



# GUIDELINES ON MANAGING IP OWNERSHIP IN GLAM INSTITUTIONS

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## Acronyms

CA	Confidentiality Agreement
DSM	<i>Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market</i>
EU	European Union
GLAM	Galleries Libraries and Museums
GOSH	Great Ormond Street Hospital
ICHC	Italian Cultural Heritage Code
IP	Intellectual Property
IP	Intellectual Property
IPR	Intellectual Property Rights
NDA	Non Disclosure Agreement

# 1. Introduction

Managing intellectual property (IP) within GLAM (Galleries Libraries and Museums) institutions involves navigating legal, ethical, and organizational considerations related to the ownership and use of assets. As custodians of cultural and intellectual heritage, these institutions must balance public access with the proper protection and management of the rights associated with their collections and creative outputs.

Identifying IP ownership allows GLAMs to protect their assets, manage rights effectively, and maximize opportunities for licensing and revenue generation. A clear understanding of ownership ensures compliance with legal frameworks, prevents unauthorized use, and strengthens institutional branding and reputation. Furthermore, by conducting thorough IP audits, establishing ownership policies, securing agreements for third-party content, and implementing licensing frameworks, institutions can mitigate legal and ethical risks while supporting transparency and accountability.

Clarifying ownership is therefore essential not only for safeguarding institutional interests but also for promoting responsible access, reuse, and sharing of cultural materials in the digital age. It helps institutions comply with copyright law, cultural heritage protections, and ethical obligations while continuing to foster open access and public engagement.

This guide is designed as a practical tool to support GLAM institutions in identifying their intellectual property assets, understanding ownership, and managing related rights. It is structured in two parts:

1. **Collections and existing assets:** focusing on identifying and managing IP within the institution's holdings.
2. **Institution-generated materials:** addressing issues of ownership and intellectual property rights related to newly created digital content, research outputs, and photographic materials.

Together, these two sections aim to strengthen institutional capacity to manage IP responsibly while advancing their mission of preservation, access, and knowledge dissemination.

## 2. Collections and Existing Assets

### 2.1. Preliminary considerations: Identifying the nature of the material

Managing IP in museums, libraries, and other GLAM institutions is essential to safeguard cultural heritage, ensure legal compliance, and facilitate responsible access and reuse.

The first step in this process is to determine the legal nature of the materials held by the institution, in particular, whether they qualify as “works” protected by intellectual property rights (IPRs). This assessment is crucial, as it defines whether an asset is subject to protection or belongs to the public domain, and therefore guides all subsequent decisions regarding its use, reproduction, and dissemination.

#### Determine Whether the Work is Eligible for IP Protection

The first step is to determine whether the material under review is eligible for protection under IP law. Not all assets meet the criteria required to be considered intellectual property. For instance, in museums, not every artistic piece qualifies as a “work” under copyright regulations.

To be protected as a work, the material must meet certain legal requirements: it must be *original* and *expressed*. Originality, in the context of copyright, means that the work results from the author’s own creative effort and is not merely a copy or reproduction of existing works. The protection applies to the specific expression of ideas, not to the ideas themselves.

#### What it’s not protected by IP law?

Originality requires that the work be the author’s own intellectual creation. This means that the work must reflect the author’s personality and be the result of the author’s free and creative choices.<sup>1</sup>

For example, the following are elements that lack originality or fall outside the legal scope of IP:

- **Ideas, styles, and concepts**
  - For example: You cannot copyright a style of painting
- **Facts, data, and discoveries**
  - GLAM institutions often generate research (e.g., object provenance, chemical composition, excavation findings), but the raw facts are free to use.
  - Copyright only protects the specific expression of those facts, such as the way they are written or presented in a work.
- **Methods, techniques, and processes**
  - A GLAM institution cannot claim IPR over a **method of conservation or cataloguing**, only over a written or visual presentation of it.
- **Public domain works**
  - Any work that is in the public domain (e.g., a 16th-century painting) does not have IP protection, so generally it can be used freely. However, certain constraints should be taken into consideration.

<sup>1</sup> Judgment of the Court (Fourth Chamber) of 16 July 2009 C-5/08 ‘Infopaq International A/S v Danske Dagblades’.

## 2.2. Public Domain

Determining whether a work is in the public domain is a crucial aspect of IP management for GLAM institutions, both from a clearance and an ownership perspective. Once a work enters the public domain, it becomes part of our shared cultural heritage and can be freely used, reproduced, and adapted. This openness enables GLAM institutions to promote access to knowledge, support education, and foster creativity.

However, public domain status does not eliminate all legal or ethical considerations. The duration of copyright protection varies across jurisdictions, generally following the author's life plus 50 years under the Berne Convention, though some regions apply different terms. These disparities lead to cases where a work may be free in one country but still protected in another.

Moral rights add further complexity, as they often persist after copyright expires, requiring users to respect authorship and integrity. Moreover, cultural heritage laws in some countries, such as Italy and Greece, regulate the reproduction or commercial use of historically significant works even after their copyright protection has ended.

Finally, contractual or donor restrictions may limit how GLAM institutions use or digitize certain works. As a result, determining whether a work is truly free for use requires careful legal and ethical evaluation that goes beyond copyright expiration alone.

### How to Determine Whether a Work is in the Public Domain — A Practical Guide

Determining whether a work has entered the public domain is an essential step before using, digitising or disseminating it. The duration of copyright depends on factors including:

- the type of work,
- who authored the work,
- when the work was created or published

A concise overview of the main considerations is provided by the following:

#### **Check the Duration of Copyright**

In most countries, the Berne Convention copyright protection lasts 50 years after the author's death (*post mortem auctoris*).

However, national variations apply that extend this term, see some examples below:

- Spain: For authors who died before 1987, the term is 80 years after death.
- European Union and the United Kingdom: Generally, copyright expires 70 years after the author's death. However, there are certain exceptions<sup>2</sup>.
- United States: The duration depends on when the work was published. Works published before 1978 are protected for 95 years from publication, while those published later are protected for the life of the author plus 70 years.

<sup>2</sup> Example of exceptions to the general rules in United Kingdom: <https://www.gov.uk/government/publications/copyright-notice-duration-of-copyright-term/copyright-notice-duration-of-copyright-term#refexceptions-to-the-general-rules> (Last reviewed on 5 November 2025)

Always verify the specific legislation in the country where you intend to use the work.

### **If There Are Multiple Authors**

For joint works, the term of protection runs from the death of the last surviving author. This applies to co-authored books, films, musical compositions, and similar collaborative works.

### **Once a Work Is in the Public Domain**

When copyright expires, a work may generally be used, reproduced, adapted, or shared freely. However, some important limitations and obligations may still apply:

- **Moral rights:** In some jurisdictions, moral rights are perpetual or last beyond economic rights. Users must respect the author's right to attribution and the integrity of the work.
- **Cultural heritage laws:** Certain countries (e.g., Italy, Greece) impose restrictions on the reproduction or commercial use of works considered national heritage, even if copyright has expired.
- **Contractual conditions:** Donors, estates, or institutions may have imposed specific terms regarding how works can be displayed, digitised, or reused.

A thorough review of these aspects ensures responsible use of public domain materials within GLAM institutions.

## **Public Domain Determination Checklist**

This checklist is designed to guide users through the main questions to determine whether a work is likely to be in the public domain and can be freely used. It may be adapted to institutional policies or national frameworks.

### **Identify the Work and Its Authorship**

- Identify the author or creator.**  
Copyright terms are usually based on the **life of the author**.
- Does the work have multiple authors?**
  - If yes → determine the **date of death of the last surviving author**.
  - Copyright term runs until **life of the last co-author + 50 years** (Bern Convention) , +70 years (EU) or according to local law.
- Is the author anonymous, pseudonymous, or unknown?**  
Special rules often apply:
  - In the EU/Spain → 70 years from lawful publication.
  - In the U.S. (Works created after Jan 1, 1978) → 95 years from publication or 120 years from creation, whichever expires first.
- Is the work a collective work (e.g., institutional, corporate, or group project)?**  
Often protected for **70 years from lawful publication** (EU).

**Is the work a derived version (translation, adaptation, annotated edition)?**

Derivative works have **their own copyright**, even if the original is public domain.

**Determine the Copyright Term**

**Identify the country of origin**

- Where was the work first created or lawfully published?
- Copyright duration is normally determined by the national law of that country.

**Apply the regional/national rules**

European Union (including Spain)

- General term → Life + 70 years.
- Term starts on January 1 of the year following the author's death.
- Spain exception:
  - Life + 80 years if the author died before 7 December 1987.
- Anonymous/pseudonymous/collective works → 70 years from lawful publication.
- Joint authorship → Life of the last surviving author + 70 years.

United States

- Works created after Jan 1, 1978 → Life of the author + 70 years.
- Anonymous, pseudonymous, or work made for hire → 95 years from publication or 120 years from creation (first to expire).
- Works published before 1978 → Duration depends on several factors (renewal, publication date, notice status).

Foreign authors

- If using the work in the EU:
- EU authors → national treatment, always applying EU/Spanish terms (life + 70 or life + 80).
- Non-EU authors → terms determined by international treaties, country of origin, and reciprocity rules.

**Confirm if the required period has expired**

- Has the term (life + X years, or publication-based term) fully elapsed?
- Remember: counting always begins January 1 of the following year.

**Special categories to review**

- Unpublished or posthumous works: Some national laws provide special terms if the author died long before publication.
- New editions of public domain works: A publisher may hold 25 years of rights over a creative/typographic edition, even if the underlying work is public domain.

- Derivative works: Translations, adaptations, revisions, annotations etc. have independent protection.

### Check Additional Legal or Ethical Constraints

**Moral rights:**

- Are moral rights perpetual or long-lasting in the relevant jurisdiction?
- Must the author still be credited or the work preserved in its original form?

**Cultural heritage laws:**

- Is the work considered part of a protected national collection, monument, or archive?
- Are reproductions, digitisation, or commercial uses subject to governmental approval or fees?

**Contractual conditions:**

- Are there restrictions imposed by donors, estates, or acquisition agreements?
- Do institutional policies (e.g., collection management rules) limit reuse?

### Confirm and Document Your Findings

- Record the sources used to determine the author's death date and copyright term.
- Keep evidence of any legal or contractual restrictions identified.
- If uncertain, seek advice from a legal officer or intellectual property specialist.
- Once confirmed, clearly label the item as *Public Domain* or with the appropriate licence.

## 2.3. Analysed Cultural, Ethical, and Heritage Restrictions

Even when a work is in the public domain, additional legal or ethical limitations may continue to apply. Public domain status does not guarantee unrestricted use. Cultural institutions, GLAM collections, and researchers must assess whether other rights or regulations still apply.

### 2.3.1 Types of Restrictions Beyond Copyright

#### **Moral Rights**

In many countries (e.g., France, Italy), moral rights are perpetual.

Users must respect:

- **Attribution** (crediting the author)
- **Integrity** (no distortion or derogatory treatment of the work)

#### **Cultural Heritage Restrictions**

Some jurisdictions enforce **special national rules** for heritage assets, regardless of copyright status.

Examples:

- **Italy:** The Italian Cultural Heritage Code (IHC) requires **authorization** for any *commercial* use of cultural heritage objects under public administration.
- **Greece:** Restrictions on photographing or commercially reproducing archaeological objects.
- **Indigenous heritage:** Use may require community consent even if copyright has expired.

### Cultural Policy Restrictions

National or regional laws may restrict:

- Commercial reuse
- Exportation
- Reproduction of culturally sensitive material

### Pre-existing Longer Terms or Special Rights

Certain laws grant rights that **outlast standard copyright**, such as:

- Publishing rights in new critical editions
- Special statutory rights (e.g., the UK's unique 'Peter Pan' provision, see case study below).

## 2.3.2 Cases Studies

Several practical examples are provided below to illustrate the different applications and exceptions that may be encountered in practice.

### Peter Pan (UK)

#### Background

J.M. Barrie donated the copyright in the work *Peter Pan* to **Great Ormond Street Hospital (GOSH)** in 1929.

Barrie died in 1937; under UK law then in force, copyright would normally have expired in 1987.

#### Unique Legal Exception

The UK Parliament created a **special statutory right** in Section 301 of the *Copyright, Designs and Patents Act 1988*.

This provision grants GOSH a **perpetual right to receive royalties** from:

- Public performances of the play
- Commercial publications
- Broadcasts of *Peter Pan* **within the United Kingdom**.

#### Key points

- This is **not** an extension of copyright.
- The **copyright expired**, but the **statutory right continues indefinitely**.
- The right applies **only in the UK**.
- In other countries, *Peter Pan* entered the public domain.

#### Outcome

*Peter Pan* is public domain internationally, except for the **UK-specific perpetual royalty right**.

#### Conclusion

- Even when copyright expires, **special national laws** may impose continuing obligations.
- Always check for **jurisdiction-specific exceptions**.

## Italian Cultural Heritage Code (ICHC)<sup>3</sup>

### Background

A balsamic vinegar producer based in Modena used the image of Duca d'Este, as depicted in a Velázquez painting held in the Galleria Estense, a public cultural institution. Despite the painting being centuries old and in the public domain, the Italian Ministry of Culture sued for unauthorised commercial use.

### Legal Framework

Under the **ICHC**, commercial reproduction of cultural heritage assets under public administration requires:

- **Prior authorization**
- **Payment of royalties**

Non-profit uses for study, research, freedom of expression, or cultural promotion do not require authorization.

### Court's Decision (Bologna Court of Appeal, 2024)

- The Court confirmed that cultural heritage assets enjoy a **form of image right**, similar to natural persons (Art. 10 Civil Code).
- Commercial use without authorization is unlawful.
- The ICHC does not constitute a "perpetual copyright"; rather, it protects **public cultural interests**, not private rights.
- Damages awarded: €22,000 per year of unauthorized use.

### Outcome

Courts consistently uphold that **commercial exploitation of Italian heritage assets requires prior authorization**, even when the artwork is in the public domain.

### Conclusion

- Public domain status does not override heritage protection laws.
- Institutions must verify **national cultural heritage regulations**, especially in countries like Italy and Greece.

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<sup>3</sup> <https://ipkitten.blogspot.com/2024/10/bologna-court-of-appeal-confirms-that.html>

## 2.4. Integrated Checklist

### Territorial Scope

Question	Consideration
In which country are you located or do you intend to use the work?	Copyright duration varies by jurisdiction (e.g., life + 70 years in the EU, life but in order countries such as U.S depends on the date of publication).
Could the work still be protected in another country?	A work might be in the public domain in one country but still under copyright in another, requiring verification of multiple legal frameworks before use.

### Cultural Heritage & National Restrictions

Question	Consideration
Is the work subject to cultural heritage laws in its country of origin?	Certain countries (e.g., Italy, Greece) impose restrictions on the commercial use of works even if they are technically in the public domain.
Does the work fall under national heritage protection?	Some works may be classified as national heritage, requiring special permissions for reproduction or use.

### Final Determination

Question	Consideration
Have you confirmed whether the work is in the public domain across all relevant jurisdictions?	If the work is still under copyright in any applicable territory, appropriate licensing or authorization is required before use.
Are non-copyright restrictions still applicable?	Heritage laws, moral rights, cultural protocols, or statutory rights may apply.

## 2.5. Determining Copyright Ownership

Once you have confirmed that the work is still protected by copyright, the next step is to determine whether your institution actually holds the rights. Ownership of the physical object does not automatically grant copyright ownership, so it is essential to verify the legal status of the rights.

To establish whether the museum or archive is the legitimate rights holder, check:

- **Acquisition or donation agreements:** Do they include an explicit transfer of copyright, or only the physical object?
- **Contracts with authors or estates:** Was copyright assigned, licensed, or retained by the creator?
- **Internal documentation:** Are there records showing a rights transfer or a perpetual license?

If the institution **does not hold the rights**, it must identify who does. This could be:

- The original creator,
- The creator's heirs (if fewer than 70 years have passed since death), or

- A third party who acquired the rights through contract or inheritance.

If no clear rights holder can be established, the work should be treated cautiously and not reproduced or published until the ownership situation is clarified.

For detailed guidance on tracing rights ownership, consult the IMPAC3T IP Classical Plus Tool '**Rights Clearance for GLAMS**'.

### 3. Institution-Generated Materials and New Assets

GLAM institutions regularly generate IP-protected materials, which may include:

- Exhibition catalogues
- Photographs of artworks and collections
- Audiovisual content (videos, documentaries, virtual tours)
- Digital reconstructions and 3D models
- Logos, branding materials, and graphic designs
- Research publications and reports
- Website content and educational materials
- Merchandising products

These materials may be protected by copyright, trademark, or design rights, depending on their nature; however, for the sake of clarity, this section will focus on copyright issues. Other rights are discussed later.

#### 3.1. Checklist for GLAM-Created Works

Question	Consideration
Was the work created by GLAM employees?	In many jurisdictions, works created by employees within their duties automatically belong to the employer (such as the work-for-hire in the US).
Was the work commissioned to third parties?	If external contractors or freelancers created the work, verify whether copyright has been properly assigned to the museum.
Does the institution have a clear IP policy for staff-generated content?	Establish internal guidelines to clarify ownership of works created by employees and ensure proper documentation.
Were contracts signed with external creators?	Ensure that all agreements explicitly transfer copyright to the museum, specifying assignment, rights of use, exclusivity, and duration.

#### 3.2. Industrial Property Rights in GLAM

Beyond copyright, institutions may hold various industrial property rights, including patents, trademarks, design rights, and trade secrets. These rights help institutions protect their branding, exhibition elements, and proprietary research methodologies. Proper identification of these rights is essential to determine ownership and facilitate licensing agreements.

That being said, the GLAM institutions may own the following industrial property assets:

### Trademarks

- Institutional name and logo
- Exhibition and program titles (e.g., “[Van Gogh Immersive Experience](#)<sup>4</sup>”)
- Packaging and branding of merchandise (e.g., museum souvenirs)
- The appearance of the museum/library building if distinctive (e.g., [Guggenheim Bilbao](#)<sup>5</sup>)

### Design Rights

- Graphic design of brochures, promotional materials, and exhibition layouts
- Distinctive interior or exterior design of the institution
- Commissioned works, statues or figures
- Website and mobile application designs

### Patents and Trade Secrets

- Innovative restoration and conservation techniques developed in-house
- Digital archives and structured databases enabling permanent digital exhibitions
- Trade secrets related to management strategies, IP administration, and donor lists

## Checklist for Identifying Industrial Property Rights

### Trademarks

Question	Consideration
Has the institution registered its name and logo as trademarks?	Trademark registration ensures exclusive use and prevents unauthorized third-party usage.
In which territories should trademarks be registered?	GLAM institutions with international reach should consider registering trademarks in relevant jurisdictions.
For which goods and services should the trademark be registered?	Institutions should think of a trademark registration strategy not only according to the products or services they offer at the time of application but also for future market strategies they wish to pursue and/or expand in the future.
Are exhibition and program titles unique and regularly used?	Unique titles can be trademarked to protect branding and avoid confusion.
Is the branding of merchandise (e.g., souvenirs, publications) protected?	Ensuring exclusive branding prevents counterfeit products from devaluing museum identity.
Has the institution considered protecting the architectural appearance of its building?	If the building is iconic and widely recognized, trademark or design protection may be applicable.

### Design Rights and Architectural Identity

<sup>4</sup> See <https://www.tmdn.org/tmview/#!/tmview/detail/EM500000018453858>

<sup>5</sup> See <https://www.tmdn.org/tmview/#!/tmview/detail/US500000078343263>

Question	Consideration
Does the institution create original graphic designs for promotional materials?	If distinctive, these designs may be eligible for design rights protection.
Are exhibition layouts and display structures unique?	If they create a unique visual identity, they may be protected under industrial design law.
Has the institution considered protecting the design of its website and applications?	Digital interfaces that are original and functional may be eligible for protection.

### Patents and Trade Secrets

Question	Consideration
Has the institution developed innovative restoration or preservation techniques?	If they meet patentability criteria (novelty, inventive step, industrial application), they may qualify for a patent.
Were these techniques developed by employees or external researchers?	If created by employees, the institution likely holds the patent rights under employment law. If developed by external parties, proper agreements must be in place.
Does the institution maintain confidential research, management strategies, or donor lists?	Sensitive information can be protected as trade secrets if reasonable efforts are made to keep it confidential.
Have confidentiality agreements (Non Disclosure Agreements (NDA) or Confidentiality Agreements (CA)) been established with relevant staff and collaborators?	NDAs help protect proprietary information from unauthorized disclosure.

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