime and expire upon their death. Privacy and data protection rights are balanced, and sometimes superseded, by the need to access information in the public interest. This will often be the case for information related to public figures or of historical value.

As with performers' rights and publicity rights, privacy and data protection rights are unlikely to come into play when digitizing public domain works. At the same time, the privacy and data protection rights of current users of your digitized collection will influence how you design those access systems.

Traditional Knowledge and Traditional Cultural Expressions

Some materials contain traditional knowledge or cultural expressions. This can be embedded within a cultural object, written records, or in photographs, sound recordings, and films.

Traditional knowledge and cultural expressions can be claimed by their communities of origin. However, these materials are not always recognized as attracting copyright or other rights under UK and US law. This leaves their claims of ownership by communities of origin in a gray area of the law, which can raise ethical questions in relation to the digitisation and release in open access of materials carrying this knowledge. There are many strategies to address these questions within the context of your digitization. These often include direct engagement with communities of origin.

Culturally sensitive materials

Not all materials are appropriate for digitization, online publication, or open access. Examples include ancestral remains, funerary objects, or other spiritual collections, as well as materials requested for restitution by their communities of origin.

Your plans to digitize, publish, or release rights in the materials (or not) should be adapted to these material types. Whenever possible, plans should center the associated communities or individuals in any decision making.

Contractual limitations

Contracts can limit your ability to digitize, publish, or release certain materials as open access. These contracts formed with volunteers, photographers, commercial image libraries, donors, or creators may impose conditions on digital collections management.

One example includes a collection of photographs donated to an institution under conditions that they are not digitized or published online. Another includes agreements made with commercial image libraries or photographers that limit what you can do with digital reproductions of public domain works in your collection. These contractual terms must be respected.

How to Mitigate Risk or Manage 'Unknowns'

When clearing works for digitization, you may lack the information necessary to conclude an item is appropriate for open access publication. For the most part, you can publish these materials in the digital collections, as long as you mark them differently and have a strategy in place to mitigate any "unknowns."

Copyright Disclaimers versus Licenses

If you are unsure of copyright or other rights, you can publish materials using a disclaimer rather than a license. In effect, this enables you to publish the collections online but caution users that rights may apply and impact reuse. The burden then shifts to users to ensure any reuse is legally compliant. Because of this, disclaimers should generally be used as a second choice in building your open access program.

One example of a disclaimer includes "No Known Copyright," which informs users there is reasonable cause to believe the underlying work is no longer protected by copyright. Another example includes "Copyright Not Evaluated," which informs users the organization has been unable to determine the copyright status of the underlying work. Be aware that using disclaimers as a default blanket rights statement can result in additional administration for staff related to requests for information.

In the event someone comes forward with a rights claim to the materials you have made available, and you are reasonably confident that the claim is accurate, you will be in the position to update your records and the rights statement accordingly.

Terms of Use

Your website terms are a great place to communicate the specifics of your open access program, including your mitigation strategy. You can explain how potential rights owners can contact you with any claims. Similarly, you can include information about the licenses,

rights statements, and disclaimers you apply to digital collections. A clear terms of use will tell users how they can engage with materials online. It will also convey to users and potential rights owners that you are acting in good faith.

Take Down Mechanisms

As a content host, you must remove online content that infringes someone's rights. A clear take down policy with contact information ensures potential rights holders can contact you with a removal request. Such requests are opportunities to resolve issues and reassure rights holders their rights are being respected.

Content may need to be removed for a range of reasons. Someone may believe an infringement of their intellectual property rights has occurred or request the removal of personal data from your records. While such requests are not common, it pays to have an internal and external process for removing materials while you investigate a request. Your website terms of use are a great place to include a take down policy.

Important Decisions

This guide assumes you will make two important decisions when creating your program: first, to design your open access program using digital collections of public domain works; and second, to not claim new rights in those digitizations. There are other important decisions to keep in mind.

What do we digitize?

Focusing on public domain works naturally reduces the scope of digital collections available for open access publication. When preparing these digital collections, you might consider the gender and/or geographic demographics of the items and their creators. This is because studies increasingly show the types of public domain collections perceived to be "risk-free" often represent more homogenous creative expressions, perspectives, and demographics. Your digitization and open access program can embed a strategy that improves representation in digital collections and in online environments as a commitment to diversity, equity, and inclusion.

What licenses, public domain tools or labels do we apply?

Licenses, public domain tools, and labels help communicate to users how your digital surrogates can be used, but they are not always interchangeable.

Open licenses communicate that new rights arise, but the rightsholder permits use and modification for any purpose with minimal conditions on reuse. Public domain tools

communicate that no rights exist in the underlying work or digital surrogate, and that the item can be used for any purpose, without permission, or any new reuse conditions. Labels communicate the status of the highest level of rights present in a digital object.

Creative Commons and the Rights Statements initiative have created various licenses, tools, and labels to aid open access publication.

Creative Commons Open Licenses and Public Domain Tools

Creative Commons licenses rely on a valid copyright arising, so they should not be applied to faithful reproductions of public domain works. However, in some cases, digital surrogates or data created during collections management may be sufficiently original to attract copyright protection. If so, Creative Commons has two open licenses you can use: CC BY 4.0 (Attribution) and CC BY-SA 4.0 (Attribution-ShareAlike). Both permit modification and commercial reuse of the data in line with international standards for open.

Even if rights arise, you can choose to dedicate those materials to the public domain. For this, use the CC0 1.0 Universal Public Domain Dedication. For all other non-original digital surrogates, data, and metadata, use the Public Domain Mark.

Your organization may want users to cite the organization as the source, but this desire alone cannot justify the application of an open license where no copyright arises. Instead, use a public domain tool and educate users about good citation practices. Europeana has excellent Public Domain Usage Guidelines that you can point users to.

Is it better to use CC0 1.0 or the Public Domain Mark?

National standards for copyright or related rights may render materials public domain in one jurisdiction while subject to protection in another. For users in the more restrictive jurisdiction, this creates risks during cross-border reuse.

The legal code of CC0 1.0 Universal Public Domain Dedication recognizes this uncertainty and ensures users that if any rights are recognized in the jurisdiction of use, the rightsholder waives them or will never enforce them and agrees to a fallback license (hence the "Universal"). Creative Commons recommends CC0 for reproduction media of public domain works for this reason. The GLAM-E Lab agrees with this recommendation.

Rights Statements Labels

The Rights Statements initiative includes twelve standardized labels that communicate the rights status of the work they are applied to. To illustrate, if a book is in-copyright, the digital surrogate of the book will be labeled "In Copyright." Although no new rights arise in the digitization, reuse remains restricted by the in-copyright status of the underlying book. By contrast, if the book is in the public domain, the digitization will be labeled "No

glam-e lab

Copyright." Neither the digital surrogate nor the underlying work attracts new copyright protection.

Two Rights Statements align with international standards for open: No Copyright – United States and No Known Copyright. Other relevant labels include Copyright Not Evaluated and Copyright Undetermined.

What quality of images and metadata should we publish?

Whenever possible, you should publish the highest resolution images with the richest metadata possible. This ensures that your image will be reused above others and that users can trace the work back to your organization.

Not all websites are set up for open access publication or self-service image delivery. This can depend on the collections management system, data storage, or organizational budget. If you need to charge for image creation and delivery, avoid using copyright fee models, such as licensing fees, for services related to public domain collections. Instead, focus on service fee models and new digitization costs, which are more transparent and accessible. You might also publish high quality data on external platforms to reduce administration and eliminate costs associated with storing and providing images upon request.

Where should we publish our digital collections?

You can publish digital collections in more than one place. This increases the likelihood that the collections will be used, disseminated, and relied on by the public, particularly above other lower-quality images available online. Examples include your website, Wikimedia Commons, Flickr Commons, GitHub, or data aggregators like the Digital Public Library of America, Europeana, and ArtUK.