

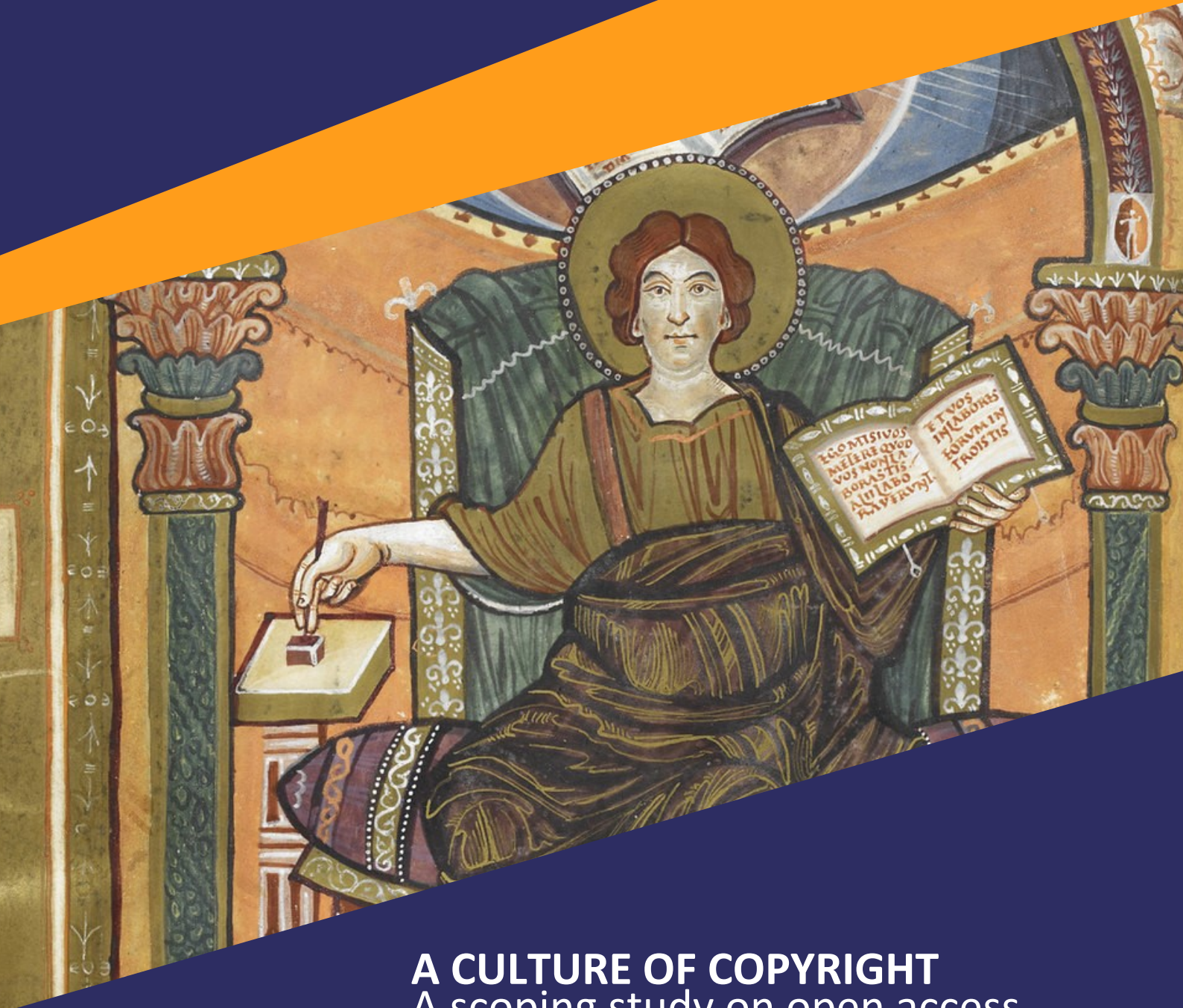
TOWARDS  
A NATIONAL  
COLLECTION



Arts and  
Humanities  
Research Council

# COMMISSIONED REPORT

February 2022



## A CULTURE OF COPYRIGHT

A scoping study on open access  
to digital cultural heritage collections  
collections in the UK

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## Acknowledgements

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A large number of people have supported this research and provided invaluable insight during queries, correspondence and interviews. Thank you especially to the interview participants for their time and intellectual generosity, as well as the peer reviewers Ronan Deazley, Douglas McCarthy, Mathilde Pavis, Tala Rahal and Simon Tanner. There are many others who have made contributions to this area over the past two decades, without which this (and other) research would not have been possible. Because of this, a huge thanks goes out to all persons working to digitise and publish collections and data online, especially the risk-takers in the UK and across the globe who have laid the important groundwork for open access and open GLAM.

## About the author

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## Citation

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Andrea Wallace, 'A Culture of Copyright: A scoping study on open access to digital cultural heritage collections in the UK' (Towards A National Collection, 2022), [CC BY](#), [\[DOI\]](#)

Front Cover image: [Harley Golden Gospels. Four Gospels \(the 'Golden Gospels', 'Harley Golden Gospels'; 'Codex Aureus'\), with canon tables. - caption: 'Miniature of an Evangelist portrait of John.'](#)  
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# Executive Summary and Key Recommendations

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This report was commissioned by the *Towards a National Collection* programme (TaNC) to better understand the ways in which open access shapes how the UK's digital cultural heritage collections can be accessed and reused. The study was undertaken by Dr Andrea Wallace in 2021.

As stated on the website, TaNC's goals are to support "research that breaks down the barriers that exist between the UK's outstanding cultural heritage collections, with the aim of opening them up to new research opportunities and encouraging the public to explore them in new ways". The UK's galleries, libraries, archives and museums (GLAMs) hold an immense breadth of cultural heritage in trust for the public. In stewarding these collections, GLAMs produce new materials, like documentation, images, scans, data and metadata, research data and publications, and other types of media and knowledge. Many GLAMs extend access to collections and associated materials through websites or external platforms. Open access to digital collections is thus an essential tool to reduce barriers and enable wider public participation.

But what does 'open access' mean? And what does it enable the public to *do* with heritage collections? Across the UK, GLAMs take different paths to answering these and related questions. This research set out to study these paths within a sample of UK GLAMs that includes those involved in TaNC projects, complemented by wider data on open GLAM, digital collections and copyright law. Four types of information inform this report:

- (1) Existing empirical data on global open GLAM activity, policies and data volume;
- (2) New empirical data on UK GLAMs, public domain collections and rights management, including:
  - a. A dataset of 195 UK GLAMs containing information on online collections, rights statements and reuse policies, technical protection measures, publication platforms, open access engagement, commercial licensing practices, data volume and other data points;
  - b. An in-depth review of the rights statements and reuse policies of 63 GLAMs selected from that sample;
  - c. 30 one-hour open ended interviews with TaNC project investigators, UK GLAM staff, external platform staff and open GLAM advocates;
- (3) A review of relevant case law and policy developments in the UK and elsewhere; and
- (4) A literature review of scholarly writing on copyright and open access to digital heritage collections.

**The findings indicate there is no consensus in the UK GLAM sector on what open access means, or should mean.** There is also a fundamental misunderstanding of what the public domain is, includes and should include. Indeed, staff perspectives and GLAM policies can vary widely, even within a given institution. Accordingly, this study aimed to discern and outline what support is necessary to address systemic barriers to open access, starting with copyright itself.

Copyright generally protects creative expressions during the creator's lifetime and an additional 70 years after death. During the copyright term, the public pays the rightsholder a fee to reuse the work. The idea is that these economic benefits will incentivise creators to make new creative works, over which they will enjoy a limited monopoly from which they may profit and exert control. Once

copyright expires, the work enters the public domain and is available for anyone to reuse for any purpose.<sup>1</sup> In this way, the public domain is a central part of the copyright bargain and its availability produces a wider benefit to society: public domain works can be reused to create new knowledge and cultural goods that enrich social welfare and invigorate the local economy. Considering these aspirations align with public missions, GLAMs around the world are in the process of updating digital remits and strategies to feature these goals for digitised public domain collections. Yet new questions can arise related to the presence or absence of copyright in digital surrogates of public domain works and collections data as a result. This study thus aimed to understand how the UK GLAM sector fared in the global open GLAM landscape and what new potentials are enabled by the digital national collection.

The report is organised in six sections:

- *Section 1* situates this study among others like it and outlines the research approach, methods taken and data relied on.
- *Section 2* focuses on law and policy movements in the UK, the US and EU, taking readers through key developments, practices and findings that need to be understood to appreciate the data.
- *Sections 3 and 4* outline these data: first, data on open GLAM activity in the UK compared to the rest of the world; second, data on 195 UK GLAMs, including those involved in TaNC projects; and third, data on how 63 UK GLAMs interpret and apply copyright law to digitised public domain materials.
- *Section 5* analyses findings across the research and contextualizes them with evidence from interviews with practitioners.
- *Section 6* concludes with recommendations.

A particular contribution this report seeks to make is to outline gaps that will remain unless a range of strategies and support are taken up to redirect *who* can access and reuse the UK's outstanding cultural heritage collections. Because of copyright's complicated nature, the report also provides the necessary context to appreciate the data, findings and recommendations. The UK GLAM sector currently sits at a crossroads: it can either crystallize the status quo of gatekeeping through copyright, or it can embrace open access and truly enable new societal growth and knowledge generation through digital media availability.

In the UK open GLAM space there is a lack of leadership which TaNC is well positioned to provide. TaNC can influence future policy making in ways that break down the barriers existing between the UK's outstanding cultural collections, including public access to and reuse of them. This report addresses both how and why a TaNC position on open access to cultural collections is essential and necessary. It goes further by mapping the areas where real policy progress can be made. Consequently, this report considers a wider audience than TaNC and its projects, and it identifies barriers that reinforce a culture of copyright around the UK's cultural heritage collections in the public domain, quite literally, at the public's expense.

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<sup>1</sup> The focal point of this report is limited to copyright. Other intellectual property rights, like a trade mark or publication right, can impact digitisation, availability and use. These are secondary to the main question about whether the digital materials should be in the public domain and are not addressed here.

## Recommendations overview

### Take a position that no new rights arise in non-original reproduction media generated around public domain works

The UK Intellectual Property Office has provided a clear legal foundation upon which TaNC's position can be based. This will support the retroactive application of CC0 to non-original reproduction media generated around public domain works. GLAMs can voluntarily align where they have cleared and claimed rights in digital assets.

### Adopt an open licensing requirement for future UK digital collections research infrastructure across TaNC, AHRC and UKRI

A requirement will support the publication of all outputs (*i.e.*, beyond scholarly articles and monographs) created with infrastructure funding via open licences (CC BY) and public domain tools (CC0). This will support the prospective application of open access licences and tools to outputs created with infrastructure funding and reduce barriers encountered by research projects seeking to partner with GLAMs.

### Expand access to funding and programmes for community support

This might be facilitated through a community partner programme that effectively expands access to funding to the UK's small- and medium-sized GLAMs and supports open GLAM through knowledge exchange and new partnerships.

### Coordinate with other key UK actors to align on open access

Coordinate with other UK funding bodies and associations such as Arts Council England and the National Museum Directors' Council to advance open access adoption and to develop a shared strategy for long term support on copyright and open access.

### Coordinate with key UK actors to develop a sustainable open access programme with a central support point

Support the rollout of open access through a centralised support point that provides capacity building tailored to projects and problem solves across the sector, and by publishing the templates and outputs produced, such as checklists, contracts and data collaboration agreements, as public resources.

### Improve messaging around open access

Advocate for open access via a campaign that communicates expectations on open access, shares best practices and experiences, connects GLAMs across the sector, focuses on access and reuse (rather than new audiences) and supports navigating the necessary and important exceptions to open access publication.

### New research on open access and future proofing

Dedicate resources to undertake research *on* open access to inform the international open GLAM movement. The UK is in a unique position in that it can design a programme that tracks data on rollout and produces cutting edge research on the benefits of open GLAM, as well as what a more nuanced and inclusive approach to open GLAM might resemble.

## Key themes and insights

### **The state of the UK GLAM sector, copyright and commercialisation of digitised public domain collections:**

#### **With COVID-19 and increased governmental pressures to self-generate revenue, GLAM decision makers appear less likely to eliminate any income sources**

The pandemic has resulted in doors shut, staff furloughed and made redundant, and knowledge and expertise lost, with priorities shifting to institutional survival. Many international exhibitions and partnerships have been cancelled or are no longer feasible. These and other conditions are impacting how GLAMs commercialise digital collections. Any decision to forego licensing revenue, however small, is made more difficult by pressures from legislators and Governments to generate income, no matter the business model. As a result, GLAM staff are working under significant and increasing pressures to achieve what they can with open access with the limited support and power available to them. Participants in this research unanimously framed these conditions as significant barriers to open access goals.

#### **The research revealed a fundamental lack of knowledge around copyright and what the public domain is, includes and should include**

Complicated laws lead to complicated outcomes for GLAMs, and their publics. Legal advice is generally perceived to be expensive and inaccessible by GLAMs without in-house counsel. As a result, many GLAMs rely on each other for interpreting and applying laws that can be rife with grey areas. This is made more difficult when legal areas converge around collections, like copyright, contract, obligations for public bodies, privacy and data protection. These variables translate to a range of public-facing policies on the reuse of digital collections that are often overbroad, unenforceable or claim rights far beyond the protections available under UK law.

#### **Risk aversion among GLAMs is unnecessarily holding back the heritage sector**

The research revealed deeply embedded practices of risk aversion, even around public domain materials that should pose little to no risk for digitisation and public reuse. As one participant framed it, “the natural position is one of saying no before yes”. For a wide range of materials, gaps in information, expertise or the financial resources necessary to clear copyright and/or determine the materials that are in the public domain prevent GLAMs from making such conclusions. The result is that copyright is assumed to subsist in far more materials than it should. Risk aversion also materialises in public-facing policies, which reveal more about individual GLAM needs and fears than how users can access and reuse digital collections.

#### **Licensing images of public domain works does not appear to be a present or future revenue scheme with potential for growth, and is actually a financial burden on the GLAM sector**

Data strongly suggests commercial licensing services are unsustainable and have been for some time. At an individual level, (many) GLAMs bear the costs of maintaining their own commercial licensing system. In the aggregate, this amounts to significant costs expended across the sector. Providing the service incurs loss for the majority of UK GLAMs; few are profitable, and those that are, are primarily national museums. These limited income sources also appear to be shrinking. UK GLAMs operate within a global marketplace for image licensing where high-resolution images are

increasingly released to the public domain by other GLAMs. As one participant commented, “You can’t compete with free.”

### **Commercialisation, control and attribution desires sit at the heart of traditional copyright approaches**

Conversations revealed that commercialisation and guardianship factors influence decisions to claim copyright and/or provide digital access, rather than a legal assessment of the ‘originality’ of reproduction media required to attract new rights. Staff expressed concerns that fiscal assessments are often made based on *potential* commercial viability, rather than any immediate or concrete plans to commercialise collections. Desires to retain control or ensure attribution to the GLAM or source creator also inform these decisions.

### **Copyright has already negatively impacted TaNC projects and the digital national collection**

The research revealed many examples of commercialisation goals and/or partnerships impacting what gets digitised, used for research projects and published online. In the aggregate, institutional decisions that shape what appears in the public-facing collection can render collections relatively invisible, both digitally and for research, and impact public perceptions around value and cultural relevance.

### **The state of open GLAM in the UK:**

#### **Open GLAM in the UK remains an emerging trend rather than a sector-wide commitment to the public**

There is no consensus in the UK GLAM sector on what to do, nor is there any consensus about open access means, or should mean. Instead, GLAMs generally respond to open access with individualised strategies that frame open access as a balance against control, income generation and commercialisation goals. This results in a sector that overwhelmingly takes a default approach to making new copyright claims in the reproduction media generated around public domain collections.

#### **The overwhelming majority of UK GLAM policies do not comply with the UK Intellectual Property Office’s 2015 Copyright Notice**

Across the UK, only six institutions were found to comply with the IPO’s Copyright Notice by adopting policies to *not* claim new rights in digitised public domain collections published online: Birmingham Museums Trust, Llyfrgell Genedlaethol Cymru (National Library of Wales), Newcastle Libraries, Royal Pavilion & Museums, Brighton & Hove, Wellcome Collection and York Museums Trust. Only the Royal Pavilion & Museums Trust, Brighton & Hove expressly references the UK IPO’s interpretation of copyright law. All appear to hold back high-resolution assets for commercialisation.

#### **High level data on the UK GLAM sector paints a relatively healthy picture of open GLAM when compared to data on global open GLAM activity**

Globally, at least 1,208 institutions and organisations release some or all eligible data using open licences and public domain tools as of 7 October 2021. Of these, the UK comprises 80 or 6.6% of open GLAM instances, and ties for third place with Sweden (80 or 6.6%) behind the United States (292 instances or 24.2%) and Germany (157 instances or 13.0%). UK GLAMs have released at least 10,487,115 open and public domain assets (14.8% of the global total volume) to a variety of platforms online.



## **A closer look reveals the UK GLAM sector takes a traditional copyright approach to publishing digitised public domain collections**

This materialises in a few ways:

### **In the global Open GLAM Survey data of 1,208 organisations:**

- A majority (73 or 91.3%) of the 80 UK GLAMs release only some rather than all eligible data under open licences or public domain tools. In other words, the data shows 91.3% of UK instances approach open access as an exception to institutional policies that claim rights and restrict access to eligible data. Some of this activity can be directly attributed to funding obligations.
- Of the 10,487,115 open and public domain assets contributed by UK GLAMs, seven GLAMs were identified as contributing 10,409,004 or 99.3% of all UK assets. These include the Natural History Museum (7,131,263), the British Library (1,186,746), the Portable Antiquities Scheme (1,038,191), Royal Botanic Gardens, Kew (595,140), Wellcome Collection (387,228), York Museums Trust (40,426), and the Royal Pavilion & Museums Trust, Brighton & Hove (28,010). A majority of UK instances (50 or 62.5%) publish fewer than 100 open and public domain assets, accounting for a total of 1,029 assets or 0.009% of the total volume contributed by UK GLAMs.

### **In the UK GLAM Sample data of 195 organisations:**

- When viewed by their “majority approach” to publishing digital collections, 144 or 73.8% of organisations in the UK GLAM Sample operate policies of closed licences or all rights reserved for digitised public domain collections. In reality, this number is much higher. Accounting for all UK GLAMs would reduce the representative percentage of open GLAM engagement in the UK (*i.e.*, both the instances and data volume) to vanishingly small numbers.
- At least 35 GLAMs or 17.9% of the sample maintain technical protection measures to assets published on the website through pay-to-view software, watermarks, account creation, IIF, disabling download and/or publishing very low-quality or thumbnail images.

## **The large majority of UK open GLAM instances are local and regional organisations engaging with data aggregators and external platforms**

The findings indicate data aggregators and external platforms have been crucial for both asset publication and the exposure they bring to collections. Those provided by Europeana, Flickr Commons, Wikimedia Commons and Art UK can also offer flexibility and advantages that impact how open GLAM proceeds due to the systems and rights statements that shape platform participation, particularly for small organisations. 73 or 91.3% of all UK open GLAM instances rely on such organisations as a primary method of publication, with Art UK alone accounting for 47 or 58.8% of instances. The UK’s largest holders of cultural collections are not open and primarily publish rights restricted collections via their own websites. Two exceptions make significant contributions in data volume: the Natural History Museum and British Library.

## **The UK GLAM sector is already behind on open access to heritage collections, and it appears to be falling further behind**

According to participants and data, UK GLAMs are almost a decade behind relatable peers in other countries, specifically in the United States and European Union (and Member States). More consistent legal authority in these jurisdictions correlates to greater open GLAM participation overall, and particularly approaches that publish content to the public domain, at higher qualities and in greater volumes. As a result, and in addition, UK GLAMs and research-led perspectives are notably absent from shaping many of the new questions emerging around unfettered access to digital heritage collections.

## **Open access is at risk of decline or stagnation in the UK**

Interviews and web-based research revealed clear evidence of decline or stagnation. Many participants noted that open access conversations are now harder with COVID-19. Some participants have had to re-defend the open access policy due to revived commercialisation desires. The research revealed many examples of digital assets that are being reassessed and even removed from websites and open access platforms to bolster exclusivity and commercialisation goals.

## **The risks posed by inaction and maintaining the status quo, and the potential for open GLAM in the UK:**

### **The potential for resolution on the legal question of copyrightability**

A clear and binding legal principle protecting the public domain would propel the UK GLAM sector forward. However, this requires legislative reform or litigation, which are unlikely to happen. GLAMs (and other actors) may voluntarily align (or not) with the UK IPO's statement that no copyright arises in digitised public domain works. To date, this has yet to occur. Participants raised the ethical issues involved while stressing the prevailing approach is made possible by a *legal* climate with variants of grey. These conditions result in a sector-wide practice that caters to copyright, commercialisation and control where the UK's digital national collection is concerned.

### **UK GLAMs appear to have no intention of enforcing copyright claims to digital surrogates of public domain works**

There was unanimous consensus among interview participants that no GLAMs previously had or planned to enforce these disputed rights beyond a cease-and-desist notice.

### **UK GLAMs are making things unnecessarily hard on themselves and future staff**

The research revealed a traditional copyright approach leads to legacy data issues and more complex rights management processes, which can be complicated by staff turnover and the loss of institutional or project-specific knowledge. Such approaches can also impact staff efficiency and knowledge production within and across GLAMs, including what projects staff can pursue and what research can be undertaken due to desires to reserve certain collections from engagement (and open access obligations) for their potential commercial viability.

### **UK GLAM staff regularly turn to open and public domain collections and data made available by relatable peers**

Many participants revealed turning to well-known CC0 collections in other countries to illustrate blog posts on the GLAM's own website and other media. One participant noted the institutional contradiction of using openly licensed collections while operating a licensing service for their own,

asking: “Who is this serving?” UK GLAMs are also integrating openly licensed content to enrich collections data, improve information services and enable staff to focus on other tasks. Few also reciprocate by contributing openly licenced content and CCO data to websites and external platforms.

### **The current situation is one of risking the public domain**

The data demonstrates a pressing need to curtail these practices for the benefit of GLAMs, their staff and users and the UK economy. Participants expressed genuine concerns around the future relevance of their collections: “If we don’t release this stuff, we’re going to get written out of history. Images that reappear are going to be the ones that are openly licensed or in the public domain.” When asked what might help, one responded: “Anything that moves the needle would be helpful. But we really need a jump at this point.”

### **Open access has had an overwhelmingly positive impact on GLAMs that have embraced it**

Open access has: removed barriers across systems and within operations, including the “copyright delay” embedded in collections management and public engagement; positively impacted their ability to attract research funding, including funding for digitisation (notably, for some with more developed open access programmes, the amount of funding attracted by the programme far outweighed the revenue generated by commercial licensing on an annual basis); positively impacted internal and external researchers’ abilities to pitch new projects and publish on topics that require images; resulted in greater overall public interest in collections, positive attention and good will; and increased the brand value and public profile. However, there is widespread *incapacity* to engage due to shortfalls in financing, labour, staffing and technologies. Participants stressed the incredible amount of work that goes into preparing collections for digital systems even prior to the incredible amount of work required for publication *and* for open access. As one commented, “Open access is hard too. For something that seems simple, it’s really not.”

### **Participants would welcome a stance by TaNC and UKRI**

Many pointed to open licensing requirements of Wellcome Collection and The National Lottery Heritage Fund as positive developments that have enabled or revived discussions around open access. The feeling was that public funding should render all outputs produced through the funding as available for public reuse. A position protecting the public domain was also seen as necessary. Many commented that the more funders who embrace such policies the better, as it is harder to advocate for embedded change if open access only occurs in the margins. This was something seen as requiring fundamental attention.

### **TaNC can be leaders on this point and take a position for the UK GLAM sector to follow**

Across the sector, there has been a lack of coordinated leadership, a disregard of the UK Intellectual Property Office’s Copyright Notice, tensions within GLAMs and among GLAM staff on open access demonstrating a huge gap that needs to be filled. More detailed recommendations on this are provided in *Section 6*.

# 1. Situating the study

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*“Rights need to be fronted. The idea of having joined up collections is great. But, in practice, the rights must be sorted out at the start.”*

Staff at a large UK GLAM

## 1.1. Introducing the study

This report contributes a UK perspective of open GLAM while analysing it against the global open GLAM movement and recent legal developments that will dramatically alter the digital landscape of open access to cultural heritage collections in the public domain. It is directed at a range of audiences central to this landscape, including TaNC and the AHRC, UK government, lawmakers and policymakers, GLAM directors, staff and supporters, the general public and users, and even audiences outside the UK.

The research proceeded against a backdrop of similar studies spanning two decades of data on the benefits and drawbacks of copyright claims, commercial licensing and open access strategies adopted by cultural institutions and organisations:

- A 2002 report by Simon Tanner and Marilyn Deegan explored **reproduction charging models for digital cultural heritage in the UK and Europe** among 51 institutions, including in-depth interviews and observations of a representative sample of 15. Tanner and Deegan found “the most powerful deciding factor for price was the perceived market value of the item (as defined by what similar organizations are charging) rather than the actual cost of creation and provision.” None of the institutions fully recovered the costs of the services through licensing alone.<sup>2</sup>
- Simon Tanner’s follow-on 2004 report explored **reproduction charging models for digital cultural heritage in the US** among 100 museums, including in-depth interviews and observations of a representative sample of 20. Tanner found most licensing departments operated at a loss. A few larger museums produced profits based on income generated around a relatively tiny group of popular works.<sup>3</sup>
- Studies in 2006 and 2009 by Nancy Allen, Hillary Ballon and Mariet Westermann focused on the **field of art history and art history publishing**. The research found the dependence on high quality images and the copyright costs associated with them negatively impact the field of art history and are serious impediments to the productive development of digital publications for art history.<sup>4</sup>
- A 2009 report by Prodromos Tsiavos **mapped the flows of content, value and rights across the UK public sector**. Tsiavos found rights clearance, the constant education of audiences and staff training on intellectual property are crucial to the success of digitisation initiatives and open access objectives, which correlate to the higher maintenance costs involved in

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<sup>2</sup> [https://kclpure.kcl.ac.uk/portal/en/publications/exploring-charging-models-for-digital-cultural-heritage-in-europe\(5f0e70c0-8753-4d71-bbf9-881dfa5352a9\)/export.html](https://kclpure.kcl.ac.uk/portal/en/publications/exploring-charging-models-for-digital-cultural-heritage-in-europe(5f0e70c0-8753-4d71-bbf9-881dfa5352a9)/export.html)

<sup>3</sup> [https://kclpure.kcl.ac.uk/portal/en/publications/reproduction-charging-models--rights-policy-for-digital-images-in-american-art-museums\(95d04077-f8ec-4094-b8c1-d585c6b16d9b\).html](https://kclpure.kcl.ac.uk/portal/en/publications/reproduction-charging-models--rights-policy-for-digital-images-in-american-art-museums(95d04077-f8ec-4094-b8c1-d585c6b16d9b).html)

<sup>4</sup> <http://cnx.org/content/col10728/1.1/>; <http://cnx.org/content/col10376/1.1/>

implementing and sustaining such programmes.<sup>5</sup>

- A 2010 report by Simon Tanner and Marilyn Deegan studied the **opportunities, benefits and impacts of digitised resources for the UK**, laying important groundwork for (re)evaluating how value can be transformed and measured through digital initiatives that provide access to the UK’s heritage collections.<sup>6</sup>
- Work by Kenneth Crews and Melanie Brown between 2010-2012 examined the **broad website terms of use and licensing policies** of 50 art museums in the United States. Crews and Brown uncovered a range of “copyright overreach” strategies limiting reuse in ways that inhibit new creativity, scholarly exploration and pose a threat to the public domain.<sup>7</sup>
- Kristin Kelly’s 2013 report surveyed 11 art museums in the United Kingdom and United States at **various stages of opening up public domain collections**. Kelly found that fears around loss of control and revenue loss either faded, or did not materialise, while the evidence of both internal and external benefits of open access steadily grew.<sup>8</sup>
- The 2015 Striking the Balance Report studied the ways in which **a lack of clarity, standardisation and funding around open licensing** shaped the business models and access policies of various United Kingdom cultural institutions. The report highlighted the significant investment gap between goals for digital remits and the resources available to realise them.<sup>9</sup>
- A 2016 paper by Effie Kapsalis revisited the museums featured in Kelly’s 2013 report and documented the **impact of funding obligations and public expectations on increasing open access to collections and the demonstrated benefits for cultural institutions**. Kapsalis’s work laid the groundwork for the Smithsonian’s own shift to open access in 2020.<sup>10</sup>
- A 2018 report by Martine Denoyelle, Katie Durand, Johanna Daniel and Eli Doukaridou-Ramantani detailed **the complex systems regulating the circulation of art images in French collections and the impact of copyright on downstream reuse**, finding commercial objectives were at the root of the problem.<sup>11</sup>
- In Australia, a 2021 report explored audiences’ expectations around, and engagement with, art through new technologies, including **how COVID-19 has accelerated the shift to digital cultural engagement and the development of a growing ‘dual economy’**.<sup>12</sup>

These studies document almost two decades of research undertaken on how technology has changed the ways cultural institutions document and manage their collections, and the new barriers and opportunities that can arise through licensing and open access. All overlap with findings from this study.

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<sup>5</sup> [https://sca.iiscinvolvement.org/wp/files/2009/04/sca\\_2009symp\\_ipr\\_casestudies-final.pdf](https://sca.iiscinvolvement.org/wp/files/2009/04/sca_2009symp_ipr_casestudies-final.pdf)

<sup>6</sup> <https://kdl.kcl.ac.uk/what-we-do/consultancy/strategic-thinking-and-practice/inspiring-research-inspiring-scholarship/>

<sup>7</sup> [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2026476](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2026476)

<sup>8</sup> <https://www.clir.org/pubs/reports/pub157/>

<sup>9</sup> [https://www.nationalmuseums.org.uk/media/documents/publications/striking\\_the\\_balance.pdf](https://www.nationalmuseums.org.uk/media/documents/publications/striking_the_balance.pdf)

<sup>10</sup> [http://siarchives.si.edu/sites/default/files/pdfs/2016\\_03\\_10\\_OpenCollections\\_Public.pdf](http://siarchives.si.edu/sites/default/files/pdfs/2016_03_10_OpenCollections_Public.pdf)

<sup>11</sup> <https://www.inha.fr/fr/recherche/le-departement-des-etudes-et-de-la-recherche/domaines-de-recherche/programmes-en-cours/images-usages.html>

<sup>12</sup> <https://australiacouncil.gov.au/advocacy-and-research/in-real-life/>

## 1.2. Overview of the research scope

For reasons explained throughout this report, this research scope is limited to the open access policies and practices around **collections in the public domain**. It does not address the access parameters around in-copyright works and collections, as these are defined by national copyright laws and controlled by the works' rightsholders, which is rarely the institution. This report studies access to materials for which the institution claims to be, and sometimes is, the rightsholder.

Around this, the research cast a wide net to understand the scope of digital collections and policies that UK GLAMs publish on their own websites and external platforms (*e.g.*, Art UK, Europeana, Flickr Commons, Wikimedia Commons).

## 1.3. Defining GLAM, open and other terms

**GLAM** refers to Galleries, Libraries, Archives and Museums and is used as shorthand to refer to *any* national, regional or local cultural heritage institution or similar organisation.

**User** refers to many individuals or groups including members of the general public, educators, researchers, GLAM staff, and even GLAMs themselves, located in the UK or elsewhere.

**Work** refers to an item, information or output. Sometimes a work requires creative input and attracts copyright protection; when it does not, the work is in the public domain from the moment of creation.

**Licence** refers to the legal conditions under which the work is provided.

**Open, open access or open licence** carries the meaning of “open” as defined by the Open Knowledge Foundation: “Open means anyone can *freely access, use, modify, and share for any purpose* (subject, at most, to requirements that preserve provenance and openness).”<sup>13</sup> Under international open access statements, materials must be made available for commercial reuse to qualify as open.<sup>14</sup>

**Public domain** conveys an absence of copyright or similar restrictions on use. For the purposes of this report, ‘public domain’ should not be equivocated or conflated with terms like ‘published’ or ‘publicly available’ in reference to digital media. Also note that references to ‘open’ can include knowledge and materials in the public domain since anyone can freely access, use, modify, and share them for any purpose.

**Public domain tools** are used to mark public domain media. These are not licences, because no rights exist to support the application of a licence (or rights have been waived).

**Closed licence** denotes some rights have been released, but the rights to prohibit modification or commercial use remain reserved.

**Digital media** and/or **digital collections** refers to the range of content produced during the digitisation and management of physical collections, and may include data, metadata, paradata, text and images (*i.e.*, digital surrogates).

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<sup>13</sup> <https://opendefinition.org/>

<sup>14</sup> Examples include the 2002 Budapest Open Access Initiative, the 2003 Bethesda Statement on Open Access Publishing and the 2003 Berlin Declaration on Open Access to Knowledge in the Science and Humanities.

**Open media** and/or **open collections** refers to open digital media and open digital collections produced during the digitisation and management of physical collections, as described immediately above. Not all digital media and digital collections published online are open.

**Digital surrogate** refers to a digital reproduction of an object. In its public task, the National Archives defines digital surrogate as “a representation of a record, usually an image, stored in digital form.”<sup>15</sup>

**All eligible data** describes when GLAMs release *all* digital surrogates of public domain works under open licences and public domain tools as a matter of policy.

**Some eligible data** describes when GLAMs release *some* digital surrogates of public domain works under open licences and tools on an individual project or output basis as a matter of practice.

**Open GLAM** is an independent movement associated with the Open Knowledge Foundation, Wikimedia Foundation, and Creative Commons. Open GLAM relates to and overlaps with other open initiatives, like open access, open culture, open science, open data, open source, and open innovation.

**Instance** refers to a GLAM-level policy or practice on open access. For example, instance can refer to the Smithsonian Institution, which releases almost four million high resolution images to the public domain (CC0) on its own website, or the Bath Postal Museum, which releases one jpeg at 550x685 pixels at 72dpi to the public domain (Public Domain Mark) on Art UK. Both are treated as one instance for the purpose of tabulating an open access policy or practice.

**Volume** refers to the number of digital surrogates published by or across GLAMs. Using the examples above, the volume of open assets published by the Smithsonian is nearly 4,000,000 assets (CC0); the volume of open assets published by the Bath Postal Museum is 1 asset (Public Domain Mark). Volume does not imply unique assets. There can be overlap where GLAMs contribute open assets to more than one platform.

**Reuse** refers to both use (first use) and reuse (downstream use) of digital media.

**Data aggregator** refers to an organisation that collects data from one or more sources, provides some value-added processing, and repackages the result in a reusable form.

**Technical protection measures** are actions taken to block or limit access to a work, such as watermarking, disabling download or uploading the lowest quality of images.

**Moral rights** refer to the noneconomic rights that protect the personal and reputational, rather than monetary, value of a work to its creator.

## 1.4. Methodology

This report draws on several types of information:

- Existing empirical data on open GLAM globally, specifically the ‘Survey of GLAM open access policy and practice’, (‘Open GLAM Survey’);<sup>16</sup>
- New empirical data on UK GLAMs, including data from:
  - A survey of access to the digital collections of 195 UK GLAMs across internal and

<sup>15</sup> <https://www.nationalarchives.gov.uk/information-management/re-using-public-sector-information/about-psi/public-task/>

<sup>16</sup> Douglas McCarthy and Andrea Wallace, “Survey of GLAM open access policy and practice,” <http://bit.ly/OpenGLAMsurvey>

- external platforms ('UK GLAM Sample');<sup>17</sup>
- A survey of the copyright and open access policies of 63 GLAMs from the UK GLAM Sample ('UK GLAM Policies');<sup>18</sup>
- 30 one-hour interviews with TaNC project investigators, UK GLAM staff, external platform staff and open GLAM advocates;
- A review of case law and policy developments in the United Kingdom, the United States and the European Union; and
- A literature review of scholarly writing on copyright and open access to digital collections.

#### 1.4.1. Data sources, collection and scope

All surveys adopted a user perspective in reviewing and extracting publicly available information from GLAM websites and external platforms. For the purposes of data collection, this involved taking on the role of a user and the ways in which they encountered rights information on a given website.

##### Open GLAM Survey

Managed by Douglas McCarthy and Dr Andrea Wallace, the Open GLAM Survey is an ongoing informal survey of open access policies and practices in the global GLAM sector. It collects all known instances of open collections published online by GLAMs and other organisations.<sup>19</sup> This involves personally reviewing GLAM websites, data aggregators and other platforms on a periodic basis and manually updating the Google spreadsheet.<sup>20</sup> As of 7 October 2021, the survey featured 1208 instances of open GLAM, 80 of which are in the UK.

##### UK GLAM Sample

Created for this report, this sample replicates and expands the Open GLAM Survey data extraction and methodology to include a range of GLAMs across the UK and new data points. The initial sample of 350 organisations included Independent Research Organisations (IROs) and Research Centre Institutes (RCIs), GLAMs associated with TaNC Foundation and Discovery projects, UK GLAMs in the Open GLAM Survey, and other UK GLAMs and related organisations. An initial review was performed to identify and remove organisations outside the scope of inquiry (*e.g.*, no permanent collections). The final sample included 195 organisations.

From the final sample, 24 are IROs (all RCIs were removed). Another 32 are Universities (including GLAMs within universities). This brings the total number of organisations eligible for AHRC funding to 56 (or 28.6%). The remaining 140 include public and private GLAMs at national, regional and local levels (*e.g.*, councils, historic buildings) and research initiatives or data aggregators (*e.g.*, Portable Antiquities Scheme, Culture Grid, Archaeology Data Service).<sup>21</sup> Organisations are distributed across the UK as follows: Channel Islands (1 total); England (154 total); Isle of Man (1 total); Northern Ireland (5 total); Scotland (28 total); Wales (6 total).

<sup>17</sup> Appendix 1. UK GLAM Sample, <https://doi.org/10.5281/zenodo.6242179>

<sup>18</sup> Appendix 2. UK GLAM Policies on copyright and open access, <https://doi.org/10.5281/zenodo.6242559>

<sup>19</sup> For more information: [https://docs.google.com/document/d/15U\\_Z50WCUM\\_OWQ9HKLvLMlkMo\\_CN68FLVl9OKJQ8yY/edit](https://docs.google.com/document/d/15U_Z50WCUM_OWQ9HKLvLMlkMo_CN68FLVl9OKJQ8yY/edit)

<sup>20</sup> <http://bit.ly/OpenGLAMsurvey>

<sup>21</sup> The full list is available in Appendix 1.



Data collection for the UK GLAM Sample extended to:

Data collected	Scope
Entry fee	Any entry fee charged for only Galleries and Museums, including those within Universities
Location	City, country, Wikidata link and Q code (for mapping purposes)
Funding eligibility	(1) General eligibility for AHRC funding and (2) participation in a Foundation or Discovery project
Own website and digital collections	Extracted from the GLAM's own website: <ul style="list-style-type: none"> <li>• <b>Digital collections presence:</b> (1) whether the GLAM has a collection online, and if so whether (2) images are purely illustrative or (3) searchable as objects via a database or (4) searchable only as records via a database;</li> <li>• <b>Digital collections volume (if stated or searchable):</b> (1) volume of all digital collections and (2) volume of open data;</li> <li>• <b>Rights claimed and technical protection measures:</b> whether (1) copyright is clearly claimed, (2) inconsistent, (3) unclear and/or (4) no copyright policy exists on the website; and (5) whether any technical protection measures are used to prevent download and reuse (<i>e.g.</i>, watermarks, download disabled, etc);</li> <li>• <b>Rights statements:</b> for (1) the digital asset, (2) underlying work and (3) metadata; along with links to policies for (4) reuse and (5) cultural sensitivity;</li> <li>• <b>Commercial licensing:</b> whether the GLAM (1) manages their own commercial licensing operations or (2) outsources licensing; (3) the quantity of digital collections within Bridgeman Images and (4) the quantity of digital collections within Google Art &amp; Culture;</li> <li>• <b>Public task:</b> how 'documents' and access to information is outlined by GLAMs with the Re-Use of the Public Sector Information Regulation 2015 obligations<sup>22</sup>;</li> </ul>
Art UK	Engagement with Art UK and (1) the scope of digital surrogates available (2D and/or 3D works), (2) the total volume, (3) open data volume, (4) closed licence volume, (5) status of the tool(s) used ( <i>i.e.</i> , public domain or CC0, open, closed, both, or All rights reserved) and (6) the rights statement primarily used
Platforms used	Platforms, if any, where open data is published: (1) Own website, (2) Art UK, (3) Europeana, (4) Flickr, (5) Flickr Commons, (6) Sketchfab; and (7) Wikimedia Commons; in addition to (8) the volume of data released and (9) rights statements used across each platform
Open access status	Comparing statements used across all platforms to code the GLAM via (1) the majority approach to digital collections and (2) 'most open' level at which digital collections have been published across platforms: <ul style="list-style-type: none"> <li>• All eligible data, no new rights (public domain or CC0);</li> <li>• All eligible data, open-compliant (CC BY, CC BY-SA);</li> <li>• Some eligible data, no new rights (public domain or CC0);</li> <li>• Some eligible data, open-compliant (CC BY, CC BY-SA);</li> <li>• Closed licences (CC BY-ND, CC BY-NC, CC BY-NC-SA, CC BY-NC-ND and equivalents);</li> <li>• Closed licences by exception (All rights reserved, except for photographs of sculptures produced for an Art UK project funded by The National Lottery Heritage Fund); and</li> <li>• All rights reserved</li> </ul>
Engagement	Date of first engagement with open access, if known
Commercial licensing	Commercial licensing of collections via the GLAM and/or a third party, if stated
Total open data volume	Total volume of (1) open assets online across all known platforms and, of those, (2) the volume that is legally compliant with the public domain ( <i>i.e.</i> , CC0, Public Domain Mark or No Known Copyright Restrictions)

<sup>22</sup> Discussed in Section 2.1.

## UK GLAM Policies

Following data collection for the UK GLAM Sample, 63 GLAMs were selected for a more in-depth dive into copyright and open access policies and practice.<sup>23</sup> This survey created a dataset extending to GLAM policies published on their own website related to copyright, open access, sensitive materials, and the public task, as well as policies on external platforms where digital collections are published.

### Interviews

Interviews sought information on any aspects of copyright or open access related to a TaNC project, the individual's role and/or GLAM policies and practice. Interviews also provided an opportunity to verify information in online policies and understand the challenges that shape them. Interview data has been generalised or presented in the aggregate to maintain participants' anonymity. Any direct quotes have been approved for use.

#### 1.4.2. Data accuracy

Due to the nature of web-based research using publicly available information, there may be some inaccuracies and limitations in the data due to their sources.

Every effort was made to ensure no inaccurate or misleading data appears in this report, but the author cannot guarantee absolute accuracy. Some may be inherent to data, legal interpretations, information or other statements produced by the data sources themselves. These inaccuracies reflect the reality of rights management and interpretation of law within and across GLAMs.

For example, GLAM policy statements are often conflicting, subject to change and may not expressly claim or disclaim copyright in digital collections. Many GLAMs lack formal policies, and/or online collections or searchable collections, which can impact high-level categorisation and quantitative analysis. Additional factors related to resources, capacity, technology, platforms, legacy data, funding obligations, senior management, sustainability and staff turnover can result in inconsistent approaches taken across internal and external platforms, even with a given GLAM.

For these reasons, qualitative discussions of policies and data reflect holistic assessments accounting for these contradictions. Rather than presenting a definitive value, the quantitative discussions below represent an 'at least' approach to measuring digital collections and open collections published online.

## 1.5. GLAM distribution across the datasets

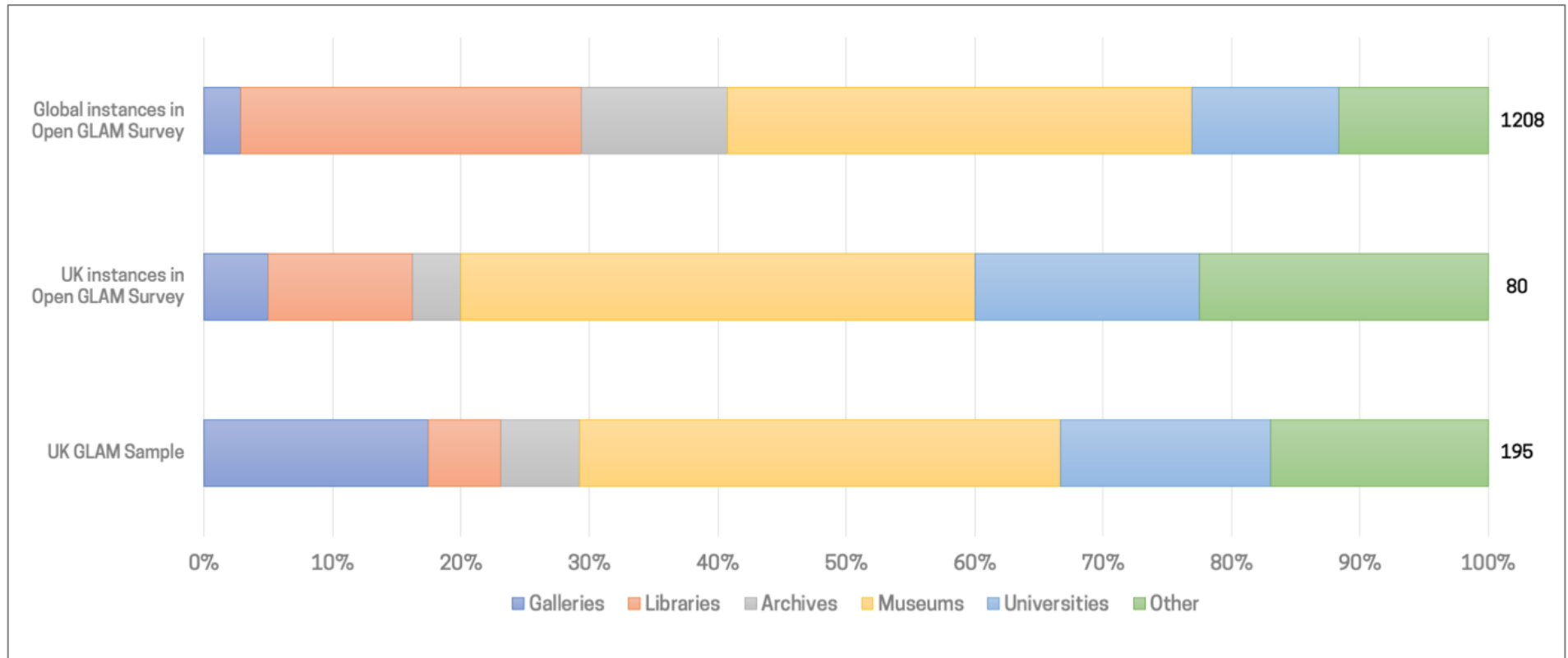
The figures below show the distribution of galleries, libraries, archives and museums across two datasets:

- the Open GLAM Survey ('Global instances in Open GLAM Survey', 1,208 total) with the UK's representation for comparison ('UK instances in the Open GLAM Survey', 80 total); and
- the UK GLAM Sample (195 total, including the 80 UK instances in the Open GLAM Survey).

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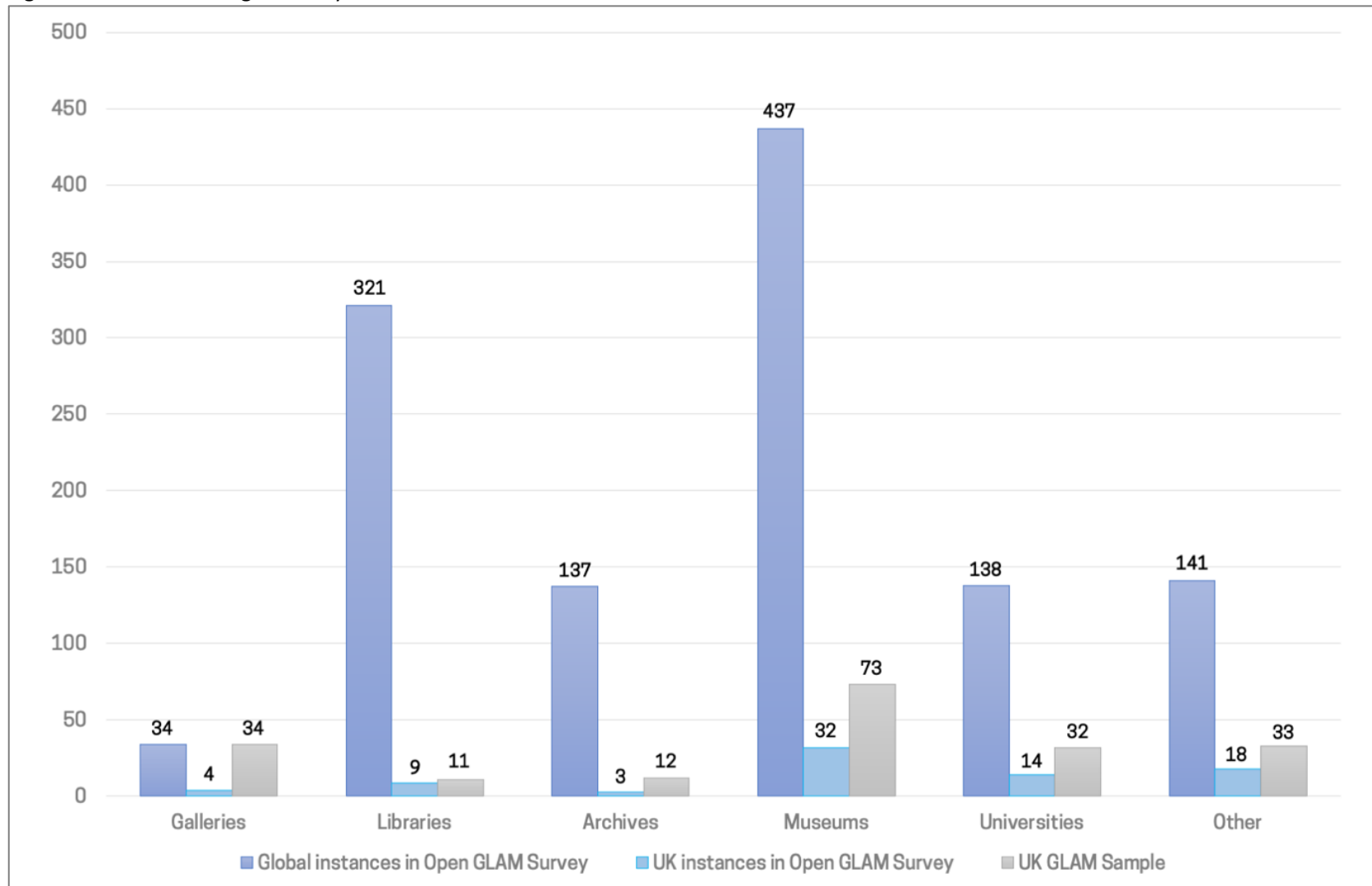
<sup>23</sup> The full list is available in *Appendix 2. UK GLAM Policies on copyright and open access.*

Figure 1. Distribution in proportions organised by dataset<sup>24</sup>



<sup>24</sup> Figures: <https://doi.org/10.5281/zenodo.6242179>

Figure 2. Distribution organised by sector<sup>25</sup>



<sup>25</sup> Figures: <https://doi.org/10.5281/zenodo.6242179>

## 2. Breaking down the law

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*“The question is simple: in a digital age, should images in our public collections be restricted so that museums can earn money for them, or should that be shared as widely as possible as a means of expanding knowledge, stimulating our creative industries and engaging new and more diverse audiences?”*

Lord Valerian Freyberg, Question for Short Debate on 12 September 2018, House of Lords

### 2.1. Introducing the laws

Copyright law impacts an immense number of materials in UK collections, limiting whether and how GLAMs can make materials available online. Most UK GLAMs are incredibly risk averse when managing in-copyright collections and view misinterpreting or ‘breaking’ the law as a risk in itself. Although in-copyright collections are outside the report’s scope, it is important to note these overcautious and deeply situated practices also shape interpretations of laws relevant to public domain collections and the obligations of public bodies. Whether copyright arises during the reproduction of public domain works is an unresolved question of law that impedes access to the public domain and public sector information. Yet, even if rights arise, no law requires GLAMs to claim or enforce them. Interviews revealed a policy to do so brings its own set of consequences related to, and informed by, aspects of funding, costs, enforcement, visibility, reputation and the public mission. As one interviewee put it, “The road between commercialisation and ‘free’ is really difficult to walk morally, politically and legally due to the grey areas around whether rights in reproduction media can be claimed.”

Accordingly, this portion of the research asked: What is the law in the UK? And what conditions have caused this grey area to emerge, expand, stagnate and even roll back progress on open access to UK heritage collections? For this, five areas of law require brief explanation.

**Copyright.** Copyright law is designed to automatically protect a work upon its creation. This means a creator is not required to register or seek formal approval to enjoy copyright protection. But not everything a creator makes receives protection. A work must be sufficiently ‘original’ to attract copyright, which means a minimum level of creative input must be expended during the work’s making. If so, the copyright generally lasts for the creator’s lifetime and another 70 years after their death.<sup>26</sup> Once copyright expires, the work belongs to the public domain and anyone can use it for any purpose, and forever; the work cannot be ‘re-protected’ by a new copyright. This means no copyright is infringed, for example, when a GLAM makes a digital surrogate of a public domain work. The real question is whether that digital surrogate is sufficiently original in its own right to attract protection. Copyright can also protect data and datasets where the data itself is creative (*e.g.*, a staff member’s opinion) rather than descriptive (*e.g.*, tombstone data about an object), or where the selection or arrangement of the data in a dataset involves creative input. If not, *sui generis* rights can protect the contents of a database where there is a substantial investment in obtaining, verifying or presenting the data (but no creative input).<sup>27</sup>

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<sup>26</sup> This is true of most copyright terms. However, GLAMs deal with other works sometimes subject to different, or longer, terms. It can be difficult to know when the work falls in or out of copyright, and mistakes are easy to make.

<sup>27</sup> ‘*Sui generis*’ translates to “of its own kind”. These neighbouring rights are distinct from copyright and arise in materials, like databases, to protect the investment in compiling and making the database.

**Moral rights.** Sitting alongside copyright are moral rights, which are the noneconomic rights that protect the personal and reputational value of a work to its creator. In the UK, these are limited to the rights of attribution and integrity and interpreted narrowly, as discussed in *Section 4*. Moral rights expire upon the expiration of copyright. This means no moral rights exist in public domain works.<sup>28</sup>

**Public domain.** Any works or materials that are *not* sufficiently original belong to the public domain upon creation. The public domain is an imaginary space that includes a range of other materials: information that copyright law excludes from its protection, like numbers, facts or short phrases; original works made before copyright existed, like the *Mona Lisa*; and original works for which copyright protection existed but has expired (*i.e.*, out-of-copyright works). With this latter category, we need certain information, like the creator's date of death, to determine whether copyright has expired. Without it, we cannot conclude the work is out-of-copyright and thus in the public domain. These and other uncertainties impact a range of 'orphan works' in collections. Legal grey areas around 'originality' also produce uncertainties on the rights status of reproduction media and collections data. Consequently, immense amounts of heritage materials sit in public domain purgatory. The important point to remember here is that not everything is automatically protected by copyright or *sui generis* rights upon creation. In other words, all materials are by default in the public domain *unless* the legal conditions are met to justify copyright protection.

**Contract.** Contract law can apply where a website's terms of use or copyright policies permit or prohibit certain activities. By accessing and using a website, the user might consent to the terms of use and be contractually bound by them. This too is a legal question that requires litigation on factors that impact whether a valid contract was formed, like notice, consideration and even the reasonableness of the terms. Many GLAMs use website policies to reinforce claims to intellectual property (IP) and prohibit activity beyond what copyright exceptions would permit a user to do.<sup>29</sup> Such terms are discussed further in *Section 4*. It is also important to note that GLAMs sign contracts themselves that may restrict what they can do with public domain materials in their collections (*e.g.*, donor or exclusive agreements).

**Obligations for public bodies.** Freedom of information laws, like the Freedom of Information Act 2000 and Re-Use of the Public Sector Information (RPSI) Regulation 2015, secure the public with rights to access and reuse types of information produced by public authorities as part of their public task.<sup>30</sup> How a public body (or Act of Parliament<sup>31</sup>) defines the public task determines which documents and information fall within its scope. These laws acknowledge the costs associated with supplying that information and permit charging reasonable fees under certain circumstances. GLAMs can charge more for reuse where the organisation holds IP rights in the document, and/or is required to generate revenue to cover a substantial part of the costs relating to their public task or documents required to perform the public task. Despite such exceptions, public bodies must be transparent with their fee models (including reprographic and permissions fees) and apply standard fees across reuse types. This means, for a request to put a high-resolution image of a painting on a luxury bag for commercial resale in stores worldwide, the National Gallery must charge the same fee

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<sup>28</sup> This applies only to the UK. The situation is different in different jurisdictions.

<sup>29</sup> In some cases, such terms could be argued to violate the Fraud Act 2006, specifically the section 2 offence of fraud by false representation. See Ronan Deazley and Robert Sullivan (2011) 'Copyright, Licences, and Statutory Fraud, *Journal of Media Law* 3(2): 287-303

<sup>30</sup> Freedom of Information Act 2000, c. 36; Re-use of the Public Sector Information Regulation 2015 No. 1415

<sup>31</sup> *e.g.*, The Museums and Galleries Act 1992, c. 44

to a member of the public as it charges Louis Vuitton and Jeff Koons.<sup>32</sup>

**Privacy and data protection.** Finally, laws protect personal or sensitive information related to living individuals and prohibit reuse that would be incompatible with data protection laws, like the General Data Protection Regulation (GDPR) and Data Protection Act 2018.<sup>33</sup> As data controllers and public authorities, GLAMs must guard against disclosing information that has been derived from personal data and process it to ensure individuals cannot be identified. These laws must be balanced against others promoting public access and reuse. For example, an out-of-copyright document digitised by scan as part of the public task may contain personal or sensitive information that requires redaction or prevents the GLAM from disclosing or supplying the information, even though the digital surrogate is in the public domain. This can impact a range of materials and data related to donors, rightsholders, archives, photographs, metadata, or other information identifying living individuals.

**Introducing the layers.** When it comes to interpreting these laws, assessing any rights in materials is not always straightforward. Layers of composite media can involve different rights and rightsholders depending on Crown copyright, moral rights, photographers (*e.g.*, employees versus freelance), third party partnerships, staff members who author information or users who contribute data, including a balance of rights in the data or information and corresponding obligations to provide or restrict access to them.

The figure 3 diagram shows how layers of (potential) rights may arise in collections media, starting with a 2D or 3D work of art or cultural object and following it through various processes of digitisation, information and collections management.

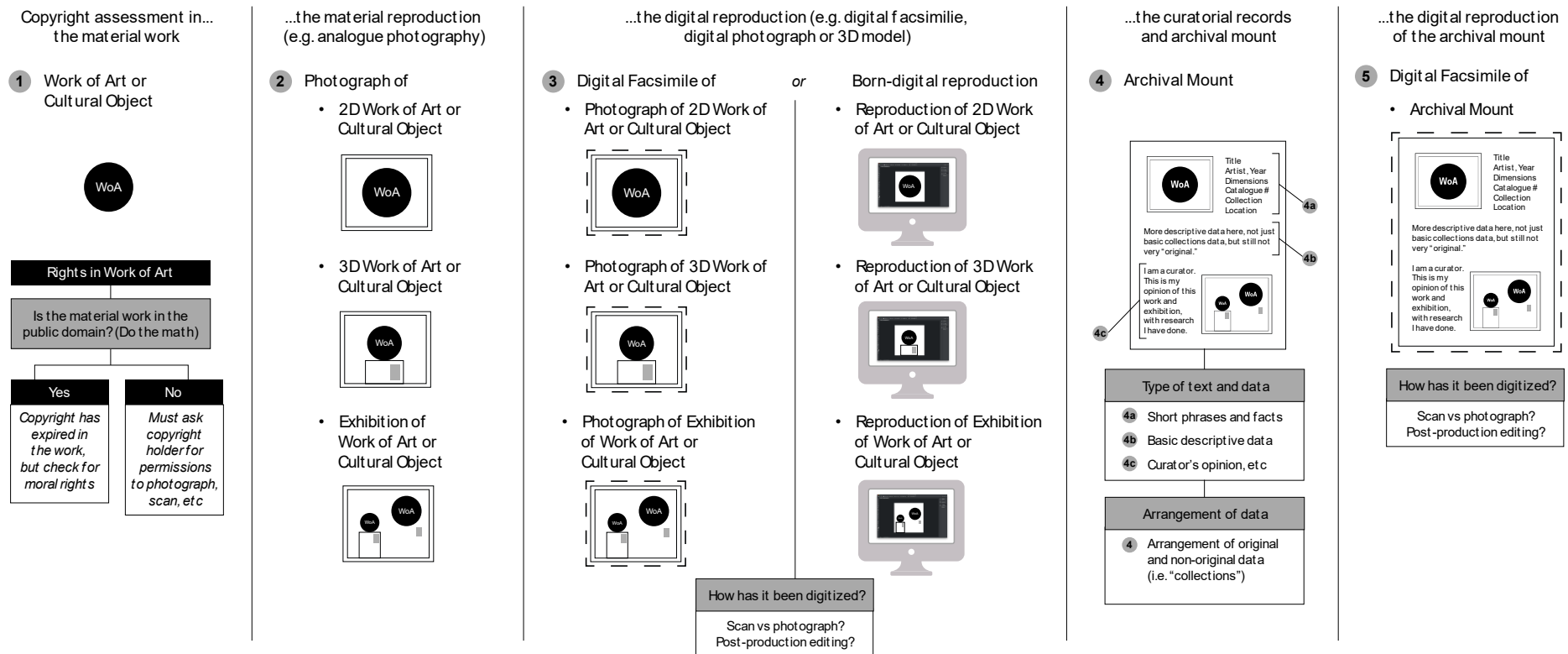
This summary has been simplified to frame the issues raised by the literature review and interview participants when digitising and managing public domain collections.

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<sup>32</sup> <https://hk.louisvuitton.com/eng-hk/stories/masterscampaign2#>

<sup>33</sup> Data Protection Act 2018, c. 12

Figure 3. Layers of rights relevant to copyright and other rights assessments<sup>34</sup>



Andrea Wallace, [CC BY 4.0](https://creativecommons.org/licenses/by/4.0/)

<sup>34</sup> Figures: <https://doi.org/10.5281/zenodo.6242179>



## 2.2. Legal climate in the United Kingdom

Patchwork guidance on how these legal areas intersect leaves room for individualised interpretations by UK GLAMs. In general, this has resulted in a sector-wide approach that resists compliance with UK law.

### 2.2.1. Legislation and case law on whether rights arise in reproduction media

The Copyright Designs and Patents Act 1988 requires a work to be ‘original’ to attract protection.<sup>35</sup> Those arguing that photographic reproductions are sufficiently original rely on a case from 1869 that considered copyright in a photograph reproduction of an engraving.<sup>36</sup> The judge held that the photographic reproduction was original and could be protected. But two factors are important: first, the engraving itself was in-copyright and the claimant enforcing rights in the photograph held the rights in the engraving; and second, reproduction technologies and case law have come a long way since 1869. Without overruling this opinion, later courts have consistently held that skill, labour and/or judgment (*i.e.*, creativity) must be expressed during a work’s creation to attract protection.<sup>37</sup> The creative input must be substantial, or at least not trivial—but no matter how much skill or labour is required, copying a work *per se* cannot make the new work original.<sup>38</sup> These doctrinal developments suggest 2D reproductions of 2D works do not attract a new copyright, no matter the amount of skill and labour involved in their production.

Copyright is more likely to arise when a 3D work is photographed (but not scanned, which is akin to copying *per se*).<sup>39</sup> Protection, however, is not based on the format transfer from 3D to 2D alone. Courts require an examination of the object’s positioning, the angle of the photograph, and other elements like lighting, background and focus to determine whether creative input is expended.<sup>40</sup> It is worth noting that these cases were decided prior to the EU harmonisation of copyright in 2006, which has been argued to require a higher level of creativity to attract copyright protection under the ‘author’s own intellectual creation’ standard.<sup>41</sup> While the UK is no longer an EU member, its courts have held there is “no difference in substance” between UK standards and EU standards where originality in photographs is concerned.<sup>42</sup>

As discussed, data requires creative input in its creation, selection or arrangement to attract copyright in the dataset. In addition, *sui generis* rights can protect a database, but the data itself can be too descriptive or so basic that no protection extends to the individual data components included in the dataset or database. This raises questions around which rights might arise, be enforced, and how, around collections data published online.

Finally, there are provisions of UK copyright law that provide ‘fair dealing’ exceptions for users, like making a temporary copy for private study or use, text and data analysis for non-commercial

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<sup>35</sup> Copyright Designs and Patents Act (CDPA) 1988, c. 48, s. 1(1)

<sup>36</sup> Graves’ Case [1869] LR 4 QB 715

<sup>37</sup> *Ladbroke v William Hill* [1964] 1 All ER 465

<sup>38</sup> *Interlego AG v Tyco Industries* [1989] AC 217; *The Reject Shop Plc v Robert Manners* [1995] FSR 870

<sup>39</sup> This statement refers to a photograph of a discrete object (*e.g.*, a sculpture). More complicated assessments are necessary with complex digitisation processes and cultural heritage, such as 3D reconstruction or photogrammetry of cultural heritage sites. Distinctions might be made between raw data and the composite media and/or impacted if the process ingests or incorporates already existing intellectual property and rights protected media.

<sup>40</sup> *Antiquesportfolio.com plc v Rodney Fitch & Co Ltd* [2001] FSR 345

<sup>41</sup> <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:372:0012:0018:EN:PDF>

<sup>42</sup> *Temple Island Collections Ltd v New English Teas Ltd & another* [2012] EWPC; *Eva-Maria Painer v Standard VerlagsGmbH and Others*, Case C-145/10

research, for criticism, review, quotation, and news reporting, and other purposes.<sup>43</sup> Should online policies and contracts claim overbroad rights that prohibit these uses, the law states such terms cannot be enforced. This is because UK copyright law was revised in 2014 to include contract override provisions that render void or unenforceable any attempts to prohibit by contract certain acts that would otherwise not infringe copyright.<sup>44</sup>

Because of these clear gaps in case law and legislation, the UK Intellectual Property Office and the House of Lords have both directly addressed this issue.

### 2.2.2. UK Intellectual Property Office 2015 Copyright Notice

The clearest and most current statement of law comes from the UK Intellectual Property Office (IPO). In 2015, the UK IPO published its 'Copyright Notice: digital images, photographs and the internet'. On page 3, the IPO directly confronts this issue, referencing the above EU standards and opinions of the Court of Justice of the European Union and their effect in UK law:

[A]ccording to established case law, the courts have said that copyright can only subsist in subject matter that is original in the sense it is the author's own 'intellectual creation'. Given this criterion, it seems unlikely that what is merely a retouched, digitised image of an older work can be considered as 'original'. This is because there will generally be minimal scope for a creator to exercise free and creative choices if their aim is simply to make a faithful reproduction of an existing work.<sup>45</sup>

Despite this, the Copyright Notice has had little impact on digitisation practices in the UK, perhaps because it is guidance and non-binding. When it was published, there was much discussion among GLAMs on what impact it would have on commercial licensing. Only one of the 195 UK GLAM policies surveyed referenced the Copyright Notice: that of the Royal Pavilion & Museums Trust, Brighton & Hove.<sup>46</sup>

### 2.2.3. House of Lords 2018 Debate

Three years later, the House of Lords addressed this issue. Lord Valerian Freyberg posed the following question:

To her Majesty's Government whether they sanction each National Museum's interpretation of image copyright law; and if not, what measures are in place to review whether the National Museums are interpreting image copyright law correctly.<sup>47</sup>

The preliminary response focused on operational matters and autonomy rather than addressing the legal question of copyright and accuracy of legal interpretations among national museums:

National museums are bound to provide free, in person, access to the permanent collections as a condition of government Grant-in-aid (GIA) funding and this policy has been a great success. Provided this condition is met, national museums are encouraged to pursue commercial activities, which may include image licensing. Such activities are an important supplement to museums in supporting their objectives to facilitate participation for people of all ages and backgrounds.<sup>48</sup>

The debate on 12 September 2018 also left the legal questions unresolved. No debate of whether the law supported copyright and licensing fees occurred. Instead, it focused on topics like national

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<sup>43</sup> CDPA 1988, ss. 28-31

<sup>44</sup> CDPA 1988, ss. 28-31, 36, 50, 296

<sup>45</sup> <https://www.gov.uk/government/publications/copyright-notice-digital-images-photographs-and-the-internet/copyright-notice-digital-images-photographs-and-the-internet>

<sup>46</sup> Discussed in Section 3.4.

<sup>47</sup> <https://questions-statements.parliament.uk/written-questions/detail/2017-11-06/HL2907>

<sup>48</sup> <https://questions-statements.parliament.uk/written-questions/detail/2017-11-06/HL2907>

museums' abilities to recover costs, their funding positions and how they respond to operational demands.<sup>49</sup> These concerns, no matter how pressing, cannot justify licensing fees and business models built upon copyright where no copyright arises in reproduction media.

#### 2.2.4. Intersection with obligations on public bodies

National collections belong to the public and fall under various Acts of Parliament, like the Museums and Galleries Act 1992,<sup>50</sup> the National Heritage Act 1983<sup>51</sup> and/or GLAM-specific legislation like the British Museum Act 1963<sup>52</sup> or National Library of Scotland Act 1925.<sup>53</sup> GLAMs hold collections in trust for the public. Whether reproduction media generated around publicly-owned collections in the public domain *also* belong to the public and/or must be provided free of charge depends on how a GLAM (or an Act of Parliament) defines its public task and which documents fall within it, in addition to how a GLAM interprets copyright law.<sup>54</sup> *Section 4* details examples of public tasks that make distinctions between digital surrogates and other reproduction media, including between low and high resolution images for the purposes of performing the task versus the purposes of commercialisation.<sup>55</sup>

Many national, regional and local GLAMs frame open access as balancing income generation against “free access” or “giving collections away for free” as mutually exclusive approaches. However, more than one participant mentioned the weight that national voices carry as clear holdouts on the copyright question, preventing an overall shift forward for the UK GLAM sector. Reasons for this are discussed in *Section 2.4*.

#### 2.2.5. Funders and open licensing requirements

Major funders of national and international projects have adopted open licensing requirements at increasing rates, like the Bill and Melinda Gates Foundation, the Hewlett Foundation and the Arcadia Fund. Initiatives like Plan S and the new UKRI policy require publicly funded projects to publish research articles, monographs and the underlying data in open access so it may be accessed, shared and reused.<sup>56</sup> In the UK, two major funders operate open licensing requirements as a condition of funding.

In September 2020, The National Lottery Heritage Fund adopted a broad policy extending to all project outputs. The Heritage Fund's open licensing requirement aligns with the UK IPO guidance and new EU laws discussed below.<sup>57</sup> Projects funded after 16 September 2020 are required to publish original materials using the CC BY licence ([Creative Commons Attribution 4.0 International](https://creativecommons.org/licenses/by/4.0/)) and dedicate all code, metadata and similar materials to the public domain using the CC0 tool ([Creative Commons 1.0 Universal Public Domain Dedication](https://creativecommons.org/licenses/by/4.0/)). The guidelines state 2D and 3D photographic reproductions and scans of public domain works are not ‘original’ and must be published using the CC0 public domain dedication. The requirement applies only to media generated

<sup>49</sup> <https://parliamentlive.tv/event/index/abdab600-79f4-4962-aaf6-1d9b76c5d442?in=16:47:35>, transcript on file with the author

<sup>50</sup> GLAMs include: British Library, British Museum, Imperial War Museum, National Gallery, National Galleries Scotland, National Library of Scotland, National Maritime Museum, National Museums of Scotland, National Portrait Gallery, Natural History Museum, Science Museum, Tate Gallery, Victoria & Albert Museum and the Wallace Collection. Museums and Galleries Act 1992, c. 44

<sup>51</sup> National Heritage Act 1983, c. 47

<sup>52</sup> British Museum Act 1963, c. 24

<sup>53</sup> National Library of Scotland Act 1925, c. 73

<sup>54</sup> The Re-use of Public Sector Information Regulations 2015, No. 1415

<sup>55</sup> Discussed in *Section 4.2.9*.

<sup>56</sup> <https://www.coalition-s.org>; <https://www.ukri.org/our-work/supporting-healthy-research-and-innovation-culture/open-research/open-access-policies-review/>

<sup>57</sup> <https://www.heritagefund.org.uk/good-practice-guidance/digital-guide-working-open-licences>

by and through the funding; it does not retroactively apply to projects beginning prior to September 2020 or to pre-existing media that is incorporated into a project.

The Wellcome Collection maintains an open access policy for funded research that primarily addresses scientific research data, academic publications, software and code, and other scholarly outputs.<sup>58</sup> Wellcome also specifically prohibits spending funding on image fees and directs users to GLAMs with high quality images that can be downloaded and reused for free. In addition to Wellcome Images, these include the National Gallery of Art, J. Paul Getty Institute and Yale Center for British Art, which are located in the United States.<sup>59</sup> Compliance guidance on any digitised archival images produced by the funding notifies users they should expect Wellcome to “exercise sufficient control over [any rights] to ensure that our public engagement aims are met”.<sup>60</sup> With respect to its own digitised public domain collections, Wellcome releases images as CC0 and CC BY.<sup>61</sup>

## 2.3. Legal climate in the United States and European Union

Based on the overlap in laws and the distribution of open GLAM instances,<sup>62</sup> the United States and European Union (and its Member States) provide relatable relevant peers to the United Kingdom. More consistent authority in these jurisdictions correlates to greater open GLAM participation overall, and especially approaches that publish content to the public domain, at higher qualities and in greater volumes.

### 2.3.1. United States

The prevailing opinion in the United States is that no new rights arise in faithful reproductions of both 2D and 3D works. This is informed by federal case law from 1998, 1999, 2008 and 2016.<sup>63</sup> This premise has been increasingly embraced by US GLAMs, many of whom were early advocates for open access to cultural collections.

Many US GLAMs continue, however, to claim copyright in reproduction media. Even so, the United States has the strongest national showing of open GLAM participation and the use of public domain tools, rather than open licences, as discussed in *Section 3.2* and *Appendix 3*.

US GLAMs rely on government funding sources, the private sector and earned income, which differs from the public funding models in place to support UK and EU GLAMs. Few US GLAMs are considered public institutions for this reason. One exception to this is the Smithsonian Institution, which as a group of public institutions receives around two-thirds of annual funding from public sources. In the US, the Smithsonian has contributed the largest volume of open collections to date, totalling 3,942,729 CC0 assets at the time of this writing.<sup>64</sup>

### 2.3.2. European Union

The European Union has supported more than a decade of legislation and policies with similar aims. A 2011 Recommendation on the digitisation and online accessibility of cultural material and digital preservation promoted the principle that public domain materials should remain in the public

<sup>58</sup> <https://wellcome.org/grant-funding/guidance/open-access-guidance/open-access-policy>

<sup>59</sup> <https://wellcome.org/grant-funding/guidance/open-access-guidance/complying-with-our-open-access-policy>

<sup>60</sup> <https://wellcome.org/grant-funding/guidance/intellectual-property-guidance/intellectual-property-policy>

<sup>61</sup> Discussed in *Section 3* and *4*.

<sup>62</sup> Discussed in *Section 3*.

<sup>63</sup> *Bridgeman Art Library, Ltd v Corel Corp*, 25 F. Supp. 2D 421 (S.D.N.Y. 1998); *Bridgeman Art Library, Ltd v Corel Corp*, 36 F. Supp. 2d 191 (S.D.N.Y. 1999); *Meshwerks, Inc v Toyota Motor Sales USA, Inc*, 528 F.3d 1258 (10th Cir. 2008); *President and Fellows of Harvard College v Steve Elmore*, No. CIV 15-00472-RB/KK, 19 (D.N.M. 2016).

<sup>64</sup> <https://collections.si.edu/search/results.htm?q=&media.CC0=true>

domain following digitisation.<sup>65</sup> After years of inconsistent GLAM approaches, the EU formalised this principle in the 2019 Copyright in the Digital Single Market Directive.<sup>66</sup> Article 14 confronts the long-standing practice of claiming rights in non-original reproduction media, but is limited to “works of *visual art* in the public domain.” Despite not extending to *all* works in the public domain, Article 14 broadly applies to everyone, from GLAMs to commercial photo libraries to the general public. It also applies to “any material resulting from an act of reproduction”, such as metadata, software code, raw 3D scans and 2D photography, as well as future media formats and technologies. Also in 2019, the EU expanded obligations for public sector bodies to create and publish data on the principle of “open by design and default” via the Open Data Directive, a recast of the Public Sector Information Directives.<sup>67</sup> The Commission adopted a policy of CC BY 4.0 for all original materials and CC0 1.0 for raw data, metadata, and other comparable documents to support reuse by the general public to the widest degree.<sup>68</sup> The Commission is currently revisiting how the 2011 Recommendation can further the digital transformation of the cultural sector<sup>69</sup>, accompanied by a new 2021 Recommendation on a common European data space for cultural heritage.<sup>70</sup> These developments communicate a clear EU consensus and growing momentum to protect its robust public domain, break down access barriers to cultural collections and to provide GLAMs and the public with the technical infrastructures to support digital transformation and boost the European economy.

## 2.4. The potential for resolution on the copyright question

Legal developments abroad that support a robust public domain may have no effect in UK law, but they will undoubtedly impact user behaviour in the UK, and globally. As US and EU GLAMs increasingly publish collections to the public domain, user groups, research activities and reuse interest (both general and commercial) will increasingly shift to these digital markets. This reality poses risks to the digital relevance of UK collections and how heritage collections can boost the UK economy, particularly if the question of copyright goes unresolved in the UK.

### 2.4.1. Legal resolution is unlikely

Government resolution in the near future seems unlikely. The UK lacks plans to implement a strategy equivalent to the 2019 EU Directives that support legal clarity around the reuse of digital collections in the public domain.<sup>71</sup> Moreover, Brexit resulted in the withdrawal of existing copyright exceptions available to UK GLAMs, and without new provisions in place to reduce risk or insulate them.<sup>72</sup>

Judicial resolution also seems unlikely, which would require a GLAM institution to enforce copyright against a user in court. However, this would be risky because: (1) the claim to copyright is weak; (2) website terms also remain questionable; and (3) procedural rules place court costs and counsel fees on the shoulder of the loser. Success on the matter is low, while the risks of enforcement are high: a GLAM could be saddled with an unfavourable precedent in addition to an expensive bill. To be fair,

<sup>65</sup> <https://op.europa.eu/en/publication-detail/-/publication/510c5e78-3ec5-4f7a-a9ef-e4b5f044b1d0/language-en>

<sup>66</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX%3A32019L0790&from=EN>

<sup>67</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1024&from=EN>

<sup>68</sup> [https://ec.europa.eu/transparency/documents-register/detail?ref=C\(2019\)1655&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=C(2019)1655&lang=en)

<sup>69</sup> [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/11837-Evaluation-of-the-Recommendation-on-digitisation-and-online-accessibility-of-cultural-material-and-digital-preservation/public-consultation\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/11837-Evaluation-of-the-Recommendation-on-digitisation-and-online-accessibility-of-cultural-material-and-digital-preservation/public-consultation_en)

<sup>70</sup> [https://digitallibrary.cultura.gov.it/wp-content/uploads/2021/11/C\\_2021\\_7953\\_1\\_EN\\_ACT\\_part1\\_v5\\_YLDDJUfeiMyrMrt5F0sz2MGmc\\_80911.pdf](https://digitallibrary.cultura.gov.it/wp-content/uploads/2021/11/C_2021_7953_1_EN_ACT_part1_v5_YLDDJUfeiMyrMrt5F0sz2MGmc_80911.pdf)

<sup>71</sup> Or to secure to GLAMs new copyright exceptions around in-copyright and out-of-commerce collections, which is outside the scope of this report but worth mentioning. <https://questions-statements.parliament.uk/written-questions/detail/2020-01-16/4371>

<sup>72</sup> e.g., Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works (27 October 2012) OJ L 299/5

any type of legal process, even mediation, is more than most GLAMs can afford despite whether the parties proceed to trial where the rule on a loser bearing costs would apply. But because these factors prevent access to or use of courts to settle the matter, GLAMs resort to using cease-and-desist notices of infringement. In 2009, the National Portrait Gallery did exactly this in a letter to Wikipedia editor Derek Coetzee, which is now publicly available online.<sup>73</sup> It is much cheaper (and usually less public) to resolve disputes this way. The nature of the UK legal system thus presents deterrents to judicial resolution.

There was unanimous consensus among interview participants that no GLAMs previously had or planned to enforce copyright claims beyond a cease-and-desist. Notices primarily pertain to egregious reuses or infringement of in-copyright collections. Many noted they lacked resources (and staffing) to issue notices.

#### 2.4.2. Voluntary resolution is unlikely

Few GLAMs employ policies that align with the UK IPO's Copyright Notice. The majority position is to make copyright claims despite the IPO authority. Moreover, despite two decades of data indicating that licensing incurs losses, GLAMs continue to operate such services.<sup>74</sup>

Recent data suggests these sources of limited income are shrinking with each GLAM's shift to open access. In other words, licensing images of public domain works is neither a present nor future revenue scheme with any potential for growth. UK GLAMs must operate within a global marketplace for image licensing where high-resolution images are increasingly released by other GLAMs to the public domain for any reuse. As one participant commented, "You can't compete with free."

As early as 2002, studies by Simon Tanner and Marilyn Deegan reported the majority of institutions were funnelling income back into running the service, which operated at a greater cost than it brought in.<sup>75</sup> Subsequent studies across libraries, archives and special collections have reinforced these findings.<sup>76</sup> During the House of Lords debate, Lord Freyberg raised this and other publicly available UK data showing that between 2013-2017:

- **Government Art Collection** operated at a loss, except for a profit of £180 made in 2017.
- **National Gallery** received between £121,014 (2013) and £107,847 (2015) for all image licensing\* operated through the National Gallery Company. From 2016, the Gallery received a flat income of £100,000 per year based on licensing its image collection to the National Gallery Company on an annual basis. As a private entity, the National Gallery Company is not subject to the Freedom of Information Act 2000.
- **National Galleries Scotland** received between £8,543 (2013) and £19,720 (2016) in profit.
- **National Portrait Gallery** brought in between £225,001 (2014) and £114,137 (2017) in profit for all image licensing\*, while spending between £216,161 (2014) and £245,941 (2017) in total costs related to all departmental work. Notably, the 3,300 high-resolution images uploaded in 2009 by user Derek Coetzee to Wikimedia Commons remain online more than a

<sup>73</sup> [https://commons.wikimedia.org/wiki/User:Dcoetzee/NPG\\_legal\\_threat](https://commons.wikimedia.org/wiki/User:Dcoetzee/NPG_legal_threat)

<sup>74</sup> See Section 1.

<sup>75</sup> [https://kclpure.kcl.ac.uk/portal/en/publications/exploring-charging-models-for-digital-cultural-heritage-in-europe\(5f0e70c0-8753-4d71-bbf9-881dfa5352a9\)/export.html](https://kclpure.kcl.ac.uk/portal/en/publications/exploring-charging-models-for-digital-cultural-heritage-in-europe(5f0e70c0-8753-4d71-bbf9-881dfa5352a9)/export.html), p 1; [https://kclpure.kcl.ac.uk/portal/en/publications/reproduction-charging-models--rights-policy-for-digital-images-in-american-art-museums\(95d04077-f8ec-4094-b8c1-d585c6b16d9b\).html](https://kclpure.kcl.ac.uk/portal/en/publications/reproduction-charging-models--rights-policy-for-digital-images-in-american-art-museums(95d04077-f8ec-4094-b8c1-d585c6b16d9b).html), p 40

<sup>76</sup> See: <https://meridian.allenpress.com/american-archivist/article/74/2/522/24193/Copyfraud-or-Legitimate-Concerns-Controlling>; <https://www.clir.org/pubs/reports/pub157/>; <https://pro.europeana.eu/post/making-impact-on-a-small-budget>; <https://rbm.acrl.org/index.php/rbm/article/view/435>; <https://journals.sub.uni-hamburg.de/hjk/article/view/1191>; <https://www.scienceopen.com/document?vid=72172cf4-9b91-46cc-a494-bf95694a8610>

decade later. Rather than damaging their profitability, the National Portrait Gallery reported 36 of the top 50 selling images from 2010-2015 came from these.<sup>77</sup>

- **Royal Museums Greenwich** received between £88,000 (2014) and £146,000 (2017) in profit.
- **Sir John Soane’s Museum** made approximately £5,000 each year. Annual costs to run the licensing service are around £4,450 per annum.
- **Tate** data relates to income from photographs of public domain artworks, rather than profit, and ranges from £191,316 (2014) to £161,535 (2016).
- **Victoria & Albert Museum** made between £75,000 (2014) and £166,000 (2017) in profit for all image licensing\*, while spending between £122,000 (2015) and £201,000 (2018) in salaries and overheads.
- **Wallace Collection** brought in between £6,000 and £10,000 after accounting for direct costs (mainly staff) but no indirect overheads.<sup>78</sup>

\* *Income data includes all image licensing, rather than only images of public domain artworks.*

Collections data and metadata are also perceived to carry commercial licensing value, particularly with archival materials around family and local histories, data held by regimental museums, and comparable materials value to platforms like Ancestry.com<sup>79</sup> and FindMyPast.<sup>80</sup>

The 2015 Striking the Balance report noted it was “difficult to identify detailed information about the commercial return” from licensing because of “a common reluctance to report relatively low direct revenues, often attributable to a fear that management will perceive the activity as not worth it (and hence it may put jobs at risk)”.<sup>81</sup> Interviews revealed one instance of a job reduction among GLAMs that dedicate collections to the public domain. However, the position itself was not tied to generating revenue and instead was focused on tasks like asset management, online publication and managing volunteers who contributed to data management and publishing collections. Another instance of restructuring revealed the GLAM was able to point to their CC0 policy to make the case for why a job was no longer needed and transferred the person to a different role. Some felt advocating for open access can put an individual’s job at risk where assertions are not given around staff reassignment.

In addition, the “challenging economic and policy environment” noted by the report has since grown more dire with COVID-19 and government pressures to self-generate revenue.<sup>82</sup> The choice to forgo licensing revenue, however small, is made more difficult by pressures from legislators and Governments to generate income, no matter the business model.<sup>83</sup> This is discussed further in *Section 5*. However, an obligation or need to generate income, or the ability to demonstrate profits from licensing, cannot be exchanged for the legal conditions necessary for a valid copyright to arise. As discussed above, works must be sufficiently original for copyright to subsist. Only then are copyright licensing fees and business models justified and legal.

Together, the above conditions indicate it is unlikely that resolution on this issue will come from legal or voluntary actions.

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<sup>77</sup> [https://www.whatdotheyknow.com/request/nmdc\\_report\\_striking\\_the\\_balance\\_4](https://www.whatdotheyknow.com/request/nmdc_report_striking_the_balance_4)

<sup>78</sup> [https://www.whatdotheyknow.com/user/richard\\_stephens\\_2#foi\\_requests](https://www.whatdotheyknow.com/user/richard_stephens_2#foi_requests)

<sup>79</sup> <https://www.ancestry.com/>

<sup>80</sup> <https://www.findmypast.com>

<sup>81</sup> [https://www.nationalmuseums.org.uk/media/documents/publications/striking\\_the\\_balance.pdf](https://www.nationalmuseums.org.uk/media/documents/publications/striking_the_balance.pdf), p. 30

<sup>82</sup> [https://www.nationalmuseums.org.uk/media/documents/publications/striking\\_the\\_balance.pdf](https://www.nationalmuseums.org.uk/media/documents/publications/striking_the_balance.pdf), p. 4

<sup>83</sup> <https://www.theartnewspaper.com/comment/dcms-leaked-letter-museums>

## 3. Open GLAM in the UK, and globally

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*“Our images now appear in journal articles, reports and random places as purely illustrative... we’ve seen them printed out and posted on school walls, or on birthday cards and other places. We no longer collect examples because there are too many!”*

Staff at a UK open GLAM

### 3.1. Introducing the data

Before discussing the data in more depth, the following reminders may be helpful.<sup>84</sup>

**First**, the starting point of data collection is whether **digital surrogates of public domain works** are made available online.

**Second**, ‘open’ policies and licences refer to only those which **permit commercial use** of materials.

**Third**, the report follows the UK Intellectual Property Office’s position: **no new rights arise in faithful reproductions of public domain works**. Based on this, the following categories are useful to define:

- **Public domain compliant assets** are digital media published using public domain or CC0 tools. Under the UK IPO’s position, these tools and their application comply with UK law;
- **Open compliant assets** are digital media published using open licences, such as CC BY, CC BY-SA, or the Open Government Licence. Under the UK IPO’s position, these licences are misapplied and do not comply with UK law.

The figure 4 diagram illustrates where these tools and licences fall along the spectrum of rights and reuse.

**Fourth**, ‘all eligible data’ describes when GLAMs release *all* digital surrogates of public domain works under open licences and public domain tools. By contrast, ‘some eligible data’ describes when GLAMs release *some* digital surrogates of public domain works under open licences and tools on an individual project or output basis.

**Fifth**, data analysis should be seen as a baseline discussion or an ‘at least’ approach to quantifying digital collections and engagement with open access. There are many reasons for why data may vary, even within a given GLAM’s approach.<sup>85</sup> In reality, this is representative of the user experience when searching online for copyright policies and digital collections available for reuse.

**Sixth**, ‘instance’ refers to an institution; ‘volume’ refers to an amount. These are mutually exclusive. Importantly, volume does not imply unique assets. The same asset or group of assets may appear more than once if the institution has shared them via two or more platforms.

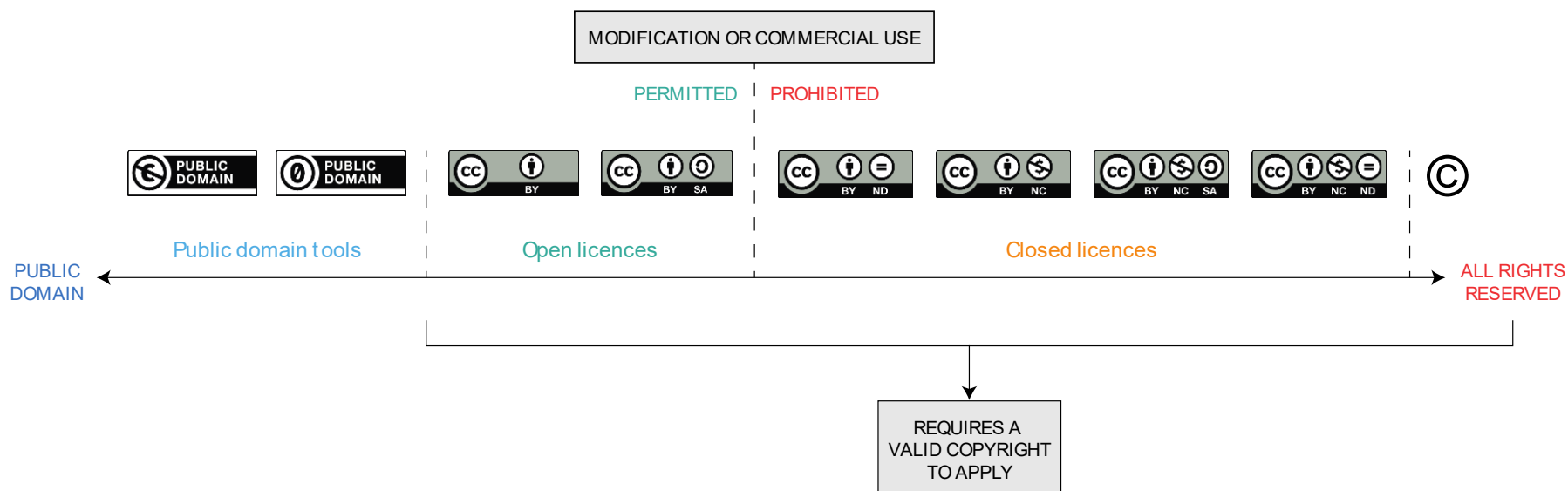
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<sup>84</sup> These and other terms are discussed in *Section 1.3*.

<sup>85</sup> See, e.g., *Section 1.4.2*.



Figure 4. Spectrum of Creative Commons licences and public domain tools<sup>86</sup>



Andrea Wallace, [CC BY 4.0](https://creativecommons.org/licenses/by/4.0/)

<sup>86</sup> Figures: <https://doi.org/10.5281/zenodo.6242179>

To frame the discussion, a short summary of findings is included below.

**Section 3.2.** How the UK measures up to the global open GLAM picture:

- At least 1,208 institutions and organisations publish digital collections using open licences and public domain tools. The UK comprises 80 or 6.6% of these instances and ties with Sweden (80 or 6.6%) for third to the United States (292 or 24.2%) and Germany (157 or 13.0%).
- Of the top 10 countries with the highest representation of instances, those that publish all eligible data to the public domain are ordered as follows: the United States (50), France (21), Spain (15), Germany (14), Sweden (11), the Netherlands (8), the United Kingdom (6), Poland (4) and Norway and Sweden (1). In the UK these include Birmingham Museums Trust, National Library of Wales, Newcastle Libraries, Royal Pavilion & Museums Trust, Brighton & Hove, Wellcome Collection and York Museums Trust.
- The majority of UK instances (73 or 91.3%) publish assets using open licences and public domain tools as exceptions to institutional policies that reserve rights in eligible data.
- Globally, GLAMs have released at least 70,931,426 open and public domain assets to a variety of platforms. Of these, UK GLAMs have published at least 10,487,115, accounting for 14.8% of all global open assets. 7 GLAMs were identified as contributing 99.3% of all UK contributions.
- 143 Museums and Galleries make all eligible data available under open licences and public domain tools. Of these, almost half (68 or 47.6%) provide free entry onsite and free reuse online. In the UK, this includes the Birmingham Museums Trust.

**Section 3.3.** How UK GLAMs compare to one another:

- Of the UK GLAM Sample of 195 GLAMs (which includes all UK instances from the Open GLAM Survey), 144 or 73.8% operate policies of closed or all rights reserved for eligible assets. In reality, this number is much higher. Accounting for all UK GLAMs would reduce the representative percentages of open instances and data volume to vanishingly small numbers.
- Seven GLAMs have contributed 99.3% of all UK open assets. These include: Natural History Museum (7,131,263), British Library (1,187,746), Portable Antiquities Scheme (1,038,191), Royal Botanic Gardens, Kew (595,140), Wellcome Collection (387,228), York Museums Trust (40,426) and Royal Pavilion & Museums Trust, Brighton & Hove (28,010).
- The majority of open GLAM instances (50 or 62.5%) publish fewer than 100 assets using open licences or public domain tools, accounting for a total of 1,029 assets or 0.009% of the total volume in the UK.
- Based on instances, the primary platform for publication is Art UK (47 instances or 58.8%, contributing 9,810 assets). Based on volume, the primary platform for publication is the GLAM's own website (6,664,534 assets or 63%, contributed by 9 instances).
- At least 35 GLAMs (or 17.9%) of the sample maintain technical protection measures that limit viewing, downloads or reuse of assets. A number of GLAMs have removed open assets from platforms.

## 3.2. A deep dive into the Open GLAM Survey: How does open GLAM in the UK measure up to the rest of the world?

**Note:** This section discusses data on all known instances of open GLAM activity. It takes a closer look at the GLAMs engaged to demonstrate the nuance and complexity of approaches taken.

The sample includes data as of 7 October 2021 from the Open GLAM Survey managed by Douglas McCarthy and Andrea Wallace.<sup>87</sup>

Each section signals whether the data discussed is **Global**, or for the **United Kingdom** and how it compares to the **Rest of the world**.

### 3.2.1. Open GLAM instances: geographic spread and open access scope

Globally, at least 1,208 institutions and organisations release some or all eligible data using open licences and public domain tools. Of these, the UK comprises 80 or 6.6% of open GLAM instances.

**Global.** GLAMs are located in 49 countries across Africa (1 total), Asia (28 total), Australasia (45 total), Europe (779 total), North America (319 total) and South America (33 total).<sup>88</sup>

A majority of 937 (77.6%) approach open access on a collections-by-collections basis. This means they release **some** eligible data under open licences or public domain tools. The remaining 271 (22.4%) approach open access as a matter of policy. This means they release **all** eligible data under open licences or public domain tools.

**United Kingdom.** GLAMs are distributed across the UK as follows: England (65 or 5.4% of Global GLAMs); Scotland (13 or 1.1%); Wales (2 or 0.2%). Museums, Universities and Other represent 80.0% (64) of open GLAMs. Libraries, Archives and Galleries represent 20.0% (16).

A majority (73 or 91.3% of UK GLAMs) release **some** eligible data under open licences or public domain tools. The remaining (7 or 8.7% of UK GLAMs) release **all** eligible data under open licences or public domain tools.

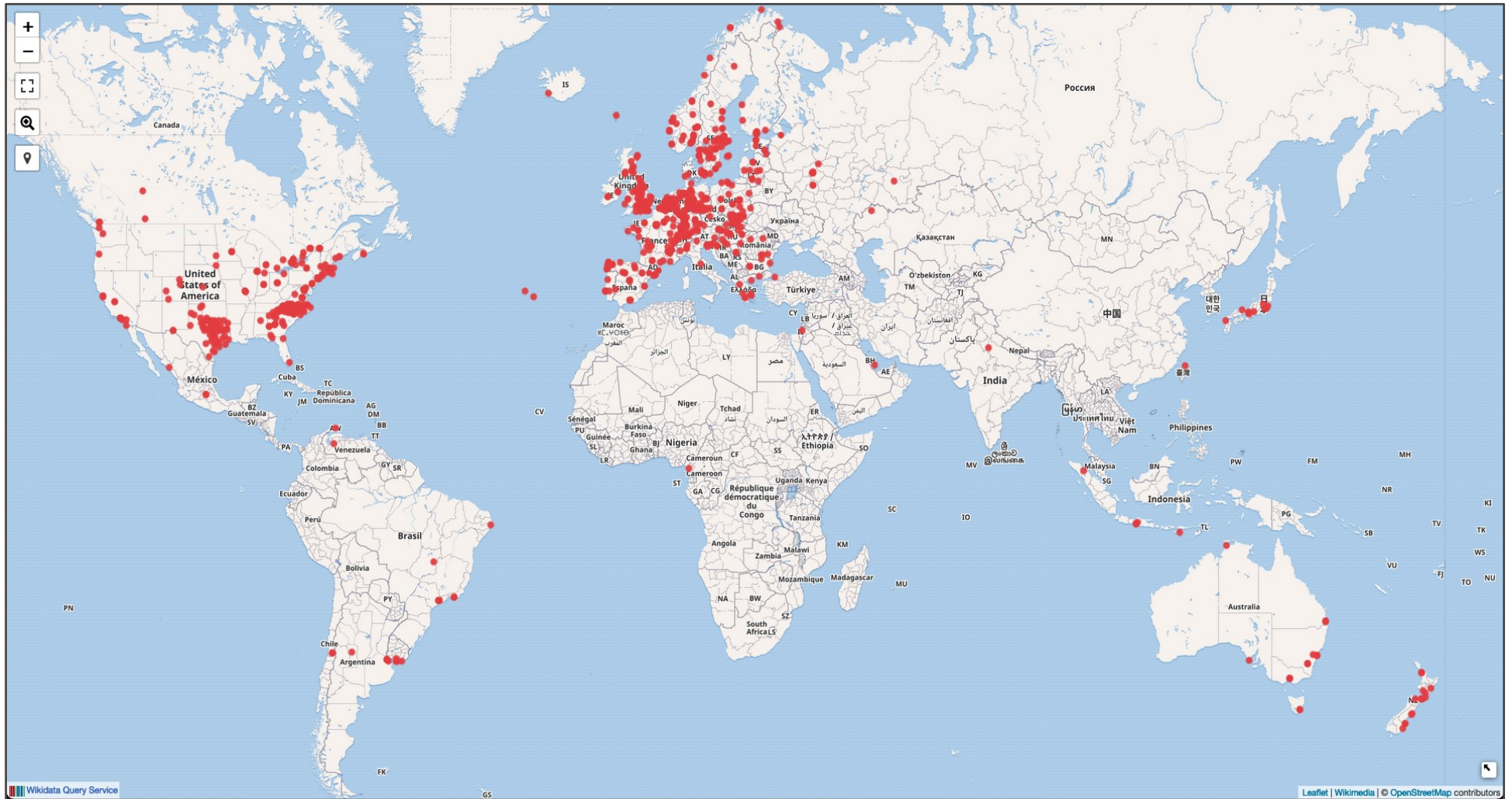
For total open GLAM instances, the UK (6.6%) and Sweden (6.6%) are third to the United States (24.2%) and Germany (13.0%). Despite this, the data shows 91.3% of UK instances approach open access as an exception, rather than the rule. Data on the top 10 countries is discussed further in *Section 3.2.3* and in *Appendix 3: Top 10 countries with open GLAM participation*.

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<sup>87</sup> Douglas McCarthy and Andrea Wallace, "Survey of GLAM open access policy and practice," <http://bit.ly/OpenGLAMsurvey>, version on 7 October 2021

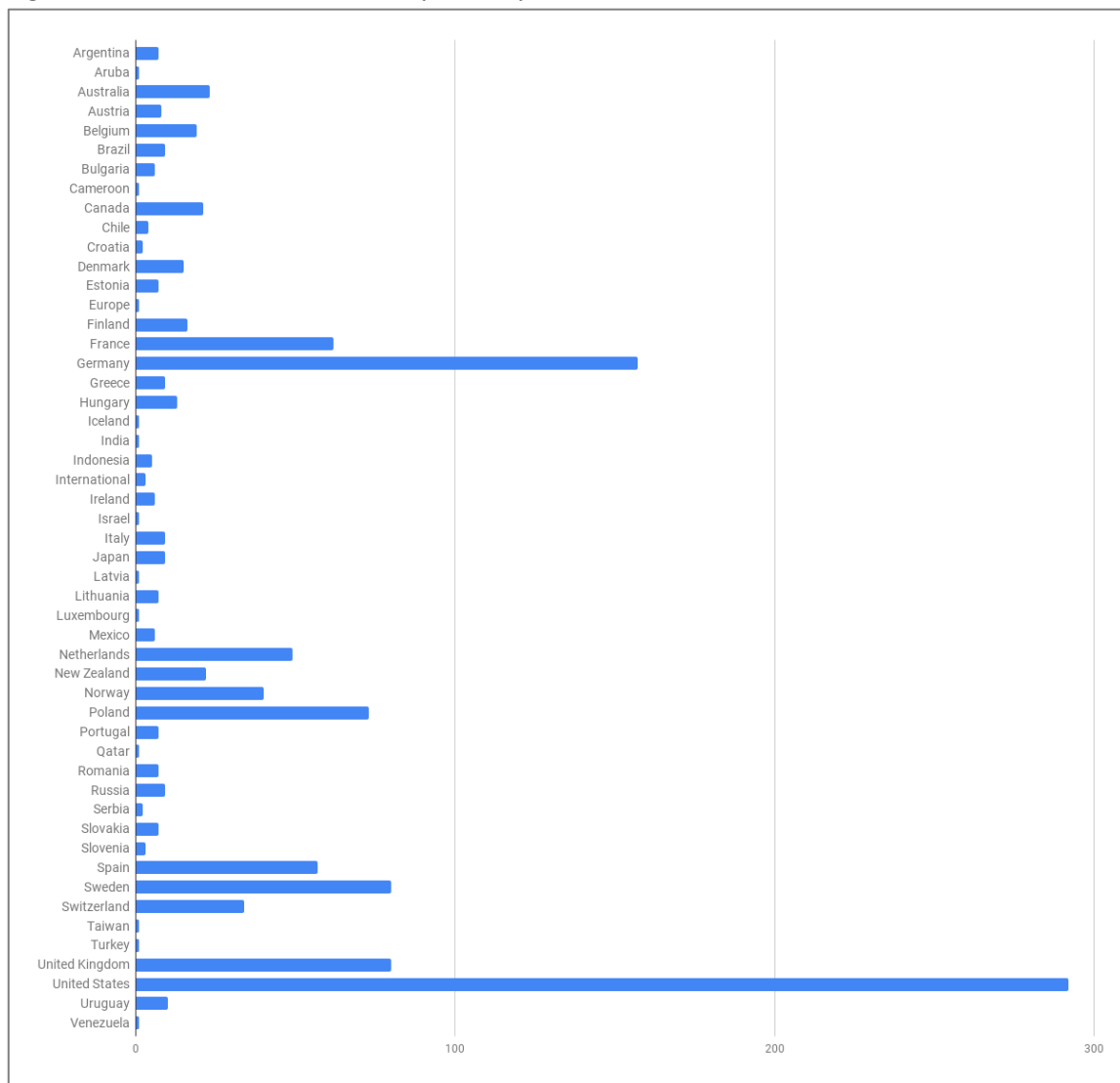
<sup>88</sup> Argentina (9); Aruba (1); Australia (23); Austria (8); Belgium (19); Brazil (9); Bulgaria (6); Cameroon (1); Canada (21); Chile (4); Croatia (2); Denmark (15); Estonia (7); Finland (16); France (62); Germany (157); Greece (9); Hungary (13); Iceland (1); India (1); Indonesia (5); Ireland (6); Israel (1); Italy (9); Japan (9); Latvia (1); Lithuania (7); Luxembourg (1); Mexico (6); Netherlands (49); New Zealand (22); Norway (40); Poland (73); Portugal (7); Qatar (1); Romania (7); Russia (9); Serbia (2); Slovakia (7); Slovenia (3); Spain (57); Sweden (80); Switzerland (34); Taiwan (1); Turkey (1); United Kingdom (80); United States (292); Uruguay (10); Venezuela (1). Non-national outliers include 4 organisations: European Space Agency (Europe); Khalili Collections, Biodiversity Heritage Library, and the UNESCO Archives (International).

Figure 5. Global open GLAM instances<sup>89</sup>



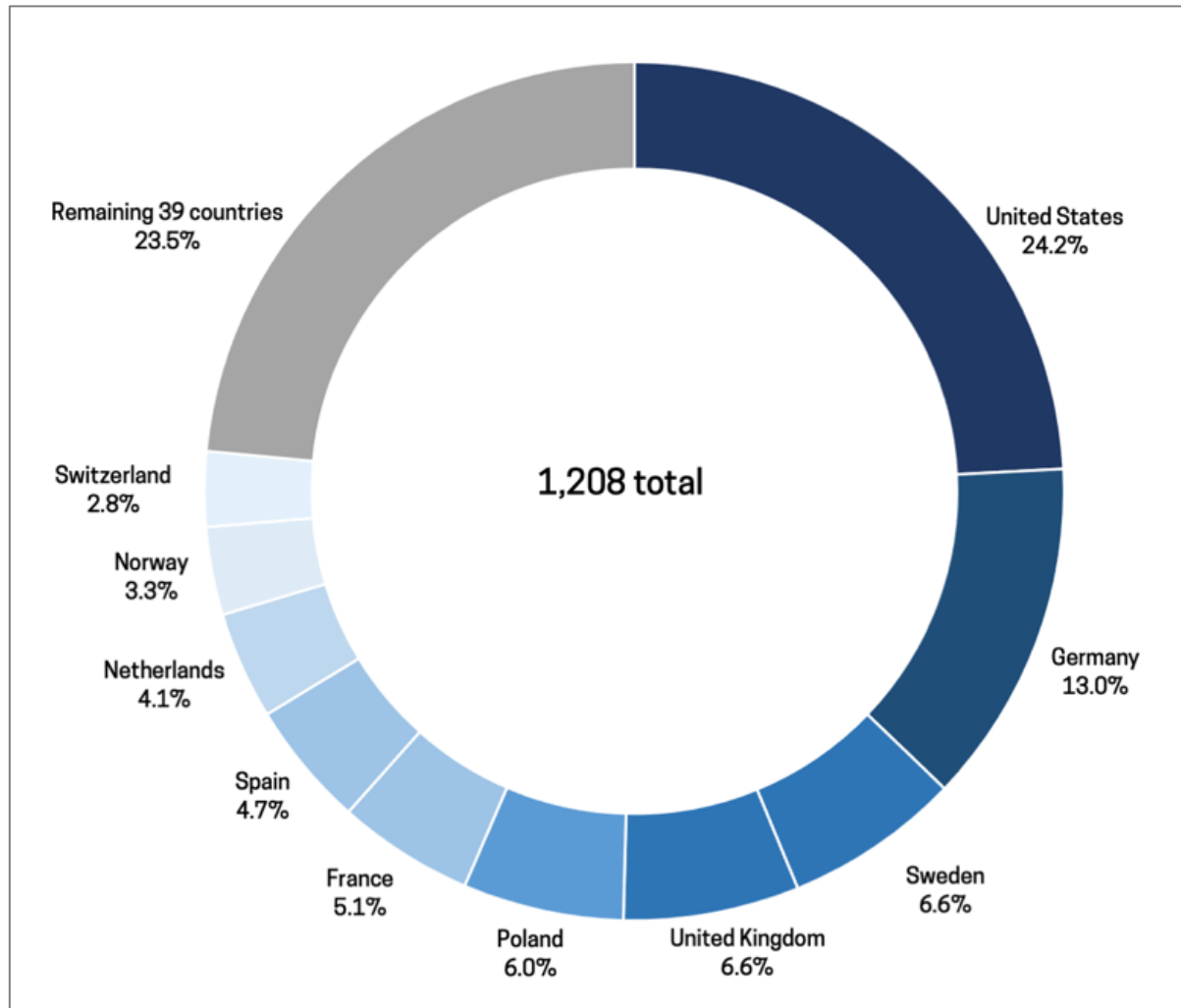
<sup>89</sup> Figures: <https://doi.org/10.5281/zenodo.6242179>

Figure 6. Distribution of instances by country<sup>90</sup>



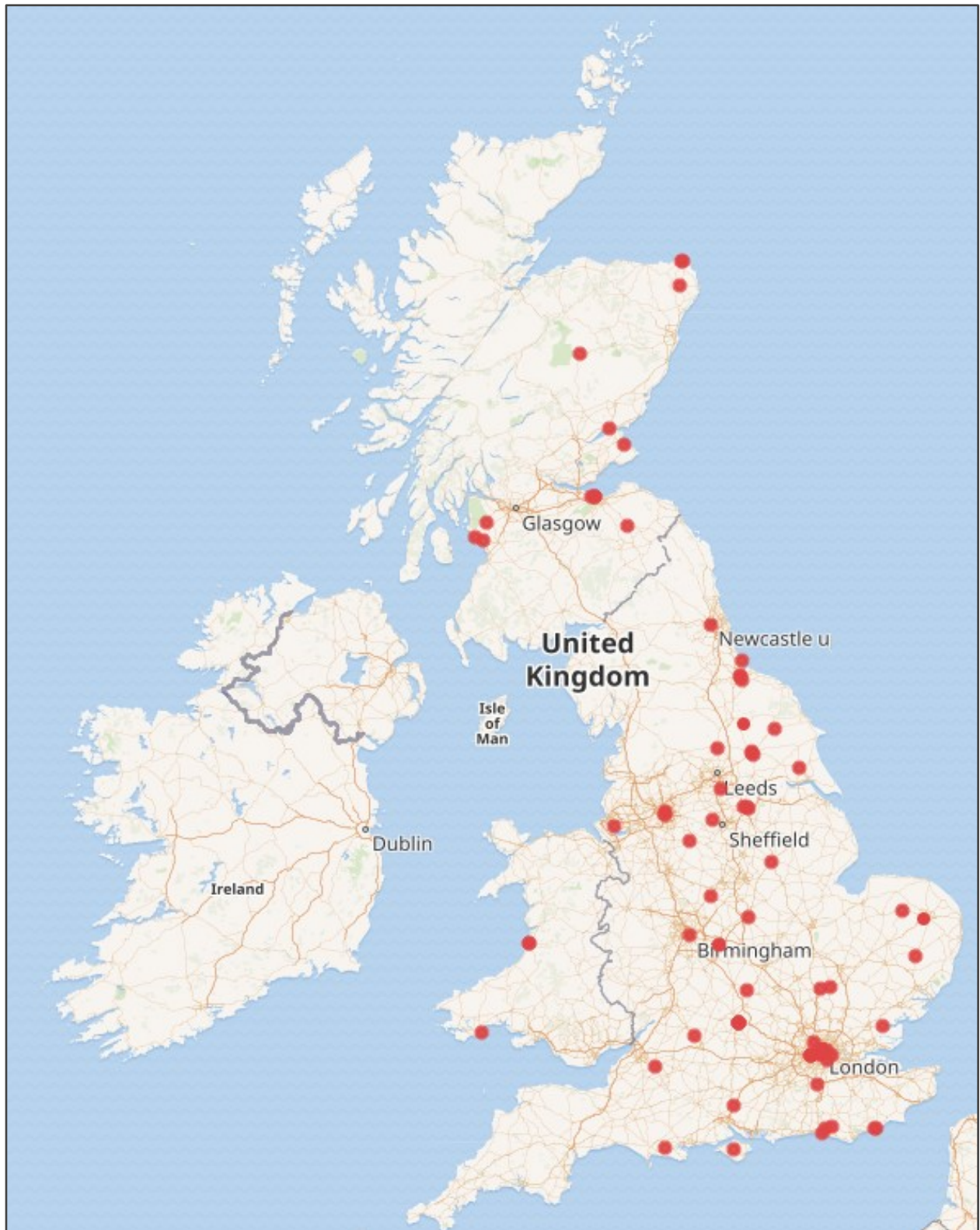
<sup>90</sup> Figures: <https://doi.org/10.5281/zenodo.6242179>

Figure 7. Top 10 countries compared, and remaining 39 countries<sup>91</sup>



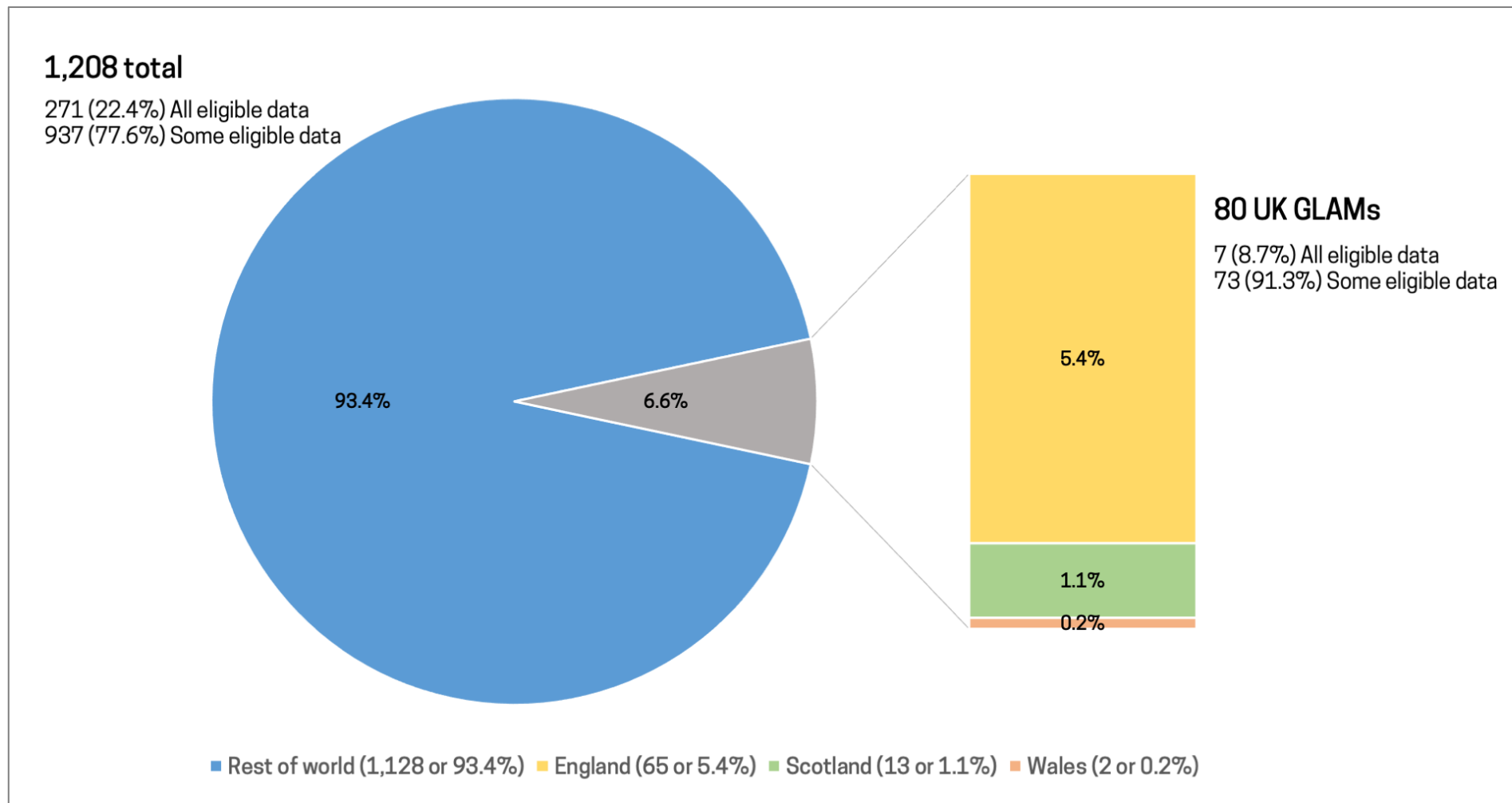
<sup>91</sup> Figures: <https://doi.org/10.5281/zenodo.6242179>

Figure 8. UK open GLAM instances<sup>92</sup>



<sup>92</sup> Figures: <https://doi.org/10.5281/zenodo.6242179>

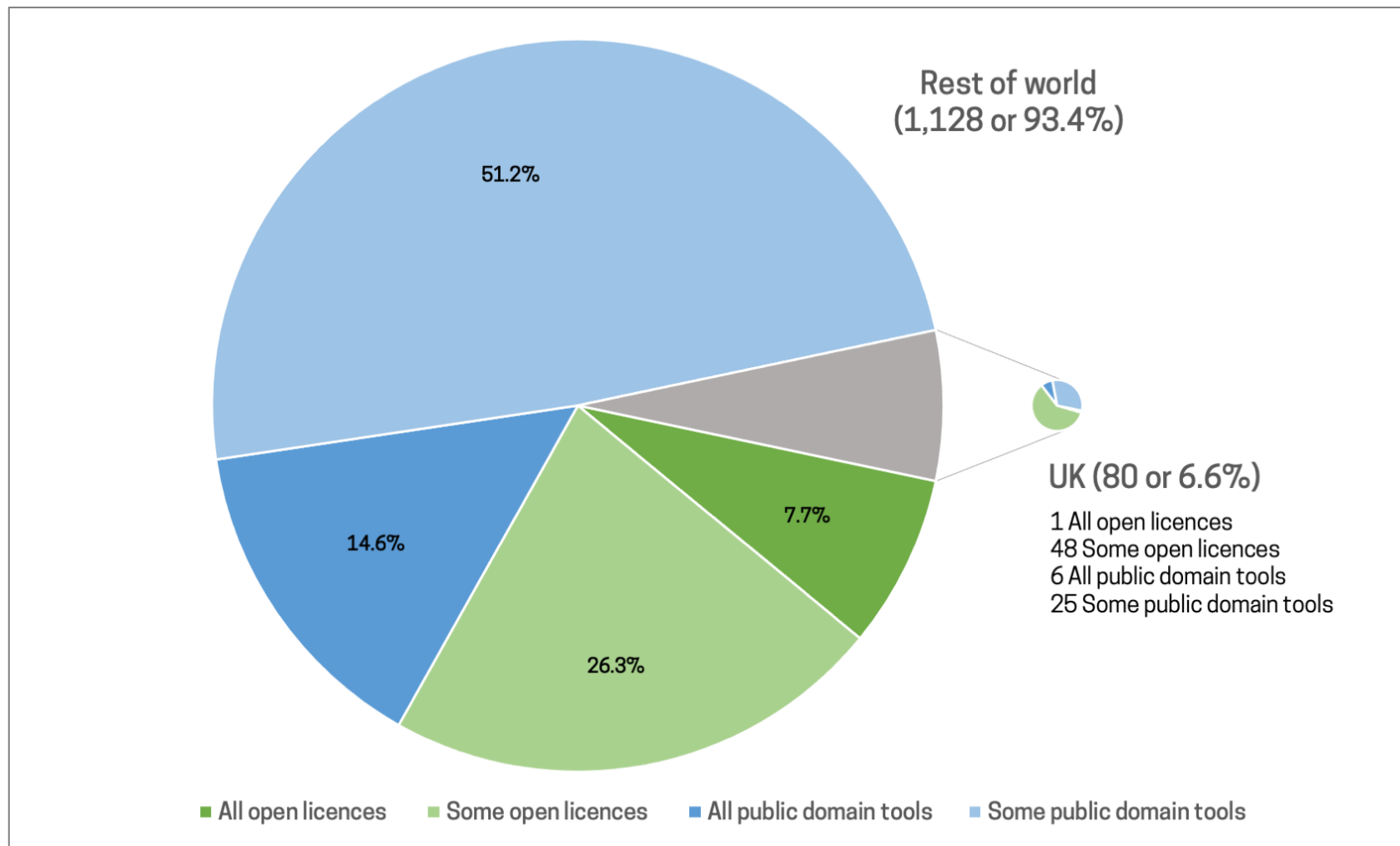
Figure 9. Open access scope: UK GLAM instances compared to the rest of the world<sup>93</sup>



<sup>93</sup> Figures: <https://doi.org/10.5281/zenodo.6242179>



Figure 10. Distribution of open licenses and public domain tools: UK compared to the rest of the world, at scale<sup>94</sup>



<sup>94</sup> Figures: <https://doi.org/10.5281/zenodo.6242179>

### 3.2.2. Open GLAM instances: open versus public domain compliant assets

**Global.** Of the total 1,208 GLAMs, 411 (34.0%) **claim new rights** and use **open licences** to publish assets generated around public domain works. Of the 411, there are 94 (7.8%) who take this position for **all eligible data**. The remaining 317 (26.2%) take this position for **some eligible data**.

The other 797 (66.0%) **claim no new rights** publish assets using **public domain tools**. Of the 797, there are 177 (14.7%) who take this position for **all eligible data**. The remaining 620 (51.3%) take this position for **some eligible data**. In EU Member States alone, new survey entries and the volume of public domain compliant assets are expected to skyrocket as GLAMs align policies with Article 14 of 2019 Copyright in the Digital Single Market Directive and release all eligible data for any reuse.<sup>95</sup>

**United Kingdom.** Of the total 80 UK GLAMs, 49 (or 61.3%) **claim new rights** and use **open licences** to publish assets generated around public domain works. Based on the data immediately above, the UK is the inverse of the global position. Of these, 1 GLAM takes this position for **all eligible data** (Portable Antiquities Scheme). The remaining 48 take this position for **some eligible data**.

The other 31 (38.7% of UK) publish assets using **public domain tools**. Of the 31, there are 6 who take this position for **all eligible data**. These are Birmingham Museums Trust, National Library of Wales, Newcastle Libraries, Royal Pavilion & Museums Trust, Brighton & Hove, Wellcome Collection and York Museums Trust. The remaining 25 (31.3% of UK) take this position for **some eligible data**.

### 3.2.3. Open GLAM participation in top 10 countries

For comparison, the top 10 countries with high open GLAM instances and their volume are discussed in detail in *Appendix 3: Top 10 countries with open GLAM participation*. Short summaries are provided below.

The United States (98.9%), Poland (97.2%) and Spain (78.9%) lead on the percentage of instances who publish eligible data to the public domain, rather than claim new rights and publish data using open licences.<sup>96</sup> However, countries that lead on the national percentage of instances that publish **all eligible data to the public domain** are France (33.9%) and Spain (26.3%). Instances that publish all eligible data to the public domain are ordered as follows: the United States (50), France (21), Spain (15), Germany (14), Sweden (11), the Netherlands (8), the United Kingdom (6), Poland (4) and Norway and Sweden (1).

Representation among these countries may be influenced by one or more factors, such as cultural mindset, legal clarity on the question of copyright, the presence of local or national aggregators, partnerships formed with external platforms, or targeted digitisation campaigns and hackathons.

**United States – 292 instances; 10,662,295 assets.** The US has the most legally compliant open GLAM practice among instances. The most common platform for publication is Wikimedia Commons (201 or 69.1% of US instances). 56 US instances publish open collections via their own website, often at medium to very high-resolution formats. The US has a high representation of total instances that publish all eligible collections to the public domain: 49 total instances (or 16.8% of US instances). The Smithsonian Institution accounts for 37.0% of the total volume for the US, with 3,942,729 CCO assets.

**Germany – 157 instances; 2,360,368 assets.** Most instances in Germany claim new rights and publish data using open licences (115 or 72.3% of Germany instances). Until recently, this was lawful

<sup>95</sup> See Section 2.3.1.

<sup>96</sup> See Appendix 3.

and supported by case law. The platform and project Coding da Vinci has significantly impacted instances of open GLAM in Germany, accounting for 96 (or 61.1% of Germany instances). The German Digital Library accounts for 61.4% of the total volume for Germany, with 1,448,485 assets in the public domain.

**Sweden – 80 instances; 3,677,372 assets.** The DigitaltMuseum, which aggregates collections of Sweden and Norway (funded by Arts Council Norway), accounts for 62.0% (or 50) of instances and 47.1% (or 1,732,868 assets) of the total volume for Sweden. In addition, the Swedish Open Cultural Heritage national aggregator, funded by the Swedish Government and supported by the Swedish National Heritage Board, accounts for 16.5% (or 13) of instances by delivering data to Europeana through an open API. In general, Sweden has a high representation of national GLAMs engaging with open access across local and national aggregators, external platforms and their own websites.

**United Kingdom – 80 instances; 10,487,115 assets.** The majority of UK instances claim new rights and publish data using open licences (49 or 61.3%). The most common platform for publication is Art UK (47 or 58.8% of UK instances). External platforms account for 91.3% (or 73) of instances in the UK. The British Library accounts for 11.3% of the total volume for the UK, with 1,187,746 assets in the public domain. The Natural History Museum accounts for 68.0% of the total volume for the UK, 7,131,178 assets published via open licences and 85 assets in the public domain (7,131,263 total assets). In general, the UK has a low representation of national institutions engaging with open access.

**Poland – 73 instances; 1,907,319 assets.** Sketchfab accounts for 58.9% (or 43) instances contributing 1,152 assets (or 0.06%). High representation on Sketchfab stems from the Malopolska's Virtual Museum Project. By contrast, Europeana accounts for 34.2% (or 25) instances contributing 1,790,985 assets (or 93.9%). Biblioteka Narodowa contributes the largest volume of public domain compliant assets via Europeana (580,794 or 30.5% of the total volume for Poland).

**France – 62 instances; 20,421,396 assets.** France has a high rate of instances that publish all eligible collections to the public domain (33.9% or 21 instances). Paris Musées accounts for 14 instances using primarily the CC0 tool, with a total contribution of 290,716 public domain compliant assets. Half of all instances (50.0%) publish assets via their own website. Another 21.0% (or 13) publish assets using a local aggregator (*i.e.*, collections search platform) designed for GLAM groups (*e.g.*, Paris Musées), rather than any national aggregator. The Centre National d'Études Spatiales (National Centre for Space Studies) contributes 19,340,944 assets or 94.7% of the total volume for France via its own website using the Licence Ouverte.

**Spain – 57 instances; 1,976,818 assets.** Europeana accounts for 24 instances (or 42.1%) with a total volume of 1,549,088 assets (or 78.4%). Within this, Biblioteca Virtual de Prensa Histórica contributes 1,138,866 public domain compliant assets (or 57.6% of the total volume for Spain). Galiciana, Biblioteca Dixital de Galicia, the digital library of Galicia (managed by the Library of Galicia) accounts for another 19 instances (or 33.3%) contributing 147,151 public domain compliant assets (or 7.4% of the total volume for Spain).

**Netherlands – 49 instances; 8,280,372 assets.** Europeana accounts for 26 instances (or 53.1%) contributing 5,918,260 assets (or 71.5% of the total volume for the Netherlands). Within this, Naturalis Biodiversity Center contributes 4,512,192 public domain compliant assets (or 54.5% of the total volume) and the Koninklijke Bibliotheek contributes 837,988 public domain compliant assets. Another 10 instances publish 1,968,443 assets via their own website (or 20.4% of the total volume for the Netherlands). Of these, two large contributors of public domain compliant assets include the

Rijksdienst voor het Cultureel Erfgoed (873,452 assets) and the Rijksmuseum (705,542 assets).

**Norway – 40 instances; 1,005,494 assets.** The DigitaltMuseum, which aggregates collections of Sweden and Norway (funded by Arts Council Norway), accounts for 59.0% (or 23) of instances and 46.7% (or 469,673 assets) of the total volume for Norway. Another eight instances (or 20.5%) publish 132,640 assets (or 13.2% of the total volume for Norway) via Europeana. The Vitenskapsmuseet contributes the largest volume, publishing 295,465 open compliant assets (or 29.4% of the total volume for Norway) via its own website.

**Switzerland – 34 instances; 674,299 assets.** Wikimedia Commons accounts for 17 (or 50%) instances contributing 69,887 assets (or 10.4% of the total volume in Switzerland), primarily published via CC BY-SA. The largest contributor is the Bildarchiv der ETH-Bibliothek, ETH Zürich, publishing 489,161 public domain compliant assets via the own website (or 72.5% of the total volume in Switzerland). No assets are published via Europeana. In June 2019, Switzerland passed a law protecting non-original photographs, like a photographic reproduction of a public domain painting, via a neighbouring right.

Greater detail is provided in *Appendix 3: Top 10 countries with open GLAM participation*. The Open GLAM Survey provides a full list of all global instances, which can be sorted by country.

Figure 11. Open access scope among the top 10 countries, and the remaining 39 countries<sup>97</sup>

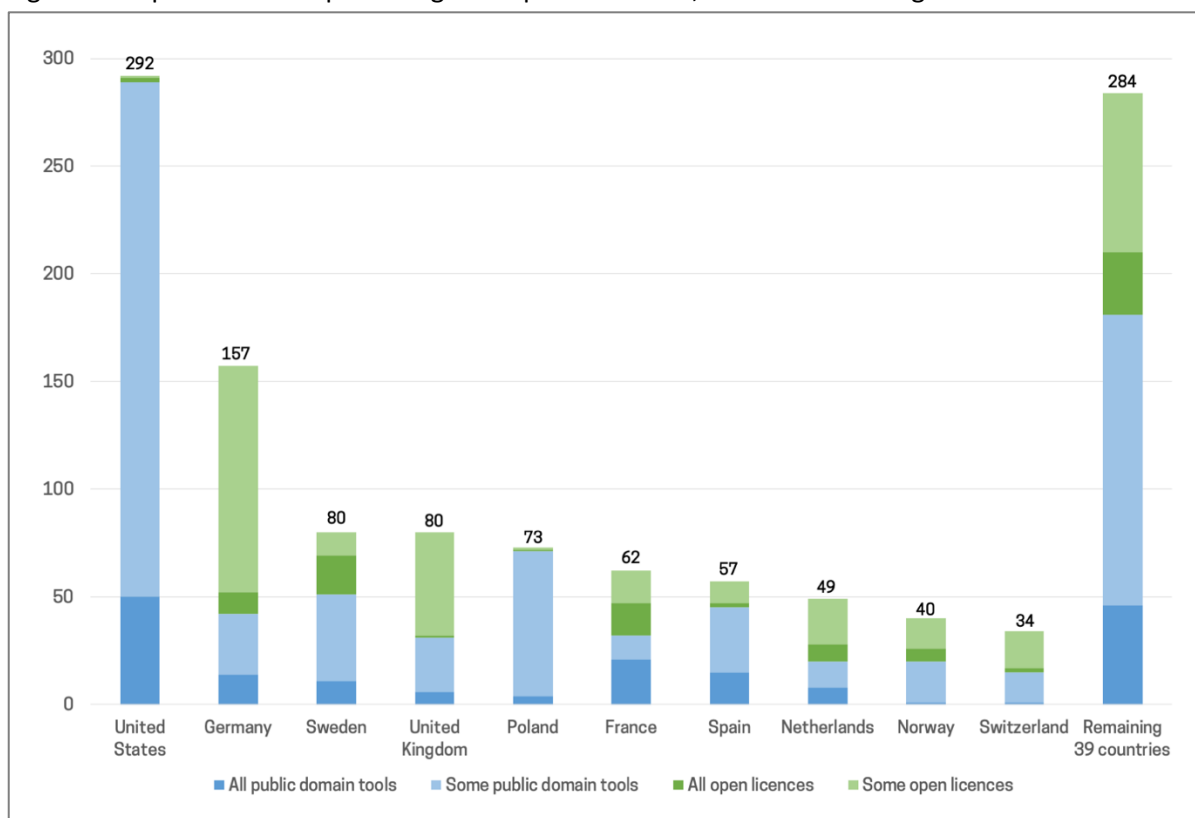
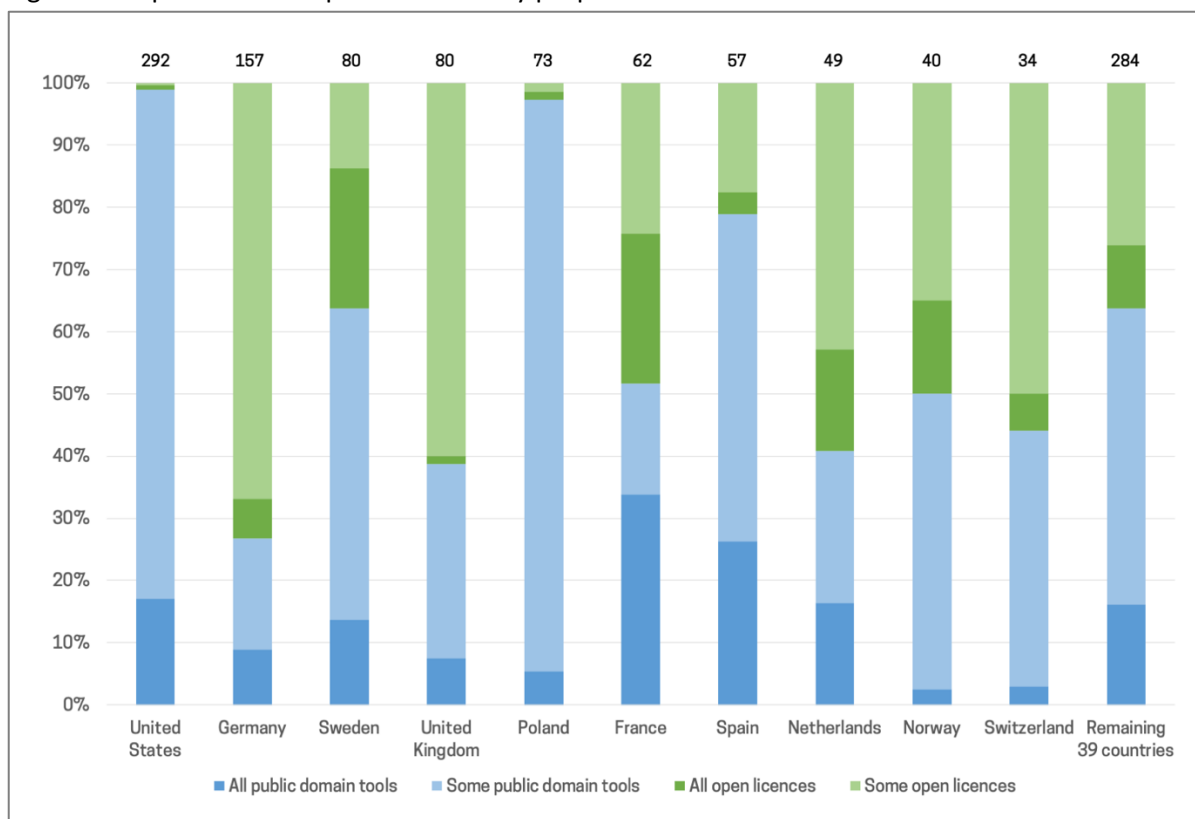


Figure 12. Open access scope distributed by proportions<sup>98</sup>



<sup>97</sup> Figures: <https://doi.org/10.5281/zenodo.6242179>

<sup>98</sup> Ibid

### 3.2.4. Open GLAM volume: open versus public domain compliant assets

**Global.** GLAMs have released **at least 70,931,426 open and public domain assets** to a variety of platforms online. This number includes all known assets released under both open licences and public domain tools.

**United Kingdom.** UK GLAMs have released **at least 10,487,115 open and public domain assets** (14.8% of all global open assets) to a variety of platforms online. Of these, 7 GLAMs were identified as contributing 10,409,004 or 99.3% of all UK contributions. These include the Natural History Museum (7,131,263), the British Library (1,187,746), the Portable Antiquities Scheme (1,038,191), Royal Botanic Gardens, Kew (595,140), Wellcome Collection (387,228), York Museums Trust (40,426), and the Royal Pavilion & Museums Trust, Brighton & Hove (28,010).<sup>99</sup>

**At least 1,307,021** (12.4% of UK assets) **are public domain compliant.** After isolating the British Library's contribution of 1,187,746 (90.9% of UK public domain compliant assets), this number comes to 119,275 assets (9.1% of UK public domain compliant assets) that have been contributed by 31 UK GLAMs.

### 3.2.5. Museums & Galleries: free entry and open access

Data is also collected on entry fees for Museums and Galleries who publish **all eligible collections to the public domain.** Data is not collected for Libraries and Archives, as they rarely charge for entry.

**Global.** 143 Museums and Galleries make **all eligible data** available under **open licences** and **public domain tools.**<sup>100</sup> Of these, almost half (68 or 47.6%) provide free entry onsite and free reuse online: 25 are in the United States, 17 are in Sweden and 9 are in France (representing 51 of 68 GLAMs).<sup>101</sup> Distribution is shown in the figure 14.

Some of these organisations charge service fees for new image creation or delivery and/or continue commercialising high resolution versions. However, they also publish collections online for any reuse purpose, including commercial reuse.

Data is limited to the fee charged, rather than actual fees received or income generated from visitors onsite. It suggests the ability to charge for admission is neither a driver for adopting open access, nor a source of revenue that offsets any loss of income previously generated by exclusive control and licensing. Museums with higher entry fees, like the Rijksmuseum (€20), are the exception.

**United Kingdom.** National Museums and Galleries in the UK must provide free onsite access to the permanent collection as a condition of government Grant-in-aid funding. This requirement does not extend to open access to digital collections online. As discussed in *Section 4.*, the National Portrait Gallery references this obligation in their policy and explains that licensing fees support the Gallery's ability to provide free entry and care for its collections.<sup>102</sup> Only one UK Gallery (and Museum) provides free entry onsite and free reuse of public domain collections online as a matter of policy (*i.e.*, all eligible data - public domain compliant): Birmingham Museums Trust.

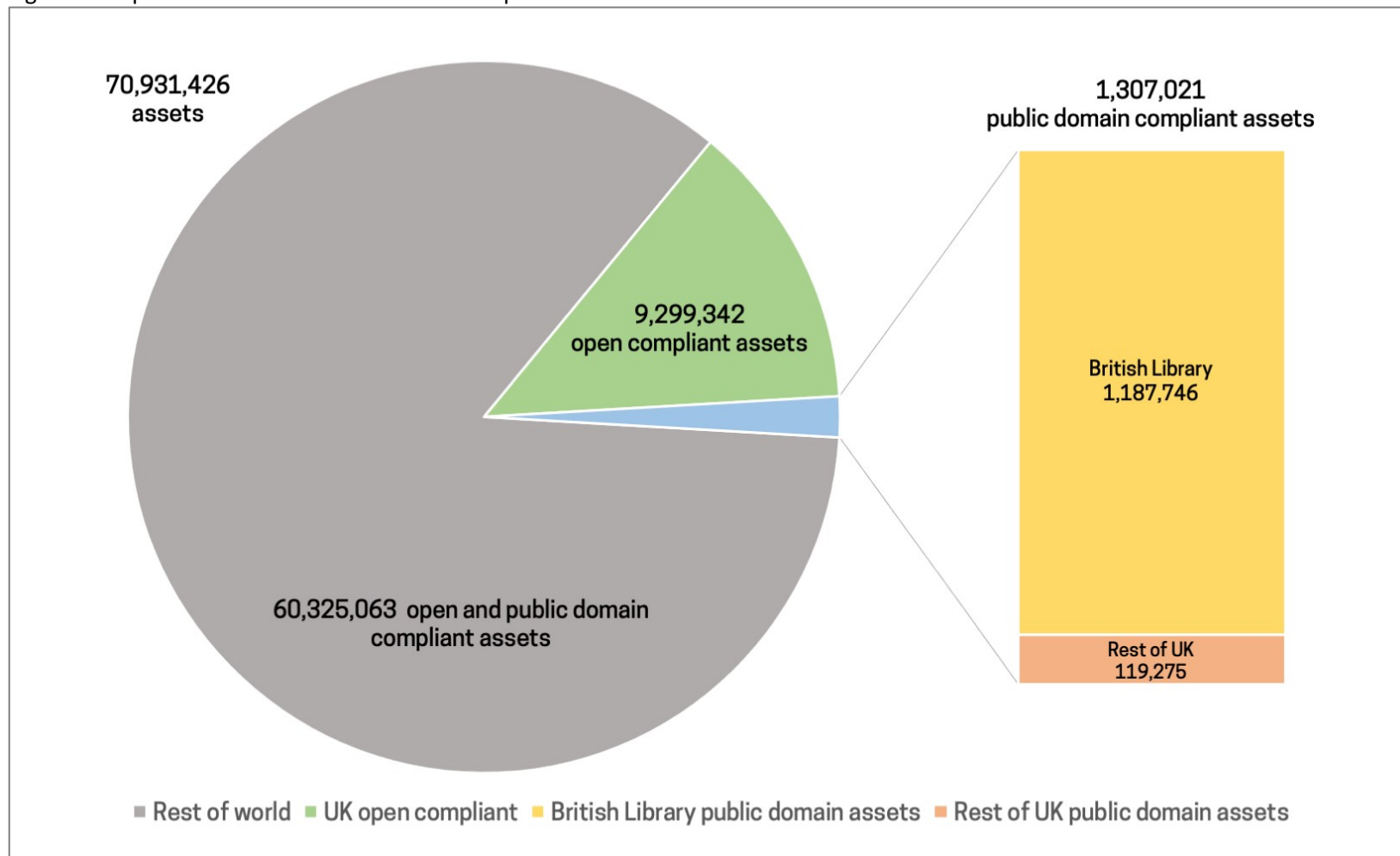
<sup>99</sup> Further details are in *Section 3.3.*

<sup>100</sup> The total number is 144, but one policy was unclear and so the gallery was removed: Kupiškio etnografijos muziejus in Lithuania, <http://etnografijosmuziejus.lt>.

<sup>101</sup> Data on admissions fees has been converted into Euro. See *Appendix 4.* for the full list of GLAMs and entry fees.

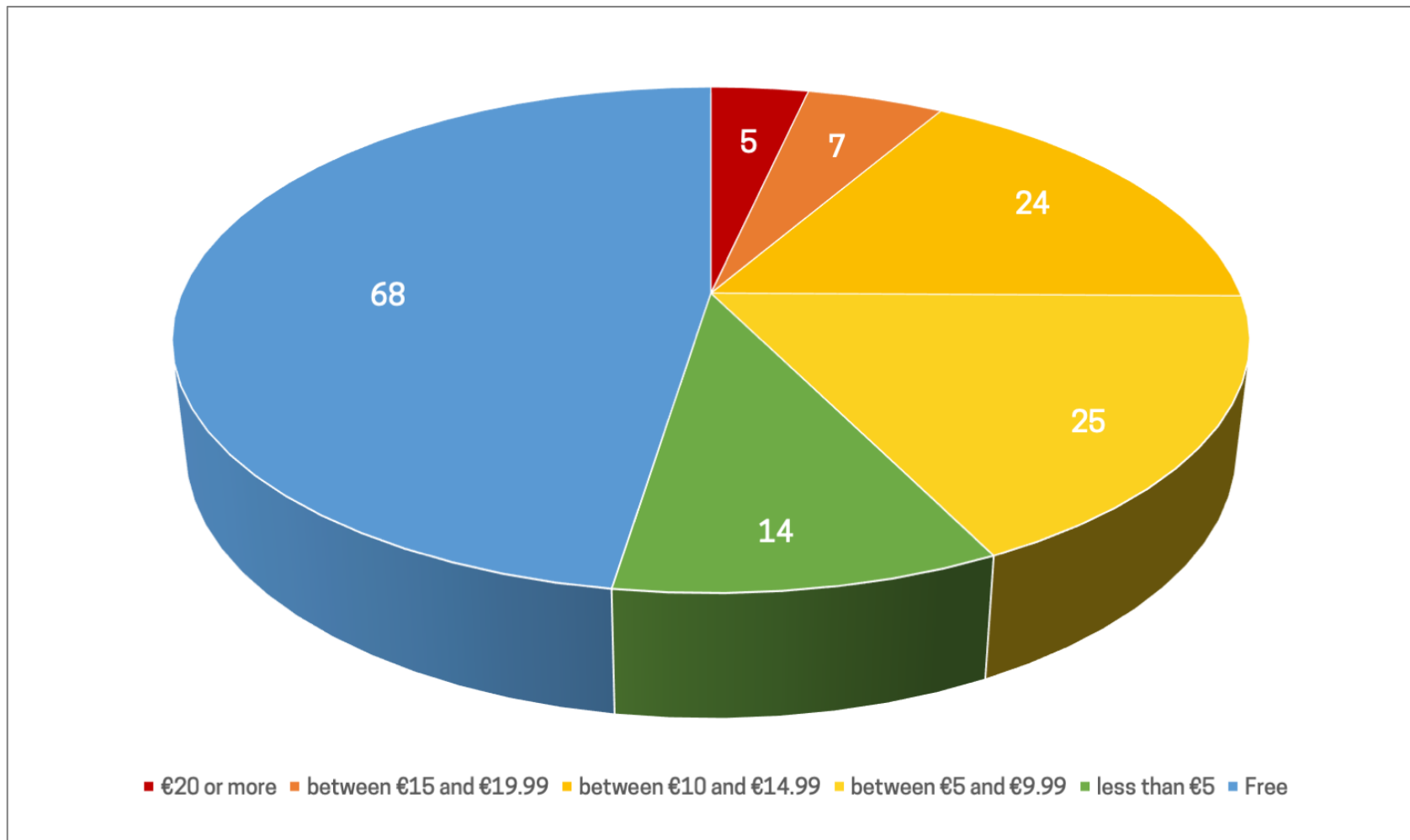
<sup>102</sup> "The Gallery is a strong supporter of free entry - we don't think visitors should have to pay to see the Collection. Those who may never be able to visit us can enjoy and learn about the Collection through images published in books and magazines, and on television and the internet. The Gallery's image licensing department raises money by licensing reproductions, thus supporting both the free entry policy and the Gallery's main functions caring for its Collection and engaging people with its works." <https://www.npg.org.uk/business/images>

Figure 13. Open data volume: Rest of world compared to UK<sup>103</sup>



<sup>103</sup> Figures: <https://doi.org/10.5281/zenodo.6242179>

Figure 14. Entry fee for Museums & Galleries that publish all eligible data for any reuse<sup>104</sup>



<sup>104</sup> Figures: <https://doi.org/10.5281/zenodo.6242179>



### 3.3. A deep dive into the UK GLAM Sample: How do UK GLAMs compare to each other?

**Note:** This section discusses data on all 195 GLAMs in the UK GLAM Sample, which is different to the sample discussed immediately above.

Created for this report, the UK GLAM Sample initially consisted of 350 organisations, including Independent Research Organisations (IROs) and Research Centre Institutes (RCIs), GLAMs associated with TaNC Foundation and Discovery projects, UK GLAMs in the Open GLAM Survey, and other UK GLAMs and related organisations. An initial review was performed to identify and remove organisations outside the scope of inquiry (*e.g.*, no permanent collections). The final sample of 195 organisations are distributed across the UK as follows: Channel Islands (1); England (154); Isle of Man (1); Northern Ireland (5); Scotland (28); Wales (6).

This section looks at the extent to which UK GLAMs engage with open GLAM and how UK GLAMs compare overall.<sup>105</sup> Two datasets in this sample do not appear in the global data on UK GLAM instances: the Archaeology Data Service and Culture Grid.<sup>106</sup> This brings the total UK open GLAM count to 82, rather than 80, for the purposes of this section.

#### 3.3.1. Categorisation of GLAMs

This phase of the research sought to understand how UK GLAMs publish collections across websites and external platforms, and under what reuse parameters. For each GLAM included in the sample, the policies were assessed from two different lines of inquiry:

What is the **majority approach** taken by the GLAM; and

What is the **most open approach** taken by the GLAM (*i.e.*, the application of open licences or public domain tools<sup>107</sup>)?

It is important to view each GLAM against these two axes, as they can overlap or diverge significantly. Interpreting them in isolation reveals two very different pictures of UK engagement and fails to capture the complexity of each GLAM's approach, as well as the overall trends across the sector.

For example, if we investigate a GLAM's **most open approach**, the picture is similar to the UK data discussed in *Section 3.2*. In total, 82 or 42.1% of UK organisations surveyed publish one or more assets using open licences or public domain tools, contributing a total of 10,487,115 open assets or 14.8% of all global assets (that could be counted via publication platforms). A total of 113 or 57.9% in the UK GLAM Sample have *not* yet engaged with open access. This paints a relatively healthy picture of open GLAM for the UK heritage sector.

However, if we look at the **majority approach** taken by each GLAM and collect data such as where assets are published, how many and under what tools and licences, we understand that 144 or 73.8% in the UK GLAM Sample operate policies of closed or all rights reserved for eligible assets. In reality, this number is much higher. Because the discussion in this section pertains to the limited

<sup>105</sup> See *Section 1.4.1* for a discussion of data collection.

<sup>106</sup> These aggregators do not comply to the open GLAM data sampling for various reasons, in addition to Culture Grid no longer being in use. Volume and distribution of licences and tools used are not calculated for these platforms due to the variety of contributors and inability to filter data.

<sup>107</sup> See Figure 4 in *Section 3.1*.

sample of 195 UK GLAMs, it already includes all known instances of open GLAM engagement. Accounting for all UK GLAMs would reduce the representative percentages of open GLAM engagement (*i.e.*, open instances and data volume) to vanishingly small numbers. Moreover, 7 UK GLAMs contribute 99.3% of all UK open assets. The majority of open GLAM instances (50 or 62.5%) publish fewer than 100 assets using open licences or public domain tools, accounting for a total of 1,029 assets or 0.009% of the total volume in the UK.

These very different pictures demonstrate why a two-part coding for each institution is necessary. Each GLAM uses a mix of policies and practice to publish assets online; some are open, but most are not. Some assets are published due to open access obligations attached to funding; others are due to mandatory open licences or statements imposed by platforms. Although seven organisations have implemented open GLAM as a matter of policy and apply open licences or tools to all eligible collections, their practices vary significantly.

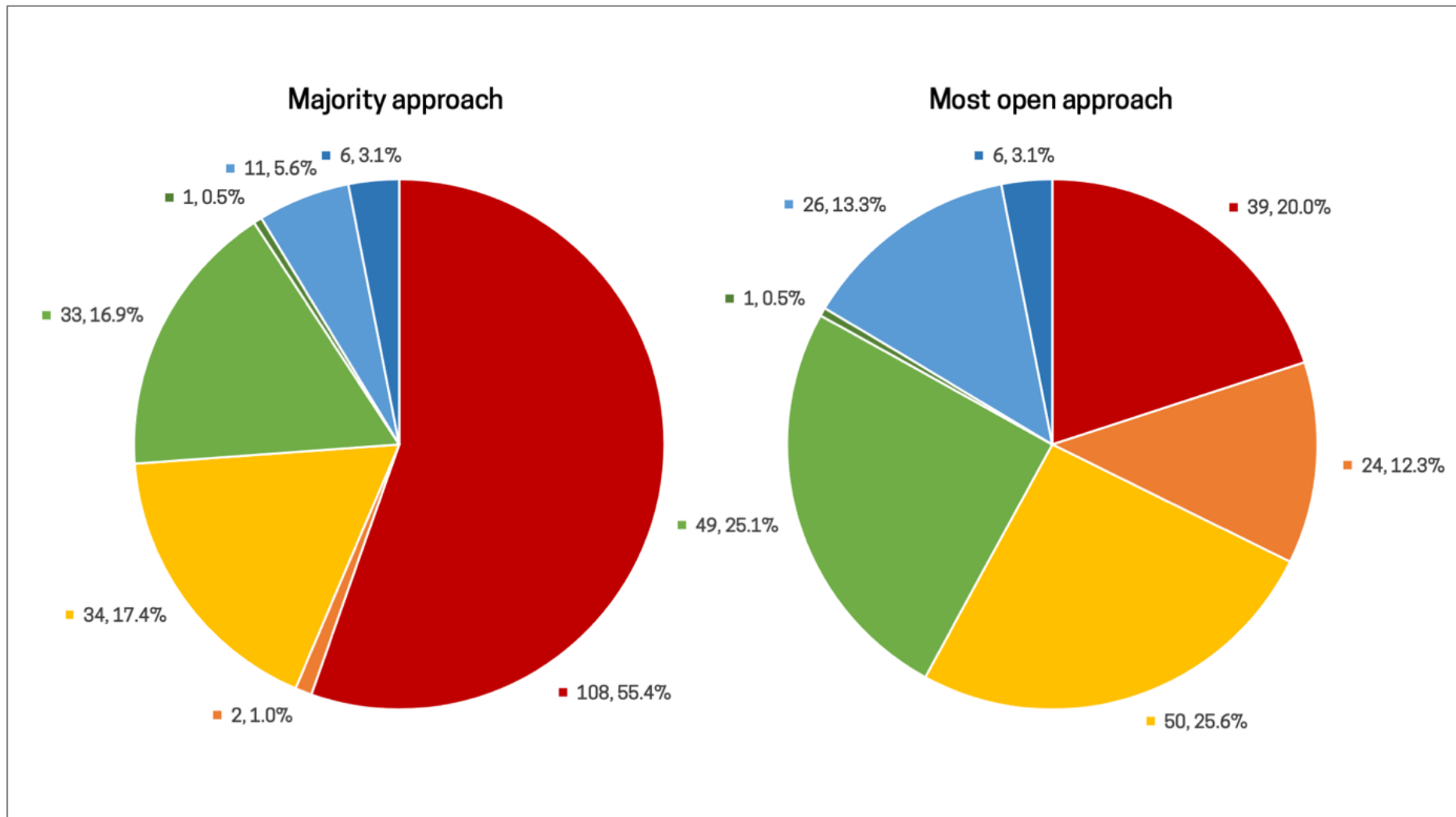
The takeaway is that the UK GLAM sector is already behind and appears to be falling further behind. Data shows a few big or national open GLAM instances and many small ones, but primarily a UK sector that takes a default approach to new copyright claims in the reproduction media generated around public domain collections. On the whole, these results are disappointing and obstructive to delivering on open access goals to the UK’s cultural collections.

The table below breaks down the dual coding of UK GLAMs by majority and most open approach across the seven identified categories.

Table 1. Description of categories and breakdown of sample by the **majority** approach and **most open** approach

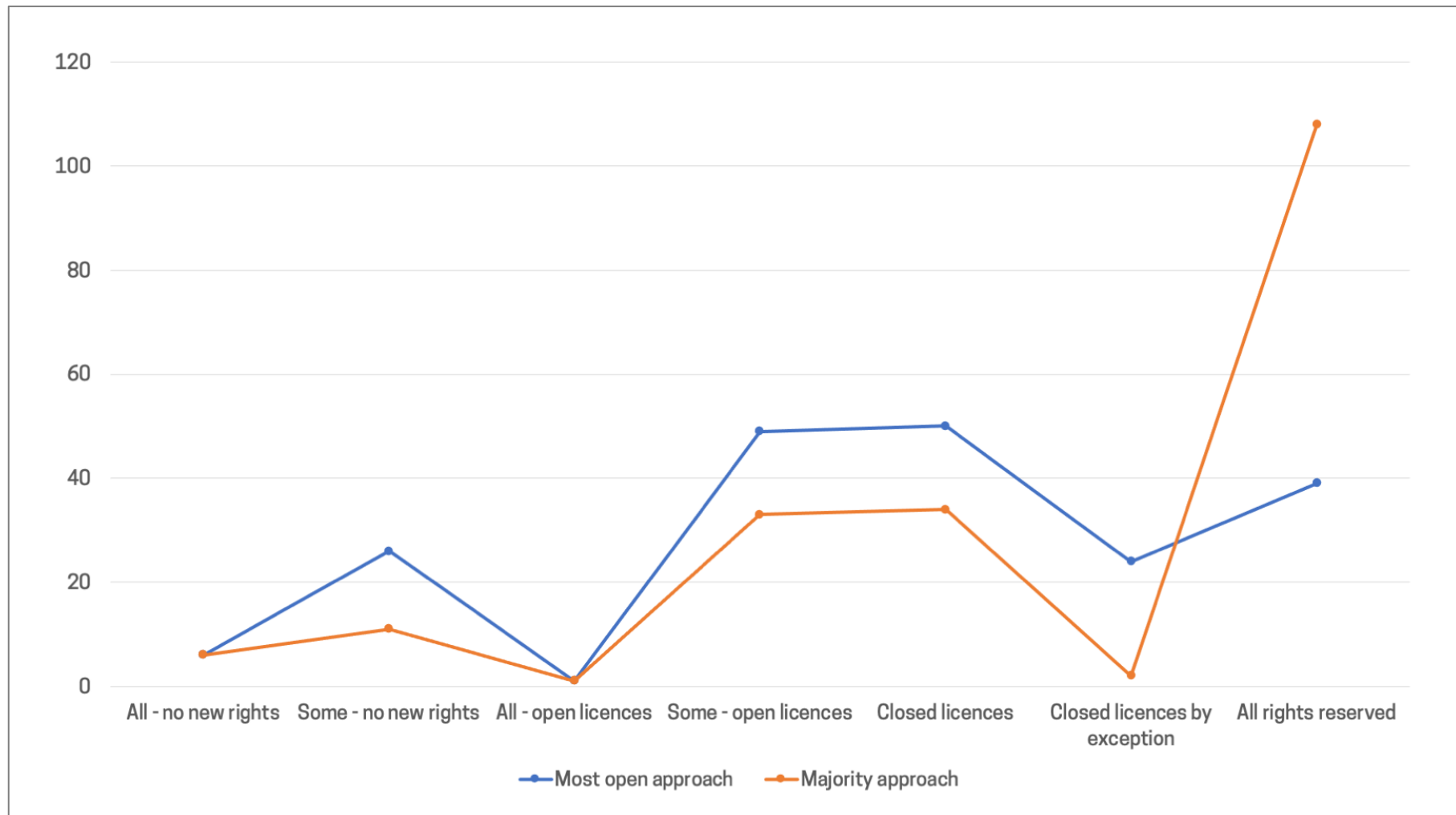
Category	Description	Majority approach	Most open approach
<b>All rights reserved</b>	Claims and reserves all rights that may arise under intellectual property law across all platforms	108 (55.4%)	39 (20.0%)
<b>Closed licences by exception</b>	Claims and reserves rights that may arise under intellectual property law across all platforms, except for photographs of sculptures produced for an Art UK project funded by The National Lottery Heritage Fund	2 (1.0%)	24 (12.3%)
<b>Closed licences</b>	Claims and reserves rights that may arise under intellectual property law across all platforms and publishes some or all eligible data via closed licences	34 (17.4%)	50 (25.6%)
<b>Some eligible data - open compliant</b>	Claims and reserves rights that may arise under intellectual property law across all platforms and releases some eligible data via open licences	33 (16.9%)	49 (25.1%)
<b>All eligible data - open compliant</b>	Claims and reserves rights that may arise under intellectual property law across all platforms and releases all eligible data via open licences	1 (0.5%)	1 (0.5%)
<b>Some eligible data - no new rights (public domain compliant)</b>	Claims and reserves rights that may arise under intellectual property law across all platforms and releases some eligible data via public domain tools	11 (5.6%)	26 (13.3%)
<b>All eligible data - no new rights (public domain compliant)</b>	Claims no new rights across all platforms and releases all eligible data via public domain tools	6 (3.1%)	6 (3.1%)

Figure 15. Majority approach compared to most open approach<sup>108</sup>



<sup>108</sup> Figures: <https://doi.org/10.5281/zenodo.6242179>

Figure 16. Majority approach compared to most open approach<sup>109</sup>



<sup>109</sup> Figures: <https://doi.org/10.5281/zenodo.6242179>

### 3.3.2. Breakdown of 10,487,115 open assets

**Note:** Volume does not imply unique assets. There can be overlap where GLAMs contribute open assets to more than one platform.

**Seven GLAMs have contributed 99.3% of all UK open assets.** Large contributors (more than 25,000 assets) include:

**Natural History Museum:** 7,131,263 open compliant assets (primarily CC BY via Own website and Europeana);<sup>110</sup>

**British Library:** 1,187,746 public domain compliant assets (public domain or no known copyright restrictions via Own website, Flickr Commons, and Europeana);<sup>111</sup>

**Portable Antiquities Scheme:** 1,038,191 open compliant assets (CC BY via Own website and Europeana);<sup>112</sup>

**Royal Botanic Gardens, Kew:** 595,140 open compliant assets (CC BY via Europeana);

**Wellcome Collection:** 387,228 open and public domain compliant assets (CC BY and CC0 via Own website and Europeana);<sup>113</sup>

**York Museums Trust:** 40,426 public domain compliant assets (Public Domain Mark via Own website and Art UK);<sup>114</sup>

**Royal Pavilion & Museums Trust, Brighton & Hove:** 28,010 open and public domain compliant assets (CC0, Public Domain and CC BY-SA via Own website and Sketchfab).<sup>115</sup>

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<sup>110</sup> Own website: 5,671,155 CC BY, 85 Public Domain; Europeana: 1,460,023 CC BY

<sup>111</sup> Own website: Unclear amount; Flickr Commons 1,070,492 No known copyright restrictions; Europeana: 114,254 Public Domain

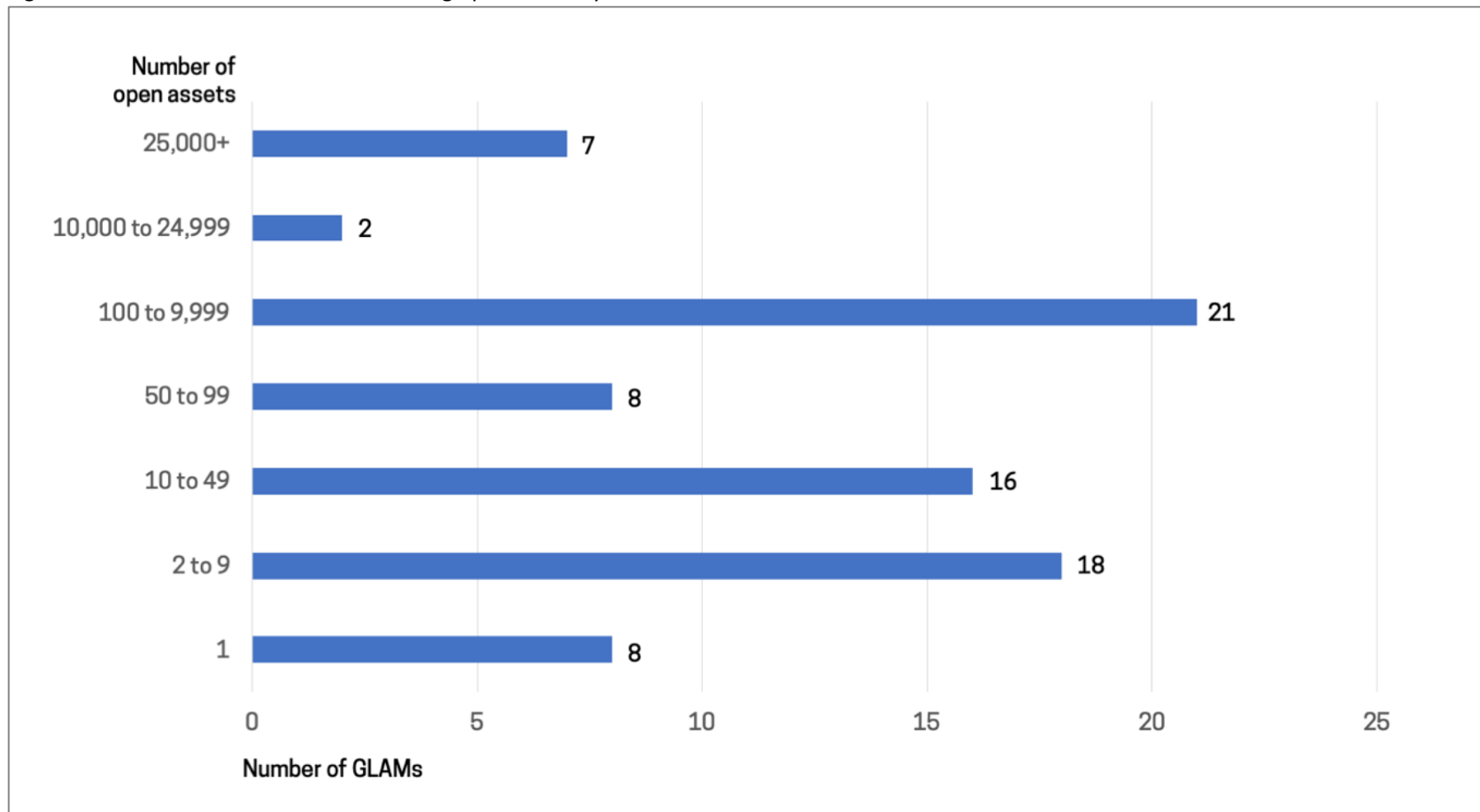
<sup>112</sup> Own website: 609,987 CC BY; Europeana: 428,204 CC BY

<sup>113</sup> Own website: Unclear amount; Art UK: 5,093 Public Domain or CC0

<sup>114</sup> Own website: 39,503 Public Domain Mark; Art UK: 923 Public Domain Mark

<sup>115</sup> Own website: 28,000 Public Domain / CC0; Sketchfab: 10 CC BY-SA

Figure 17. Distribution of GLAMs contributing open assets by total volume<sup>116</sup>



<sup>116</sup> Figures: <https://doi.org/10.5281/zenodo.6242179>

**At least 1,307,021 of these assets are public domain compliant.** After isolating the British Library’s contribution (1,187,746 assets), this number comes to 119,275 assets.

**The majority of open GLAM instances publish fewer than 100 assets using open licences or public domain tools.** In total, 50 UK GLAMs (comprising 62.5% of UK instances) each publish fewer than 100 open assets accounting for 1,029 (or 0.009%) of the total volume in the UK. These 50 UK GLAMs release open assets across a number of platforms, but not their own websites. Most publish via Art UK (marked below as \*, with exceptions specified).

Table 2. UK GLAMs with fewer than 100 open assets

50 to 99 assets - 8 GLAMs	10 to 49 assets - 16 GLAMs	2 to 9 assets - 18 GLAMs	1 asset - 8 GLAMs
Herbert Art Gallery and Museum (50, Wikimedia Commons); Buxton Museum & Art Gallery (56*); University of Dundee Museum Collections (56, Sketchfab); New College (57*); Museum of Domestic Design & Architecture (65, Europeana); Mary Rose Trust (71, Wikimedia Commons and Sketchfab); Jerwood Library of the Performing Arts (80, Flickr Commons); Leicester Museums and Galleries (99, Europeana)	Royston & District Museum & Art Gallery (10*); Aberdeenshire Council (11*); Dorman Museum (13*); Lewes Town Hall (13*); York Army Museum (15*); Jerwood Gallery (16*); Norfolk and Norwich University Hospital (18*); University of Manchester (23*); Newark Town Hall Museum and Art Gallery (24*); Carisbrooke Castle Museum (27*); North Ayrshire Heritage Centre (32*); St Peter's College (36*); Braemar Castle (36, Wikimedia Commons); Scottish Maritime Museum (46, Sketchfab); Laurence Sterne Trust (48, Wikimedia Commons); Harris Manchester College (49*)	University of York (2*); Hastings Library (2*); Portico Library and Gallery (2*); Captain Cook Birthplace Museum (2*); Coventry Council House (2*); Cricklade Town Hall (2*); Dereham Assembly Rooms (2*); Holmesdale Natural History Club (2*); University of Sussex (3*); Tenby Town Council (3*); Eden Camp Modern History Theme Museum (4*); Brackley Town Hall (4*); Beith Library (4*); Tank Museum (5*); Maldon Moot Hall (5*); Laurels (8*); Middlesbrough Town Hall (9*); Perth Museums and Galleries (9*)	London School of Hygiene & Tropical Medicine (1*); Hepworth Wakefield (1*); Toynbee Hall (1*); Ashwell Village Museum (1*); Bath Postal Museum (1*); Royal Hampshire Regiment Museum (1*); Bradfield Parish Council Offices (1*); Greater Manchester County Record Office (1*)

Of these 50 GLAMs, 12 are **public domain compliant**, releasing a total of 268 assets to the public domain. The remaining 38 GLAMs claim new rights and publish a total of 761 **open compliant** assets.

### 3.3.3. Breakdown of digital collections on GLAM websites

The research recorded how the 195 GLAMs make collections available on their websites and coded findings by the following categories:

- **No collections.** Websites have no digital collections, even for illustrative purposes.
- **Searchable catalogue only.** Websites host a searchable catalogue of records only.
- **Illustrative collections only.** Websites use images of collections to illustrate the website and advertise the types of collections or objects available onsite.
- **Searchable digital collections.** Websites host a searchable catalogue of records accompanied by images and other media.

This distribution is discussed further below.

**No collections.** 42 GLAMs publish no collections on their website. Only 2 have a formal copyright policy. 40 publish assets on Art UK. **31 GLAMs publish open assets:** 28 use Art UK; 2 use Wikimedia Commons; 1 uses Flickr Commons and Wikimedia Commons. These are primarily smaller organisations.

Ashwell Village Museum	Maldon Moot Hall
Brackley Town Hall	Middlesbrough Town Hall
Bradfield Parish Council Offices	Museum of Hartlepool
Braemar Castle	New College
Buxton Museum & Art Gallery	Norfolk and Norwich University Hospital
Carisbrooke Castle Museum	North Ayrshire Heritage Centre
Coventry Council House	Royal Hampshire Regiment Museum
Cricklade Town Hall	Royal Pump Room
Dereham Assembly Rooms	Royston & District Museum & Art Gallery
Eden Camp Modern History Theme Museum	St Peter's College
Greater Manchester County Record Office	Tenby Town Council
Harris Manchester College	Thirlestane Castle
Holmesdale Natural History Club	Toynbee Hall
Laurels	University of Manchester
Lewes Town Hall	University of Sussex
London School of Hygiene & Tropical Medicine	

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**Searchable catalogue only.** 11 GLAMs maintain a catalogue of only records. Only 3 have a formal copyright policy. 5 publish assets on Art UK. **4 GLAMs publish open assets:** 3 use Art UK; 1 uses Flickr. These are primarily smaller organisations.

Aberdeenshire Council	Hastings Library
Beith Library	Newcastle Libraries

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**Illustrative collections only.** 26 GLAMs maintain websites with illustrative collections only. Only 8 have a formal copyright policy. 25 publish assets on Art UK. **10 publish open assets:** 9 use Art UK; 1 uses Wikimedia Commons and Sketchfab. These are primarily smaller organisations.

Bath Postal Museum	Mary Rose Trust
Captain Cook Birthplace Museum	Newark Town Hall Museum and Art Gallery
Dorman Museum	Royal Watercolour Society
Hepworth Wakefield	Tank Museum
Jerwood Gallery	York Army Museum

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**Searchable digital collections.** 121 GLAMs maintain searchable digital collections on their own website. Of these, 28 lack any formal copyright policy. Some display a copyright notice near an image or in a footer. Others use watermarks on digital assets. 99 publish assets on Art UK. **35 GLAMs publish open assets.** The platform spread is more diverse, including their own website, Flickr Commons, Sketchfab, Art UK, Europeana, and Wikimedia Commons. Many publish on more than one platform.



Aberdeenshire Museums Service	National Galleries Scotland
Archaeology Data Service	National Library of Scotland
Birmingham Museums Trust	Natural History Museum
British Library	National Science and Media Museum
Culture Grid	Perth Museums and Galleries
East Riding Archives	Portable Antiquities Scheme
Herbert Art Gallery and Museum	Portico Library and Gallery
Heritage Doncaster	Royal Botanic Gardens, Kew
Horniman Museum and Gardens	Royal Pavilion & Museums Trust, Brighton & Hove
Imperial War Museums	Science Museum Group
Laurence Sterne Trust	Scottish Maritime Museum
Leicester Museums and Galleries	Tyne & Wear Archives & Museums
Jerwood Library of the Performing Arts	University of Dundee Museum Collections
Llyfrgell Genedlaethol Cymru (National Library of Wales)	University of Edinburgh Art Collection
LSE Library: The British Library of Political and Economic Science	University of St Andrews
Museum of Domestic Design & Architecture	University of York
National Archives	Victoria & Albert Museum
National Brewery Heritage Trust	Wellcome Collection
	York Museums Trust

### 3.3.4. Platforms for publication of open assets

**Publication by primary platform.** Many GLAMs publish **open assets** on more than one platform. The distribution of the primary platform for publication is as follows:

- **47** to Art UK (or 58.8%)
- **9** to Europeana (or 10.8%)
- **10** to Flickr & Flickr Commons (or 12.0%)
- **7** to Own website (while also contributing significant data to external platforms) (or 8.4%)
- **3** to Sketchfab (or 3.6%)
- **6** to Wikimedia Commons (or 7.2%)

**Publication on Art UK.** The total volume of **all assets** on Art UK is 282,036. Of these, 11,588 assets (or 4.1%) are published using **open licences or public domain tools** according to the distribution below:

- **10,207** – Public Domain or CC0
- **571** – CC BY
- **810** – CC BY-SA

5 GLAMs contribute 9,966 (or 98%) of these 10,207 **public domain compliant** assets:

- **5,093** – Wellcome Collection
- **1,778** – Yale Center for British Art (United States)
- **1,112** – Birmingham Museums Trust
- **1,060** – National Library of Wales
- **923** – York Museums Trust

Notably, the second largest contributor of public domain compliant assets to Art UK is the **Yale Center for British Art** in New Haven, Connecticut. Once removed, the UK open assets total 9,810.

**Volume published: 10,487,115 total assets.** Some of these assets likely overlap across platforms. For example, the Natural History Museum publishes 5,671,155 CC BY assets and 85 Public Domain Mark assets on its own website and 1,460,023 CC BY assets on Europeana, bringing the total volume to 7,131,263. Given the potential for overlap, it is possible the assets on Europeana are duplicates of assets already published to the museum’s website. Some GLAMs also publish assets on more than one platform and are therefore represented multiple times in the table below.

Table 3. Breakdown of volume published\*

Platform	Volume	%	GLAMs
Art UK	9,810	0.09%	51
Europeana	2,727,171	26%	13
Flickr & Flickr Commons	1,084,395	10%	12
Own website	6,664,534	63%	9
Sketchfab	165	0.0001%	5
Wikimedia Commons	1,260	0.0001%	8

\* Platform filters limit how search returns can be sorted and/or viewed (e.g., by GLAM or rights statement). A discrepancy of 220 additional open assets on Art UK is unaccounted for in the itemized UK GLAM Sample data. This is likely due to data collection occurring over three weeks and new contributions being made by GLAMs during this time.

**Volume published: breakdown of open licences and public domain tools used.** GLAMs may take different approaches when publishing assets across one or more platforms, such as applying different statements (e.g., CC BY-SA on Europeana and Public Domain on Art UK<sup>117</sup>). This may be due to changes in a GLAM’s policy over time or the types of standardised statements offered by a platform.

Table 4. Breakdown of open licences and public domain tools used

	Art UK	Europeana	Flickr Commons	Own website	Sketchfab	Wikimedia Commons
NKCR			1,084,395	20,000		143
Public domain	10,207	119,547		67,588		431
CC0		525		5,804	151	
CC BY	571	2,603,100		6,571,142	4	416
CC BY-SA	810	3,999			10	270

### 3.3.5. Technical protection measures

At least 35 GLAMs (or 17.9%) maintain technical protection measures that limit viewing, downloads or reuse of assets published on the website. Some implement more than one measure.

<sup>117</sup> National Library of Wales

Table 5. Breakdown of technical protection measures used

Technical Protection Measures	#	Institution
Pay-to-view	3	The National Archives National Records Scotland Parliamentary Archives
Watermarks	8	Bradford Museums & Galleries Gallery Oldham Laurence Sterne Trust Liverpool Central Library Mary Rose Trust National Jazz Archive Oxford University Museum of Natural History Royal Botanic Gardens, Kew
Account required or personal information collected upon download	4	Jerwood Library of the Performing Arts The National Archives (Discovery) National Galleries of Scotland (for higher resolution images) National Portrait Galleries (for CC BY-NC-ND 3.0 images)
Download disabled, e.g., via the image display interface or inability to right-click and download	20	Aberdeen Archives, Art Gallery and Museums Atkinson Art Gallery Bristol Archives Bristol Museum & Gallery British Library (IIF) Dulwich Picture Gallery Dundee Art Galleries and Museums Fleming Collection (can circumvent by clicking to enlarge) Guernsey Museums and Galleries Heritage Collections UK Parliament Historic England (Historic Buildings and Monuments Commission for England) Leeds Museums & Galleries Llyfrgell Genedlaethol Cymru (National Library of Wales) (IIF) The National Collection (Discovery) Newark Town Hall Museum and Art Gallery Northern Ireland War Memorial Stirling Smith Art Gallery & Museum Tyne & Wear Archives & Museums University of St Andrews (IIF) Watford Museum
Low resolution	4	Bowes Museum Dundee Art Galleries and Museums (where download is enabled) Historic Environment Scotland National Galleries of Scotland (with canvas, artwork and rights information)

### 3.3.6. Commercial licensing

Commercial licensing services are standard among most GLAMs in the sample. Data was collected for GLAMs who advertise images through a self-maintained licensing interface (e.g., Tate Images Picture Library) and/or external licensing platform (e.g., Bridgeman Images).

At least 48 GLAMs operate their own commercial licensing service and/or online picture library.

These include

Ashmolean Museum	Museum of London
Bradford Museums & Galleries	National Archive
British Film Institute	National Army Museum
British Library	National Galleries of Scotland
British Museum	National Gallery
Courtauld	National Jazz Archive
East Riding Archives	National Museum Wales
Egypt Centre	National Museums Liverpool
Glasgow Museums	National Museums Northern Ireland
Government Art Collection	National Portrait Gallery
Guernsey Museums and Galleries	National Trust
Heritage Collections UK Parliament	Northampton Museums
Highland Council Archive	Natural History Museum
Historic England (Historic Buildings and Monuments Commission for England)	Parliamentary Archives
Historic Environment Scotland	Pitt Rivers Museum
Historic Royal Palaces	Royal Academy of Art
Jewish Museum London	Royal Armouries
Kirklees Museums and Galleries	Royal Botanic Gardens, Edinburgh
London Transport Museum	Royal Botanic Gardens, Kew
Manchester Art Gallery	Royal Museums Greenwich
Manchester Museum	Science Museum Group
Mary Rose Trust	Tate
Museum of Classical Archaeology	Victoria & Albert Museum
Museum of Liverpool	Wallace Collection

Many post fee-models to the website or provide fee calculators for users, including for fair dealing uses permitted by UK copyright law.<sup>118</sup>

There is wide use of watermarks on images made available through these commercial image libraries and external licensing platforms. These instances are not included in the data on technical protection measures, as they obstruct images on platforms that operate separately from the website and/or primary digital collections interface.

At least 56 GLAMs from the UK GLAM sample licence at least 123,912 assets via Bridgeman Images. Google Art & Culture hosts another 92,337 from 40 UK GLAMs.

Such commercial relationship raise questions around how the value of these partnerships is assessed, whether copyright and/or exclusivity is even necessary for these relationships, and what success looks like.

### 3.4. Early stages of open GLAM

The data shows open GLAM is in early stages, although some countries and/or their national institutions take more consistent approaches.

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<sup>118</sup> See Section 4.

### 3.4.1. What's missing from the data

Without greater standardisation across practices and controlling for other types of data, it is difficult to produce deeper insight into national and international comparators for open access.

Some data, like the total number of GLAMs nationally, do not (yet) exist. Others are difficult to collect, like technical data on images (*e.g.*, resolution, formats published and metadata scope) or collections level data (*e.g.*, total collections, total digitised collections and the distribution of in-copyright versus public domain for underlying works). Some may produce speculative data or require their own in-depth study (*e.g.*, on main differences in approaches across the GLAM sector, particularly by libraries and archives compared to galleries and museums).

In the UK, most instances of open GLAM appear to publish digital surrogates in low to very low resolution (*e.g.*, at screen display resolution). Data on technical practice could produce meaningful assessments on the quality of assets published and the types of reuse enabled. However, few GLAMs document and/or publish this information or take consistent approaches for legacy reasons. Some limitations may be imposed by platform functionality. For example, Art UK limits images to 1200 pixels on the longest side.

The higher-level data collected by this study remains useful for comparing how GLAMs publish collections, interpret national law and enable reuse, and for identifying gaps.

For example, a glaring gap revealed in the map (see *Section 3.2.*) is *where* open access is occurring. Regions with aggregators have higher representation for many reasons, some of which are discussed immediately below. But the data shows GLAMs in the majority of the world (and their publics) are under-represented. This has implications for *which* countries and institutions are shaping open GLAM, as well as *which* collections by virtue of open access receive greater public and research attention and *whose* narratives and knowledge accompany them. To this point, language barriers also may contribute, both to reuse and to data collection, where standardised licences and tools are not used (*e.g.*, Creative Commons) and instead policies must be read and understood in order to appreciate any reuse parameters.

### 3.4.2. The role of data aggregators and external platforms

Data aggregators and external platforms collect data from one or more sources, provide some value-added processing, and repackage the result in a reusable form. Examples include Europeana, Flickr Commons and Wikimedia Commons. These organisations have been crucial both for asset publication and for the exposure they bring to collections, as well as for data collection on open GLAM activity (*i.e.*, this study).

Aggregators and platforms offer solutions to institutional barriers and challenges faced by GLAM staff and GLAMs themselves. Some participants mentioned that their organisation's website lacked the technical capacity to publish or release high quality images due to bandwidth, storage infrastructure and systems within the institution. A website's interface can be complicated to update and is often bespoke to a GLAM. Layers for rights statements must be maintained internally and built into the interface logic to display on the front-end. Participants noted the complexity of these systems (including the institution itself as a system) makes change slow. Some participants noted seeking funding for GLAM-specific projects to resolve or improve issues, but raised they also can introduce legacy issues, be designed for limited application or, where transferable, be difficult to

scale and implement for the vast majority of GLAMs.

By contrast, aggregators and platforms can offer flexibility. Many also have advantages and perks. They can provide greater publication sustainability and human-facing support. Some offer funding and opportunities for collaboration, training and knowledge exchange. Images on these platforms receive an enormous volume of page views, which can increase exposure to the GLAM and its collection at higher rates than via the GLAM's own website and searchable digital collections.

The aggregators and platforms used can impact how open GLAM proceeds due to the systems and rights statements that shape participation. Some support the technical application of standardised statements in the interface and employ staff to review datasets or provide copyright support prior to publication. Use of open licences and public domain statements are a condition of entry for many. Wikimedia platforms require uploaders to apply CC BY-SA or more permissive statements to content. Wikimedia may condition digitisation funding upon publishing eligible assets to the public domain.

Douglas McCarthy (Europeana) offered insight explaining:

As seen in Europe, aggregators play an important role in publishing digital collections from small organisations. When combined with the fact that aggregators (generally) insist on rights labelling, this creates the conditions for relatively small collections being recorded and surprisingly prominent in the open GLAM survey. In the UK, Art UK serves this role.

The inverse of this is that national and large institutions tend to not join large scale aggregation projects, and therefore avoid having to adhere to aggregators' data models, including standardised rights statements for their collections.

Participants noted policies of aggregators and platforms have taken chunks out of the collection and required GLAMs to be more open, which they see as desirable because of the drive for engagement.

### 3.5. Open GLAM and the UK: a conclusion

Highlights from the data reveal:

The large majority of UK open GLAM instances are **local and regional organisations**.

Data aggregators and external platforms have had a huge impact on open GLAM representation in the UK. Among these, **Art UK accounts for 58.8% of all UK open GLAM instances**.

The **UK's largest holders of cultural collections are not open**. A few exceptions make significant contributions in volume.

**7 UK GLAMs embrace open access as a matter of policy**. 6 take a **public domain compliant** approach; 1 takes an **open compliant approach**. All appear to hold back high-resolution assets for commercialisation.

Some **open GLAM activity can be directly attributed to funding obligations**.

**Open access is at risk of decline or stagnation**. This finding extends to GLAMs currently engaging in open GLAM activity, as well as a wider trend emerging across the GLAM sector.

Indeed, interviews and web-based research revealed clear evidence of decline or stagnation. Many

participants noted that open access conversations are now harder with COVID-19. By relying on legacy work undertaken by previous staff, some staff have been able to hold ground against suggestions to withdraw assets and adopt a more commercially minded approach. Some participants mentioned that conversations on adopting more permissive licences have lost momentum. Even participants from open GLAMs noted having to re-defend the position on occasion due to revived commercialisation desires.

Web-based research revealed a few GLAMs are walking back on open access activity. To support this finding, the Internet Archive’s Wayback Machine was used to investigate engagement with Flickr Commons. As shown in the table on the following page, The National Archives, the National Science and Media Museum and Royal Museums Greenwich have removed assets from the Commons.

To illustrate, The National Archives hosted at least 213 images in the photostream in March 2010, the earliest date of capture on the Internet Archive.<sup>119</sup> Over the years, the total asset volume grew to at least 20,050 photos in March 2020.<sup>120</sup> The overwhelming majority have since been removed. Today, the account hosts 56 assets.<sup>121</sup>

Table 6. Flickr Commons activity via the Internet Archive<sup>122</sup>

	Earliest capture	Date	Highest capture	Date	Current assets
British Library	1,019,998	<a href="#">12-2013</a>	1,073,492		1,073,492
East Riding Archives	368	<a href="#">12-2016</a>	814		814
Faculty of Music Trinity Laban	32	<a href="#">11-2014</a>	80		80
IWM Collections	699	<a href="#">07-2014</a>	714		714
LSE Library	601	<a href="#">11-2009</a>	3,095		3,095
Museum of Hartlepool	203	<a href="#">08-2012</a>	338		338
The National Archives	213	<a href="#">03-2010</a>	20,050	<a href="#">3-2020</a>	56
National Science and Media Museum	76	<a href="#">09-2008</a>	583	<a href="#">12-2016</a>	449
Royal Museums Greenwich	134	<a href="#">09-2008</a>	829	<a href="#">07-2014</a>	0
Tyne & Wear Archives & Museums	505	<a href="#">01-2012</a>	2,813		2,813

These and other examples provided by participants reveal assets are being removed to bolster exclusivity and commercialisation goals. GLAMs are aware they cannot revoke open licences and tools, like Creative Commons. Instead, removing access to the asset re-secures the exclusivity perceived to be necessary for commercialisation.

<sup>119</sup> <https://web.archive.org/web/20100327164222/https://www.flickr.com/photos/nationalarchives/>

<sup>120</sup> <https://web.archive.org/web/20150705112950/https://www.flickr.com/photos/nationalarchives>

<sup>121</sup> <https://www.flickr.com/people/nationalarchives/>

<sup>122</sup> <https://www.flickr.com/people/britishlibrary/>; <https://www.flickr.com/photos/erarchives/>; <https://www.flickr.com/photos/erwoodtcm/>; <https://www.flickr.com/people/imperialwarmuseum/>; <https://www.flickr.com/photos/lselibrary/>; [https://www.flickr.com/photos/hartlepool\\_museum/](https://www.flickr.com/photos/hartlepool_museum/); <https://www.flickr.com/people/nationalarchives/>; <https://www.flickr.com/people/nationalmediamuseum/>; <https://www.flickr.com/people/nationalmaritimemuseum/>; [https://www.flickr.com/photos/twm\\_news](https://www.flickr.com/photos/twm_news)

## 4. Public facing policies & GLAMs interpreting UK law

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### “Are digitised copies of older images protected by copyright?”

Simply creating a copy of an image won't result in a new copyright in the new item. However, there is a degree of uncertainty regarding whether copyright can exist in digitised copies of older images for which copyright has expired. Some people argue that a new copyright may arise in such copies if specialist skills have been used to optimise detail, and/or the original image has been touched up to remove blemishes, stains or creases.

However, according to established case law, the courts have said that copyright can only subsist in subject matter that is original in the sense that it is the author's own 'intellectual creation'. Given this criterion, it seems unlikely that what is merely a retouched, digitised image of an older work can be considered as 'original'. This is because there will generally be minimal scope for a creator to exercise free and creative choices if their aim is simply to make a faithful reproduction of an existing work.”

UK Intellectual Property Office, 2015 Copyright Notice: digital images, photographs and the internet

**Note:** This section discusses data on 63 GLAMs selected from the UK GLAM Sample.

Websites were reviewed to locate any terms of use, ethical, copyright and/or open access policy applying to reuse of digital surrogates of public domain works. An assortment of policies with clear statements on rights and reuse are included in the final sample.<sup>123</sup> GLAMs in affiliated groups are represented by the umbrella policy for the organisation (*e.g.*, National Museums Liverpool, Birmingham Museums Trust, Tyne & Wear Archives & Museums). This eliminated redundancy in policy inclusions and reduced the overall number in the final sample. The policies are included in full in *Appendix 2. UK GLAM Policies on copyright and open access.*

This portion of the research asked: How are UK GLAMs interpreting laws and shaping public access to digital media generated around public domain works? The discussion below quotes heavily from public facing policies.

### 4.1. Introducing inconsistency and inflexibility

Public facing policies can provide insight into internal operations, such as how an organisation views and values its digital collections and interprets various laws and obligations to the public.

Law, itself, is deeply situated in a culture of 'it depends'. Lawyers are trained to anticipate risk and insulate clients from liability, rather than to advocate for an approach seen by a client (and entire sector) as carrying risk and adverse to interests. Legal advice is perceived to be expensive and therefore inaccessible to many GLAMs. As a result, GLAMs often rely on one another for interpreting and applying law. Ultimately, these and other factors shape the policies that reveal both consistencies and inconsistencies across UK GLAM practices and inflexibilities around risk, rights management and collections reuse.

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<sup>123</sup> Not included in the sample are UK GLAMs without online digital collections and UK GLAMs with digital collections online but without a copyright policy, or with an unclear copyright policy.



## 4.2. Policies, practices and interpretations of law

The analysis below relies on website policies where GLAMs publish digital media of public domain collections. To aid the reader, footnotes include information on the policy name, the GLAM and its majority approach taken to publishing collections.

### 4.2.1. Interpretations of copyright law

Many GLAMs make broad statements that all online content is protected by UK law. The **British Museum** extends this interpretation to international law: “All the content on our website is protected by internationally recognised laws of copyright and intellectual property. The British Museum can decide under what terms to release the content for which we own the copyright.”<sup>124</sup> **Leeds Museums & Galleries** also claims “[o]ur copyright and other intellectual property rights are protected by UK laws and by international treaties”,<sup>125</sup> as does the **Tank Museum**: “All text, images and multi media files on this website are protected by internationally recognised laws of copyright and intellectual property.”<sup>126</sup> These and other GLAM references to national and international IP law make no mention of corresponding laws that shape or define the public domain.

A few expressly address rights arising in reproductions. The **Government Art Collection** reminds users “if the artist of the work is alive, or has been dead for less than seventy years, there will normally be a separate copyright in the work itself in addition to the copyright in the photographic reproduction”.<sup>127</sup> This is not technically accurate. A photographic reproduction is considered a copy of the underlying in-copyright work. The default rightsholder is thus the same rightsholder of the underlying work, *unless* that right was transferred or assigned by contract (*e.g.*, to the GLAM during acquisition). The **National Portrait Gallery**’s framing is better: “An important thing to remember is that ownership of copyright can be completely distinct and separate from ownership of a physical object. For example, the Gallery owns a number of paintings and photographs (objects) which it cannot copy without permission, as it does not own the copyright. Often this rests with the artist or photographer, or their estate.”<sup>128</sup> There is no mention of what happens when the copyright expires. The Gallery links to the UK IPO’s website when describing the range of rights recognised in IP law, but it does not follow the IPO’s legal interpretation that no new rights arise in photographic reproductions of public domain works.<sup>129</sup> In the *Copyright and reuse* policy, the following statement is made: “The National Portrait Gallery champions clear and balanced information about copyright and licensing.”<sup>130</sup>

The **Royal Pavilion & Museums Trust, Brighton & Hove** is the only GLAM (of all 195, but likely in all of the UK) to rely on the 2015 UK IPO guidance in its interpretation of copyright law. The Museum publishes an extensive policy on intellectual property rights and reproductions, which “recognises that [the organisation] cannot claim copyright in faithful 2D reproductions of 2D objects which are no longer protected by copyright”.<sup>131</sup>

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<sup>124</sup> Copyright and permissions, 8. British Museum (Closed licences)

<sup>125</sup> Terms of Use, 23. Leeds Museums & Galleries (All rights reserved)

<sup>126</sup> Privacy and Legal, 54. Tank Museum (All rights reserved)

<sup>127</sup> Crown copyright, 16. Government Art Collection (All rights reserved)

<sup>128</sup> An introduction to copyright, 39. National Portrait Gallery (Closed licences)

<sup>129</sup> An introduction to copyright, 39. National Portrait Gallery (Closed licences)

<sup>130</sup> Copyright and reuse, 39. National Portrait Gallery (Closed licences)

<sup>131</sup> IPR and reproduction policy, 50. Royal Pavilion Brighton Museums (All eligible data - no new rights)

#### 4.2.2. Acknowledgement of the public domain

Some GLAMs expressly mention the public domain or imply that copyright expires.

**GLAMs that publish open content.** The **British Library** makes a statement on the public domain and flags materials may be marked as such online.<sup>132</sup> **LSE Library** includes a general discussion on the rights statements and licences used, referencing the public domain mark and no known copyright and what collections or items these statements apply to (*e.g.*, “very old works”).<sup>133</sup>

The **National Library of Wales** does not expressly mention the public domain, but states that “The Library does not claim ownership of copyright in digital reproductions. Access to reproductions shall be subject to the same rights as would apply to the work in its original format.”<sup>134</sup> This information is separate from the *Copyright* policy, which includes general information on the rights statements used.<sup>135</sup> Immediately following reference to the 2015 UK IPO guidance, the **Royal Pavilion & Museums Trust, Brighton & Hove** states that “[i]t considers these surrogates to be in the public domain”.<sup>136</sup> The Museum also commits to publishing “catalogue data about its collections under open licences or as public domain assets” where possible.

**York Museums Trust** has an extensive frequently asked questions type of policy, with user-centred prompts like “What can I do with YMT’s online collections images?” and responses like “Images of works on which copyright has expired are marked Public Domain. We have no particular legal rights over these images, so they can be used for any purpose. Old artworks are a good example of public domain works.” Screenshots accompany the answers, along with text requesting (rather than requiring) attribution: “All we ask is that York Museums Trust is credited in the following way whenever a Public Domain image in our collection is used. *Image courtesy of York Museums Trust :: <http://yorkmuseumstrust.org.uk> :: Public Domain.*”<sup>137</sup>

**GLAMs that reserve all rights or use closed licences.** Many GLAMs reference the expiration of copyright in tandem with new copyright claims, highlighting that the user should be on notice of any underlying rights that must be considered in addition to their own.

**Sir John Soane’s Museum** claims “intellectual property rights in all content comprising or contained within this website” and reminds users “if a work of art, sculpture or work of artistic craftsmanship is still in the artist’s copyright (where for example the artist is still alive or has died within the last 70 years) you will need to obtain the additional permission of the artist or his or her estate or successor in title in order to reproduce the work”.<sup>138</sup> The **Fitzwilliam Museum** publishes low-resolution images under a CC BY-NC-ND 4.0 licence and notes this excludes “any images of works that are still in copyright (which includes anything where the creator is still alive or that falls within the period of date of death plus 70 years) or which are explicitly stated to be governed by a different licence”.<sup>139</sup> **Guernsey Museums & Galleries** claims copyright in “images, design and text in the website” and notes “the picture library can only supply images of works that remain in copyright (where the artist

<sup>132</sup> Websites and online services, 7. British Library (Some eligible data - no new rights)

<sup>133</sup> Terms and conditions for re-using content, 25. LSE Library: The British Library of Political and Economic Science (Some eligible data - no new rights)

<sup>134</sup> Intellectual property rights policy, 24. Llyfrgell Genedlaethol Cymru (National Library of Wales) (All eligible data - no new rights)

<sup>135</sup> Copyright, 24. Llyfrgell Genedlaethol Cymru (National Library of Wales) (All eligible data - no new rights)

<sup>136</sup> IPR and reproduction policy, 50. Royal Pavilion Brighton Museums (All eligible data - no new rights)

<sup>137</sup> Image Requests, 60. York Museums Trust (All eligible data - no new rights)

<sup>138</sup> Terms of use, 53. Sir John Soane’s Museum (All rights reserved)

<sup>139</sup> Terms of use of our website, 13. Fitzwilliam Museum (Closed licences)

or photographer is alive, or where they died less than 70 years ago) if prior written permission has been sought from the copyright holder” and requires the user to provide “a copy of this permission when submitting [the] reproduction request”.<sup>140</sup>

In a provision specific to use for educational purposes, **Museums Sheffield** notes “[u]nfortunately we are unable to provide images that are currently in copyright (where the artist is still alive or has died in the last 70 years)”.<sup>141</sup> This information is not repeated in terms covering other reuse purposes. On a webpage called “An introduction to copyright”, the **National Portrait Gallery** explains “[c]opyright usually lasts for the creator’s lifetime, plus the end of 70 years after their death (i.e. copyright always expires on 31 December in a given year)”.<sup>142</sup> The Gallery expressly addresses the public domain, albeit incorrectly, in another webpage specific to its Academic Licence: “Non-commercial research is research whose objective is to put new ideas *into the public domain* for public benefit and at no cost to the end user. It will therefore normally be financed from public or charitable funds” (italics added).<sup>143</sup>

These policies reference the term of copyright for the underlying work without explaining what it means for those rights to expire.

#### 4.2.3. Disclosure of rights in underlying work

Few GLAMs distinguish between the object and the image, both in general policies and when viewing an item. In some instances, the design of the display interface introduces uncertainty around a work’s rights status.

**Aberdeen Archives, Art Gallery and Museums** includes a clear copyright statement in the *Terms and Conditions* and notice in the website footer. Users encounter a different rights statement when viewing an item: “Copyright: Out of copyright.” This statement may refer to the underlying work, yet it contradicts other statements made by the organisation. Users who do not encounter the *Terms and Conditions* could reasonably interpret the out of copyright statement near the image as authorising its unfettered reuse.



#### Miscellaneous Photographs (7): Portraits

Photographer: [Photographed by John MacMahon](#) (Aberdeen, Scotland, 1843 - 1927)  
Date: 1850-1899  
Medium: paper  
Classifications: Photography  
Credit Line: Presented in 1978 by Miss Battisby.  
Copyright: Out of copyright  
Location: On Display - Gallery 18  
Object number: ABDMS006862  
Terms: [Photography](#), [Studio](#), [Carte de Visite](#)

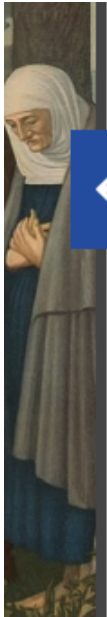
The **Heritage Collections UK Parliament** approach is clearer. The *Copyright* policy states “all of the images on this website are subject to copyright”. Users are provided with two rights statements when viewing an item: “Image copyright: UK Parliament” and “Object copyright: Out of copyright.” However, no examples read “Out of copyright” for both the “Image copyright” and “Object copyright” statements.

<sup>140</sup> Image Rights, 17. Guernsey Museums & Galleries (All rights reserved)

<sup>141</sup> Reproducing Museums Sheffield’s Images, 32. Museums Sheffield (All rights reserved)

<sup>142</sup> An introduction to copyright, 39. National Portrait Gallery (Closed licences)

<sup>143</sup> Academic licence details, 39. National Portrait Gallery (Closed licences)



## Copyright



All images on this website are owned by UK Parliament, and may also be subject to third party copyright.

[Read more about copyright here.](#)

### Image copyright

UK Parliament

### Object copyright

Out of copyright

### Image Credit

The English People reading Wycliffe's Bible Print  
by George Clausen © Parliamentary Art  
Collection WOA 1415

These item level assessments suggest the data infrastructure and websites' technical interface may be in place for accommodating a policy change.

#### 4.2.4. Over restrictive personal use and conflicts with fair dealing

The UK copyright act permits certain acts around in-copyright works under the concept of 'fair dealing'.<sup>144</sup> These include fair dealing for the purposes of: criticism or review; quotation; reporting current events; parody, caricature or pastiche; and illustration for instruction. Courts consider a number of factors when determining whether a dealing (or use) is fair. Accordingly, even if the copyright were valid, users are legally entitled to "deal" with those works in certain contexts, and those rights cannot be overridden by contractual terms stating otherwise.

Some GLAM policies make express or implied references to copyright exceptions or fair dealing. Examples include: **Fleming Collection; Imperial War Museums; Museum of London; National Galleries Scotland; Parliamentary Archives; Royal Albert Museum; Royal Museums Greenwich; Royal Pavilion & Museums Trust, Brighton & Hove; Victoria & Albert Museum; Art UK; and Guernsey Museums & Galleries** (fair use).<sup>145</sup>

Others have overbroad prohibitions that conflict with fair dealing, particularly around personal use:

**Atkinson Art Gallery** permits users to "temporarily download one copy of the materials (information or software) on The Atkinson's web site for personal, non-commercial transitory viewing only".<sup>146</sup>

**East Riding Archives** informs users that "[b]y viewing and or purchasing an image from this collection, you are agreeing to comply with copyright licensing regulations. These state your use of the image is for personal use only. The images may not be reproduced, published or distributed in any format including books, magazines, promotional, advertising or any other material in print or media including the Internet, broadcast and private or public exhibition without the express permission of the East Riding Council Heritage Service."<sup>147</sup>

<sup>144</sup> CDPA 1988, ch. III, s. 29-32

<sup>145</sup> See *Appendix 2*.

<sup>146</sup> Terms & Cons, 3. Atkinson Art Gallery (All rights reserved)

<sup>147</sup> Terms and conditions, 12. East Riding Archives (All rights reserved)

**Kirklees Image Archive** contains language that mirrors the policy above (in italics): *“By viewing a digital image from this collection, you are agreeing to comply with licensing obligations. These state that your use of the image is for personal use only, and that you will not copy, publish or distribute the image in any way.”*<sup>148</sup>

**Leeds Museums & Galleries** permits downloads “provided [the content] is not re-used or re-published in any way”.<sup>149</sup>

**Manchester Art Gallery** states “[a]ll material is provided for browsing and viewing purposes only. No copies of the digital images or text may be made except for personal use”, and goes on to describe personal use as “non-commercial, domestic use by an individual involving the making of only single copies of each digital image”.<sup>150</sup>

**National Museums Liverpool** permits users to “save, copy and print our images from our website, provided they are solely for your own personal use”.<sup>151</sup>

**National Museums Northern Ireland** prohibits content from being “copied, altered in any way or transmitted to others (unless explicitly stated otherwise) without authorisation”.<sup>152</sup>

**National Portrait Gallery** informs users the “website is here for [their] enjoyment” and permits users to “access, download and/or print contents for non-commercial research and private study purposes”. Those who “wish to use this material in any other way, [] must seek permission”.<sup>153</sup>

**Tank Museum** permits users to “access, download and print pages from the Materials on a temporary basis for the sole purpose of viewing them for non-commercial personal or educational purposes”.<sup>154</sup>

Ronan Deazley and Robert Sullivan have argued that terms which users to pay a licence fee for uses deemed to be fair dealing and permitted by copyright law could violate the Fraud Act 2006, specifically the section 2 offence of fraud by false representation.<sup>155</sup>

In a bespoke non-commercial licence, the **Imperial War Museum** defines ‘use’ around negative restrictions, rather than permissions: “‘Use’ as a verb, means doing any act which is restricted by copyright or database right, whether in the original medium or in any other medium, and includes for the purpose of this licence use without limitation distributing or copying in accordance with the terms of this licence.” The licence does not acknowledge the acts or ‘use’ legally permitted by copyright law.

Many terms extend to activity on personal blogs and social media, content captured by screenshots and/or sent by text and email, as well as data storage on personal devices and local drives. Realistically, GLAMs lack the sufficient resources and ability to enforce them, even if they were supported by law.

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<sup>148</sup> Terms, 22. Kirklees Image Archive (All rights reserved)

<sup>149</sup> Terms of Use, 23. Leeds Museums & Galleries (All rights reserved)

<sup>150</sup> Copyright, 26. Manchester Art Gallery (All rights reserved)

<sup>151</sup> Images and photography service, 37. National Museums Liverpool (All rights reserved)

<sup>152</sup> Copyright, 38. National Museums Northern Ireland (All rights reserved)

<sup>153</sup> Copyright and reuse, 39. National Portrait Gallery (Closed licences)

<sup>154</sup> Privacy and Legal, 54. Tank Museum (All rights reserved)

<sup>155</sup> See Ronan Deazley and Robert Sullivan ‘Copyright, Licences, and Statutory Fraud’ (2011) *Journal of Media Law* 3(2): 287-303

#### 4.2.5. Access for educational purposes

Some GLAMs permit reuse beyond what fair dealing would allow, particularly for educational purposes.

The **Ashmolean Museum** states that the “Collections Online has primarily been created for use by the education community” and permits use for “non-commercial educational purposes, including school higher education and further education students and employees for uses connected with education”.<sup>156</sup> The **Bodleian Libraries** publishes content CC BY-NC 4.0. In addition, “to encourage wide engagement and reuse of collections for the purposes of private study, research, teaching, and educational instruction”, the Library provides a list of additional permitted uses, such as: “in academic textbooks/e-books and academic books/e-books with print runs up to and including 3,000 copies” and “in journals/e-journals and academic newsletters”.<sup>157</sup> This is restricted to inside use only.

Other GLAMs define educational uses by print runs and publications. The **Victoria & Albert Museum** reserves all rights on the website, but permits use of content: (1) for print based academic publications, “one-time use [] in publications with print-runs up to and including 4,000 copies, for one edition only”; (2) for academic e-publications, online journals, non-commercial websites and blogs, use “up to 5 years from the first day of publication”; and (3) for charities and non-profit organisations, “one-time use [] in print or electronic formats up to 4,000 print copies or 5 years online”.<sup>158</sup> This latter distinction raises questions around the fairness provisions on standard use charges imposed by the PSI Regulation. Additional conditions apply: images cannot exceed A5 when printed or 768 pixels along the longest side online, they can be used only inside publications and the amount of V&A Content used must not exceed 25% of the total content used.

The **National Portrait Gallery** has extensive and varying policies for reuse of content under a (1) Professional Licence, (2) Academic Licence and (3) CC BY-NC-ND 3.0 licence.<sup>159</sup> Users must apply for the professional and academic licences or submit an email address to activate the download of CC BY-NC-ND 3.0 “low resolution images” (800 pixels wide at 72 dpi).<sup>160</sup> The Academic Licence for “high resolution images” (1500 pixels wide at 72 dpi) requires the user to register personal details and submit a request online for any “private, non-commercial research, use in a classroom, use in a dissertation or for scholarly and non-commercial publications” so long as the “combined print/electronic run is below 2,000 copies for books, or 4,000 copies for journals (and images are used inside (not on the cover)[...])”.<sup>161</sup> Additional conditions are contained in the webpage specific to “The National Portrait Gallery Academic Licence”.<sup>162</sup> Information and obligations relevant to the Academic Licence alone are spread across (at least) three different pages.

Other GLAMs condition educational use to be more restrictive than fair dealing would allow. To reproduce an image for research or educational use, **Museums Sheffield** requires the user to obtain permission via an email containing “as much detail as possible [] about your intended use of the image” but notes “[u]nfortunately we are unable to provide images that are currently in copyright

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<sup>156</sup> Terms of Use, 2. Ashmolean Museum (All rights reserved)

<sup>157</sup> Terms of use, 5. Bodleian Libraries (Closed licences)

<sup>158</sup> Website terms and conditions, 58. Victoria & Albert Museum (All rights reserved)

<sup>159</sup> Use this image, 39. National Portrait Gallery (Closed licences)

<sup>160</sup> Copyright and reuse, 39. National Portrait Gallery (Closed licences)

<sup>161</sup> Copyright and reuse, 39. National Portrait Gallery (Closed licences)

<sup>162</sup> Academic licence details, 39. National Portrait Gallery (Closed licences)

(where the artist is still alive or has died in the last 70 years)".<sup>163</sup> Accordingly, the Museum considers requests for educational use of only digital surrogates of public domain works in the collection (which also imposes Museum oversight over the fair dealing exception).

These framings of fair dealing and educational use can change according to resolution, media type and whether the documents fall within the public task, as discussed further below.

#### 4.2.6. Commercial versus non-commercial activities

Activities framed as commercial versus non-commercial demonstrate how GLAMs view permissible activities around reproduction media. Some GLAMs prohibit all commercial reuse in policies.

Many GLAMs publish materials via Creative Commons Non-Commercial licences and use language from the NC 4.0 version in the policy to clarify that non-commercial "means not primarily intended for or directed towards commercial advantage or monetary compensation".<sup>164</sup> This includes:

**Fleming Collection; Glasgow Museums; LSE Library; Museum of Classical Archaeology; Science Museum Group; Tate; and Art UK.**<sup>165</sup> The **Bodleian Libraries** goes on to explain: "This restriction is in place in part because the Bodleian Libraries seek to protect the commercial partnerships and activities based on images of our collections that provide an income stream that supports the work of the Bodleian, including our digitization efforts."<sup>166</sup>

A handful of national museums use the CC language and list bespoke examples of commercial and non-commercial activities. Commercial use examples from the **British Museum** (CC BY-NC-ND-SA 4.0) include: "anything that is in itself charged for", "freely distributed leaflets that promote goods or services" and "display in public places offering or promoting a product or service".<sup>167</sup> While the **Victoria & Albert Museum** reserves all rights (*i.e.*, does not use CC licences), it does use the NC language to define non-commercial purposes (overlap in italics): "The V&A considers non-commercial use to be any use that is *not intended for or directed towards commercial advantage of monetary compensation*."<sup>168</sup> Note that "primarily" does not modify "intended" in this version, which expands the scope of activities that might qualify as commercial use. Finally, the **National Portrait Gallery** (CC BY-NC-ND 3.0) defines commercial use via terms related to print runs and publications, as previously discussed. Similar to the Bodleian Libraries, the Gallery expressly highlights image licensing as an important income stream: "Diligent conduct in respect of [IP] rights, as well as the protection, active use and careful development of the revenue-generating potential of the Gallery's IPR, are essential to the Gallery's functioning, good reputation, authority, sustainability and the achievement of its core objectives." A few paragraphs later, it continues: "The Gallery's image licensing department raises money by licensing reproductions, thus supporting both the free entry policy and the Gallery's main functions caring for its Collection and engaging people with its works."<sup>169</sup>

Some GLAMs create bespoke non-commercial licences which use the NC language. The **Royal Armouries** uses its own 'Non-Commercial Licence (and Crown Copyright Licence)' which defines

<sup>163</sup> Reproducing Museums Sheffield's Images, 32. Museums Sheffield (All rights reserved)

<sup>164</sup> <https://creativecommons.org/licenses/by-nc/4.0/legalcode>

<sup>165</sup> See Appendix 2.

<sup>166</sup> Terms of Use, 5. Bodleian Libraries (Closed licences)

<sup>167</sup> Copyright and permissions, 8. British Museum (Closed licences)

<sup>168</sup> Website terms and conditions, 58. Victoria & Albert Museum (All rights reserved)

<sup>169</sup> Copyright and reuse, 39. National Portrait Gallery (Closed licences)

commercial use as (overlap in italics): “*primarily intended for or directed toward commercial advantage or private monetary compensation or gain*”.<sup>170</sup> The **Imperial War Museum** uses its own ‘IWM Non-Commercial Licence’ with the following definitions (overlap in italics): “‘Commercial’ means *intended for or directed toward commercial advantage or private monetary compensation*”, and “‘Non-Commercial’ means *not intended for or directed toward commercial advantage or private monetary compensation*.”<sup>171</sup> Use of “private” in these instances likely stems from reliance on text from the NC 3.0 version.<sup>172</sup>

The **Fleming Collection** and **National Galleries of Scotland** cite charity law in provisions stating they treat other charities (and their trading arms) as commercial organisations and prohibit their use of website materials on that basis.<sup>173</sup>

#### 4.2.7. Unenforceable terms

Certain policy terms are unenforceable, such as terms overriding acts permitted by copyright law.<sup>174</sup> Others raising questions around enforceability may require litigation to resolve.

**Bradford Museums & Galleries** states that “[b]y agreeing to these terms and conditions you are also confirming that you are over the age of 13 and thus legally able to give permission for your data to be held”.<sup>175</sup> Users allegedly agree to terms by viewing the website, similar to **Tyne & Wear Archives & Museums**’s policy: “By choosing to view the collections you have accepted these conditions.”<sup>176</sup>

**East Riding Archives** states by “viewing and or purchasing an image from this collection, you are agreeing to comply with copyright licensing regulations”.<sup>177</sup> Upon “terminating your viewing”, **Atkinson Art Gallery** requires users to “destroy any downloaded materials in [their] possession whether in electronic or printed format”.<sup>178</sup> These terms are often referred to as “browse wrap terms”, as they bind the user by virtue of simply viewing the website. Such terms raise concerns around lawfulness, consent and enforcement.

At least two GLAMs attempt to control use of materials on external platforms through policies on their websites. In a section called ‘Copyright of Flickr Images’, **East Riding Archives** explains images on Flickr Commons are marked as “no known copyright restrictions”, indicating that we are unaware of any current copyright restrictions on these images, either because copyright has expired, no evidence has been found that copyright restrictions apply, or we own the copyright and have chosen not to exercise that control”.<sup>179</sup> The Archives then attempts to condition their use with: “The images that we upload to our Flickr photostream are available for non-commercial research, private study, or educational purposes.” **The National Archives** includes a similar statement for collections uploaded to both Flickr Commons and Wikimedia Commons and limiting reuse “for the purposes of research, private study or education (non-commercial use) only”.<sup>180</sup> On Wikimedia Commons, all 381

<sup>170</sup> Download this image, 47. Royal Armouries (Closed licences)

<sup>171</sup> Imperial War Museum Non-Commercial Licence, 21. Imperial War Museums (Closed licences)

<sup>172</sup> <https://creativecommons.org/licenses/by-nc/3.0/legalcode>

<sup>173</sup> Terms & Conditions, 14. Fleming Collection (All rights reserved); Copyright & image licensing, 34. National Galleries Scotland (Closed licences)

<sup>174</sup> A court will not compel a party to act according to a term that is deemed unenforceable. In some cases, an entire contract may be unenforceable, such as when notice, the offer or acceptance of the contract itself is deemed insufficient.

<sup>175</sup> Terms and Conditions, 6. Bradfords Museums & Galleries (All rights reserved)

<sup>176</sup> Search our collections, 56. Tyne & Wear Archive & Museums (All rights reserved)

<sup>177</sup> Archives online, 12. East Riding Archives (All rights reserved)

<sup>178</sup> Terms & Cons, 3. Atkinson Art Gallery (All rights reserved)

<sup>179</sup> Archives online, 12. East Riding Archives (All rights reserved)

<sup>180</sup> Creative Commons and photo sharing, <https://www.nationalarchives.gov.uk/legal/copyright/creative-commons->



images are marked 'Public Domain' and were digitised through a Wikimedia UK grant.<sup>181</sup> On Flickr Commons, images are labelled 'no known copyright restrictions'. These UK GLAMs and others on Flickr have deleted assets previously uploaded to the Commons, as discussed in *Section 3.5*.

The **Parliamentary Archives** has an indemnification clause: "When you use a copy or the item in a way that infringes copyright, you agree to indemnify the Parliamentary Archives in respect of any damages or costs incurred by it in respect of that infringement."<sup>182</sup> Under this policy, indemnification could potentially include costs incurred when enforcing the (alleged) copyright against the infringing user, such as staffing time and overheads.

Some terms are practically impossible to enforce, such as this one on **Tate's** website: "All use of Tate images under Creative Commons is checked by Tate. Please email us about how you plan to use the work at [email address]. Thank you."<sup>183</sup> Whether this is meant to be a condition of use, or a courtesy request, is unclear. However, Creative Commons licences are expressly designed to permit reuse without permission or communication between the rightsholder and user. The **Horniman Museum** forbids users to "frame or link to the website or any part of it without our express permission".<sup>184</sup> Both terms convey a desire for communication with users and a general interest in knowing how content may be used, but they are presented under the umbrella of legal enforcement.

#### 4.2.8. Moral rights and attribution

Moral rights are a red herring in the UK when dealing with public domain works: because moral rights expire alongside the copyright, they have ceased to exist. However, the attraction to claiming copyright in digital surrogates is that the right of attribution to the institution can be secured through the new copyright.<sup>185</sup>

Moral rights accompany copyright protection and provide authors with the right to be named (or not) as the author of a work when it is copied or communicated (*i.e.*, the right of attribution, and to object to false attribution) and to control any treatment that may be derogatory or affect the author's reputation (*i.e.*, the right of integrity).<sup>186</sup> In the UK, the right of attribution does not arise unless it is asserted (*e.g.*, in a contract or on website terms).<sup>187</sup> Attribution and integrity rights last for the term of copyright. But it is worth noting that UK employees retain moral rights even where the copyright is owned by their employer.<sup>188</sup> Moral rights can be waived, but they cannot be transferred. For our purposes, assuming a copyright *is* valid, the question is then *who* owns the moral rights in digital surrogates versus *who* can enforce them. GLAM employees and independent contractors who create digital media often waive moral rights or agree for the GLAM to be attributed as part of their contract. However, the GLAM will not receive the rights to enforce the moral rights as part of this bargain.

Details around moral rights can get technical and complicated. To aid this, Creative Commons has translated the essential elements of the right of attribution to licences for BY (Attribution) and the

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[and-photo-sharing/](#)

<sup>181</sup> [https://commons.wikimedia.org/wiki/Category:War\\_art\\_in\\_The\\_National\\_Archives\\_\(United\\_Kingdom\)](https://commons.wikimedia.org/wiki/Category:War_art_in_The_National_Archives_(United_Kingdom))

<sup>182</sup> Publishing images, 41. Parliamentary Archives (All rights reserved)

<sup>183</sup> Creative Commons licences and Tate, 55. Tate (Closed licences)

<sup>184</sup> Terms and Conditions, 20. Horniman Museum (All rights reserved)

<sup>185</sup> See *Section 2*.

<sup>186</sup> CDPA 1988, ch. IV, ss. 77-89

<sup>187</sup> CDPA 1988, s. 79(6)

<sup>188</sup> CDPA 1988, ss. 11(2), 79(3) and 82

right of integrity to licences for ND (NoDerivatives). All UK GLAMs using CC licences at the very least use the BY licence, as CC BY is both the most permissive licence and starting point for all other variants. Some also opt for the ND licence to prohibit any remixing, modifications or adaptations of images and data. These include: **Fitzwilliam Museum** (Own website); **Glasgow Museums** (Art UK); **Guernsey Museums & Galleries** (Art UK); **Historic Royal Palaces** (Art UK); **Kirklees Image Archive** (Art UK); **Leeds Museums & Galleries** (Art UK); **Manchester Art Gallery** (Art UK); **Museum of Classical Archaeology** (Own website); **National Gallery** (Own website); **National Portrait Gallery** (Own website, Art UK); **Pitt Rivers Museum** (Own website); **Royal Academy of Art** (Own website); **Royal Museums Greenwich** (Own website); **Sir John Soane’s Museum** (Art UK); **Tate** (Own website, Art UK); **University of York** (Own website); **Wallace Collection** (Own website).<sup>189</sup>

Language that resembles moral rights by requiring attribution, preventing modification or imposing other restrictions are in countless GLAM policies.<sup>190</sup> Many terms go far beyond the protections available under UK law.

With respect to the rights to attribution and to object to false attribution, GLAMs regularly require users to acknowledge the organisation and sometimes the author of the work. For works in the public domain, the author’s right of attribution has expired. This means there is no legal obligation to cite the author (even though it is good practice). That these obligations are included in policies suggests they are meant to be contractually enforceable. Some GLAMs provide examples to aid users, which notably are of public domain artworks. The examples below are taken directly from policies:

Claude Monet, Poplars, 1891, Image © **The Fitzwilliam Museum**, Cambridge

Leonardo, The Virgin of the Rocks, 1491–1508 Photo © **The National Gallery**, London

Joseph Michael Gandy, ‘An imagined view of the Bank of England in ruins’, 1830, Photo: © **Sir John Soane’s Museum**, London

The **Fleming Collection** also prohibits the “false attribution of authorial or copyright credits, and the removal of any FWA metadata from digital file formats”.<sup>191</sup> By contrast, **Birmingham Museums Trust** includes a standard image by-line on items that states, “Optional attribution: Photo by Birmingham Museums Trust, licensed under CC0.”<sup>192</sup>

With respect to the right of integrity, policies range in scope. The **Atkinson Art Gallery** prohibits modification of materials.<sup>193</sup> The **National Museums Northern Ireland** prohibits content from being “altered in any way”.<sup>194</sup> The **Fleming Collection** prohibits “inaccurate or distorted reproductions”.<sup>195</sup> **Tate** prohibits users to “extract from, manipulate, alter or modify the Materials in any way”.<sup>196</sup> The **Wallace Collection** prohibits “inaccurate or distorted reproductions, colour treatments, alterations or adaptations of website content, except where other terms allow”.<sup>197</sup>

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<sup>189</sup> See *Appendix 2*.

<sup>190</sup> See *Appendix 2*.

<sup>191</sup> Terms & Conditions, 14. Fleming Collection (All rights reserved)

<sup>192</sup> Image byline, 4. Birmingham Museums Trust (All eligible data - no new rights)

<sup>193</sup> Terms & Cons, 3. Atkinson Art Gallery (All rights reserved)

<sup>194</sup> Copyright, 38. National Museums Northern Ireland (All rights reserved)

<sup>195</sup> Terms & Conditions, 14. Fleming Collection (All rights reserved)

<sup>196</sup> Creative Commons licences and Tate, 55. Tate (Closed licences)

<sup>197</sup> Copyright and images, 59. Wallace Collection (Closed licences)

Some GLAMs extend these policies to accuracy, deception and reputational damage. The **Horniman Museum** conditions reuse on “the material being reproduced accurately and not used in a misleading context”.<sup>198</sup> **Sir John Soane’s Museum** conditions reuse on “the material being reproduced accurately and not used in a misleading context or altered format (such as stretched, compressed, coloured or altered in any way so as to distort its original format)”.<sup>199</sup> In another policy, the Museum permits image cropping but requires written permission for any other changes or modifications.<sup>200</sup> The policy also states “[i]mages may not be used in any way which could be considered to be deceptive or which could reflect unfavourably upon the good name or reputation of Sir John Sloane’s Museum”.<sup>201</sup> In its Academic Licence, the **National Portrait Gallery** prohibits similar use that is “deceptive or which damages the good name or reputation of the National Portrait Gallery, the artist, or the persons depicted in the images”.<sup>202</sup> It is worth noting that this term applies to scholarly research with which the Gallery might disagree or construe as derogatory to the institution, the artist or even the person depicted in the underlying portrait. Lastly, the **Bodleian Libraries** prohibits use “which might adversely affect the image, reputation, goodwill, distinctiveness or prestige” of not only the Bodleian Libraries and its collections, but also the University of Oxford.<sup>203</sup>

In reality, it is difficult to know *whose* moral rights are at the heart of these terms: the underlying author’s or the GLAM’s? At least one example extends this claim to even the persons depicted in the artwork. The combined effect across GLAMs is to significantly limit the ways in which the public can use digital collections for a range of typical purposes, as well as atypical and innovative purposes, like computational data and/or as a medium to create new cultural works and knowledge.

#### 4.2.9. Differential treatment in images

Many policies delineate between images created for the purposes of performing the public task and activities falling outside of it. For those within the public task, some policies create sets of documents, claim IP rights in them, and/or make use of the Re-Use of the Public Sector Information Regulation 2015 exception to commercialise the documents.<sup>204</sup> In practice, this means GLAMs hold back high-resolution images and entire datasets for commercialisation while publishing low resolution images or basic datasets online under various statements and formats. What is defined as ‘high-resolution’ or of commercial value varies by GLAM.

For the **British Museum** both “low resolution and higher resolution (up to A5 size images)” and “[c]ollection online object data and textual material published on the website” fall “[i]nside the public task and [are] generally available for free non-commercial reuse” via the CC BY-NC-SA 4.0 licence. Also “[i]nside the public task and re-usable for commercial purposes at a charge” are “higher resolution images of the collection,” the fees and terms for which are available through the British Museum Images commercial licensing website. Accordingly, the British Museum considers its digital surrogates as documents created under the public task but makes use of the exemption for documents in which the Museum (allegedly) holds intellectual property rights. Different resolutions are published for public reuse, depending on the reuse purpose. The Museum considers inside the

<sup>198</sup> Terms and Conditions, 20. Horniman Museum (All rights reserved)

<sup>199</sup> Use of images and copyright, 53. Sir John Soane’s Museum (All rights reserved)

<sup>200</sup> Terms of use, 53. Sir John Soane’s Museum (All rights reserved)

<sup>201</sup> Terms of use, 53. Sir John Soane’s Museum (All rights reserved)

<sup>202</sup> Academic licence details, 39. National Portrait Gallery (Closed licences)

<sup>203</sup> Terms of use, 5. Bodleian Libraries (Closed licences)

<sup>204</sup> Discussed in *Section 2.1*.

public task but not available for re-use “[a]ny documents where re-use would be against the public interest having regard to [...] in the case [of] human remains held in the collection, the principles set out in Guidance for the Care of Human Remains in Museums (DCMS 2004) [...] and] in the case [of] cultural property generally, the principles set out in the Combating Illicit Trade: Due Diligence Guidelines for Museums, Libraries and Archives on Collecting and Borrowing Cultural Material (DCMS 2005)”.<sup>205</sup> This latter category of documents and reuse is relevant to the next section on Ethical Statements and cultural sensitivities.

**Birmingham Museums Trust** also takes a high/low resolution approach. Documents “generally available for free re-use” under the public task include “[f]actual data about works in the collection which has been intentionally published” and “[d]igital images of works in the collection up to 3Mb files, at no more than 300dpi, limited to copyright-expired works” under the CC0 public domain dedication. Available for re-use at a charge are “higher resolution images of copyright-expired works in the collection, whether as jpegs or tiff images”.<sup>206</sup> In truth, this qualifies Birmingham Museums Trust and others in the ‘All eligible data - no new rights’ category as falling outside its scope and instead within the ‘Some eligible data - no new rights’ category. However, because the images are of such a high resolution, this GLAM remains categorised by this report as ‘All eligible data - no new rights’. Others remain in that category for similar or different reasons, as discussed in *Section 3.4*.

The **Science Museum Group** defines “the production of replicas or reproduction of objects relating to science and technology, or of souvenirs” and the “sale of information” related to that as activities that “diversify and increase private and commercial funding opportunities”. Within these activities, the policy distinguishes between (1) “[s]creen-resolution images of objects in the collection where a Creative Commons license is specified on the webpage [and] documents expressly produced for free and unrestricted public access in partnership with public bodies” and (2) those that are “high-resolution” and “available through the Science and Society Picture Library”. Similar to the British Museum, the Group defines documents having regard to human remains (and the DCMS Guidance on human remains) and cultural property (and the DCMS Guidance on due diligence) as “inside the Public Task but not generally available for re-use”. In the notes, the Group specifies that “[c]ollection records (not including photographs) and some other datasets are inside the public task and where specified on the webpage, are available for free reuse [as CC0 1.0]”.<sup>207</sup>

By contrast, both the **Government Art Collection** and **The National Archives** exclude images from documents produced in the performance of the public task (or at least from documents subject to the Open Government Licence). The Government Art Collection’s public task is not on the website, but the *Crown copyright* policy includes a section on ‘Copyright of images’ that states “[i]mages of works of art on this site are not covered by the Open Government licence. If you wish to reproduce any of the works featured on this site, please contact the Government Art Collection.”<sup>208</sup> The National Archives informs users that images fall outside the public task: “The National Archives actively seeks to maximise the public value of its collection, including by undertaking activities that are beyond its Public Task. For example, other people or organisations might commission or fund the digitisation of public records (producing digital surrogates), in partnership with The National Archives, to widen access or to achieve a commercial return. Information created for these purposes

<sup>205</sup> Public task, Re-use of documents, 8. British Museum (Closed licences)

<sup>206</sup> Public task, 4. Birmingham Museums Trust (All eligible data - no new rights)

<sup>207</sup> Public task, Guidance on reuse, 51. Science Museum Group (Closed licences)

<sup>208</sup> Crown copyright, 16. Government Art Collection (All rights reserved)

is outside our public task.” The policy goes on to clarify this applies to digital surrogates of public records both “created or funded by others for commercial purposes” as well as those created by the institution “to widen access to the collection”.<sup>209</sup>

The **British Library** does not define documents differently for these purposes in online policies. On the public task webpage, the Library’s mission is “to make our intellectual heritage accessible to everyone for research, inspiration and enjoyment” and it views within “collection management related activities as part of its Public Task” the “collection, recording, organisation, structuring, storing, adaptation, digitization, facilitation of retrieval and consultation, disclosure by transmission or dissemination, and *licensing of any or all material held by the British Library on behalf of the nation*” (italics added).<sup>210</sup>

The **National Galleries of Scotland** public task highlights a number of “customary practices” the Galleries is responsible for outside of specific statutory or regulatory provisions, including the “[p]roduction of replicas or reproduction of works of art or souvenirs” and the “[s]ale of informative material in relation to works of art or replicas or souvenirs”.<sup>211</sup> Pursuant to this, the ‘Copyright & image licensing’ policy offers two non-commercial formats for reuse: the “lower resolution ‘share’ image” (600 pixels width) and the “higher resolution ‘download’ image”.<sup>212</sup> The user can right-click and directly download a lower resolution ‘share’ image, which “contains a banner at the bottom of the artwork information and its copyright holder”. The example uses a public domain artwork. Information on the artwork and its copyright holder is unclear. The image delivered is at such a small size the text is difficult to read, even when enlarged (see below).



Based on the banner information, the user could understand the rightsholder to be (1) Sir Henry Raeburn, (2) Antonia Reeve or (3) National Galleries of Scotland (if the logo placement counts). Under the CC licence selected (CC BY-NC 3.0), a user could crop out that information without violating its terms.<sup>213</sup> For higher resolution ‘download’ images, users must create a “free user account” to reuse content for certain non-commercial activities outlined in the policy. No banner accompanies these images. For higher resolution images or uses beyond these policies, commercial licences must be obtained.

Finally, a number of institutions treat public domain works differently from in-copyright works when claiming and managing the IP rights. For example, images of public domain works made by **Tate** are published as © Tate, CC BY-NC-ND 3.0. However, in-copyright works are published according to the underlying rights of the work itself (e.g., © David Hockney). In theory, the same methods of reproduction and interpretations of copyright law should apply to both digital surrogates. But

<sup>209</sup> Public task, 33. The National Archives (All rights reserved)

<sup>210</sup> Public task, 7. British Library (Some eligible data - no new rights)

<sup>211</sup> Our Public Task, 34. National Galleries Scotland (Closed licences)

<sup>212</sup> Copyright & image licensing, 34. National Galleries Scotland (Closed licences)

<sup>213</sup> ND is not present to prohibit image modification.

practice reveals they are treated differently across UK GLAMs.

#### 4.2.10. Ethical statements and cultural sensitivities

Statements on decolonisation, cultural sensitivities and ethical reuse are also made in GLAM policies. These can relate to intellectual property rights, open access or even digital access to collections.

While **Bristol Museum & Gallery** does not have a copyright policy, a significant portion of its website is dedicated to decolonisation statements that focus on the physical collection, the buildings and other aims. Policies extend to: ‘Action on decolonisation’ with a public commitment; ‘Our aims and objectives’ with the working group’s terms of reference; ‘Decolonisation – FAQs’ with many questions and answers on specific collections and colonial connections in general; and a ‘Decolonisation Blog’ which collates Museum activities on decolonisation.<sup>214</sup> No digital policy or decolonisation of digital collections is considered within these.

Some policies provide general notice to the user that the digital collections and data they encounter can be problematic. Some go further by inviting corrections and feedback on collections. Some provide educational context around issues embedded in collections.

The **Horniman Museum** explains the database includes “language taken from historical documents [] may now appear outdated and offensive” and some “information on objects that are considered secret or sacred by some communities”.<sup>215</sup>

**Tyne & Wear Archives & Museums** includes a notice that some information and images “may include images of objects that could offend some people, or that local communities might consider sacred or special”.<sup>216</sup>

**Museum of Archaeology and Anthropology** does not have a copyright policy but acknowledges its “catalogues include historic descriptions and representations that are factually inaccurate, racist and otherwise inappropriate” and makes a commitment “to the work of addressing hurtful legacies in the collections we care for”. It also asks users for “help in identifying images or data that cause offence or harm”, providing an email address for feedback and suggestions.<sup>217</sup>

The **Pitt Rivers Museum** does not have a copyright policy but warns users in two places. The first is presented as a sort of terms of use pre-screening upon clicking ‘Search the Collections’, which users must agree to before proceeding. A ‘Cultural warning’ puts users on notice that “some records document research into people and cultures using scientific research models and language from the 19th and 20th centuries. These depicted people in ways that are outdated and offensive.” It goes on to explain there is “information on, and photographs of, objects associated with ritual or ceremonial activity yet to be classified as public. In some indigenous communities, there may be prohibitions relating to the age, gender initiation and ceremonial status or clan of the person who may see them. The database also contains the names of deceased persons, which may cause sadness or distress, particularly to relatives of these people.”<sup>218</sup> The second notice is provided via the ‘Collections online’. It asks users “to bear in mind that these are working databases that are constantly being updated. It is important to see how objects were perceived in the past; therefore we preserve all the

<sup>214</sup> See 61. Bristol Museum & Gallery (C. Ethical policies)

<sup>215</sup> Item, Collection Information, 20. Horniman Museum (C. Ethical policies)

<sup>216</sup> Search Our Collections, 56. Tyne & Wear Archives & Museums (C. Ethical policies)

<sup>217</sup> Collections, 62. Museum of Archaeology and Anthropology (C. Ethical policies)

<sup>218</sup> Search the collections, 43. Pitt Rivers Museum (C. Ethical policies)

information ever recorded. Some of this historic terminology is discriminatory and offensive. Please note the databases include records for objects that are considered secret or sacred by some communities.” The policy concludes by inviting information and corrections via email.<sup>219</sup>

The **Royal Museums Greenwich** has a policy on ‘Culturally sensitive images’, that is worth quoting at length. It begins by highlighting “[i]mages of the transatlantic slave trade and colonial slavery are historic visualisations of an inhuman system of suffering and exploitation. Many show the casual violence that was endemic in the slave system. Black people, whether free or enslaved, are almost always depicted in a derogatory and racially stereotyped manner, reflecting the widespread European prejudices of the day.” It goes on to warn users of the language and visual treatment around such imagery. In another paragraph, the policy calls attention to “exploration” and the ideas it embodied in relation to “scientific knowledge, individual endurance and state power”. It highlights that “[m]ore recently, discussions about what exploration is, who its heroes are and the roles of Indigenous communities in expeditions have led to much more nuanced understandings of these histories”. The policy concludes with a commitment to “write captions that are accessible, respectful and accurate, consulting with individuals, communities and specialists to address the complex and challenging themes within our collections” and invites feedback by email.<sup>220</sup>

Unlike other policies, the **LSE Library** notes these issues should also impact reuse. The policy informs users that “[i]n addition to copyright, there may be other rights or considerations that affect the way you are able to re-use our content. For example, some of our content may contain information about individuals who may still be alive or contain culturally or racially insensitive language or imagery.” The Library makes a commitment to flag issues “in the item or collection description” where they are aware of them but informs the user “it is your responsibility to ensure that your use is ethically and legally sound”.<sup>221</sup>

Some policies are specific to human remains. The **Petrie Museum of Egyptian Archaeology** discloses with respect to its “small collection of human remains, these specimens are currently being re-catalogued to conform to the UCL policy on human remains and so have not been published at the present time”.<sup>222</sup> By contrast, **Leeds Museum & Galleries** notes its “substantial collection of human remains which were once parts of living people” and commits “to caring for them in a respectful manner while also making the collections available for research and engagement where appropriate, in line with our human remains policy”.<sup>223</sup> This Human Remains policy clarifies the Museum “will only use images of human remains in interpretation or in marketing (including the website) after approval by the Human Remains Working Group” and “only if pertinent to the accompanying content”. For the galleries, the Human Remains policy “permits respectful photography of human remains on display” which “is supported by visitor consultation carried out in 2018”.<sup>224</sup> Returning to the main policy, the text highlights research undertaken during the ‘Skeletons: our Buried Bones’ exhibition, which “asked visitors what they thought about having and using human remains, and allowing photography of human remains on display, in order to inform the human remains policy

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<sup>219</sup> Collections online, 43. Pitt Rivers Museum (C. Ethical policies)

<sup>220</sup> Culturally sensitive images, 49. Royal Museums Greenwich (C. Ethical policies)

<sup>221</sup> Terms and conditions for re-using content, 25. LSE Library (C. Ethical policies)

<sup>222</sup> UCL Petrie Collection Online Catalogue, 42. Petrie Museum of Egyptian Archaeology (C. Ethical policies)

<sup>223</sup> Archaeology and Numismatics, 23. Leeds Museums & Galleries (C. Ethical policies)

<sup>224</sup> Leeds Museums & Galleries Human Remains Policy, 23. Leeds Museums & Galleries (C. Ethical policies)

going forward”.<sup>225</sup> The policy provides a link to the final report.<sup>226</sup>

In addition to these, the **Science Museum Group** and the **British Museum** define documents related to human remains separately in public tasks. In the ‘Copyright and permissions’ policy, the British Museum goes further, explaining they reserve all rights for some digitised materials “due to cultural sensitivities, or if doing so would be against any existing Museums policies (such as our human remains policy)”.<sup>227</sup> In this sense, the Museum’s approach is to make these images available online, claim IP rights as © Trustees of the British Museum and use copyright law (in theory) to secure and monitor ethical reuse. Users can locate relevant images and records via searches for tags like ‘human remains’, ‘human skeleton remains’, and ‘human mummy’.<sup>228</sup>

Finally, the **British Library** has a statement specific to “ethical and permitted usage of recordings”, which was prepared with the World Intellectual Property Organisation (WIPO). It begins by explaining “[d]ue effort has been made to ensure culturally sensitive material has been cleared for use or has been removed from wider access”. The collections themselves are digitised and made available “purely for the purposes of safeguarding them and for making them available for non-commercial research, study and private enjoyment” and include “culturally sensitive materials, among them ethnographic sound recordings”. The policy prohibits use and alteration “in ways that might be derogatory to the indigenous and local communities who are traditional custodians” It notes that while “the British Library, or contributors to its collections, may be the owners of intellectual property in the digitisation of the sound recordings and in the sound recordings themselves, the Library recognises that broader rights and interests [in the materials] reside with the traditional custodians”. As a result, “prior informed consent of the British Library and/ or [sic] other contributing parties, as well as the traditional custodians is required for the republication and commercial use of part or whole of these materials”.<sup>229</sup> This reflects the many layers of rights that can arise in such materials, while also suggesting additional rights can apply to the digital file as a result of their digitisation.

Aside from these, no other policies discussed rights in reuse, cultural sensitivities and how users might consider context around digital collections and data encountered online. This does not mean such work is not ongoing within institutions, only that the majority of public facing policies do not extend to these concerns.<sup>230</sup> This reflects the wider dynamic of such research and activities being access-focused, project-based or exceptions to collections management, rather than comprehensively built into systems and operational budgets in a way that reflects their systemic embeddedness among UK collections and concerns of reuse.

#### 4.2.11. Discussion of open access

Finally, policies were reviewed for express mentions of open access. Some policies include or link to specific statements on open access, but few explain what this means or use open access to anchor

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<sup>225</sup> Archaeology and Numismatics, 23. Leeds Museums & Galleries (C. Ethical policies)

<sup>226</sup> <https://museumsandgalleries.leeds.gov.uk/wp-content/uploads/2020/05/Visitor-Responses-to-Human-Remains-in-Leeds-Museums-and-Galleries-final-report.pdf>

<sup>227</sup> Copyright and permissions, 8. British Museum (C. Ethical policies)

<sup>228</sup> <https://www.britishmuseum.org/collection>

<sup>229</sup> Sounds, Licences, 7. British Library (C. Ethical policies)

<sup>230</sup> For example, see <https://www.tate.org.uk/about-us/projects/provisional-semantic>; <https://photoarchive.paul-mellon-centre.ac.uk/groups/Archival-Silence-and-Historical-Bias>; <https://www.bl.uk/collection-guides/major-named-collections-of-printed-books-now-in-the-british-library>



the policy's framing. Others do explain open access but limit its scope.

The **Ashmolean Museum** makes an open access commitment in its 'Digital strategy', which includes as its vision the goal of embracing "the opportunities offered by digital to democratise access to collections, eliminating geographic, cultural and economic boundaries". The policy does not consider that copyright in digital surrogates and data may frustrate these goals by erecting new boundaries that are geographic (*e.g.*, UK copyright law), cultural (*e.g.*, Museum oversight around reuse) and economic (*e.g.*, licensing fees to access and reuse images). Instead it focuses on *digital* access (rather than open access) around an ambition "to create full machine-readable metadata and digital surrogates of our unique collections and make them available and discoverable online, and to *preserve and safeguard them for future generations*" (italics added). To fulfil this, the Museum will "[o]ptimise access to the collections for digital teaching and research" and "[u]tilise the collections to enhance public participation and engage new audiences locally, nationally and internationally". To support this, the Museum will "[c]reate an efficient sustainable model for preserving and managing the collections" and "develop commercial strategies and partnerships, where appropriate, to grow income streams and ensure the financial sustainability of our operations".<sup>231</sup> The 'Terms of Use' reserve all rights in images of collections, galleries and buildings and require "© Ashmolean Museum, University of Oxford" to accompany any reuse for non-commercial and educational purposes only.<sup>232</sup>

Others define 'open access' around information and research, rather than collections and digital surrogates. The **Science Museum Group** clarifies its goal to "enable audience's [sic] reuse of images" is achieved through the CC BY-NC-SA 4.0 licence. By contrast the CC BY 3.0 licence "applies to 'open access' content such as the Science Museum Group Journal" and the CC0 "public domain *attribution*" (italics added, as this is a public domain dedication and does not require attribution) applies to "datasets such as the collection metadata".<sup>233</sup> In the 'Guidance on reuse' document accompanying the public task, the notes read: "The Science Museum Journal is inside the public task and generally available for free reuse with attribution ("Open access") on Creative Commons Attribution CC-BY."<sup>234</sup>

The **National Portrait Gallery** and the **British Library** reference public funding as supporting open access goals. In the 'Open Access Policy', the Library includes a statement "in support of Open Access to research that has been funded from the UK public purse", which goes on to convey this position is specifically in reference to research.<sup>235</sup> The Gallery frames public funding and its impact not within open access, but rather with respect to "non-commercial research". Because this is research "whose objective is to put new ideas into the public domain for public benefit and at no cost to the end user", the Gallery explains "[i]t will therefore normally be financed from public or charitable funds".<sup>236</sup> This statement is made in the Academic Licence the Gallery supports for the purposes of allowing reuse for non-commercial purposes, rather than the Gallery's policy on copyright and open access and how public funding impacts its own activities.

The **Fleming Collection** limits its commitment to providing "online access" to "as many of the works

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<sup>231</sup> Digital strategy, 2. Ashmolean Museum, Oxford (All rights reserved)

<sup>232</sup> Terms of Use, 2. Ashmolean Museum, Oxford (All rights reserved)

<sup>233</sup> Creative Commons, 51. Science Museum Group (Closed licences)

<sup>234</sup> Guidance on reuse, Public task, 51. Science Museum Group (Closed licences)

<sup>235</sup> Open Access Policy, 7. British Library (Some eligible data - no new rights)

<sup>236</sup> Academic licence details, 39. The National Portrait Gallery Academic Licence (Closed licences)

in its collection as possible” via the Search the Collection website.<sup>237</sup>

The entry point for data collection on ‘open access’ was the copyright or terms of use policy. Other policies may exist across GLAM websites and not be referenced within these policies.

### 4.3. Risking the public domain

Despite whether a work is in the public domain or in-copyright, there are many legitimate reasons why digital collections cannot be made available for public reuse, legal and otherwise. However, such reasons are rarely explained to the user in a way that supports the public mission, educational remits and stewardship of the digital collections. Users need to understand open access, copyright and the public domain, in order to understand how they can use collections.

GLAMs can be perceived to be sources of authority based on the website terms and language presented to users. In reality, there are considerable levels of anxiety around the application of laws and the desire to comply and respect rights. Yet traditional copyright policies that treat in-copyright and public domain materials together and use dense legalese generally place the onus on the user to ensure no infringements of law occur. This assumes significant knowledge and understanding of the user. Such policies can become barriers to access and reuse, regardless of what their individual terms permit or prohibit. They reveal more about individual GLAM needs and attitudes than how users can access and reuse digital collections across the UK. The data demonstrates a pressing need to curtail these practices, for the benefit of GLAMs, their staff and users, and the UK economy.

These policies reveal incredibly risk averse approaches, even to public domain materials that should pose little to no risk for GLAM digitisation and public reuse. Many participants noted an absolute fear of copyright and the risk averse nature of institutions, particularly as present among national GLAMs. One commented risk was perceived in publicising the GLAM’s risk averse approach on the website as it could signpost to the public that infringing materials may be online. Another commented the sector as a whole was “more focused on worries than realities”. When asked whether disputes arose with rightsholders, participants gave minor examples of standard takedown requests or payment of ad-hoc licensing fees.

Participants also provided no or very few examples of dispute resolutions with users. Given there is no actual enforcement of these policies, including the copyright claim to digital surrogates, why have them? Such policies attempt to control reuse of public domain works in collections despite contradicting the UK IPO’s interpretation of copyright law and the drain on resources it causes to the GLAM.

By contrast, there is a real risk of TaNC projects and policies replicating these approaches and creating new barriers to the content and even the outputs created with public funding. Participants from all GLAMs expressed genuine concern around the future relevance of their collections: “If we don’t release this stuff, we’re going to get written out of history. Images that reappear are going to be the ones that are openly licensed or in the public domain.” Considered against the wider open GLAM climate, traditional practices paint a bleak future for the reuse of public domain heritage materials in UK collections.

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<sup>237</sup> Terms & Conditions, 14. Fleming Collection (All rights reserved)

## 5. Analysis of findings - A culture of copyright

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*“I don’t have any power. I can advise [my organisation] this is wrong, and that we should change it, and provide all the reasons. But I don’t have any power.”*

IP manager of a national collection

The study observed many longstanding tensions that inform practices around gatekeeping, commercialisation, control and access have been further complicated by economic recessions, reduced funding for the sector and public remits that seem to evolve alongside technological advancement. At the same time, there are ways to employ these technologies to support new knowledge and cultural production, creative innovation and commercialisation, for both the UK’s GLAMs and their public(s). However, the sector’s ongoing focus on maintaining exclusive rights in, and thus control over, the reproduction media produced by such technologies risks both TaNC’s aims and crystallizing a barrier that thwarts open access to a digital national collection. This study finds the focus on copyright is not only misplaced, but also seriously impeding the potential of the UK’s cultural heritage collections for GLAMs, their wider public(s) and our cultural and creative industries.

### 5.1. A sector in need of support

It should be stressed that GLAM staff are working under significant and increasing pressures to achieve what they can with the limited support and power available to them. Interview participants agreed the biggest barrier—both within their respective institutions and across the UK GLAM sector—is a lack of resources.

This state of affairs has negative consequences for various aspects of digital collections creation, rights management and open access. Specific stressors relevant to why rights are claimed in reproduction media are addressed below. The negative consequences that materialise and shape the digital national collection and the potential of open access to reduce them are addressed in the sections that follow.

#### 5.1.1. Support for public domain *and* copyright competence

The quantitative research suggests there is a fundamental lack of knowledge around copyright *and* the public domain across the UK GLAM sector. Even staff in IP-related roles may interpret the law within an institutional vacuum according to the relevant desires and needs of the organisation.

Staff routinely referred to the complicated nature of copyright as inducing risk averse determinations around open access and general collections management. Put simply, in a participant’s own words, “the natural position is one of saying no before yes”. The result is that copyright is assumed to subsist in far more materials than it should, which impacts not only assessments of digital collections and materials created around works known to be out-of-copyright and/or in the public domain, but also assessments of whether copyright subsists in physical collections and materials for which the potential rightsholder is alive or has died within 70 years. Not everything is protected by copyright from the moment of creation. As one IP manager commented, “For a lot of people, copyright is an abstraction. The field itself has so many misunderstandings in terms of how it impacts collections management.” Another participant stressed that, “You must understand copyright in order to understand what is in the public domain and what can be made

available openly.” Staff expressed future proofing worries that if GLAMs do not understand (or know with certainty) that something is in the public domain, they will treat risk averse materials as in-copyright and disengage. Across the UK, the scope of impacted materials is immeasurable.

This stressor is compounded by the fact the sector has underinvested in copyright awareness and support. The majority of GLAMs have limited access, if any, to legal service and expertise. Some receive *pro bono* services for project-specific or one-off advice. Few have an IP manager or legal team to support the range of needs that go beyond rights management. Those who do rely significantly on such persons and are even expected (and happy) to defer to them. For many, such persons provide an invaluable resource. Some are even able to push back against (relative) risk aversion to design creative solutions. Others noted difficulties when these roles sit within the commercialisation department or trade arm of the GLAM. Where more traditional positions are taken, this is seen as contributing to stagnation on open access and interpretations of law that do not serve the public.

Conversations revealed that commercialisation factors primarily influence decisions to claim copyright and/or provide digital access rather than a legal assessment of the “originality” of reproduction media. For many GLAMs, decisions on digitisation, access *and* open access hinge on the commercial viability of materials. Staff expressed additional concerns considering such assessments are often made based on *potential* commercial viability, rather than any immediate or concrete plans to commercialise. This can impact different collections disproportionately. Those ripe for public engagement are seen to be equally ripe for commercialisation due to their attractiveness and the GLAM’s ability to leverage their public as future consumers through a commercial partnership. A copyright-by-default approach is therefore seen to protect *potential* revenue streams and prohibit any commercialisation or profit that does not flow back to the GLAM itself. A few staff interpret the RPSI Regulation to support or require this approach, as a risk averse reading could prohibit GLAMs from charging for commercial partnerships where the collections are also published using open licences and tools.

Reasons for taking these approaches in this transitional moment are understandable. Some staff expressed a sense of unfairness when for-profit commercialisation or the commercial sector steps in and “free-rides” on the collection. Many do not want things to be “wrongfully commercialised”. Other staff reasoned this is why GLAMs use copyright: to prevent others from taking content that is not theirs, and to safeguard it for the nation. GLAMs cannot presume to know how artists intended for their works to be reused, particularly considering such reuse includes the GLAM’s perpetual commercialisation. To counter this, participants feel “[t]here needs to be massive education around this.” As one participant observed, “GLAMs are effectively putting things back *into* copyright by putting a licence onto the reproduction materials. This results in perpetual copyright. Once something is out of copyright, it should be turned over to the public.”

The outcome of a traditional copyright approach is thus one of *risking* the public domain and its incredible potential for UK GLAMs, the public and the economy.

### **5.1.2. Support for existing digital and open access remits**

All participants noted the collapse in funding *for* digitisation following its initial push two decades ago. Today, GLAMs are expected to build digitisation into operations and find costs within the budget. Funding and budgets for open access remits are almost non-existent.

For many, severely limited resources make proactive digitisation impossible. Instead, most GLAMs digitise reactively, in response to public, scholarly or commercial requests. This enables GLAMs to pass costs onto consumers while producing digital assets necessary to collections management and digital operations, which can then be commercialised to support other activities (for the profitable few). For some, digitisation funding has been secured via small grants for projects limited in scope, or by larger projects that involve onsite renovations or storage removal. Commercial partnerships can enable digitisation yet restrict assets further through rights negotiated in the contract. These impose new obligations on GLAMs around digital asset management and licensing. For many reasons, most GLAMs situate digitisation operations within the business plan (*e.g.*, as opposed to education and outreach), and their approaches reflect that understanding of the institution, including its goals for, and the purpose of, its digital collections.

Financial precarity among the sector thus negatively impacts the stability and sustainability of digital *and* open access programmes. Almost all participants noted that staff turnover and loss of institutional knowledge raised barriers over the years. Complicated agreements signed with commercial partners or donors can render entire collections unsound for open access (and TaNC projects) where the staff involved have moved on from the organisation. Where the turnover involves staff who support open access implementation, efforts may stall, dissipate or regress entirely.

In general, the *incapacity* to engage can be related to finances, labour, staffing *and* technologies. Participants interviewed stressed the incredible amount of work that goes into preparing collections for digital systems even prior to the incredible amount of work required for publication *and* for open access. As one open GLAM participant observed, “Open access is hard too. For something that seems simple, it’s really not.” A participant from a second open GLAM explained, “Change comes from the few. Having internal champions really helps, and yet there is still a long way to go even for people who have made the first step.”

### 5.1.3. Support for COVID-19 fallout and new setbacks

All participants felt the pandemic had exacerbated resourcing issues and steered many GLAMs away from open access. Instead, “all focus has shifted to the existential crisis of how to operate”.

UK GLAMs may not charge for entry to their permanent collections, but they do rely heavily on revenue generated by visitors. Data shows some of London’s national museums welcomed between just 3% and 7% of their normal visitors in 2020/21.<sup>238</sup> These losses result in hundreds of millions of pounds across the sector. The pandemic is now impacting other revenue sources, like international partnerships and special exhibitions that normally produce income, as there are less opportunities across the global sector with everyone fighting to keep their doors open.

Voluntary and involuntary redundancies have led to significant reductions in staff. Tate reported reductions between 18% for gallery employees and 46% for the gallery’s commercial arm.<sup>239</sup> Such redundancies and furlough programmes have impacted all operational areas, with an incalculable loss of institutional knowledge and expertise. The consequences are impacting GLAMs ability to do some work at all. This includes TaNC projects, in terms of getting data together or what can now be achieved. With respect to many toolkits and resources, one participant noted guidance now feels

<sup>238</sup> <https://www.theartnewspaper.com/2021/11/10/tates-income-loss-reflects-disastrous-impact-of-covid>

<sup>239</sup> <https://www.theartnewspaper.com/2021/11/10/tates-income-loss-reflects-disastrous-impact-of-covid>

very pre-COVID and limited in usefulness.

Meanwhile, public desires for digital engagement grew during lockdown with no increase in resources to match increase on demand. Some felt GLAMs responded by prioritising commercialisation and commercial partnerships above the calls for open access. One commented, “COVID drove institutions to reconsider digital. But what came out of it is not impressive for the UK [compared to countries with developed open access agendas]. One national institution’s response was to sell Zoom backgrounds.” Some felt GLAMs are now too focused on new commercial partnerships while believing the ability to secure new partnerships and compete with other GLAMs for them relies on maintaining exclusive control of collections. Others saw open access as a way to fulfil raised expectations around hybrid models, while continuing to offer exclusive access to curated content: “During COVID, many institutions filmed exhibitions, tours and other exclusive content for members and supporters. While they were successful, the fact is the public may expect a hybrid offer from now on. But there is no funding for this! Making digital assets more widely available can help with the hybrid position.”

Indeed, this state of affairs is bad for trying to maintain a traditional copyright approach due to the resources it drains and the legacy issues which spur from it. As one participant explained, “There’s a lot of human intervention required to manage policies. We’ve lost so many colleagues around this, and now cannot manage the legacy data issues that are arising around the management of the status quo.” Staff felt that at this point, GLAMs are unnecessarily making it harder on themselves and future staff members.

Ultimately, GLAMs now appear even less inclined to eliminate *any* income sources, particularly given increased pressures from the government to self-generate revenue.

## 5.2. What is the impact of ‘A culture of copyright’ on open access?

The above stressors provide an important backdrop to analysing the impact a culture of copyright has on open access to the UK’s cultural collections.

In sum, the quantitative and qualitative research suggests that open access in the UK GLAM sector remains an emerging trend rather than a sector-wide commitment to the public. It appears that difficult conditions experienced across the sector pose risks to the progress made, and have even motivated some GLAMs to return to traditional approaches. Copyright claims and commercialisation desires sit at the heart of these approaches. As one participant commented, “we’re having the same conversations we were having 10-15 years ago”. The analysis below addresses the consequences for open GLAM.

### 5.2.1. How does law contribute?

Legal grey areas enable GLAMs to interpret laws to the greatest extent in a way that is favourable to a given goal. Currently, that goal is a desire to avoid risk and claim copyright in digital surrogates. However, the inverse is also true: there is scope to interpret those same laws and legal grey areas in a way that aligns with public missions to facilitate access to the greatest extent of openness.

Claiming copyright when no rights subsist is not *illegal*, but it is a misrepresentation of the law that can render the copyright, licences and contractual claims reinforcing it unenforceable or void.<sup>240</sup> It is

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<sup>240</sup> However, claiming copyright when one is unsure of the claim and seeking to license the work could amount to statutory fraud. It is not

also an increasingly controversial practice. Participants raised the ethical issues involved while stressing the prevailing approach is made possible by a *legal* climate with variants of grey. These conditions support a sector-wide practice that caters to copyright and commercialisation where digital collections are concerned.

The majority of UK GLAMs take favourable interpretations to a network of laws, extending claims of copyright and other rights to digital surrogates, metadata, data and all other content published on digital platforms. These approaches contradict the UK IPO's Copyright Notice while citing copyright law as the basis for their interpretation. One participant noted, "Museums will do whatever they can to interpret the law in their interest until they can't."

Although enforcement against users is absent or limited to cease-and-desist notices, interviews disclosed instances of GLAMs enforcing copyright or contractual claims against each other. Staff observed risk averse GLAMs holding back from publishing their own digital surrogates of public domain works that are held in the collection of a rights-conservative GLAM. For those GLAMs, a digitised black-and-white photograph of an artwork is considered to compete with the GLAM's own coloured and high-resolution digital reproduction.

That these concerns materialise and combine with others, and without legal clarity, is felt by some GLAM staff as a form of pressure from others to maintain the status quo.

### 5.2.2. How are staff affected?

Traditional copyright approaches are impacting staff efficiency *and* knowledge production within and across GLAMs. Staff provided examples of copyright being obstructive and open access being constructive to various operations and projects.

Traditional copyright policies were noted to shape what projects staff could pursue, and what research could be undertaken, due to desires to reserve certain collections from engagement (and open access obligations) for their *potential* commercial viability.

More than a few examples revealed staff were charged for their use of an image in the GLAM's collection for scholarly publications. In one case, images were eliminated to bring the licensing fees paid to the GLAM within the budget's limitations. The fees were paid using project funding secured from a national funder.

Participants revealed turning to Wikimedia Commons, Flickr Commons and well-known CC0 collections of organisations like the Metropolitan Museum of Art and Wellcome Collection to illustrate blog posts on the GLAM's own website. Many staff regularly prioritise use of openly licensed images over images from their own collections (and other UK collections) because of their free availability and quick transaction time. Self-service downloads cut out the need for conversations between GLAMs and negotiating any bespoke 'courtesy of' credits. Staff appreciate policies that signpost clearly and provide detailed catalogue information to users (*i.e.*, other GLAMs) to enable easy citation. One participant noted the institutional contradiction of using openly licensed collections while operating a licensing service for their own, asking: "Who is this serving?"

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illegal *per se*, but doing so by making a false representation to obtain monetary gain opens the door to illegality and a potential criminal investigation. See Ronan Deazley and Robert Sullivan 'Copyright, Licences, and Statutory Fraud' (2011) *Journal of Media Law* 3(2): 287-303; Jason Mazzone, 'Copyfraud' (2006) *New York University Law Review* 81(3): 1026-1100

UK GLAMs are integrating openly licensed content to enrich collections data, improve information services and enable staff to focus on other tasks. Few UK GLAMs also reciprocate by contributing openly licensed content and CCO data to websites and external platforms.

At least two GLAMs use Wikipedia biographies on their website, which are crowdsourced and openly licensed as CC BY-SA. The Museum of Modern Art's initiative was referenced as opening the door for others to follow. Staff realised much of the information in artists' biographies was inaccurate and needed updating; some was unfit for publication. They found the Wikipedia biography was not only more accurate, but the platform also provided a more useful interface for staff to update biographies or mistakes where present. The added benefit is that staff have been able to lend credibility to these websites by engaging with them. The approach is thus to improve public biographies on a platform that will reach millions while feeding that information back to the website, rather than reinventing each individual wheel and replicating the work for a more limited audience. The move was important for improving the overall representation of artists' biographies on the website, but particularly for artists who are under-represented and deserve more authoritative information. GLAMs simply do not have the resources to devote to developing and maintaining comprehensive biographies, which disproportionately impacts marginalised and less written about artists. The outcome was to support and enrich a crowdsourced authoritative voice, rather than to compete with it to sustain an institutional one with known errors and under-representation. As one participant noted, "Championing institutional authority can come at the expense of so many people and lives. It reveals how discriminatory it can be as an organisation and collection to try to maintain control over authority."

Finally, staff from GLAMs that took incremental steps towards open reported experiencing inefficiencies as a result. With each policy change, legacy data and rights assessment issues are revived, staff must update digital collections and website terms and communicate the new policy to a confused public. This results in greater overall resource investment around open GLAM.

### 5.2.3. Who do these policies serve?

Existing UK policies and practice appear to centre GLAMs, rather than the public (or even the creators they mean to protect).

From a user's perspective, GLAM policies and reuse parameters are difficult to understand (even for more knowledgeable user-GLAM staff who operate under similar policies).

Few public-facing policies are clear at the point of consumption. Others advertise they are "open," while contradicting this statement in practice, such as by:

- presenting collections online under all rights reserved statements;
- applying closed licences that prohibit commercial reuse;
- openly licensing collections while preventing download through technical protection measures;
- publishing content as all rights reserved on the website while publishing small samples of low-resolution images under open licences or public domain tools on external platforms;
- publishing policies that attempt to limit reuse of images published under open licences or public domain tools on external platforms; or
- distinguishing between scientific research outputs and the digital collections and data.



That a user must remediate multiple policies and platforms to make linkages among collections is obstructive to reuse, open access and public domain goals. The effect is to silo digital national (and international) collections within institutions *unless* a platform or project is specifically designed to aggregate them as an exception to the status quo.

Within such projects, digital collections remain restricted according to the rights claimed by the contributing GLAMs. Data collaboration agreements reinforce the GLAMs' (alleged) rights, secure to the platform a broad licence for the project's needs and limit the public's reuse according to each GLAM's embedded policy and the rights claimed. New datasets of limited descriptive data may be published under open licences or public domain tools. The research found no examples of such datasets including openly licenced collections images.

Such policies are useful to compare against GLAMs' original public missions, an example of which is provided below:

Manchester Art Gallery is the original useful museum, initiated in 1823 by artists, as an educational institution to ensure that the city and all its people grow with creativity, imagination, health and productivity. The gallery is free and open to all people as a place of civic thinking and public imagination, promoting art as a means to achieve social change. Created as the Royal Manchester Institution for the Promotion of Literature, Science and the Arts, it has been at the centre of city life for nearly 200 years and has been proudly part of Manchester City Council since 1882. The gallery is for and of the people of Manchester and through its collections, displays and public programmes it works with everyone to ensure creativity, care and consideration can transform all aspects of the way we live.<sup>241</sup>

#### 5.2.4. How are GLAMs using technologies to provide access?

Quantitative and qualitative research suggests GLAMs are primarily using technologies to replicate and bolster control around digital collections, rather than to provide meaningful access and enable reuse.

The review of websites revealed 35 or 17.9% of GLAMs in the UK sample continue to use technical protection measures like watermarking, disabling download or uploading the lowest quality of images. These measures are put in place via older and difficult to update website interfaces in addition to new technologies, like IIIF (International Image Interoperability Framework). Participants mentioned a rise in new platforms and interfaces that disable downloads or deliver high resolution images in tiles, along with renewed interest by licensing teams. Some suggested that such technologies were pointless, as circumvention measures could be used. At least one participant mentioned them as the future for collections management with their ability to balance open access to high resolution images (*i.e.*, digital access) while protecting licensing revenue streams.

It should be noted that a demand for such technologies creates a market for *restrictive* interfaces that replicate barriers to the public domain, rather than a market for *permissive* interfaces that support new types of public reuse, knowledge generation and innovation. The effect is to further direct public funding into a private sector that responds to such demand, rather than building new technologies that emancipate the potential of the UK's outstanding cultural heritage collections and support public demand.

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<sup>241</sup> About us, 28. Manchester Art Gallery (All rights reserved)

Participants expressed disappointment that the present focus is on designing technical infrastructures for display and delivery, rather than for users and reuse, particularly where development projects are led by GLAMs with traditional copyright approaches to image licensing and reuse of digital collections.

Legitimate desires for attribution and integrity and enabling new research through high-quality display often inform these infrastructures. However, where legitimate *rights* have expired, they cannot be re-secured through technology or claims to new rights in reproduction media. Instead, these technologies should be explored for their potential to support citation best practice, high-resolution delivery of standardised image quality and the public's ability to trace the image to the organisation and to locate the best quality image, without imposing new restrictions or compromising the quality of access provided.

### 5.2.5. How does open access impact commercialisation?

Interviews and web-based research revealed open access is often pitted against commercialisation goals and seen to jeopardize a GLAM's ability to self-generate revenue. However, data does not support this view.<sup>242</sup>

Data provided by the Birmingham Museum Trust tracked commercialisation in the period surrounding the adoption of CC0 in May 2018. Annual licensing sales of £11,000 produced between 2016 and 2018 dropped to just over £4,000 in 2019. However, according to the Trust, the drop in income corresponds to the amount previously received from academics. In fact, staff from other GLAMs noted image licensing is dominated by academics who need particular images.<sup>243</sup> The Trust noted licensing sales produced by Bridgeman Images have slowed more gradually, as global pricing becomes more competitive and/or more images are published for free. Interestingly, commercial sales of prints have remained the same.

Many participants stated their data supports another conclusion: a traditional copyright approach is itself a bad business decision. For the majority of GLAMs, it is more expensive to attempt to generate revenue through licensing services than it is to set collections free.

Participants unanimously agreed reduced government funding and pressures to self-generate income are barriers to open access goals. They also agreed that licensing income cannot make up for that shortfall, with one observing “the idea that it could gained currency in the early 2000s with the onset of digitisation and shiny new assets that could be monetised”.

Conversations revealed many open access approaches are informed by various business driven and narrow understandings of copyright and the public domain, except for those already engaged in open GLAM:

- Many view commercialisation and open access as being mutually exclusive, particularly with respect to the collection as a whole.
- Many view themselves as rightsholders whose rights must be balanced alongside the

<sup>242</sup> See also [http://siarchives.si.edu/sites/default/files/pdfs/2016\\_03\\_10\\_OpenCollections\\_Public.pdf](http://siarchives.si.edu/sites/default/files/pdfs/2016_03_10_OpenCollections_Public.pdf); [https://pro.europeana.eu/files/Europeana\\_Professional/Publications/Democratising%20the%20Rijksmuseum.pdf](https://pro.europeana.eu/files/Europeana_Professional/Publications/Democratising%20the%20Rijksmuseum.pdf); <https://pro.europeana.eu/post/making-impact-on-a-small-budget>

<sup>243</sup> See also <https://www.timeshighereducation.com/features/true-costs-research-and-publishing>

creators' rights of in-copyright collections where public access is concerned.

- Some condition open access *upon* copyrights arising, seeing copyright as necessary to balance public access with income generation around some collections while releasing others as “open access” (the meaning of which varied).
- Some balance the “freedom of commercialisation” against assets as information and the obligations of public bodies.
- Others feel copyright is not a prerequisite to income generation and noted its absence had more of a positive impact.

There appears to be a general conflation of copyright with commercialisation goals, or copyright as even being necessary to commercialise media, perhaps informed by assumptions that controlling access is necessary to controlling revenue streams. For these GLAMs, scarcity around collections is understood as necessary to attracting commercial interest from the private sector. Indeed, some open access obligations were framed as disabling GLAMs from commercialising data published under open licences, which by design are available for everyone to commercialise, including GLAMs.

Staff noted difficulties getting conversations started. Some attributed progress to restructures affecting decision making hierarchies, or to a key decision maker with a good understanding of intellectual property *and* open access who was supportive of policy change. Others referenced tensions felt between commercialisation and research departments. In one instance, research staff preferred a more permissive approach but met resistance from the commercial group. When reviewing priorities for business growth, image licensing was low on the list. Staff also referenced decisions made by, or those answerable to, a governing board as weighing heavy on commercialisation priorities. There is a sense that senior leadership among boards and councils are becoming more restrictive due to government messaging. It is worth noting three of the six public domain compliant UK GLAMs are trusts: the Birmingham Museums Trust, York Museums Trust, and Royal Pavilion & Museums Trust, Brighton & Hove.

Participants also highlighted interpretations of income, revenue, profit and value in relation to open access and grant-in-aid obligations. There is a very strong sense that income needs to continue to be generated in the current economic environment, particularly given the obligations of government funding. However, many noted such targets are set to generate *income*, not profit. In some cases, this means income is generated at all costs, which are not reviewed or tracked by the GLAM. While this is changing, the consensus was that this reflects a narrow understanding where collections produce direct, limited and one-way value to the GLAM rather than a reciprocal and broader value to the public.<sup>244</sup> Staff expressed a pressing need to change perceptions of value:

The value that we *all* get when we make collections available far outstrips the “value” that institutions get [from licensing]. It’s a reversal in value, and one of making [collections] available to the world. It’s value *to* the public. A simplified understanding of value flows only one way—to the institution—and that’s not how it works. There is a reciprocal value that flows both ways, and that *is* direct value.

Another observed:

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<sup>244</sup> <https://www.theguardian.com/law/2021/nov/15/museums-cash-in-market-cultural-digitisation-licensed-goods>

So many UK collections are incredibly low value in terms of licensing. What is being sacrificed so that GLAMs can retain control over licensing the few images that do bring in revenue? Who is making that sacrifice?

Another mentioned:

Value is a big thing that needs to be reassessed. It can't be reduced to columns. It also needs to consider the value to the local economy for apps and products, but how do you measure that? What about the value for schools and the education sector? How do you measure that? [...] Once you start talking to teachers who are engaging with [collections], graphic designers who use content, artists who *need* content, then you start to understand the value. But it's not as simple as having a dashboard [or spreadsheet] where you can measure stuff. You need to build [tools] and distil impact into something people can understand.

While value-based assessments modelling may not be directly relevant to the lawfulness of IP licensing models, this data could help the sector reimagine commercialisation beyond copyright and move forward to benefit from the new opportunities that are activated by the collections' public domain status.

Many participants commented that open access is, in fact, a *good* business model and commercial decision. One noted, "licensing services were haemorrhaging money, the legal basis was shaky, and public opinion and expectations made [the GLAM] vulnerable to bad will". The opinion was that "In the absence of a robust commercial market, open access reduces the costs of dealing with inquiries. It's a good business decision." This decision was observed to positively benefit other income sources: "open access can get more people through the doors, especially community groups and locals who are repeat visitors" and drive up onsite revenue generation.

On a practical level, narrow copyright licensing models will never produce the value that open access can, but it is much easier to track.<sup>245</sup> Staff noted data on indirect revenue, new opportunities and value generated through open access were both difficult to produce and to present as representative. One participant commented, "Benefits are easy to frame as anecdotal one-offs. It becomes hard to counter the profit-making argument with 'anecdotal' evidence." Another noted:

It's difficult for institutions to articulate how important access has been to the work they do, how they do it and to the institution itself. Because it's difficult to track, it's at risk of being taken for granted. Open GLAM doesn't make revenue. But it generates incredible value. It's important we make the case around value for the institution, and to the institution, but staff just don't have time.

Many pointed to data from the US and EU showing that open access increases brand value and the licensing opportunities that come with it.<sup>246</sup> For some, this also illustrated how chilling the lack of open access is on their ability to drive the brand forward. The collaboration aspect, curatorial input and the GLAM's audience base remain desirable for commercial partnerships. At least one UK GLAM published CC0 collections online *and* sent the assets to a commercial image library, through which they receive a small income that costs nothing to operate.

In conclusion, copyright or exclusive control are not precursors to income generation or

<sup>245</sup> See also p. 1 of the 2015 Striking the Balance finding: "There is a growing body of evidence that open access to digital content for both commercial and non-commercial reuse drives value back to the existing business model or revenue streams of the institution."

<sup>246</sup> Examples included: the Metropolitan Museum of Art; Cleveland Art Museum; Rijksmuseum; National Gallery of Denmark; Smithsonian Institution; J. Paul Getty Museum; and Nationalmuseum Sweden. See also [http://siarchives.si.edu/sites/default/files/pdfs/2016\\_03\\_10\\_OpenCollections\\_Public.pdf](http://siarchives.si.edu/sites/default/files/pdfs/2016_03_10_OpenCollections_Public.pdf)

commercialisation, and their absence can have even more of a positive impact. GLAMs remain free to commercialise collections in the public domain and form commercial partnerships around them, which remain desirable because of the expertise and brand value carried by the GLAM. The main difference is that everyone else can use the public domain too. According to one participant, “Open access is not just good economics. It’s the right thing to do.”

### 5.2.6. What does open access mean to UK GLAMs?

The qualitative and quantitative research reveals a complex picture of open GLAM policy and practice in the UK. In general, this reflects outdated approaches to open access, with little progress since the 2015 Striking the Balance Report and an overall imbalance across the sector in terms of whose voices shape the debate.

Across the UK, the prevailing approach is to provide **digital access to view** GLAM content, rather than **open access to reuse** GLAM content. In the UK sample of 195 GLAMs, this materialized as follows:

- **144 or 73.8% of GLAMs provide digital access to view GLAM content.** As a majority approach to open GLAM, 108 GLAMs retain all rights in content and 36 GLAMs publish content under closed licences prohibiting commercial reuse.
- **50 or 25.6% of GLAMs provide open access to reuse GLAM content.** As a majority approach to open GLAM, 7 GLAMs publish all eligible collections under open licences (1) and public domain tools (6). The remaining 43 GLAMs publish some eligible collections under open licences and public domain tools.
- **A total of 6 GLAMs comply with UK law.** These include: Birmingham Museums Trust, Llyfrgell Genedlaethol Cymru (National Library of Wales), Newcastle Libraries, Royal Pavilion & Museums, Brighton & Hove, Wellcome Collection and York Museums Trust.<sup>247</sup> Given the UK sample included all known instances of open GLAM participation, this number is representative of the entire UK GLAM sector.
- **Only 2 national collections have published large volumes of open collections.**

Digital access to view content is a standard open access approach in scholarly publishing. Further distinctions are made between Green and Gold open access, which reflects the reuse parameters of the content itself and may be conditioned upon release fees paid by the author, rather than by individual users. However, there is a huge difference between scholarly publishing of new research articles and GLAM publishing of digitised public domain collections: **rights undoubtedly exist in the scholarly content published via the platform.** Moreover, even in scholarly publishing, attitudes are increasingly shifting to international standards that qualify “open access” upon commercial reuse of content.<sup>248</sup>

The data shows a strong desire to engage in open access, whatever that means for an institution. Where commercialisation is prioritised, GLAMs commonly apply versions of the Creative Commons NC licences to enable public reuse while ensuring commercialisation proceeds through the GLAM

<sup>247</sup> This number could be extended to seven GLAMs to include the Portable Antiquities Scheme, which publishes archival images of objects as CC BY. Copyright is more likely to arise in these images considering objects are three-dimensional (e.g., coins) and arranged on a black background with other elements, leaving greater scope for creative input.

<sup>248</sup> See Section 2.

itself. Where attribution is prioritised, the data shows UK GLAMs are publishing small sets of data under the Creative Commons BY and BY-SA licences to ensure credits are given while enabling commercial reuse. In any event, the application of any Creative Commons licence requires a valid copyright to subsist in the digital surrogate. This is also true of the Open Government Licence. The application of such licences to digital surrogates of public domain works is neither lawful nor enforceable according to the Intellectual Property Office's own interpretation of UK copyright law.

Many TaNC projects, and wider GLAM projects, connecting collections across the UK, are being framed as revolutionary for their ability to support new scholarship and address new research questions. Their 'public' is revealed to be academic or educational, extending also to citizen researchers. Download and commercial reuse by any public is however prohibited. This scholarly approach to open access limits new knowledge, innovation and engagement with public domain collections, primarily supporting only their study.

Many participants commented that such policies are creating tension with volunteers who freely contribute their time and expect reuse of collections and data they produce or enrich to be freely available. Such policies do not acknowledge what should happen to non-original contributions in which no new rights subsist, such as transcriptions of public domain documents and/or the facts or basic information documents contain. These materials, and digital media generated around them, are communicated to create new rights for the GLAM by which the institution (and the volunteer) is bound. In this way, it seems projects involving the public are also shaping their understanding of copyright, open access and the public domain.

The result is an open GLAM landscape that maintains the status quo. Notably absent are the UK's national collections. Some mentioned many were waiting for a national institution to break rank and adopt a meaningful open access policy. When asked what might help, one participant responded: "Anything that moves the needle would be helpful. But we really need a jump at this point."

### **5.3. What is the impact on the digital national collection?**

The research uncovered various back-end aspects of copyright, open access, funding and GLAM operations that have already altered the front-end of the digital national collection.

#### **5.3.1. The impact of copyright**

Interviews revealed examples of commercialisation goals impacting what gets digitised, used for research projects and published online.

Across UK GLAMs, this has materialised as follows:

- Commercial partners are selecting collections for digitisation based on their commercial viability. GLAMs receive copies for their own personal and/or commercial reuse, including for commercial licensing services. Exclusive agreements can be limited (*e.g.*, five or more years), subject to renewal by the GLAM. This can impact what is published, when and under what reuse conditions once the agreement expires.
- GLAMs with commercial licensing services are selecting collections for digitisation based on their *potential* commercial viability. This can result in digitising and publishing more popular collections and well-known works, while lesser-known collections, works and creators remain undigitised.

- Historical practices in collecting also decrease the likelihood of older collections containing the artistic contributions of women and people of colour. When included, it is often unlikely such contributions are attributed to their creators due to that information not being recorded (or known) at the time of their acquisition or taking. This can impact the value perceived in these collections and/or render the collections as risky.
- Copyright clearance is necessary to conclude collections are in the public domain. The expense of copyright clearance in preparation for digitisation can impact which collections are digitised.
- Copyright's long term of protection (author's life + 70 years) results in less diverse digital collections when collections are selected for digitisation based on their public domain status, and for reasons related to historical practices of collecting, as discussed above.
- The digitisation technologies used can impact whether claims are made in reproduction media. Some GLAMs delineate by scan (no copyright) versus photography (new copyright).
- The likelihood that copyright arises in 2D reproductions of 3D works (*e.g.*, a photograph of a sculpture) renders openly licensing photographs of 3D collections a policy-based decision.<sup>249</sup> This affects 2D reproductions of sculptures, as well as what cultural heritage GLAMs label as 'craft' and 'antiquities' which typically have been the creative forms of expression of women and people of colour. The impact can be to further reduce diversity in representation among digital collections published online.

Within TaNC projects, this has materialised as follows:

- At the proposal stage, staff needed to examine what images already existed, were not impacted by commercial partnerships and made up a coherent series of data and images for research purposes.
- For one project, desired image sets required approval from commercial colleagues due to the project's plans to publish images online.
- Staff selected unpublished images sets that had been digitised through costs paid by external researchers.
- Staff selected image sets because they had not been flagged as valuable for commercialisation.
- Participants from GLAMs with stronger commercial licensing programs and returns that produce profit expressed desires to continue enhancing the digital collection and digitise items they know will be commercially attractive.

This data strongly suggests that copyright and the commercial benefits it is perceived to carry have already shaped the UK's digital national collection.

**First**, commercially minded decisions have created conditions where collections *not* seen as valuable can remain undigitised for a very long time. One participant noted the circularity of this problem: "In general, if collections are not digitised, they don't get researched." These aspects, and the others above, increase the likelihood of digital collections representing the contributions of white male

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<sup>249</sup> See Section 2.

creators (and collectors) of European descent *and* that the research undertaken focuses on these contributions.

**Second**, in general and with TaNC projects, commercialisation goals are holding assets back from being released under open licences and tools.

**Third**, commercial voices are disproportionately shaping whether, how and when open GLAM takes place, as discussed at length in previous sections. One participant noted the organisation was heading in the right direction but had reached a stalemate with the commercial team. While no ground has since been lost, raising the prospect of ‘more open’ revives previous tensions felt across the institution.

**Fourth**, in the aggregate, institutional decisions that shape what gets digitised, and which may be informed by the lack of copyright *and* the opportunity for commercialisation, can render collections relatively invisible, both digitally and for research.

**Fifth**, and as previously discussed, copyright fees also shape what research is undertaken by scholars within GLAMs, the UK and globally. One participant noted the “sweet irony of writing about art objects but not being able to include images” and observed that it was “becoming more common to switch topics, or the works featured, to write about things that do not implicate fees and the time involved in negotiating them”.

**Sixth**, copyright fees do not just impact *research* on UK collections in the public domain. Copyright claims raise barriers to public innovations and the UK’s technological and economic competitiveness with other markets.

**Finally**, copyright claims stall the generation of new cultural products and creations around the public domain. This impacts GLAMs’ own abilities to collect new works made by the public that are inspired by their collections.

Some staff feel these conditions are negatively impacting the relevance of the collections, GLAMs *and* their role to the public. One participant stressed:

Everything has to be brought back to *why* institutions are here. Copyright has negative obligations which restrict GLAMs from doing things. And it does depend on how you interpret it. But so much of this has been justified to say ‘we can do that so long as the money flows back to the museum.’ Instead of an ‘image licensing service,’ it should be ‘searchable collections online.’ Plus, there’s a misplaced vanity about where users go to find images. It’s not the collections, or the source. It’s Google. Make images open and they will spread, and people will come to the website through those platforms.

Another felt a culture of “hyper-commercialisation” was limiting to UK GLAMs:

Currently, GLAMs are too rewarded for innovative throwaway projects that engage with the latest thing rather than initiatives that develop or sustain long-term strategy. They’ve turned their interests to hyper-commercialisation opportunities, like NFTs. Commercial capture of museums have consolidated on Instagram and other commercial platforms, like Ancestry, rather than through public access.

### 5.3.2. The impact of open access

Interviews revealed examples of open access goals, obligations, policies and benefits that are



shaping projects, digital collections, reuse and GLAMs themselves.

Across UK GLAMs, this has materialised as follows:

- Open access has removed barriers across GLAMs' systems *and* within GLAM operations. Participants from two open GLAMs noted that the shift to open revealed where internal barriers had been, as they became visible only once removed.
- Open access has "removed the copyright delay". Participants from open GLAMs noted turnaround is quicker and has resulted in more public engagement in a playful way. The focus is now more about digitisation turnaround and flipping content for online access, rather than allowing copyright to drive that process. One open GLAM divides its digitisation approach into primary and secondary photography: primary photography includes more difficult work or specialist training; secondary photography is faster and just for imaging purposes to expand online access. They have found that when a secondary image is created, and is popular, this often spurs additional asset creation.
- Open access has positively impacted GLAMs' ability to attract research funding that includes funding for digitisation. One participant observed, "[w]hen seeking external funding for digitisation, funders are more willing to support policies for open access and want to see any assets produced with the funding published for public release".
- More than one participant noted that the amount of funding attracted by the GLAM's well-known open access programme far outweighed the revenue generated via commercial licensing on an annual basis. And while direct value is measured by the funding award, the added value of the open access programme to the GLAM as a research institution is immeasurable.
- Open access has positively impacted internal and external researchers' ability to pitch new projects and publish on topics that require images.
- Users are no longer required to navigate rights restrictions. This has led to greater overall public interest in collections.<sup>250</sup> Some open GLAMs noted an increase in collections inquiries and the need to respond to confirm that people can really reuse the images.
- Open GLAMs regularly receive positive attention online and in print for releasing images to the public domain. This is seen to add brand value, increase reputation and reach and raise interest around the collection, which carries monetary value.
- Open GLAMs are gaining a good reputation among educators and academics. A far greater number are now using images, which raises the profile and research interest in collections.
- Open GLAMs continue to be credited for use of images in academic publications and receive complimentary copies.
- Some GLAMs have stopped acquiring commercial image sets (which come accompanied by copyright claims) so they can focus on data that they can release via open licences and tools.

Within TaNC projects, this has materialised as follows:

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<sup>250</sup> For example, Birmingham Museums Trust noted 2,763 downloads by the public in the first 4 months of the policy. Prior to releasing images, they averaged licensing around 175 images total per year.

- Many TaNC projects will produce open access *platforms* and new interfaces to deliver content for exploration and research within the new platform.
- A number of TaNC projects will publish datasets CCO. The catalogue data is not seen as commercially viable compared to other media, and therefore can be released to satisfy open access goals.
- Some GLAMs will provide data to TaNC projects at lower resolutions than they maintain internally. Decisions on whether to provide less precise data for public consumption are taken by each GLAM.
- Some TaNC projects ingest and interlink complementary, open, machine-readable, unstructured and/or structured data (*i.e.*, Wikidata) published by GLAMs and organisations both in and outside the UK.

These factors will shape which national collections and data are integrated into TaNC and other UK GLAM projects, in addition to how they can be viewed and reused by the public(s).<sup>251</sup>

**First**, open access is extended to the TaNC project platforms, but not the digital collections they aggregate. Users will experience and engage with rights-restricted collections through the curated narratives, algorithms and selection processes discussed in the previous section.

**Second**, CCO datasets published to the public domain require levels of digital literacy or expertise to ingest data, run queries, build apps and make other uses.

**Third**, digital collections published under open licences and public domain tools are receiving greater attention than those restricted by rights and technical protection measures. For example, open GLAMs have observed wider image circulation and reuse via unforeseen external platforms. These external interfaces produce new data on unexpected reuse of and interest in the collection.

To illustrate, Birmingham Museums Trust publishes collections as CCO via a digital asset management system. There, the most downloaded images are also those most well-known. Of the collection, 312 assets have reappeared on Unsplash where all context around the images has been removed.<sup>252</sup> This has produced novel and interesting results. Unsplash tracks statistics on reuse and supplies new data to organisations. The Trust found users were downloading and reusing collections in new and fascinating ways without institutional involvement. One surprise has been the interest in *The Phantom Horseman* by Sir John Gilbert, which has been viewed more than 4,700,000 times and downloaded more than 38,000 times.<sup>253</sup> This can be compared against the wider collections data, which has been viewed more than 10,000,000 times and downloaded more than 68,000 times. By contrast, this image received 1,425 views and 40 downloads on the Trust's website.<sup>254</sup> That users can access collections outside of the institutional selection process is seen as important to how, and with what, users engage.

**Fourth**, the limited extent of UK open GLAM activity indicates meaningful reuse may increasingly shift to the many high-quality digital collections published outside of the UK. This is true of the UK

<sup>251</sup> <https://collectionsasdata.github.io/>

<sup>252</sup> <https://unsplash.com/>

<sup>253</sup> <https://unsplash.com/photos/5EUh-tq31eA>

<sup>254</sup> <https://dams.birminghammuseums.org.uk/asset-bank/action/viewAsset?id=17338&index=17&total=501&view=viewSearchItem>

public and even UK GLAMs that encounter barriers around reuse of the UK's digital national collections.

**Finally**, non-UK open collections and data are already being ingested into UK GLAM collections for research and other reuse purposes, thereby shaping the UK's digital national collection in ways UK GLAMs render impossible by claiming rights in digital collections.

### 5.3.3. The impact of funding

Interviews revealed examples of funding, including who can access it and what obligations it carries, as shaping the national collection.

Across UK GLAMs, this has materialised as follows:

- One GLAM abandoned a project because obligations to publish open access increased the project costs specifically related to copyright clearance, making the project impracticable. Where obligations do not accompany funding, the GLAM's strategy is to reserve copyright in digitisations of older materials that it cannot clear rights on.
- Some GLAMs revise what proposals include as project outputs due to open access obligations. This requires "getting creative around what parts are funded, as we would not be able to commercially exploit it".
- Participants noted The National Lottery Heritage Fund's Open Licensing Requirement as a very welcome development, and one unlikely to deter GLAM applications: "Funding is always needed, so everyone will always go for it." Similar sentiment was expressed with reference to the Wellcome Collections funding obligations.
- The research documented a trend of CC BY-NC sculpture images being published on Art UK, including by GLAMs with All Rights Reserved policies. These works were digitised as part of Art UK's Sculpture Project funded by the Heritage Lottery Fund and therefore subject to the previous open licensing requirement of CC BY-NC. This trend is represented in the data for the 40 GLAMs assessed as 'Closed by exception' via their most open approach.<sup>255</sup> Without this funding obligation, these images likely would have been published All Rights Reserved.
- Some participants noted that funding obligations carve out chunks of the collections and force GLAMs to be more open. The hope is these obligations could eventually snowball and have a retroactive effect on GLAM practices.
- One participant expressed that open access funding obligations are currently treated as exceptions to a system that plans to remain the same.
- Another noted not having an open access policy in place meant GLAMs were missing out on funding revenues. And not only grants, but other opportunities too.

Within TaNC projects, this has materialised as follows:

- Participants commented that if funding had been available for digitisation, they might have focused on different sets of documents.
- TaNC funding is available to RCIs and IROs, although other GLAMs may join projects as

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<sup>255</sup> See Section 3.3.

partners. Of the UK GLAM Sample data, 40 GLAMs (or 20.5%) are involved as investigators and/or partners on TaNC projects.

- TaNC funding imposes no obligation to publish outputs created with public funding for public reuse.

The increase in funding obligations over the years strongly correlates to the increase in open access to digital heritage collections. While such funding obligations are welcome, participants were concerned they might continue to provide limited reuse patches to a sector that prioritises a culture of copyright and commercialisation over open access to digital collections.

Participants commented it was harder to advocate for embedded change if open access occurs only in the margins. The experience was that it was easier for their work to be side-lined if it was externally funded. This was something seen as requiring fundamental attention.

Participants expressed frustrations that open GLAM in the UK seems reliant on funding obligations and open access carve outs. The feelings were that public funding is funded by the public, public collections are owned by the public, public institutions hold collections in trust for the public and operate according to public missions, and public domain digitisations should remain in the public domain for the public to use for whatever purpose the public so desires.

Funding obligations to publish the underlying research data (*e.g.*, a zipped file with images, data, translations) as open access with a repository can raise barriers for researchers in higher education seeking to work with GLAM collections. Where agreements to publish the data in open access cannot be reached, researchers are unable to go through with the project. A positive alignment across funding policies would improve conditions for UK higher education and GLAM collaborations. One suggestion was to move the UKRI policy into practice with GLAMs.

#### 5.3.4. The impact of GLAMs

As explained above, these layers build upon one another to shape what becomes the UK's digital national collection.

Each GLAM holds exclusive access to their own physical collections. With that comes significant power in terms of unique content for digitisation with added curatorial and educational insight. This will never cease being of value to commercial partnerships.

However, the data suggests a culture of copyright and commercialisation is deeply embedded within GLAM practices and has already impacted the digital national collection.

**First**, as discussed above, GLAMs and commercial partnerships have already selected what gets digitised and how users encounter it.

**Second**, projects focus on digital access through new interfaces that connect collections or research and shape how users access and engage with collections in new ways.

**Third**, projects incorporate and produce new research on AI, deep learning, cross-collections engagement and research and other methods, which will undoubtedly produce fascinating results.

**Fourth**, no plans are made to release these public domain collections or publicly funded outputs for unfettered reuse.

The result is that various curated and layered forms of mediation will inspire, influence and ultimately limit how users encounter and engage with this media. This limits the potential of the UK's collections in the public domain to what bespoke projects can enable or permit based on GLAM desires to claim rights, retain exclusivity and commercialise collections for their individual benefit.

Participants expressed serious concerns that maintaining the status quo was negatively impacting the sector's public and international reputation, as well as its ability to keep pace and compete with relatable peers:

UK GLAMs need to be seen as innovative again. We have to make things exciting. The UK will never be seen as innovative until it embraces open access.

As another observed, "Doing nothing is setting the UK back."

## 5.4. What is the potential of open GLAM for the UK?

The research revealed clear and strong desires to engage with open GLAM. Although the UK may be behind its relatable peers, this inaction can be leveraged to the UK's advantage.

Open GLAM presents the UK sector with exciting opportunities to bring about change that truly can shape future knowledge(s) around cultural collections and position the UK sector as a world leader on open GLAM. Participant observations have been summarised below.

### 5.4.1. An opportunity of change

Opportunities stemming from change include:

**Catching up to the UK's relatable peers.** As demonstrated by the data, the United States is well in the lead with 292 instances of open GLAM. With new legal reforms, policies and funding, the European Union and its Member States are only just behind.<sup>256</sup>

**Leveraging the sector's inaction to its advantage.** The sector's early stage is also a benefit. Many participants engaging with open access discussed what they would do differently if they could start from scratch, starting by *not* proceeding with open access on an incremental basis. These participants noted the difficulties and legacy errors now embedded in collections data and internal processes that stem from starting with a closed licence approach, then moving to an open licence approach before finally embracing the public domain status for eligible digital collections. Others noted the carve-out impact on collections management and the internal policies required to manage sets of open data on an exceptional basis, rather than as a policy-wide approach across the GLAM. With each policy change, staff must update digital collections, data and metadata, website terms and conditions, replicating previous work and resulting in greater overall resource investment. The sector's inaction can therefore be seen as a blank slate. This data and other research published by open GLAMs can be used to design more direct and informed strategies for the UK sector and its many GLAMs who have yet to engage.

**Supporting open access as a commercial decision.** For the majority of GLAMs, commercial licensing is not a sustainable or profitable business model. Nor does it justify the copyrights of GLAMs that do see a profit. Instead, the financial impacts of open access are far greater for the

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<sup>256</sup> <https://digital-strategy.ec.europa.eu/en/news/commission-proposes-common-european-data-space-cultural-heritage>

wider economy than licensing images at the point of access. Open access must be seen and embraced as a good commercial decision.

**Getting senior management on board.** Open GLAM participation often stems from bottom-up and community-led organising. There is a huge opportunity to create a shift across the sector by getting senior management on board with the convening power and lobbying effort to support sustainable change. The UK sector could lead on new strategic thinking around open access as being a central part of the institution's mission and necessary for its relevance, brand value and long-term survival.

**Shifting focus to digitised assets for public reuse.** Participants expressed desires to rethink digitised assets themselves and how to make them available for reuse. This requires shifting the focus to the public domain, what that includes, and whether it is appropriate for digitisation, how it should be digitised, and other technical and qualitative questions. The audiences will follow. As one participant noted, "this will enable new forms of scholarship and research because everyone can work fast and loose".

#### 5.4.2. An opportunity to shape future knowledge(s) and lead on open GLAM

In addition to the new research made possible by open access, there are opportunities to shape future knowledge(s) and become a leader on open GLAM.

Participants raised interests with respect to:

- **Technology.** What are the ways technology can achieve the things GLAMs want or perceive copyright to achieve (*i.e.*, best practice around attribution and integrity)? How can interfaces: support high quality display and downloads with rich metadata and cataloguing information; make collections display and management more efficient for GLAMs; collect information on reuse at the point of download; educate the public around rights, reuse and the public domain; support voluntary donations, reasonable service fees or financial kickbacks to the GLAM?
- **Digital humanities.** What is the role of research potential, digital humanities, and networked interoperability in this and the desire for open access? What existing and new scholarly fields can digital collections enrich and inform?
- **Understandings of 'national' in a digital realm.** How does a digital national collection erode traditional borders and access barriers, particularly with respect to open access? How can digital collections outside the UK be networked with those in the UK to enrich the UK's own national collection, and vice versa?
- **Digitalisation.** How can collections speak to each other through open access and beyond the confines of institutional lenses? What roles might the public and the commercial sector play in the digitalisation of the public domain, and in the enrichment of GLAM collections?

Many presented this moment as an opportunity for the UK to step forward and become a world leader on open GLAM. Participants raised new research is urgently necessary on:

- **New questions arising from open GLAM.** Digitisation, open access and even just *digital* access can raise urgent questions related to cultural sensitivity, decolonisation, contract law,

privacy, data protection, rights in user-generated data and other legal and ethical frameworks. An absence of reuse restrictions exposes materials to machine learning, artificial intelligence and computational processes that can replicate bias in collections data and lead to harm. The growing uncertainty in this area causes collections holders to take new risk averse approaches to guard against reuse and fears of misuse. With public domain collections, the focus should be what collections and data are appropriate for online display, and how. New projects examining these questions are proceeding without UK involvement, with some notable exceptions.<sup>257</sup> There is an urgent need for greater insight on the non-copyright-related issues arising from open GLAM.

- **More diverse and accurate representation among open collections.** Collections management systems have many issues related to storing and publishing historical terminology and data without adequate contextualisation to support ethical reuse. Some collections cannot be published until the technologies and labour can be invested in to update information so it is fit for purpose. Project-based solutions designed to filter this information or connect collections within a platform can limit the harms raised by publishing data. However, they result in short-term patches to addressing deeply embedded issues found across collections, rather than systemic change across GLAMs and heritage management. These aspects and other reasons discussed above negatively impact diverse and accurate representation and require our urgent attention. Otherwise, what is presented on the front-end will continue to shape public perceptions around value and exacerbate underrepresentation and bias.
- **New open access business models.** GLAMs have real and serious concerns around the resources required to digitise, prepare and publish collections, including the fear that open access poses risks to commercial partnerships and income that is direly needed. Many expressed desires for new research on open access business models that can support creative opportunities while taking a holistic approach to asset creation, management and open access goals.
- **How open access to the digital national collection can support the UK economy.** To this point, it worth quoting from the Commission Recommendation on a common European data space for cultural heritage, published 11 October 2021:

Cultural heritage is not only a key element in building a European identity that relies on common values but also an important contributor to the European economy, fostering innovation, creativity and economic growth. For example, cultural tourism represents up to 40% of all tourism in Europe, and cultural heritage is an essential part of cultural tourism. Advanced digitisation of cultural heritage assets and the reuse of such content can generate new jobs not only in the cultural heritage sector but also in other cultural and creative sectors, including for instance the video game and film industries. Cultural and creative industries contribute to 3.95% of EU value added (EUR 477 billion), employ 8.02 million people and involve 1.2 million firms of which 99.9% are [small and medium-sized enterprises].

[...] The creation of a common European data space for cultural heritage will give the cultural heritage institutions the possibility to build on the scale of the single market, in line with the

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<sup>257</sup> <https://www.tate.org.uk/about-us/projects/provisional-semantic>; <https://photoarchive.paul-mellon-centre.ac.uk/groups/Archival-Silence-and-Historical-Bias>

European data strategy. It will foster the reuse of content and spur creativity in various sectors, with value for the whole economy and society. In particular, it will provide high quality content and efficient, trusted and easy-to-use access to European digital cultural heritage assets. It will enhance further collaborations, partnerships and engagement with the network of data partners (e.g. museums, galleries, libraries, archives across Europe), aggregators and experts working in the field of digital cultural heritage. The data space will build on the current Europeana strategy for 2020-2025, whose aim is to empower cultural heritage institutions in their digital transformation.

Currently, the UK sector cannot participate in such research and activity *because* it lacks sufficient engagement and support on open GLAM. As one participant noted, “those first to market have the advantage”. At this moment, other countries, sectors and GLAMs are setting international standards, leading on open GLAM research and reaping the economic benefits. The UK is notably absent.

The final section concludes by incorporating the suggestions and requests of GLAM staff with recommendations based on the research.



## Conclusion and Recommendations

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This study set out to paint a picture of the state of open GLAM in the UK, in all its nuance and complexities, to identify what the sector needs to move forward and enable new futures around the UK's outstanding cultural collections and any barriers to that goal. TaNC is about realising these futures through the networked potential of digital collections held across UK GLAMs.

This study found the key building blocks to enable connectedness and new discoveries beyond TaNC projects are not present, namely due to the practice of claiming new rights in digital collections of public domain works based on desires to reserve them for any *potential* commercial viability.

A strong open access foundation must support the premise that public domain collections remain in the public domain following digitisation. This not only aligns with UK copyright law but reflects a growing and global understanding of open GLAM. Otherwise, barriers to access will remain and undermine the impact of TaNC projects and others across the UK GLAM sector.

This study has identified the extent to which UK GLAMs engage with open access, how far there still is to go, what is required and what is at risk. The key takeaway is that the rights-related barriers are overwhelmingly self-imposed by GLAMs. It is within the sector's control to change this culture of copyright and commercialisation. Based on this, the following recommendations are made.

### Take a position on copyright and open licensing

It is recommended that TaNC, AHRC and UKRI take a position on copyright and open licensing and adopt a policy for future funding awarded by the programme and its potential successor infrastructure, as outlined below.

To support adoption, TaNC should collaborate with other UK funding bodies and associations such as Arts Council England, the National Museum Directors' Council, the wider Arts and Humanities Research Council, Chartered Institute of Library and Information Professionals, the Archives and Records Association and The National Lottery Heritage Fund. This might include:

- Organizing a meeting to present the report's findings and its recommendations;
- Bringing key leaders together to support the report;
- Working toward a shared policy for UK funding bodies and associations; and
- Developing a shared programme for long term public domain, copyright and open access support, as outlined below.

At minimum, a statement should incorporate the following positions:

#### **An endorsement of the UK IPO's Copyright Notice**

This will support the *retroactive* application of CC0 to non-original reproduction media generated around public domain collections. GLAMs can voluntarily align where they have cleared and claimed rights in digital assets.

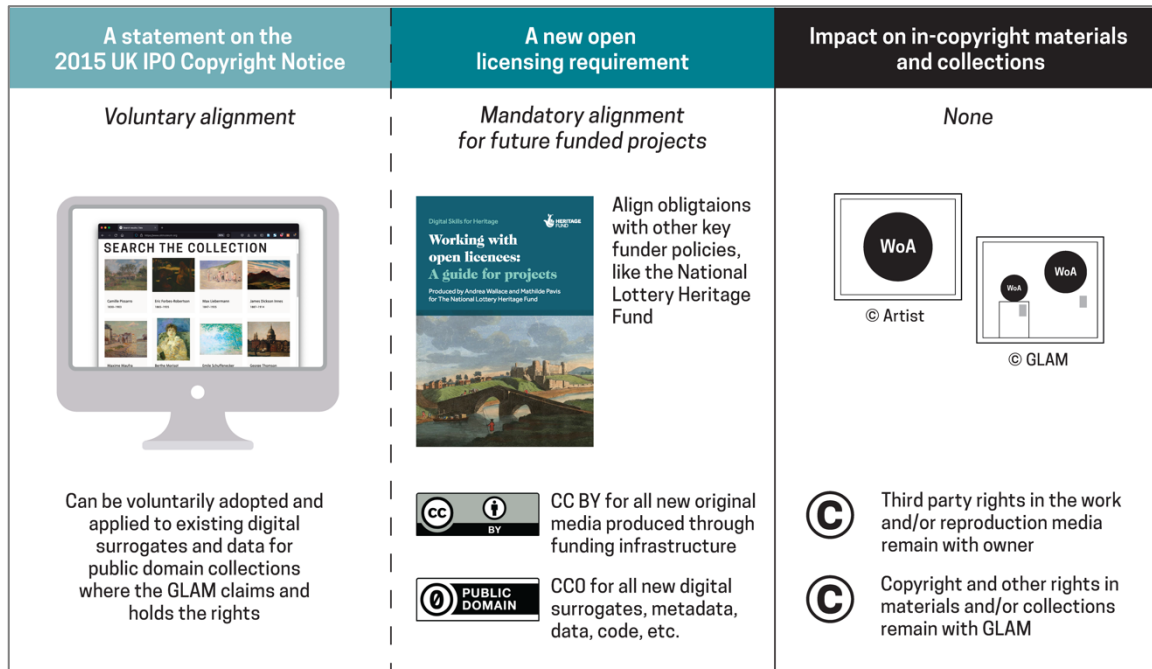
#### **Adopt an open licensing requirement for future infrastructure outputs**

This will support the *prospective* application of CC0 to non-original reproduction media generated around public domain collections. This should include obligations to publish original materials produced with infrastructure funding as CC BY to enable their widest possible reuse while ensuring

GLAMs receive attribution for their work.

A diagram of how these positions will impact the digital national collection and the UK GLAM sector is included below.

Figure 18. Diagram of recommendations and impact on collections<sup>258</sup>



Additional provisions may include:

- Prohibitions on holding back high-quality images for exclusive GLAM use and commercialisation;
- Sustainability obligations and/or guidelines on how to publish or deposit data with repositories;
- Obligations to ensure public access for a minimum period of years; with
- Some potential flexibility on the above provisions, but clear expectations on copyright and the public domain.

This approach will fill gaps left by legal grey areas and shape good practice across the GLAM sector. It aligns with The National Lottery Heritage Fund’s new policy and it will improve harmonisation and open access uptake. Many participants expressed support for such a position:

It’s difficult to push an open agenda internally without lots of external support. The IPO guidance was a fundamental shift, but it has not been followed. The Heritage Lottery Fund is also another important development and would have been even more useful if they took an actual position on copyright. More organisations should take positions on this in ways that benefit staff and the public. This is what decision makers will respond to.

It’s getting hard to test the waters in order to go forward at all. Any support from TaNC or the AHRC is great. It gives us something we can point at and say, “Yes, this is it. And we have to do this.” It means we have a standard we can point at and aspire toward.

<sup>258</sup> Figures: <https://doi.org/10.5281/zenodo.6242179>

It will probably not impact many GLAMs that take strong positions, but the more public institutions that acknowledge copyright, the better.

A policy could be the tipping point. If the AHRC took this up, it would mean everyone else would come together and fall in line. Even if it's only prospective, it's a huge step forward.

We need transferable, long-term goals. Knowing what to aspire to is important. But things also need to be formatted in a way they can plug into other platforms and make it worthwhile for everyone involved. We hate revisiting datasets and assets to rejig them. Things need to be realistic.

Finally, participants also expressed a desire for a national repository and/or sustainable digital space. Although this is outside the scope of this report, it is worth considering in light of EU developments.

## **A programme for long term public domain, copyright and open access support**

TaNC and AHRC can provide important leadership in this area and coordinate with other UK funding bodies and associations to develop a programme to provide long term support and improve the landscape for a digital national collection. This might include:

### **Access to funding and community support**

Expand access to funding and explore ways to support GLAMs who are not RCIs or IROs, particularly the UK's small- and medium-sized GLAMs with collections that will remain inaccessible without funding support. For example, this might be facilitated through a community partner programme focused on pairing less-resourced GLAMs with more-resourced GLAMs to exchange knowledge around rights and collections management, as well as smaller institutional needs around open GLAM that should be shaping larger institutional projects to improve scalability and translation across the sector.

### **Future infrastructure and a programme for open access support**

Comprehensive and long-term support could be embedded into the TaNC programme as it grows, which can be supported and extended by a range of UK funding bodies and associations and made available to the wider GLAM sector.

### **Employ someone to provide centralised support**

Regardless of *how* (or by whom) this person is employed, a centralised person who has knowledge of GLAMs, their projects, what technologies are being used, and who can help problem solve across this programme and others would be an invaluable resource.

### **Capacity building through tailored approaches**

Rather than broad training sessions on all things copyright, a programme should focus on capacity building and increasing copyright expertise through involvement in and support of projects.

### **Support with communication and understanding rights**

Better communication earlier on will support rights discussions that result in greater understanding of open access and its benefits. This will also improve understandings of risk management aspects, including what risks GLAMs should expect to bear.

### **Publishing templates and outputs for wider reuse**

Outputs produced might include contract templates, data collaboration agreements, checklists and

toolkits for project planning, and other useful documents that explain the non-copyright concerns that should inform access to materials in the public domain. These could help close gaps in expertise and improve the bargaining power of GLAMs during contract negotiations with other parties.

### **Improved messaging around open access**

Messaging is incredibly important to the success of open GLAM in the UK. This applies to both GLAMs and to public users on the receiving end. Messaging should communicate what open access *is*, what it includes (and does not include) and its benefits.

### **Advocacy**

A campaign is necessary to support wider open access uptake. In addition, advocacy could extend to sharing best practice *and* sharing failures, supporting networks and un-siloed conversations among GLAMs, and the GLAM sector.

### **Focus on access and reuse, rather than reaching new audiences**

This takes a user-centred focus without gatekeeping or preventing delivery and reuse through technologies.

### **Supporting exceptions to open GLAM**

Staff also need reassurance that not everything *should* be assumed as appropriate for open GLAM. There are many legitimate reasons why exceptions must be made, which may involve sensitive subject matter, contributions by children or young people, data protection concerns or other factors. Documenting and publishing examples would provide a form of transparency helpful for everyone involved.

### **Formal open access accreditation**

One participant suggested exploring a formal open access accreditation for the GLAM sector. This could take the form of prerequisites that must be met before applying for funding schemes, which GLAMs could also advertise on websites as a form of endorsement.

### **New research on ‘future proofing’ open access**

In addition to areas discussed in *Section 5.4*. Research on ‘future proofing’ open access can place the UK in a position to lead on research *on* open GLAM. This might include:

#### **New ways to measure user engagement**

Limited models often rely on access and rights management to monitor engagement and reuse. Participants noted desires for tools that measure engagement across collections (facilitated *by* open GLAM) rather than within collections or specific projects (facilitated by access barriers).

#### **Specific strand of research on rights-related issues stemming from open access**

Future proofing for open GLAM requires new research on topics related to privacy, cultural sensitivity, digital and intellectual property rights restitution, and user-generated intellectual property rights. One participant noted a need for a copyright study *on* data due to grey areas and the inability to call it back once integrated into structured data sources like Wikidata.

### **Technological solutions that achieve goals related to copyright but are better at mitigating risk and harm**

IIIF, PIDs and other technologies can enable attribution and integrity desires related to data quality or image resolution. Another example includes Respect.txt, which is in development to provide a “stopgap against harm” around culturally sensitive materials and operates similarly to robots.txt and humans.txt.<sup>259</sup>

### **New business models around open access**

This might enable networks with SMEs around digitisation services and new business models that support real innovation around the public domain. New opportunities await when access is not mediated and controlled by institutional platforms.

Finally, it is important to highlight that significant portions of the UK’s collections cannot be made available under open licences or public domain tools due to the rights subsisting in the underlying work (*e.g.*, text, book, document, sculpture, architecture, photograph, etc.,).

To aid this understanding, this report recommends **integrating user-centric goals into research, communications and technologies**. Research itself is for the public. Communications must centre users in definitions and terminologies and package programmes so that the broadest possible user base can understand what is possible around open access. Technologies should allow users to search by licence, download high quality assets with rich context, and support reuse.

This will help bolster understandings of copyright and open access among GLAMs and their publics, as well as understandings around what *cannot* be made open access with respect to reuse purposes. As one participant commented: **“The user-centred focus is about future proofing.”**

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<sup>259</sup> Contact George Oates for further information.

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# Appendices

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## Appendix 1. UK GLAM Sample<sup>260</sup>

List of institutions included:

Aberdeen Archives, Art Gallery and Museums	Courtauld
Aberdeenshire Council	Coventry Council House
Aberdeenshire Museums Service	Cricklade Town Hall
Aberystwyth University School of Art Museum and Galleries	Culture Grid
Angus Council	Dereham Assembly Rooms
Archaeology Data Service	Dorman Museum
Ashmolean Museum	Dulwich Picture Gallery
Ashwell Village Museum	Dundee Art Galleries and Museums
Atkinson Art Gallery	East Dunbartonshire Council
Barber Institute of Fine Arts	East Riding Archives
Bath Postal Museum	Eden Camp Modern History Theme Museum
Beith Library	Egypt Centre
Ben Uri Gallery & Museum	Ferens Art Gallery
Birmingham Museums Trust	Fitzwilliam Museum
Black Cultural Archives	Fleming Collection
Bodleian Libraries	Gallery Oldham
Bolton Library and Museum Services	Glasgow Museums
Bowes Museum	Government Art Collection
Brackley Town Hall	Greater Manchester County Record Office
Bradfield Parish Council Offices	Guernsey Museums and Galleries
Bradford Museums & Galleries	Harris Manchester College
Braemar Castle	Harris Museum & Art Gallery
Bristol Archives	Hastings Library
Bristol Museum & Gallery	Hepworth Wakefield
British Council Collection	Herbert Art Gallery and Museum
British Film Institute	Heritage Collections UK Parliament
British Library	Heritage Doncaster
British Museum	Highland Council Archive
Bushey Museum and Art Gallery	Historic England (Historic Buildings and Monuments Commission for England)
Buxton Museum & Art Gallery	Historic Environment Scotland
Calderdale City Council Museums & Galleries	Historic Royal Palaces
Cambridge University Library	Holmesdale Natural History Club
Captain Cook Birthplace Museum	Horniman Museum and Gardens
Carisbrooke Castle Museum	Hunterian Museum and Art Gallery
Carmarthenshire Museums Service	Imperial War Museums
Chetham's Library	Jerwood Gallery
City of London Corporation	Jerwood Library of the Performing Arts

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<sup>260</sup> UK GLAM Policies: <https://doi.org/10.5281/zenodo.6242179>

Jewish Museum London  
John Rylands Library  
Kirklees Museums and Galleries  
Laing Art Gallery  
Laurels  
Laurence Sterne Trust  
Leeds Museums & Galleries  
Leicester Museums and Galleries  
Lewes Town Hall  
Liverpool Central Library  
Llyfrgell Genedlaethol Cymru (National Library of Wales)  
London School of Hygiene & Tropical Medicine  
London Transport Museum  
LSE Library: The British Library of Political and Economic Science  
Maldon Moot Hall  
Manchester Art Gallery  
Manchester Metropolitan University Special Collections  
Manchester Museum  
Manx National Heritage  
Mary Rose Trust  
McLean Museum and Art Gallery  
Middlesbrough Town Hall  
Museum of Archaeology & Anthropology  
Museum of Classical Archaeology  
Museum of Domestic Design & Architecture  
Museum of East Asian Art  
Museum of Hartlepool  
Museum of London  
Museum of London Archaeology  
Museum of the Home (Geffrye Museum)  
Museums Sheffield  
National Archives  
National Army Museum  
National Brewery Heritage Trust  
National Galleries Scotland  
National Gallery  
National Jazz Archive  
National Library of Scotland  
National Museum of the Royal Navy  
National Museum Wales  
National Museums Liverpool  
National Museums Northern Ireland  
National Museums Scotland

National Portrait Gallery  
National Records of Scotland  
National Science and Media Museum  
National Theatre Archive  
National Trust  
Natural History Museum  
Naughton Gallery  
New College  
Newark Town Hall Museum and Art Gallery  
Newcastle Libraries  
Norfolk and Norwich Millennium Library  
Norfolk and Norwich University Hospital  
North Ayrshire Heritage Centre  
Northampton Museums  
Northern Ireland War Memorial  
Oriental Museum  
Oxford University Museum of Natural History  
Paisley Museum and Art Galleries  
Pallant House Gallery  
Parliamentary Archives  
Paul Mellon Centre  
Penlee House Gallery & Museum  
Perth Museums and Galleries  
Petrie Museum of Egyptian Archaeology  
Pitt Rivers Museum  
Portable Antiquities Scheme  
Portico Library and Gallery  
Powell-Cotton Museum  
Public Record Office of Northern Ireland  
Reading Museum & Town Hall  
Royal Academy of Art  
Royal Albert Memorial Museum and Art Gallery  
Royal Archives  
Royal Armouries  
Royal Botanic Gardens, Edinburgh  
Royal Botanic Gardens, Kew  
Royal Cornwall Museum  
Royal Hampshire Regiment Museum  
Royal Museums Greenwich  
Royal Pavilion & Museums Trust, Brighton & Hove  
Royal Pump Room  
Royal Scottish Academy of Art & Architecture  
Royal Ulster Rifles Museum  
Royal Watercolour Society  
Royston & District Museum & Art Gallery

Salford Museum and Art Gallery  
Science Museum Group  
Scottish Maritime Museum  
Sir John Soane's Museum  
Southampton City Art Gallery  
St Peter's College  
Stirling Smith Art Gallery & Museum  
Tank Museum  
Tate  
Tenby Town Council  
Thirlestane Castle  
Touchstones Rochdale  
Towneley Hall Art Gallery & Museum  
Towner  
Toynbee Hall  
Tyne & Wear Archives & Museums  
UCL Art Museum

University of Dundee Museum Collections  
University of Edinburgh Art Collection  
University of Manchester  
University of St Andrews  
University of Sussex  
University of York  
Valence House Museum  
Victoria & Albert Museum  
Victoria Art Gallery  
Wallace Collection  
Watford Museum  
Wellcome Collection  
Whitworth Art Gallery  
Williamson Art Gallery  
York Army Museum  
York Museums Trust

## Appendix 2. UK GLAM Policies on copyright and open access<sup>261</sup>

List of institutions included:

1. Aberdeen Archives, Art Gallery and Museums
2. Ashmolean Museum, Oxford
3. Atkinson Art Gallery
4. Birmingham Museums Trust
5. Bodleian Libraries
6. Bradford Museums & Galleries
7. British Library
8. British Museum
9. Captain Cook Birthplace Museum
10. Courtauld
11. Dundee Art Galleries and Museums
12. East Riding Archives
13. Fitzwilliam Museum
14. Fleming Collection
15. Glasgow Museums
16. Government Art Collection
17. Guernsey Museums & Galleries
18. Heritage Collections UK Parliament
19. Historic Royal Palaces
20. Horniman Museum and Gardens
21. Imperial War Museums
22. Kirklees Image Archive
23. Leeds Museums & Galleries
24. Llyfrgell Genedlaethol Cymru (National Library of Wales)
25. LSE Library: The British Library of Political and Economic Science
26. Manchester Art Gallery
27. Manchester Museum
28. McLean Museum and Art Gallery
29. Museum of Classical Archaeology
30. Museum of London
31. Museum of the Home (Geffrye Museum)
32. Museums Sheffield
33. National Archives
34. National Galleries Scotland
35. National Gallery
36. National Library of Scotland
37. National Museums Liverpool
38. National Museums Northern Ireland
39. National Portrait Gallery
40. Oxford University Museum of Natural History
41. Parliamentary Archives
42. Petrie Museum of Egyptian Archaeology
43. Pitt Rivers Museum
44. Reading Museum & Town Hall
45. Royal Academy of Art
46. Royal Albert Memorial Museum
47. Royal Armouries
48. Royal Botanic Gardens, Kew
49. Royal Museums Greenwich
50. Royal Pavilion & Museums Trust, Brighton & Hove
51. Science Museum Group
52. Scottish Maritime Museum
53. Sir John Soane's Museum
54. Tank Museum
55. Tate
56. Tyne & Wear Archives & Museums
57. University of York
58. Victoria & Albert Museum
59. Wallace Collection
60. York Museums Trust
61. Bristol Museum & Gallery
62. Museum of Archaeology and Anthropology
63. ArtUK

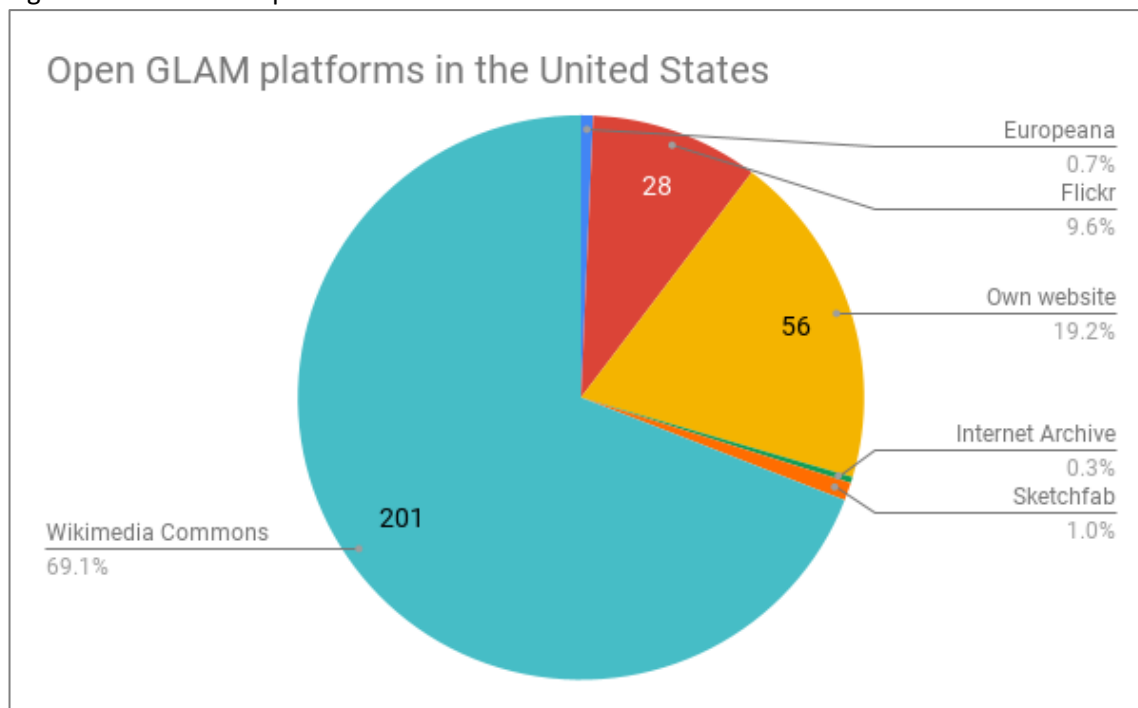
<sup>261</sup> UK GLAM Policies: <https://doi.org/10.5281/zenodo.6242559>

### Appendix 3. Top 10 countries with open GLAM participation

**Note:** Each country profile ends with a list of primarily well-known institutions that do not engage in open GLAM activity. The list is illustrative rather than exhaustive to demonstrate which big players are missing and therefore excluded from the data.

#### #1. United States – 292 instances

Figure 19. Publication platforms used in the United States<sup>262</sup>



**Total volume:** 10,662,295 assets

The United States leads on open GLAM instances. It also has the most legally compliant open GLAM practice. This could be due to greater legal consensus in case law on the question of copyright, which also informs and is cited in the Wikimedia Commons policy on digital surrogates.<sup>263</sup>

Indeed, the most common platform for publication is Wikimedia Commons (201 or 69.1% of US instances). This is partly due to a 2019 collaboration between the Digital Public Library of America (DPLA) and Wikimedia Commons to incorporate the national aggregator’s cultural artefacts into Wikipedia and other Wikimedia projects.<sup>264</sup> A year later, the DPLA also introduced a copyright status filter based on controlled rights fields, enabling users to search for media that can be used, shared, or modified for personal, educational, or commercial use.<sup>265</sup>

In addition, 56 US GLAMs publish open collections via their own website. Of these, 49 (16.8%) **publish all eligible data to the public domain** on their own websites, and often at medium to very high-resolution formats. Within the Smithsonian Institution alone, there are more than 19 organisations and collections that publish all eligible data to the public domain.<sup>266</sup> The Smithsonian

<sup>262</sup>Figures: <https://doi.org/10.5281/zenodo.6242179>

<sup>263</sup> <https://en.wikipedia.org/wiki/Wikipedia:FAQ/Copyright>

<sup>264</sup> [https://dp.la/news/dpla-cultural-artifacts-coming-to-wikipedia-through-new-collaboration-with-wikimedia-foundation?mc\\_cid=ef55eb9c56&mc\\_eid=\[UNIQID\]](https://dp.la/news/dpla-cultural-artifacts-coming-to-wikipedia-through-new-collaboration-with-wikimedia-foundation?mc_cid=ef55eb9c56&mc_eid=[UNIQID])

<sup>265</sup> <https://dp.la/about/rights-categories>

<sup>266</sup> Anacostia Community Museum; Arthur M. Sackler Gallery; Arts and Industries Building; Cooper-Hewitt, Smithsonian Design Museum; Freer Gallery of Art; Hirshhorn Museum and Sculpture Garden; National Air and Space Museum; National Air and Space Museum, Steven F. Udvar-Hazy Center; National Museum of African American History and Culture; National Museum of African Art; National Museum of American History; National Museum of Natural History; National Museum of the American Indian; National Portrait Gallery; National



Institution accounts for 3,942,729 CC0 assets (or 37.0%) of the total volume.

The US has a high representation of total instances that publish all eligible collections to the public domain: 50 total instances (or 17.1%). For comparative purposes, this list is provided on the next page.

GLAMs with collections on Flickr Commons and Wikimedia Commons primarily publish on a **some eligible data** basis.

Three points provide helpful context to the US data. First, works created by federal government employees in the course of employment automatically belong to the public domain.<sup>267</sup> This applies to employees of federal agencies like NASA, but not to employees of national cultural institutions like the Smithsonian Institution, which receives around 66% of funding from the federal government. Second, there is no federal law on whether copyright subsists in digital surrogates, although the *Section 2* discussion of judicial interpretation suggests greater consensus among case law has positively impacted GLAM policies. Third, US GLAMs rely on a combination of public and private funding, with most US GLAMs receiving a majority of funding through the private sector, philanthropic funding and self-generated revenue. While these factors may distinguish the US from the other countries with high representations of open GLAM, the outcome for GLAMs is the same: a decision to open collections remains a policy decision rather than one based on clear legal obligations.

#### **Instances of all eligible data published to the public domain:**

Albright-Knox	Los Angeles County Museum of Art
American Numismatic Society	Metropolitan Museum of Art
Art Institute of Chicago	Minneapolis Institute of Art
Barnes Foundation	NASA
Birmingham Museum of Art	National Archives and Records Administration
Bowdoin College Museum of Art	National Gallery of Art
Carnegie Hall Archives	New York Public Library
Clark Art Institute	Newberry Library
Cleveland Museum of Art	Rhode Island School of Design Museum
Cornell University Library	Saint Louis Art Museum
Davison Art Center, Wesleyan University	Science History Institute
Detroit Institute of Arts	Smithsonian Institution (19+ collections)
Gerald R. Ford Presidential Library and Museum	U.S. Department of Agriculture, National Agricultural Library
Grand Rapids Public Museum	Walters Art Museum
Harvard Library	Yale Center for British Art
Indianapolis Museum of Art at Newfields	Yale University Art Gallery
J. Paul Getty Trust	Yale University Library
Library of Congress	

**Not included in the data:** Carnegie Museum of Art; Huntington Library, Art Museum and Botanical Gardens; Museum of Fine Arts Boston; Museum of Fine Arts, Houston; Nelson-Atkins Museum of Art, Kansas City; Peabody Essex Museum; and Philadelphia Museum of Art.

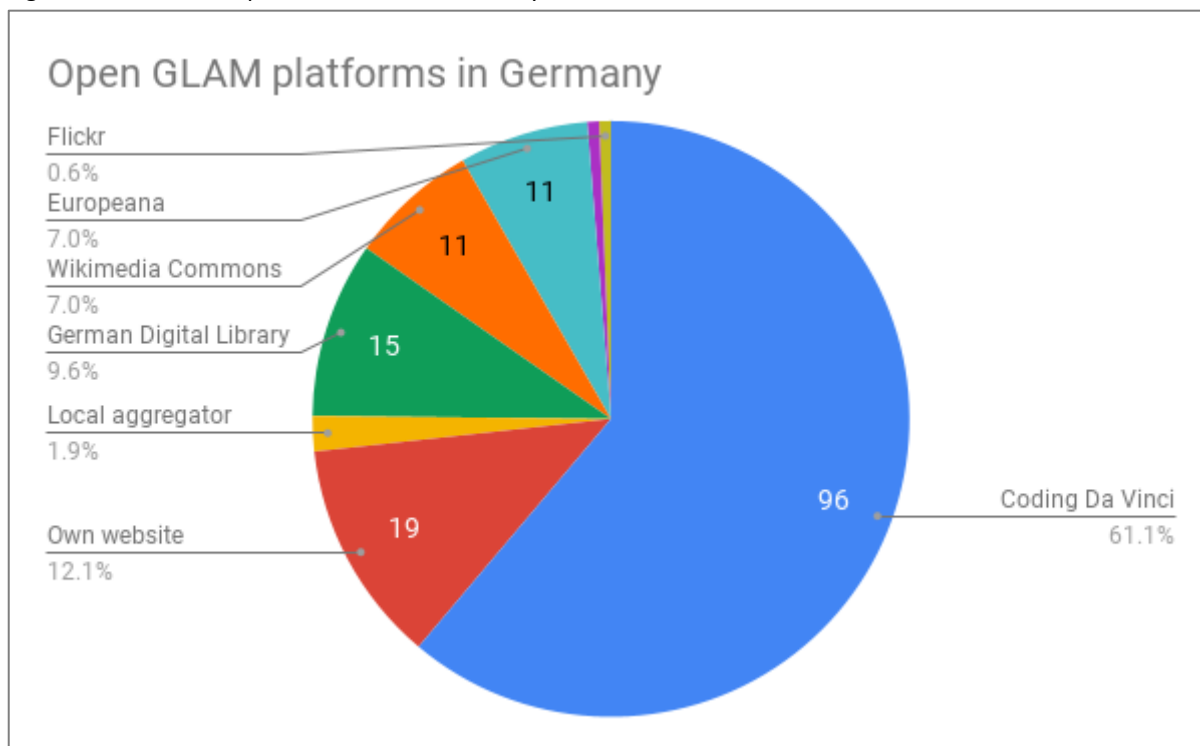
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Postal Museum; The Renwick Gallery of the Smithsonian American Art Museum; Smithsonian American Art Museum; Smithsonian Gardens; Smithsonian Institution Archives; and Smithsonian Institution Libraries. The Smithsonian National Zoological Park and some of the research institutes are not included in the data.

<sup>267</sup> 17 USC § 105

## #2. Germany – 157 instances

Figure 20. Publication platforms used in Germany<sup>268</sup>



**Total volume:** 2,360,368 assets

In contrast to the US, most instances in Germany claim new rights and publish data using **open licences** (115 or 73.2% of Germany instances), which was lawful and supported by case law until very recently.

Germany's highest court ruled in 2019 that related rights could arise in photographic reproductions of public domain works.<sup>269</sup> The court viewed these photographs as requiring technical skill, rather than creative skill, in finding copyright did not arise because the photographs did not meet the requisite 'author's own intellectual creation' standard. Instead, German law at the time recognised a lesser form of protection for non-creative photographs, which the court found applied to the reproductions.<sup>270</sup> However, now that Germany has implemented Article 14, GLAMs can no longer claim such rights in reproductions of works of visual art in the public domain.

As demonstrated by the data, Coding da Vinci has significantly impacted instances of open GLAM in Germany, accounting for 61.1%. Coding da Vinci operates as both a hackathon and platform that enables GLAMs to prepare and publish open cultural data for public reuse. This dual format was initiated by the Deutsche Digitale Bibliothek, the Open Knowledge Foundation Germany, the Berlin Research and Competence Centre for Digitalisation (digiS) and Wikimedia Germany.<sup>271</sup>

The German Digital Library accounts for a significant volume of **public domain compliant** assets, contributed by Zentral- und Landesbibliothek Berlin, Staatsbibliothek zu Berlin, Niedersächsische Staats- und Universitätsbibliothek Göttingen, and Bibliothek für Bildungsgeschichtliche Forschung.

<sup>268</sup> Figures: <https://doi.org/10.5281/zenodo.6242179>

<sup>269</sup> German Federal Supreme Court, 20 December 2018, Case No. I ZR 104/17 – *Museumsfotos*

<sup>270</sup> For more on this case, see [https://link.springer.com/article/10.1007/s40319-020-009618?wt\\_mc=Internal.Event.1.SEM.ArticleAuthorOnlineFirst](https://link.springer.com/article/10.1007/s40319-020-009618?wt_mc=Internal.Event.1.SEM.ArticleAuthorOnlineFirst)

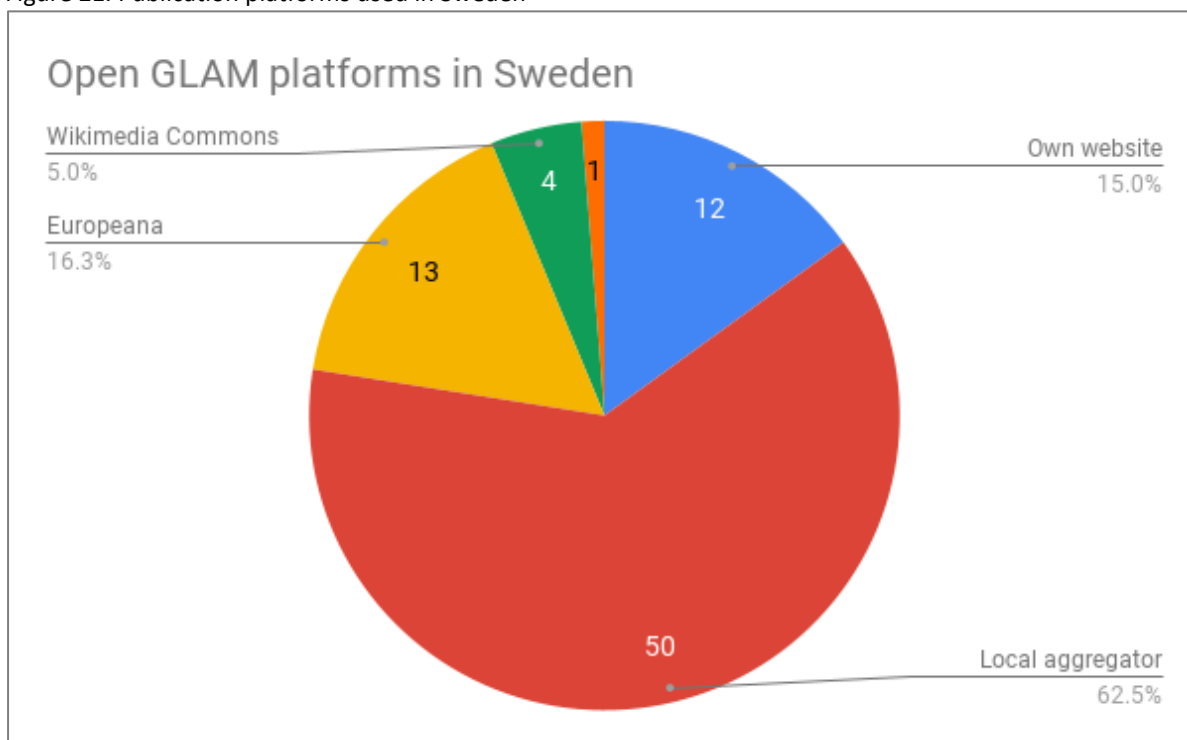
<sup>271</sup> <https://codingdavinci.de/>

These libraries have contributed 61.4% (1,448,485 assets) of the total volume in Germany.

**Not included in the data:** Deutsches Museum; Dresdner Zwinger; Germanisches Nationalmuseum; Naturmuseum Senckenberg; Römisch-Germanisches Zentralmuseum; Staatsgalerie Stuttgart; and Stiftung Preußischer Kulturbesitz (27 museums and cultural organisations around Berlin, with some exceptions).

### #3. Sweden – 80 instances

Figure 21. Publication platforms used in Sweden<sup>272</sup>



**Total volume:** 3,677,372 assets

The DigitaltMuseum, a platform funded by Arts Council Norway that aggregates collections of Sweden and Norway, accounts for 62.0% (or 50) of open GLAM instances and 47.1% (or 1,732,868 assets) of the total volume. Users can search collections via DigitaltMuseum, which links to collections management systems.<sup>273</sup>

In addition, the Swedish Open Cultural Heritage national aggregator, funded by the Swedish government and supported by the Swedish National Heritage Board, accounts for 16.5% (or 13) of open GLAM instances by delivering data to Europeana through an open API.<sup>274</sup>

GLAMs that publish higher volumes of **public domain compliant** assets via their own website include: Världskulturmuseet; Nationalmuseum; Hallwylska museet; Göteborgs stadsmuseum; Eskilstuna kommun.

In general, Sweden has a high representation of national GLAMs engaging with open access across local and national aggregators, external platforms and their own websites.

**Not included in the data:** Nordiska Akvarellmuseet; Göteborgs Konstmuseum; Tom Tits Experiment.

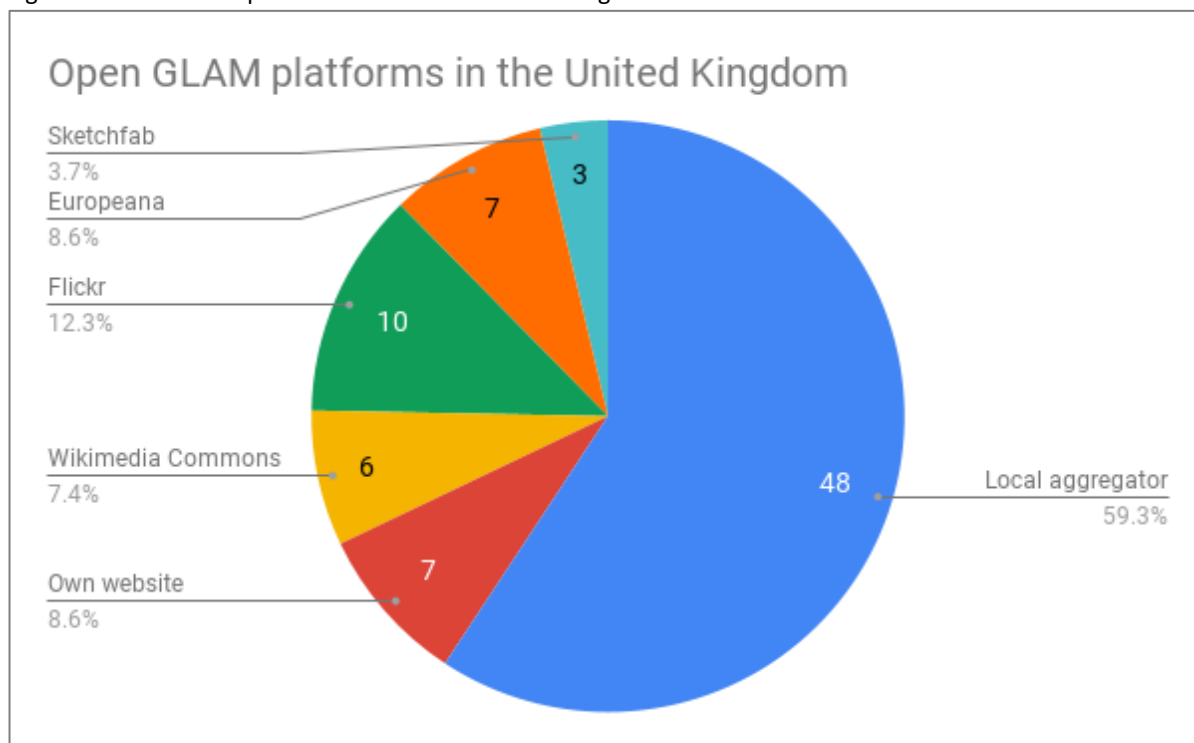
<sup>272</sup> Figures: <https://doi.org/10.5281/zenodo.6242179>

<sup>273</sup> <https://digitaltmuseum.org/>

<sup>274</sup> <https://www.raa.se/in-english/digital-services/about-soch/>

## #4. United Kingdom – 80 instances

Figure 22. Publication platforms used in the United Kingdom<sup>275</sup>



**Total volume:** 10,487,115 assets

The majority of UK instances claim new rights and publish data using **open licences** (49 or 61.3% of instances). This is similar to current approaches in Germany and the Netherlands. However, across the EU, the practice of applying open licences is expected to shift to public domain tools in compliance with Article 14.

The majority of GLAMs use Art UK to publish open collections (47 or 58.8% of UK instances), followed by Flickr Commons (9) and Flickr (1) (together, 10 total or 12.5% of UK instances).

External platforms account for 91.3% (or 73) of open GLAM instances in the UK. A small minority (7 or 8.8%) publish open collections via their own website. These are the Birmingham Museums Trust, British Library, Natural History Museum, Royal Pavilion & Museums Trust, Brighton & Hove, University of St Andrews, Wellcome Collection and York Museums Trust. Many also contribute to Art UK, Europeana and other external platforms.

The British Library accounts for 11.3% of the total volume, with 1,187,746 assets in the public domain. The Natural History Museum accounts for 68.0% of the total volume, 7,131,178 assets published via open licences and 85 assets in the public domain (7,131,263 total assets). In general, the United Kingdom has a low representation of national institutions engaging with open access. UK specific data is discussed further in *Section 3.3*.

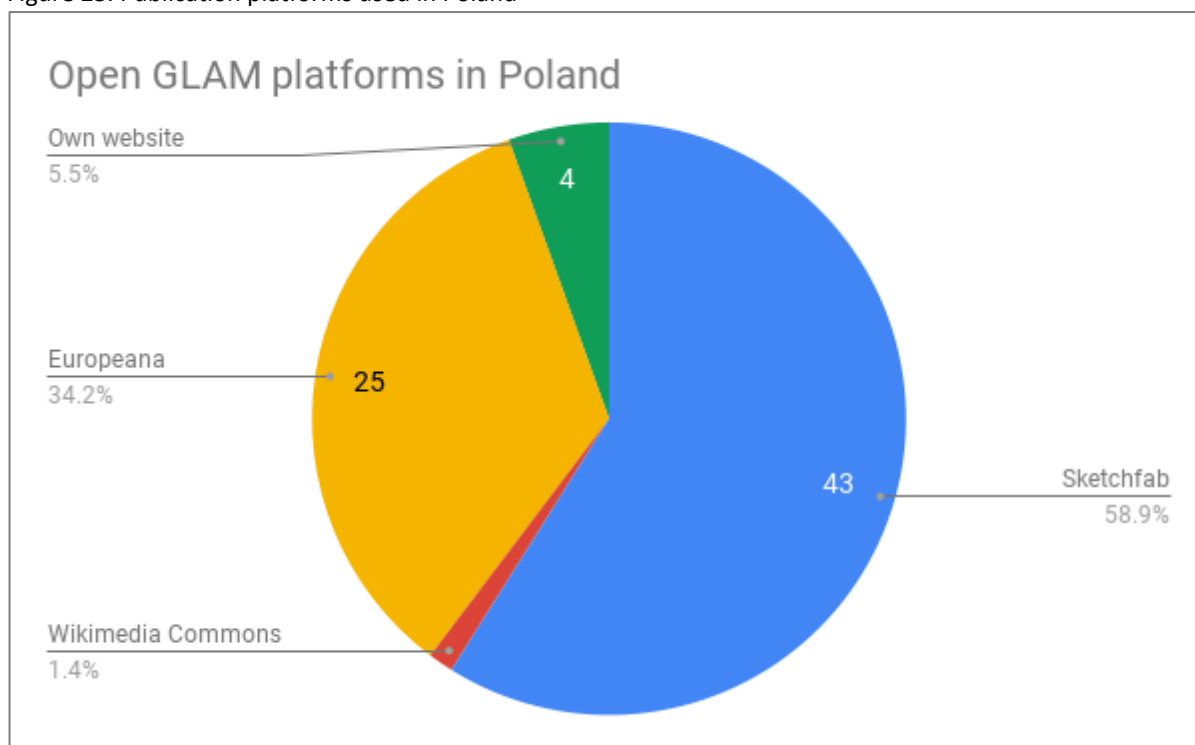
**Not included in the data:** British Museum; Glasgow Museums; Government Art Collection; Imperial War Museum; The National Archives; National Army Museum; National Gallery; National Galleries Scotland; National Maritime Museum; National Museum Wales; National Museums Liverpool; National Museums Northern Ireland; National Museums of Scotland; National Portrait Gallery; National Records of Scotland; National Trust; Parliamentary Archives; Public Record Office of

<sup>275</sup> Figures: <https://doi.org/10.5281/zenodo.6242179>

Northern Ireland; Royal Archives; Royal Armouries; Royal Collection Trust; Royal Museums Greenwich; Science Museum Group; Tate Gallery; Victoria & Albert Museum; and the Wallace Collection.

## #5. Poland – 73 instances

Figure 23. Publication platforms used in Poland<sup>276</sup>



**Total volume:** 1,907,319 assets

In Poland, Sketchfab accounts for 58.9% (or 43) instances with a volume of 1,152 assets (or 0.06%). By contrast, Europeana accounts for 34.2% (or 25) instances with a volume of 1,790,985 assets (or 93.9%).

High Sketchfab representation stems from the Malopolska's Virtual Museums project to digitise collections primarily using 3D technologies.<sup>277</sup> In addition to Sketchfab, high resolution assets (some at gigapixel resolution) from the 43 museums are available on the project platform accompanied by educational and contextual materials.<sup>278</sup> The project was co-funded by the Malopolska Institute of Culture, Economic Development Department and European Regional Fund.

Two national museums publish **public domain compliant** assets via their own website: Muzeum Narodowe w Krakowie and Muzeum Narodowe w Warszawie. Biblioteka Narodowa contributes the largest volume of **public domain compliant** assets via Europeana (580,794 or 30.5% of total volume in Poland).

**Not included in the data:** Muzeum Narodowe we Wrocławiu; Muzeum Narodowe w Gdańsku; Muzeum Narodowe w Poznaniu; Muzeum Narodowe w Szczecinie; Państwowe Muzeum Etnograficzne w Warszawie; Muzeum Narodowe w Lublinie; Państwowe Muzeum Archeologiczne w Warszawie; Muzeum Wojska Polskiego; Muzeum Narodowe w Kielcach.

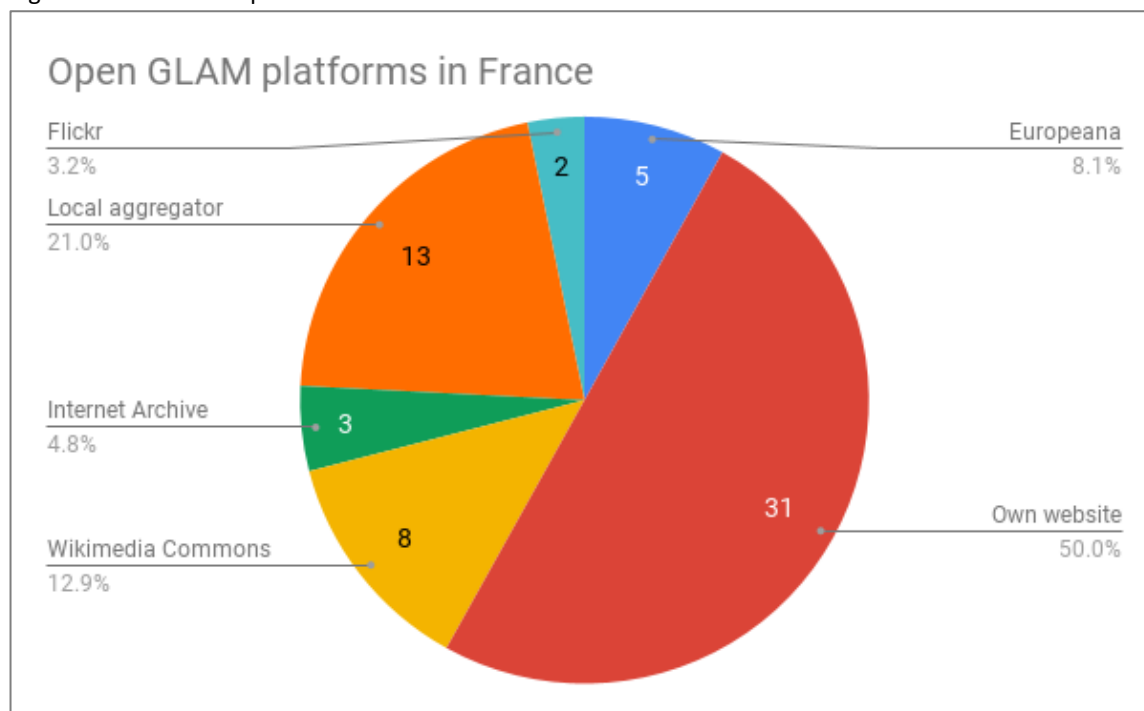
<sup>276</sup> Figures: <https://doi.org/10.5281/zenodo.6242179>

<sup>277</sup> <https://sketchfab.com/blogs/community/digitizing-art-and-history-from-40-malopolska-museums/>

<sup>278</sup> <https://muzea.malopolska.pl/>

## #6. France – 62 instances

Figure 24. Publication platforms used in France<sup>279</sup>



**Total volume:** 20,421,396 assets

As discussed above, France has a high rate of instances that publish **all eligible collections to the public domain** (33.9% of instances). Paris Musées accounts for 14 instances using primarily the CCO tool, with a total contribution of 290,716 **public domain compliant** assets.

The most common statement is the Licence Ouverte (equivalent to CC BY), adopted by 24 GLAMs (38.7% of France instances).

Half of all instances (50.0%) publish assets via their own website. Another 21.0% (or 13) publish assets using a local aggregator (*i.e.*, collections search platform) designed for GLAM groups (*e.g.*, Paris Musées), rather than any national aggregator in France.<sup>280</sup>

The Centre National d'Études Spatiales (National Centre for Space Studies) contributes 19,340,944 **open compliant** assets or 94.7% of the total volume in France via its own website using the Licence Ouverte. The other 61 instances account for the remaining 1,080,452 assets (or 5.3%).

**Not included in the data:** Musée du Louvre; Musée d'Orsay; Bibliothèque nationale de France; Musée Rodin, Musée du Quai Branly; Château de Versailles; Cité des Sciences et de l'Industrie; Musée de Cluny; Musée Guimet; Musée de la Marine; Musée national Eugène Delacroix; and Musée Gustave-Moreau.

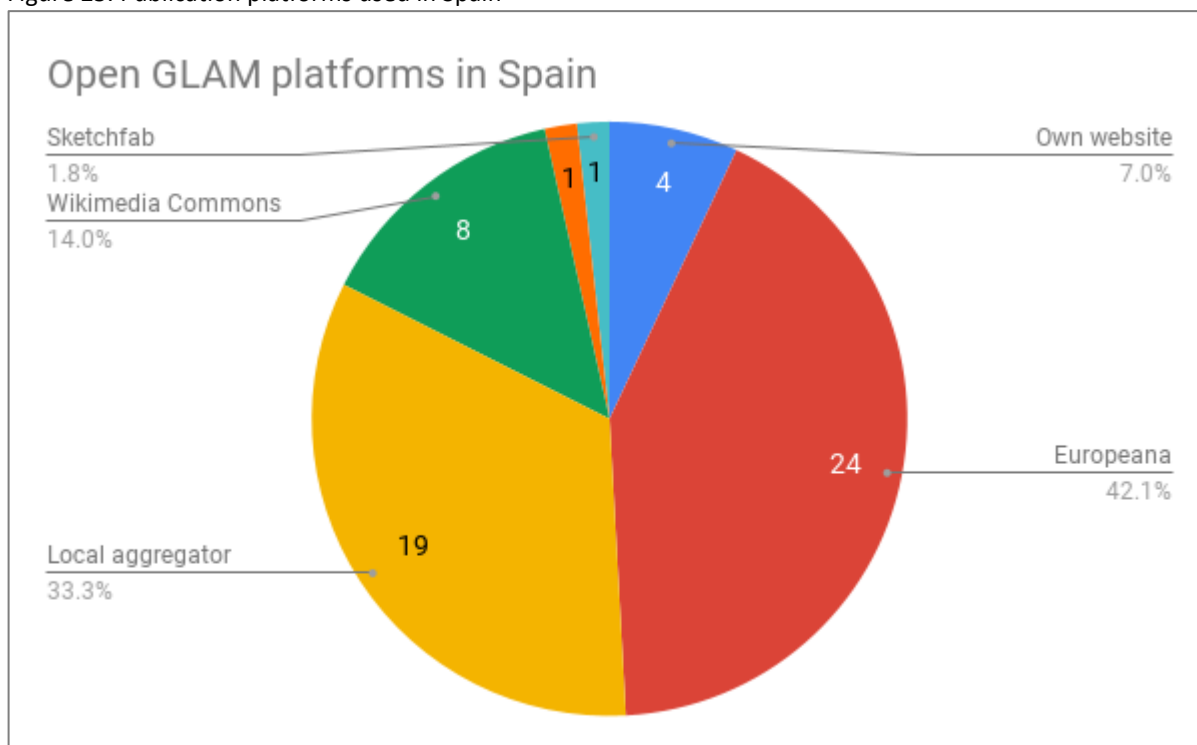
<sup>279</sup> Figures: <https://doi.org/10.5281/zenodo.6242179>

<sup>280</sup> <https://www.parismuseescollections.paris.fr/en>



## #7. Spain – 57 instances

Figure 25. Publication platforms used in Spain<sup>281</sup>



**Total volume:** 1,976,818 assets

In Spain, Europeana accounts for 24 instances (or 42.1%) contributing 1,549,088 assets (or 78.4% of the total volume in Spain). Within this, Biblioteca Virtual de Prensa Histórica contributes 1,138,866 **public domain compliant** assets (or 57.6% of the total volume in Spain).

Galiciana, Biblioteca Dixital de Galicia, the digital library of Galicia (managed by the Library of Galicia) accounts for another 19 instances (or 33.3%) contributing 147,151 **public domain compliant** assets (or 7.4% of the total volume in Spain).<sup>282</sup>

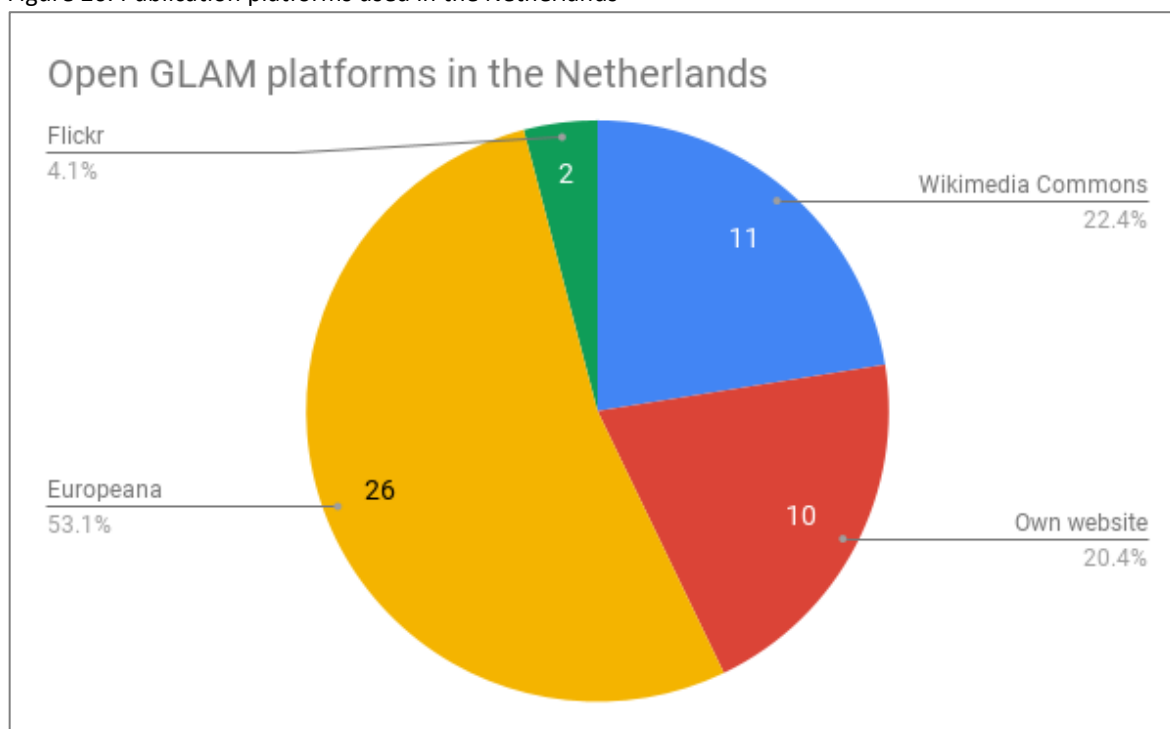
**Not included in the data:** Museo Nacional del Prado; Museo Arqueológico Nacional; Museo Nacional Centro de Arte Reina Sofía; Museo Nacional Thyssen-Bornemisza, Madrid, Spain; Museo Nacional de Antropología; Museo de América; Museo Nacional Ciencias Naturales; Museo Nacional de Arte Romano; Museu Nacional d'Art de Catalunya; El Museo de Zaragoza; El Museo Naval; and Museo del Ejército.

<sup>281</sup> Figures: <https://doi.org/10.5281/zenodo.6242179>

<sup>282</sup> <https://biblioteca.galiciana.gal/en/inicio/inicio.do>

## #8. Netherlands – 49 instances

Figure 26. Publication platforms used in the Netherlands<sup>283</sup>



**Total volume:** 8,280,372 assets

Europeana accounts for 26 instances (or 53.1%) contributing 5,918,260 assets (or 71.5% of the total volume in the Netherlands).

Within this, Naturalis Biodiversity Center contributes 4,512,192 **public domain compliant** assets (or 54.5% of the total volume in the Netherlands) and the Koninklijke Bibliotheek contributes 837,988 **public domain compliant** assets.

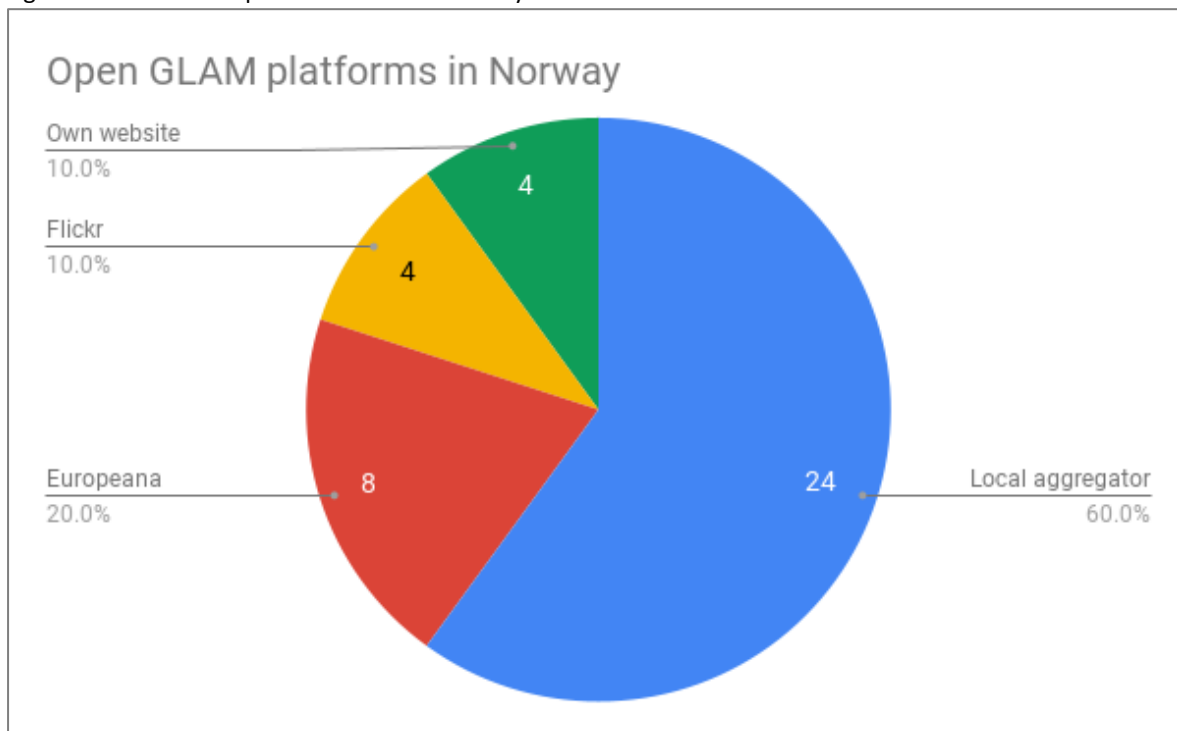
Another 10 instances publish 1,968,443 assets via their own website (or 20.4% of the total volume in the Netherlands). Of these, two large contributors of **public domain compliant** assets include the Rijksdienst voor het Cultureel Erfgoed (873,452 assets) and the Rijksmuseum (705,542 assets).

**Not included in the data:** Groninger Museum; Het Scheepvaartmuseum; Huis Doorn; Kröller-Müller Museum; Kunstmuseum Den Haag; Museum Het Rembrandthuis; NEMO Science Museum; Stedelijk Museum Breda; and Volkenkunde in Leiden.

<sup>283</sup> Figures: <https://doi.org/10.5281/zenodo.6242179>

## #9. Norway – 40 instances

Figure 27. Publication platforms used in Norway<sup>284</sup>



**Total volume:** 1,005,494 assets

As discussed, the local aggregator platform DigitaltMuseum provides access to assets in both Norway and Sweden, which users can filter by licence or GLAM.<sup>285</sup> Arts Council Norway financed the development of DigitaltMuseum, which accounts for 46.7% (or 469,673 assets) of the total volume in Norway.

Another 8 instances publish 132,640 assets via Europeana. The Vitenskapsmuseet contributes the largest volume, publishing 295,465 **open compliant** assets via its own website. The largest contributor of **public domain compliant assets** is Norsk Folkemuseum, with 95,944 assets published to Europeana.

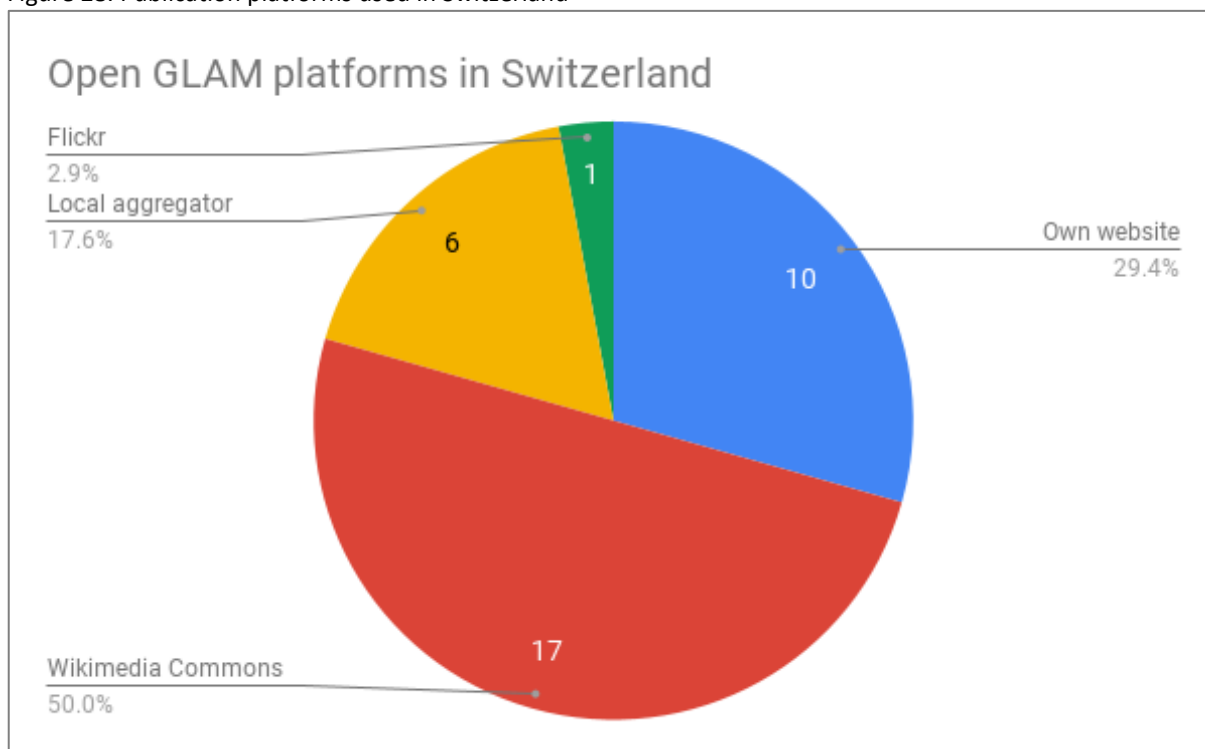
**Not included in the data:** Bymuseet i Bergen; Frammuseet; Kunstindustrimuseet; Lofoten Krigsmuseum; Norsk luftfartsmuseum; Svalbardmuseet; and Vikingskipshuset på Bygdøy.

<sup>284</sup> Figures: <https://doi.org/10.5281/zenodo.6242179>

<sup>285</sup> <https://digitaltmuseum.org/>

## #10. Switzerland – 34 instances

Figure 28. Publication platforms used in Switzerland<sup>286</sup>



**Total volume:** 674,299 assets

In June 2019, Switzerland passed a law to protect photographs that do not satisfy the threshold of originality necessary for copyright protection. Such photographs will receive a related rights protection irrespective of their “individual design.”<sup>287</sup>

The largest contributor is the Bildarchiv der ETH-Bibliothek, ETH Zürich, publishing 489,161 **public domain compliant** assets via its own website (or 72.5% of the total volume in Switzerland). The other 33 contribute the remaining 185,138 assets primarily via Wikimedia Commons, which accounts for 69,887 assets mostly published using CC BY-SA. No assets are published via Europeana.

**Not included:** Antikenmuseum Basel und Sammlung Ludwig; Institut et Musée Voltaire; Kunsthaus Zürich; Kunstmuseum Bern; Landesmuseum Zürich; Musée Ariana; Musée d'Art et d'Histoire; Musée d'Ethnographie; Muséum d'histoire naturelle de Genève; Musée d'histoire des sciences de la Ville de Genève; Museum Rietberg; Schweizerisches Architekturmuseum; Zentrum Paul Klee; and Zunfthaus zur Meisen.

<sup>286</sup> Figures: <https://doi.org/10.5281/zenodo.6242179>

<sup>287</sup> <https://sab-photo.ch/en/nun-hat-es-geklappt/>

## Appendix 4. Entry fees charged by global museums and galleries

Table 7. Ticket fees for institutions that publish open access for all eligible data (EUR on 21 October 2021)

Country	#	Institution	Platform	Volume	€
Australia	2	Museums Victoria	Own website	94,837	€0.00
		National Museum of Australia	Own website	NA	€0.00
Austria	2	Wien Museum	Own website	41,635	€5.00
		Belvedere	Own website	4,503	€13.00
Belgium	1	Museum Plantin-Moretus	Own website	NA	€8.00
Brazil	2	Museu de Zoologia da Universidade de São Paulo	Wikimedia Commons	77	€0.00
		Museu do Homem do Nordeste	Own website	NA	€0.63
Canada	3	Canada Agriculture and Food Museum	Own website	NA	€8.37
		Canada Aviation and Space Museum	Own website	NA	€9.06
		Canada Science and Technology Museum	Own website	NA	€9.06
Denmark	6	Sydvestjyske Museer	Own website	150,000	€6.72
		Thorvaldsens Museum	Own website	8,550	€9.41
		Nivaagaards Malerisamling	Own website	225	€10.75
		Den Hirschsprungske Samling	Own website	NA	€12.77
		Nationalmuseet	Own website	129,117	€12.77
		Statens Museum for Kunst	Own website	60,988	€16.12
Estonia	1	Võrumaa Muuseum	Own website	NA	€3.00
Finland	7	Helsingin kaupunginmuseo	Own website	83,322	€0.00
		Museovirasto	Local aggregator	202,881	€0.00
		Satakunnan Museo	Own website	19,772	€0.00
		Sotamuseo	Own website	160,000	€0.00
		Vantaan kaupunginmuseo (Vantaa City Museum)	Local aggregator	3,077	€0.00
		Kansallismuseo	Local aggregator	37,665	€12.00
		Kansallisgalleria	Own website	25,049	€16.00
France	14	Maison de Balzac	Local aggregator	1,433	€0.00
		Maison de Victor Hugo	Local aggregator	11,300	€0.00
		Musée Carnavalet	Local aggregator	86,165	€0.00
		Musée Cognacq-Jay	Local aggregator	487	€0.00
		Musée d'art et d'histoire de Saint-Brieuc	Wikimedia Commons	233	€0.00
		Musée d'art moderne de Paris	Local aggregator	2	€0.00
		Musée de Bretagne	Own website	300,700	€0.00
		Musée de la Vie romantique	Local aggregator	920	€0.00
		Petit Palais	Local aggregator	13,816	€0.00
		Musée des Beaux-Arts de Reims	Local aggregator	10,072	€5.00
		Musée Le Vergeur	Local aggregator	60	€5.00
		Musée Saint-Remi	Local aggregator	3,136	€5.00
		Musée de la Libération de Paris	Local aggregator	249	€6.00
		Musée Cernuschi	Local aggregator	116	€8.00
Germany	7	Münchner Stadtmuseum	Own website	2,764	€4.00
		Bayerische Staatsgemäldesammlungen	Own website	11,265	€7.00
		Volkkunde- und Freilichtmuseum Roscheider Hof	Own website	1,275	€7.00
		Staatliche Kunsthalle Karlsruhe	Own website	7,000	€8.00
		Städtische Galerie im Lenbachhaus	Own website	1,089	€10.00
		Museum für Kunst und Gewerbe Hamburg	Own website	12,141	€12.00
		Städel Museum	Own website	22,000	€14.00
Hungary	2	Semmelweis Orvostörténeti Múzeum	Local aggregator	1,031	€0.00
		Rippl-Rónai Múzeum	Local aggregator	9,188	€2.23
Ireland	1	Hunt Museum	Own website	2,530	€7.50
Japan	1	東京富士美術館 (Tokyo Fuji Art Museum)	Japan Search	8	€10.52

Lithuania	2	Kauno IX forto muziejus Rokiškio krašto muziejus	Europeana	1,363	€3.00
			Europeana	712	€3.00
Netherlands	8	Stedelijk Museum Zutphen Museum Rotterdam Nationaal Glas Museum Rijksmuseum van Oudheden Rijksmuseum Twenthe Amsterdam Museum Mauritshuis Rijksmuseum	Europeana	11,668	€7.75
			Europeana	25,794	€9.00
			Europeana	72,530	€9.00
			Own website	100,000	€12.50
			Own website	5,000	€14.00
			Own website	30,000	€15.00
			Own website	910	€15.50
			Own website	705,542	€20.00
New Zealand	6	Forrester Gallery Museum of New Zealand Te Papa Tongarewa Te Papa Tongarewa Museum of New Zealand Waitaki Museum and Archive Auckland Art Gallery Toi o Tamaki Auckland War Memorial Museum	Own website	7,598	€0.00
			Own website	52,060	€0.00
			Own website	52,060	€0.00
			Own website	7,598	€0.00
			Own website	NA	€12.18
			Own website	136,210	€12.18
Norway	6	Hvalfangstmuseet Norsk Folkemuseum Nasjonalmuseet Tromsø Museum Vitenskapsmuseet Arkeologisk museum i Stavanger	Local aggregator	10,649	€2.56
			Europeana	95,944	€2.56
			Own website	30,201	€5.13
			Europeana	1,163	€7.18
			Own website	295,465	€8.20
			Europeana	3,183	€10.25
Poland	1	Muzeum Narodowe w Krakowie	Own website	79,925	€3.29
Portugal	1	Museu da Cidade de Aveiro	Europeana	2,708	€0.00
Slovakia	5	Slovenská národná galéria Galéria Miloša Alexandra Bazovského Liptovská galéria Petera Michala Bohúňa Oravská galéria Galéria umelcov Spiša	Local aggregator	13,015	€0.00
			Local aggregator	70	€2.00
			Local aggregator	722	€2.00
			Local aggregator	1,221	€2.00
			Local aggregator	139	€2.50
Sweden	23	Armémuseum Dalarna museum Flygvapenmuseum Hälsinglands Museum Stadsmuseet i Stockholm Litografiska Museet Marinmuseum Skoklosters slott Sörmlands Museum Statens maritima museer Vänersborgs museum Hallwylska museet ArkDes Karlsborgs Fästningsmuseum Livrustkammaren Mölnåls stadsmuseum Nationalmuseum Malmö Museer Thielska Galleriet Skansen Tekniska museet Vasamuseet Österlens museum	Local aggregator	98,625	€0.00
			Local aggregator	3,171	€0.00
			Local aggregator	17,457	€0.00
			Local aggregator	8,074	€0.00
			Own website	NA	€0.00
			Own website	NA	€0.00
			Local aggregator	104,506	€0.00
			Europeana	7,672	€0.00
			Europeana	89,556	€0.00
			Local aggregator	402,683	€0.00
			Local aggregator	180,380	€0.00
			Own website	42,931	€0.00
			Local aggregator	48,951	€0.00
			Europeana	23,967	€0.00
			Wikimedia Commons	46,304	€0.00
			Local aggregator	30,470	€0.00
			Own website	80,000	€0.00
			Europeana	46,402	€4.00
			Wikimedia Commons	795	€12.99
			Local aggregator	10,999	€13.99
			Local aggregator	137,546	€14.99
			Local aggregator	19,381	€14.99
			Europeana	8,246	€29.48
Switzerland	1	Kunstmuseum Basel	Own website	4,100	€14.93
Taiwan	1	國立故宮博物院 (National Palace Museum)	Own website	16,948	€10.78

United Kingdom	3	Birmingham Museums Trust	Own website	5,804	€0.00
		Royal Pavilion & Museums Trust, Brighton & Hove	Own website	28,000	€7.12
		York Museums Trust	Own website	39,503	€7.12
United States	35	Albright-Knox	Own website	1,651	€0.00
		Anacostia Community Museum	Own website	237	€0.00
		Arthur M. Sackler Gallery	Own website	3,135	€0.00
		Birmingham Museum of Art	Own website	NA	€0.00
		Bowdoin College Museum of Art	Own website	4,695	€0.00
		Cleveland Museum of Art	Own website	36,714	€0.00
		Davison Art Center, Wesleyan University	Own website	6,227	€0.00
		Detroit Institute of Arts	Own website	31,515	€0.00
		Freer Gallery of Art	Own website	3,135	€0.00
		Hirshhorn Museum and Sculpture Garden	Own website	423	€0.00
		J. Paul Getty Trust	Own website	152,550	€0.00
		Minneapolis Institute of Art	Own website	53,638	€0.00
		National Air and Space Museum	Own website	745	€0.00
		National Gallery of Art	Own website	53,408	€0.00
		National Museum of African American History and Culture	Own website	2,033	€0.00
		National Museum of African Art	Own website	136	€0.00
		National Museum of Natural History	Own website	3,050,677	€0.00
		National Museum of the American Indian	Own website	180	€0.00
		National Portrait Gallery	Own website	10,700	€0.00
		National Postal Museum	Own website	2,512	€0.00
		Saint Louis Art Museum	Own website	3,100	€0.00
		Smithsonian American Art Museum	Own website	11,914	€0.00
		Walters Art Museum	Own website	17,635	€0.00
		Yale Center for British Art	Own website	50,924	€0.00
		Yale University Art Gallery	Own website	87,847	€0.00
		Gerald R. Ford Presidential Library and Museum	Own website	NA	€8.61
		Cooper-Hewitt, National Design Museum	Own website	42,008	€10.34
		Grand Rapids Public Museum	Own website	50,000	€10.34
		Rhode Island School of Design Museum	Own website	19,067	€12.92
		Brooklyn Museum	Own website	39,180	€13.78
		Indianapolis Museum of Art at Newfields	Own website	10,742	€15.51
		Clark Art Institute	Own website	2,700	€17.23
		Los Angeles County Museum of Art	Own website	24,970	€17.23
		Art Institute of Chicago	Own website	55,199	€21.54
		Barnes Foundation	Own website	2,211	€21.54
Metropolitan Museum of Art	Own website	375,000	€21.54		

## Appendix 5. Open GLAM activity documented after data collection

Since 7 October 2021, UK organisations have implemented open access policy and practice:<sup>288</sup>

**Aberdeen Archives, Museums & Galleries adopted CC0 for all eligible data on their own website.** This was facilitated by a functionality update to the collections database that enabled downloads based on copyright status. Aberdeen will publish all new digital surrogates of public domain works CC0 and review existing digital surrogates to clear rights for CC0 publication. The current volume of CC0 assets is 5,258. This number is expected to rise as rights clearance and new digitisation occurs. The website customisation was funded by a MGS (Museum Galleries Scotland) Small Grants Fund (up to £15,000 for accredited museums; £10,000 for non-accredited museums) and included training on Wikidata and Wikimedia Commons by Ian Watt from Code the City, an Aberdeen-based civic hacking initiative using technology and data for civic good. A worldwide functionality issue with the Wikimedia Commons batch upload tool has impacted Aberdeen’s ability to batch upload open assets. Even so, the 14 Wikipedia pages with Aberdeen images have received 1.2 million views since November. Aberdeen also received separate MGS funding for a large flatbed scanner enabling more efficient digitisation of 2D works. Updated website policies are forthcoming.

**Manchester Art Gallery adopted CC BY-SA for all eligible data on their new website (expected summer 2022).** The policy extends to low resolution images at 1200 pixels on the longest side. During a 2020 review of the Collection Information Policy, Manchester made the decision to apply the CC BY-SA licence to low resolution images. A rebuild of the main Gallery website will contain the updated policy upon launch in summer 2022. A provision on commercial licensing reads in the 2020-2023 reads: “Manchester Art Gallery seeks to create high quality digital reproductions of the objects it holds primarily for the purpose of preservation. The Gallery does not have a dedicated budget for creating these reproductions so where possible the gallery will seek to commercially licence access to these high quality digital assets (where copyright allows) to provide income to support the gallery’s digital activities.”

Additional open GLAM activity documented after data collection includes:

- **Newham Archives and Local Studies Library – 100 CC BY-SA assets on Art UK.**<sup>289</sup>
- **Newcastle University Special Collections – 30 CC BY-SA assets on Europeana.**<sup>290</sup>
- **Public Record Office of Northern Ireland – 2,010 No Known Copyright Restrictions assets via Flickr Commons**<sup>291</sup>
- **Royal Collection Trust – 32 Public Domain Mark assets on Europeana.**<sup>292</sup>
- **Royal Photographic Society Collection at the National Media Museum – 243 Public Domain Mark assets on Europeana.**<sup>293</sup>
- **University of Cardiff Special Collections and Archives – 2,788 CC BY-SA assets on the Internet Archive.**<sup>294</sup>

<sup>288</sup> Information provided via email.

<sup>289</sup> [https://artuk.org/discover/artworks/view\\_as/grid/search/has\\_image:on--licence:search-images-with-a-creative-commons-licence2cc-by--collections:london-borough-of-newham/page/5#artwork-undefined](https://artuk.org/discover/artworks/view_as/grid/search/has_image:on--licence:search-images-with-a-creative-commons-licence2cc-by--collections:london-borough-of-newham/page/5#artwork-undefined)

<sup>290</sup> [https://www.europeana.eu/en/search?query=&qf=COUNTRY%3A%22United%20Kingdom%22&qf=TYPE%3A%22IMAGE%22&qf=DATA\\_PROVIDER%3A%22Newcastle%20University%20Special%20Collections%22&reusability=open&utm\\_source=old-website&utm\\_medium=button](https://www.europeana.eu/en/search?query=&qf=COUNTRY%3A%22United%20Kingdom%22&qf=TYPE%3A%22IMAGE%22&qf=DATA_PROVIDER%3A%22Newcastle%20University%20Special%20Collections%22&reusability=open&utm_source=old-website&utm_medium=button)

<sup>291</sup> <https://www.flickr.com/photos/proni/>

<sup>292</sup> [https://www.europeana.eu/en/search?query=&qf=COUNTRY%3A%22Europe%22&qf=TYPE%3A%22IMAGE%22&qf=DATA\\_PROVIDER%3A%22The%20Royal%20Collection%20Trust%2C%20United%20Kingdom%22&reusability=open&utm\\_source=old-website&utm\\_medium=button](https://www.europeana.eu/en/search?query=&qf=COUNTRY%3A%22Europe%22&qf=TYPE%3A%22IMAGE%22&qf=DATA_PROVIDER%3A%22The%20Royal%20Collection%20Trust%2C%20United%20Kingdom%22&reusability=open&utm_source=old-website&utm_medium=button)

<sup>293</sup> [https://www.europeana.eu/en/search?query=&qf=COUNTRY%3A%22Europe%22&qf=TYPE%3A%22IMAGE%22&qf=DATA\\_PROVIDER%3A%22The%20Royal%20Collection%20Trust%2C%20United%20Kingdom%22&reusability=open&utm\\_source=old-website&utm\\_medium=button](https://www.europeana.eu/en/search?query=&qf=COUNTRY%3A%22Europe%22&qf=TYPE%3A%22IMAGE%22&qf=DATA_PROVIDER%3A%22The%20Royal%20Collection%20Trust%2C%20United%20Kingdom%22&reusability=open&utm_source=old-website&utm_medium=button)

<sup>294</sup> [https://archive.org/details/@cardiff\\_university\\_special\\_collections\\_and\\_archives](https://archive.org/details/@cardiff_university_special_collections_and_archives)