Learning to Let Go: Ownership, Rights, Fees, and Permissions of Readers’ Photographs

Abstract: This article explores the variance in attitudes towards user photography in UK libraries, archives, and museums. It examines the various interpretations of copyright and rights to reproduce images of items in the public domain deployed by cultural heritage institutions, the cost structures for user photography in the reading room, and the historic reasons for these decisions. Finally, this article explores the impact of the multiplicity of regulations on the researcher and the benefits of a clear and open approach to access and to the new research methods being employed by readers.

Key terms: digitization, copyright, manuscripts, rare books, reproduction rights, libraries, archives, museums

1 Introduction

Holistically, from the broadest of international perspectives, cultural heritage institutions have been slow to adapt to the introduction and proliferation of amateur digital photography, and to embrace freely available digital access to their collections, in the past twenty years. This is largely due to the shifting nature of trends in scholarship, how research is now conducted in a reading room environment, and a librarian or archivist’s inherent instinct to retain control of the collections within our care. Many students and researchers, who are the most frequent patrons in our reading rooms, have shifted away from the study of single items or limited data-sets which were so popular in the mid-twentieth century (e.g. an edition of a seventeenth-century poem or a single manuscript copy of a medieval text) and have instead turned to methods of enquiry which require vast amounts of data on creation, production, and use of texts or works of art.

A researcher coming in for their first visit to a reading room presently may very well wish to call up a dozen items or more in one day in order to photograph
everything he or she sees, take quick notes on the physical nature of their books or manuscripts, and return to their office to read the books or manuscripts documented, conduct methodological research, and have the time to critically think. Part of the development of this ‘humanities field work’ method of research is due to the continual lack in funding for research trips, but much of this is also due to the democratization of the ability to capture and reproduce images quickly of what one sees in a controlled reading room environment. Self-service photography or casual/Do It Yourself digitization has become a fact of life in the reading room in the past six to eight years, with high-quality digital cameras becoming increasingly more available and accessible. Any researcher who makes extensive use of primary materials found in libraries, archives, and museums now has in their toolkit a device which they can use to take digital images which can be rapidly consulted (be it a digital camera, tablet, or phone).

Instead of embracing enthusiastically the ability to either provide high-quality reproductions of a book or manuscript with transparent and fair costs, or to allow researchers to take their own photographs, many libraries and archives have been putting up barriers for the past decade in order to stem the flow of freely accessible reproductions of content within their care. This has largely been done by the practice of charging prohibitive and unclear fees for licensing images for reproduction and in-house photography or by not allowing photography in their reading rooms at all. There have certainly been major exceptions to this trend, especially in America where rulings on charging license fees (a privilege only afforded to copyright holders) for items in the public domain have provided clear guidance. However, the wide international variance in how much a researcher has to pay to use a reproduction in a publication, or even whether they are allowed to bring a camera into the reading room in the first place, speaks volumes as to how fragmented the cultural heritage sector is on this topic (cf. point 3 in Rudy 2019).

This disparity between what libraries or archives allow or charge can be completely bewildering to a researcher. In the opening salvo of her critique of libraries and archives’ imaging policies, Kate Rudy recounts helping her friend, a scholar of medieval English, source images for an upcoming publication:

Each repository she approached had its own rules, pricing schedule, and regulations concerning permission to reproduce [...]. By the time her manuscript went to press, she had

1 The United States District Court (1999) ruled that “exact photographic copies of public domain works of art would not be copyrightable under United States law because they are not original” and therefore a library or archive cannot claim license of exact photographic reproductions of public domain material in their collection.
spent more than €500 for the thirteen images in her book (“thirteen separate experiences of trauma,” as she put it), and vowed never to include another illustration in any future book. (Rudy 2011: 345–346)

2 Surveying the Landscape of Photography Policies

Five years ago I surveyed UK higher education and public special collections libraries in order to capture a snapshot of what libraries and archives were allowing in terms of photography in their reading rooms (and what people can do with their photographs after they have left). This survey, a brief six questions with one free text answer, garnered about 160 responses over the period of one month. The first question was designed to establish the size of the responding library or archive, and whether or not they were affiliated with a university, public, or private institution. The first topical question on the survey asked if photography was allowed in their reading rooms, allowing for a simple “yes/no” answer. Only 8 respondents, or about 5 percent, said “no” to this question; even in the past decade, the trend towards more liberal photographic access to collections has become the norm (see Table 1 below).

Table 1: Results from questions 2 and 3 from a survey conducted 11 December 2015–11 January 2016

<table>
<thead>
<tr>
<th>Question</th>
<th>Answer Options</th>
<th>Response Percent</th>
<th>Response Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Do you allow self-photography/digitization in your reading room? (i.e. do you allow readers/patrons to take their own photos or do their own scanning?)</td>
<td>yes</td>
<td>95.1%</td>
<td>154</td>
</tr>
<tr>
<td></td>
<td>no</td>
<td>4.9%</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>answered question</td>
<td>162</td>
<td></td>
</tr>
<tr>
<td></td>
<td>skipped question</td>
<td>10</td>
<td></td>
</tr>
</tbody>
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<tr>
<th>3. If you answered ‘yes’, do you charge readers to take their own photographs/scans?</th>
<th>Answer Options</th>
<th>Response Percent</th>
<th>Response Count</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>yes</td>
<td>8.3%</td>
<td>13</td>
</tr>
<tr>
<td></td>
<td>no</td>
<td>91.7%</td>
<td>143</td>
</tr>
<tr>
<td></td>
<td>answered question</td>
<td>156</td>
<td></td>
</tr>
<tr>
<td></td>
<td>skipped question</td>
<td>16</td>
<td></td>
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These findings were further corroborated by an independent survey which was conducted of all special collections held in Russell Group University Libraries, in which only two out of the group of 24 did not allow photography. However, two of the Russell Group University Libraries charged a daily fee for a reader to use their camera (or 8.3 percent of the total surveyed) and of the wider, month-long survey exactly the same percentage of respondents said they allowed photography but for a fee (models for fees structures from respondents ranged from £5 to £25 per day, and in one case £1 per each photograph taken).

Table 2: Results from question 5 from a survey conducted 11 December 2015–11 January 2016

<table>
<thead>
<tr>
<th>Answer Options</th>
<th>Response Percent</th>
<th>Response Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Research purposes only</td>
<td>64.8 %</td>
<td>92</td>
</tr>
<tr>
<td>Rights managed (restrictions on usage, must ask permission and/or pay to use in any type of publication)</td>
<td>18.3 %</td>
<td>26</td>
</tr>
<tr>
<td>Royalty-free (no charge for use in publications, must ask permission to use)</td>
<td>7.7 %</td>
<td>11</td>
</tr>
<tr>
<td>Creative Commons Attribution CC-BY (or something similar)</td>
<td>9.2 %</td>
<td>13</td>
</tr>
<tr>
<td>answered question</td>
<td></td>
<td>142</td>
</tr>
<tr>
<td>skipped question</td>
<td></td>
<td>30</td>
</tr>
</tbody>
</table>

The alarming variance from this survey, however, is what libraries are ‘allowing’ their users to do with photographs which they take in the reading room. At the

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2 The Russell Group “represents 24 leading UK universities which are committed to maintaining the very best research, an outstanding teaching and learning experience and unrivalled links with business and the public sector”; a full list of members can be accessed here: <http://russellgroup.ac.uk/about/our-universities/> [accessed 12 August 2020]. The institutions not allowing photography in the reading room at the time of this survey (6 January 2016) were the University of Southampton and Imperial College London.

3 At the time of this survey, both of the Special Collections Libraries of the University of York and the University of Nottingham charged £10 per day for a reader to use their own camera in the reading room.
time of the survey, all save one of the Russell Group libraries\(^4\) imposed some kind of sliding scale of fees for “permissions to publish” in any form (be it print, electronic, website, etc.); fees which are separate to the fees levied for the creation of images by the library such as ordering a scan or photograph. About 83 percent of the respondents to the month-long survey stated that readers taking their own photographs can use these photographs for “research purposes only” or “must ask permission/pay a fee to use the reader’s photograph in a publication”, essentially claiming rights to images that someone else had taken of an item in their own collection (see Table 2, above).

The 17 percent of survey respondents that did not have these requirements either charged no royalty fees but still required permission to be sought from them before publication (about 8 percent), or allowed readers to do whatever they liked with their photographs (about 9 percent), barring any type of copyright infringement. These numbers are further nuanced by the study that Michelle Light conducted of 125 American special collections libraries’ forms and procedures in regards to permissions and user fees. Light found that:

> [...] approximately 70 percent of special collections require users to seek permission to publish any content from their holdings. This includes seeking permission for public domain content, content that is copyrighted by others, and content with copyrights held by the institution. By contrast, 15 percent of these special collections only require permission to publish when the institution owns the copyright. Fifty-five percent of institutions charge usage fees or permission fees, in addition to scanning fees, for publishing any content from their holdings. (Light 2015: 50)

### 3 Rationale for Permission Fees

To answer this briefly, Light’s statement neatly sums it up: “We simply follow the practices of our peers” (2015: 49). A more full answer, however, of where the development of permission fees has grown from can be found in Will Noel’s response in an interview by TED in 2012. He says:

> Libraries containing special collections of medieval materials are normally very careful to write restrictive copyright on their materials. Part of this is historical; that is to say, when

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\(^4\) The London School of Economics Library stated on their website that “[t]here are no restrictions on copying and publishing works that are out of copyright [...] We place no restrictions on the quality of images taken, and we do not charge a fee for using a camera”. [http://www.lse.ac.uk/library/usingTheLibrary/accessingMaterials/readingRoomAccess/Copying-information.aspx](http://www.lse.ac.uk/library/usingTheLibrary/accessingMaterials/readingRoomAccess/Copying-information.aspx) [accessed 11 June 2016]. This website has since been replaced.
images of these manuscripts were published in books, it didn’t have to behave like digital
data, and it didn’t have to be free for people to use in all sorts of ways and in different
contexts. The images were just reproduced in other books. [...] You used to restrict the use
of your books to try and make money off reproductions in other books. (Ha 2012)

If anything can be derived from the free text results from the month-long survey I
conducted for this paper, or from surveying the Russell Group libraries, it is that
each library charges a different scale of fees for the rights to publish images of
their collections, irrespective of whether the user or the institution has created the
images. Some have set fees ranging from £25 to £100 per image, some have dis-
counts for students and researchers who are publishing the image in a limited run
academic book; essentially, there is no national or international consensus on
what libraries charge users for the rights to publish images.5

The real question is why libraries and archives have continued to levy charges
for licensing reproductions of items in their care. Most libraries which are af-
iliated with a larger institution (e.g. college, university, or corporate bodies, local
authority archives, or public libraries) and certainly libraries which are indepen-
dent from a higher governing body (national or private libraries) set income gen-
eration targets in order to contribute to an offset income against an annual bud-
get.6 Late fees, fines for damaged books, printing or copying fees, and merchan-
dising are some of the most popular examples of how circulating libraries
generate income. Historically, however, license fees, reproduction fees, and mer-
chandising are the only ways that a special collections library or archive could
contribute to income generation. Many recent studies and surveys have investi-
gated whether the current model of license fees in American and Canadian li-
braries and archives actually generates any profit which can be considered ‘in-
come generation’.7 All of these surveys have found that when revenue derived
from license fees is factored against the cost of staff time, filing infrastructure, and
vigilant monitoring of reproduction license infringement, then very little to no
profit is generated.

In fact, for small- to medium-scale research libraries, the amount of paper
work and staff time spent on creating and retaining permissions requests and
approvals far exceeds the amount of money that is brought in. We as librarians
and archivists, therefore, are in danger of shooting ourselves in both of our feet by

5 Although some discussion and local changes have been made at institutions during the Covid-19
pandemic of 2020, no national or UK-wide university consensus has been agreed.
6 For a recent survey and analysis of income generation practices in UK public libraries, see Pautz
and Poulter (2014).
7 See Astle and Muir (2002); Dryden (2011); and Light (2015).
scaring away potential use of our collections for publications and by making more work for ourselves without generating any real profit.  

4 Legality of Permission Fees in Public Domain Collections

A significant percentage of material in most UK special collection libraries, archives, and museum collections is out of copyright and therefore belongs to the public domain. Copyright and archival collections in the UK, however, have many more ‘grey areas’ that their caretakers and researchers should be aware of. A guidance document issued by The National Archives (2013: 5) states that “literary, dramatic and musical works that were still unpublished when the current statute, the Copyright Designs and Patents Act 1988, came into force in 1989 will be in copyright until 2039 at the earliest – this is especially important in archives, where most material is classified as unpublished”. However, manuscripts from the medieval and early modern periods which were produced before the modern notion of copyright was instituted would qualify as “works from antiquity and folklore” and therefore should fall within the parameters of UK public domain.

Librarians, archivists, and museum curators are custodians of these items owned by their institutions; however, the holding institutions cannot claim copyright over items in their possession that are in the public domain and therefore cannot claim copyright over faithful digital reproductions of items in their care that are within the public domain. This was illustrated most poignantly in an

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8 For more on this, see Kapsalis (2016: 12): “With an open access policy, revenue from rights and reproduction activities are reduced, but retaining more restrictive terms of use may cost organizations in funding opportunities, staff time, and reputation”.

9 For a working definition of Public Domain in the UK, see Erickson et al. (2015: 2):

1. Copyright works which are out of term of protection (Literary and artistic works created by authors who died prior to 1944);
2. Materials that were never protected by copyright (Works from antiquity and folklore);
3. Underlying ideas not being substantial expression (Inspiration taken from pre-existing work that may include genre, plot or ideas);
4. Works offered to the public domain by their creator (Certain free and open licensed works without restrictions).

10 For the United Kingdom, see Intellectual Property Office (2015: 3), which states: “Simply creating a copy of an image won’t result in a new copyright in the new item. [...] However, according to the Court of Justice of the European Union which has effect in UK law, copyright can only subsist in subject matter that is original in the sense that it is the author’s own ‘intellectual creation’. Given
international dispute in 2009, when Derrick Coetzee, a graduate student at the University of California, Berkeley, wrote a script that downloaded the image tiles of more than 3,000 images from the National Portrait Gallery’s website and reassembled them into complete, high-resolution images, which he then uploaded to the Wikimedia Commons.\textsuperscript{11} The National Portrait Gallery began legal actions against Coetzee and Wikimedia as it felt that its copyright over the high-resolution images had been violated.

Grischka Petri’s summary of the National Portrait Gallery/Wikimedia dispute illustrates the point of possession and copyright assumption in the cultural heritage sector most succinctly:


If we follow the rulings of the abovementioned cases and definitions of public domain and copyright, the answer to the question, then, of whether a library or archive can legally charge for the right to publish faithful reproductions of a fourteenth-century Papal Bull, or a sixteenth-century atlas, or a nineteenth-century triple-decker novel, is clearly “no”.

This is even more true when we consider the rights of an individual photographer who has taken pictures of a book or manuscript in our care that is out of copyright and therefore in the public domain. The photographer (who could be a reader, researcher, a member of the general public viewing an exhibition, etc.) is
the creator of the photograph; and if that photograph is a simple technical reproduction of the subject, then UK, European, and American copyright law states that it is simply a reproduction of a public domain work, which has no copyright, and if their photograph has elements of artistry or creativity then the rights belong to the photographer, not the institution that owns the book or manuscript.

Therefore, the only way that a library, archive, or museum can control a reproduction of an item in the public domain in their care being used in any type of publication or merchandise is by prohibiting any form of self-service photography in their reading rooms or exhibition galleries. This also applies to faithful reproductions of public domain items in collections created by the host institution: a library or archive can charge for the process of creating a photographic reproduction, for the delivery of any files, and for the staff time spent managing the transaction (all of which should be as transparent as possible to the general public), but it cannot charge for a license to publish that reproduction in any format. In fact, once a library or archive hands over that faithful reproduction to an individual, they are free to do whatever they like with that image (including using it in a publication or hosting it in full resolution online to illustrate a blog post, creating new and original artwork with that image, or printing postcards or other merchandise).12

When a library, museum, or archive licenses images to a for-profit aggregator like Bridgeman Art Library or Getty Images it does not mean that they are handing over copyright to these agencies; it means that these agencies can add images of a book or manuscript or work of art to their database and charge their users (largely media companies and publishers) a fee for the image because they are providing a value-added service (i.e. the ability to find an image of an ‘English medieval manuscript’ or ‘woodcut of Christ on the cross’ in one database and not have to pay someone to do all the image acquisition for them). The profit that is derived for cultural heritage institutions from these for-profit aggregators, then, is not from fees for copyright licenses but from subscription fees to these databases; and, as Michelle Light highlights, these partnerships with commercial companies can be very profitable for both parties (Light 2015: 57).

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12 Petri (2014: 10) provides a poetic example of how libraries and archives could consider operating their reprographic services and digital repositories: “If the image of an object in the British Museum’s collections has not yet been photographed, a reasonable fee of £60 is incurred. In this way, the first-time user becomes the sponsor of a reproduction, since it will be included in the digital collection and become freely available”.
5 Learning to Let Go

For too long access to items in the care of libraries and archives has been limited by the physical needs and demands of a pre-digital world; it is time we embrace again the idea that the whole point of a library is to provide access in whatever format to the world’s knowledge, not to keep it behind closed doors. Peter B. Hirtle saw these issues plainly in 2003, as the ‘digital revolution’ was just beginning to shake the library and archive sector; he wrote in his Society of American Archivists Presidential Address:

We [...] have the responsibility to distribute knowledge about our holdings to the public. We make the historical record available to society to maintain [...] a just society and to ensure – collectively and individually – the ownership of our history. What will happen to these ideals if archives become only assets ripe for personal or institutional exploitation? (Hirtle 2003: 243–244)

The inconsistency in ability to take photographs in a reading room and in the variance of current license fees and rights to reproduce images is widely recognized by academics and librarians and archivists as one of the major barriers to furthering academic investigation into unique items in their collections (see Hirtle 2003 and Ha 2012). An academic researcher’s perspective, however, is perhaps most pointed to close with. In her international comparative and personal study of three research libraries and their policies on capture and use of reproductions of items, Rudy describes her experience at Trinity College Dublin in the worst of lights: she was not allowed to take her own photographs of medieval manuscripts in the reading room and the cost of ordering images and obtaining permission to publish them in a scholarly, peer-reviewed journal were extremely prohibitive.13 The impact on her and others’ scholarship on items held by Trinity College Dublin is acute:

As a result of Trinity’s policies, scholars routinely avoid using resources housed in this library because of the library’s overly restrictive [...] rules and policies [...]. The numerous problems with access at Trinity College Dublin might explain why the items in their collections are little known and underutilized [...]. I am able to write about the manuscripts of which I have images, to contextualize them, and ultimately to contribute to the mission of the holding institutions –

13 Rudy (2011: 351–353) states that at the time of writing “[t]he cost of new photography [at Trinity College Dublin] is €20 to set up the manuscript, and then €1.50 per shot from the same manuscript. The cost for existing photography (including scanning existing slides or sending existing digital images) is the same: €20 to process the order, and then €1.50 per image [...]. To obtain permission to publish the resulting images in an academic book or article, a scholar must pay €90 per image (world rights/one language)”.


to preserve, document, and study their own collections – with much greater ease for manuscripts from which I have high-quality images. (Rudy 2011: 355–357)\textsuperscript{14}

As a curator, we have responsibilities to both the material in our care and the people wishing to consult and use it. One of the main hesitations in allowing free-for-all photography in our reading rooms has been conservation needs which are implicit in managing, issuing, and consulting historic items. Most libraries and archives have their own ‘treasure’ items which are regularly wheeled out for talks and public engagement, and these items often get called up in a reading room by researchers. If an item is being called up just so it can be photographed quickly and unprofessionally by a reader, would it not then make more sense for an institution to not only increase the amount of high quality digitization that it makes freely available, but also keep a register of what has been photographed by other users and is available freely to avoid duplication? The model employed by the Oxford DIY Digitization project has provided a tantalizing first step towards a crowd-sourced database of images taken in a library, and could be one of the many ways that libraries, archives, and museums address this issue (cf. Bodleian Libraries 2015).

We librarians, curators, and archivists play a crucial role in the firmament that supports new and original research; our role is to act as a live conduit between the items in our care and the readers seeking them out. The policies that we enact in our institutions directly affect the nature and direction of research and academic inquiry, and it is clear that the policies that many of us have adopted or perpetuated in regards to self-service photography and image rights obstruct that process, and in many cases could be a breach of public domain and copyright law. We should instead focus on facilitating and fostering curiosity and new lines of enquiry into the collections in our care, and on opening the doors to our vaults, be they physical or virtual, to a new generation of researchers.

\section*{Works Cited}


\textsuperscript{14} The University of Leiden Library and the Beinecke Library at Yale University were Rudy’s other test libraries where she found that self-service photography or ordering images was conducted “with a minimum of red tape” (Rudy 2011: 355–357).


