The Arts Society Copyright Guidance

As a Member Society of The Arts Society you share in our common belief that arts education and culture can enrich the lives of our members and benefit society across the UK and beyond. Our passion for the arts requires that we also respect the rights of the creators of the works that we enjoy.

The purpose of this guide is to help you understand the rights that creators have over the use of their works and ensure your activities comply with copyright law. The information provided is for general guidance only and does not constitute legal advice. Although based on UK copyright law many of its key principles will also apply in other jurisdictions.

What is copyright?
Copyright is an exclusive legal right granted to the creators of original creative works to permit or prevent people from copying their works. The Copyright, Designs and Patents Act 1988 (CDPA) is the principal UK legislation governing copyright.

What does copyright protect?
Copyright in the UK only protects original creative works that are specified in the CDPA that have been fixed or recorded in any physical or digital medium. Original means that the work is the creator's own intellectual creation, in the sense that it has not been substantially copied from another work and results from 'free and creative choices' made by the creator.

Creative works are protected by copyright regardless of any 'artistic merit'.

If a work does not fall into one of these eight categories it will not be copyright protected.

- **Literary works:** Broadly defined as any work (other than a dramatic or musical work) which is written, spoken, or sung and recorded in writing or otherwise.
- **Dramatic works:** Works which are intended to be performed through action such as plays or choreography.
- **Musical works:** The harmony and melody of a musical composition fixed as musical notation or through a sound recording. Lyrics to songs however are protected as literary works.
- **Artistic works:** 2D graphic works such as paintings and photographs, and 3D works such as sculptures, architecture or works of artistic craftsmanship such as bespoke ceramics, stained-glass windows or jewellery.
- **Films:** Any medium on which moving images are recorded.

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- **Sound Recordings:** Separate to the underlying musical or literary works which are recorded.
- **Broadcasts:** Electronic transmissions of visual images, sounds, or other information intended for members of the public. Broadcasts often contain other copyrighted materials, such as musical compositions, literary scripts, or underlying films.
- **Typographical Arrangements:** The unique style, composition, layout, and general appearance of published pages in physical and digital publications such as books journals, magazines and newspapers. It does not protect the actual text, words, or content itself.

Who owns the copyright?
Generally, the first owner of copyright in a work, will be the person who created it unless it was made by an employee in the course of their employment, in which case the employer will own the copyright.

Copyright can also be owned by more than one person. If a work has separable parts, then a work is co-owned. If a work is jointly created, then there are joint owners.

Copyright ownership can be bought, sold, inherited or bequeathed. A copyright holder can transfer the legal ownership of their copyright in a work to another party through an 'assignment' or alternatively, they can grant permission to use their work under a licence.

In the UK, the copyright in commissioned works, is by default owned by the commissioned party who created the work, unless there is a contract that assigns the copyright ownership to the commissioning party.

How are works protected by copyright?
There is no need to register copyright in the UK: it exists automatically as soon as a work in one of the eight categories is fixed or recorded.

Whilst the use of a copyright symbol in the UK shows that a work is protected by copyright it will be protected by copyright regardless.

In the UK, the standard term of copyright protection is for 70 years from the end of the year in which the creator of the work dies. There are however variations to the standard duration, including:

- Typographical arrangements: 25 years from publication.
- Broadcasts: 50 years from the year the broadcast was made
- Sound recordings: 50 years from the year in which the sound recording was made. If during that period the sound recording is published or made available to

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the public (e.g. by being played in public or broadcast), copyright lasts for 70 years from that year.

Once the term of copyright protection expires, a work enters the public domain and can be used without permission. Some cultural institutions and commercial image libraries may make assertions of copyright ownership in their images of public domain works.

UK case law and guidance from the UK's Intellectual Property Office indicates that faithful reproductions of 2D public domain artworks are unlikely to qualify for copyright protection due to an absence of creative input. Works must be 'original' to be protected by copyright, and originality requires that 'free and creative choices' have been made in their production. Arguably images of 3D artworks may be protected due to the creative choices made in the image's composition and lighting.

However, many cultural institutions seek to restrict the use of their images of public domain works by through contract law through their website terms of use and the terms of their image licences and continue to charge fees for the use images of their images.

Doing any of the following restricted acts without the copyright owner's permission constitutes a copyright infringement.

- **Copying:** Making copies of a work in any material form whether digital or analogue. This would include downloading and/or storing digital files on a server or scanning, photocopying or photographing works.
- **Issuing copies to the public:** The distribution of physical or digital copies to the public.
- **Communicating to the public by electronic transmission:** Broadcasting the work or making it available online, such as streaming it, uploading it to a website or a social media channel, or emailing it.
- **Performing, showing, or playing in public:** Publicly performing literary/musical/dramatic works or broadcasting films/sound recordings to an audience. A lecture would constitute a performance.
- **Renting or lending to the public:** Loaning out physical media such as DVDs, books, or software to the public.
- **Adaptation:** Making changes to an original work, such as translating a book into another language or writing a screenplay based on a novel.

Copyright owners or their legal representatives have the right to take legal action in the civil courts against parties they think have infringed their copyright. They can seek the payment of damages and their legal costs. In most cases they would try and resolve the

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infringement before taking legal action. This could involve the purchase of a licence or payment to compensate for unauthorised past usage.

What are "Moral Rights"?

Moral Rights are related to copyright, but whereas copyright focuses on the economic rights of copyright holders, moral rights relate to the creator's honour or reputation. They protect authors of literary, musical, dramatic and artistic works as well as films, irrespective of whether they own the copyright.

- **Attribution/Paternity:** The right to be named as the creator of their work.
- **False attribution**: The right to object to being incorrectly named as the author of a work they did not create.
- **Integrity:** The right to object to derogatory treatment of their work which includes any addition, deletion, alteration, or adaptation that they consider as a mutilation or distortion of their work or prejudicial to their honour.

Moral rights can last as long as copyright because they can be inherited. Unlike copyright they cannot be assigned to anyone else, but they can be waived.

Using Creative Commons licensed materials

Creative Commons Licences are open licences used by rights holders to facilitate the use of their creative works without the need to ask permission, because permission is already granted.

Many cultural institutions such as museums and galleries publish images of works in their collections online for use under Creative Commons (CC) licences.

There are seven types of CC licences outlined below, each with different levels of permissiveness and conditions. When using materials issued under a CC licence you need to ensure your use complies with the terms of the specific CC under which it is available.

CC ZERO Creators and owners of copyright waive their interests in their works so that others may freely build upon, enhance and reuse the works for any purposes without restriction under copyright law.

CC BY (Attribution) Under this licence, works can be used for any purpose including commercial purposes, as long as attribution is provided to the rights holder. Adaptations and changes can be made but any new adapted versions must credit the creator of the original work.

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CC BY NC ND (attribution, non-commercial, no derivatives) This is the most restrictive CC licence. Under this licence, works must be credited and can only be used for non-commercial purposes and must be used as is with no changes or adaptations.

CC licences define non-commercial use (NC) as "not primarily intended for or directed towards commercial advantage or monetary compensation". The focus is on the primary purpose of the use, acknowledging that most activities have some tangential connection to money. Arts Society events where there is no fee to attend would qualify as non-commercial. Some cultural institutions that issue works under Non-Commercial Creative Commons licences may further define uses they consider as 'non-commercial'.

Copyright and Member Societies' activities

Lectures
Accredited lecturers will own the copyright in the lecture materials they produce. However, Lecturers may include third-party copyright material (copyright protected works where the copyright is not owned by the Lecturer or The Arts Society) such as images of artworks or may involve playing extracts from music or films.

The delivery of Arts Society lectures present low-level risks of copyright infringement by Member Societies regards:

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- Member Societies making and storing copies of lecture materials that include third-party works.
- Member Societies facilitating the performing, showing, or playing in public of works other than artistic works.

These risks are mitigated under the terms of The Arts Society's accreditation agreement. Lecturers must ensure that they have cleared all necessary permissions with rights holders for the inclusion of any third-party copyright material that they use in their lecture materials. They also agree to indemnify The Arts Society and Member Societies against any legal action resulting from their use of their lecture materials.

Rather than clearing rights Lecturers may be relying on copyright exceptions outlined in the appendix to this guide such as the quotation exception or illustration for instruction exceptions. These are fair dealing exceptions and so are defences in a court of law rather than rights.

The recording of lectures is not covered under the terms of accreditation agreements. Member Societies would be liable for any copyright infringements resulting from streaming or making and sharing recordings of lectures unless the Lecturer has agreed to accept full liability in a written agreement.

The risks associated with potential copyright infringement by Member Societies is limited by not recording, live streaming or communicating recordings of lectures.

Charging fees to access streaming or recordings could undermine the non-commercial status of lectures and so risks invalidating the Lecturer's use of exceptions to copyright.

If Member Societies are recording or live streaming lectures, it is recommended that

1. You ensure that you have the consent of the Lecturer including consent on how the recordings may be used, preferably agreed in writing.

2. Recordings are saved to a secure server that can only be accessed by Society Members or guest attendees.

3. To prevent Society members or guest attendees sharing copies of recordings, access should be restricted to view only and downloads are not enabled.

Playing Music at Arts Society events

Playing recorded music or performing music live to the public is a restricted act and therefore a copyright infringement unless permission has been granted by the rights holders.

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In the UK premises that play recorded music to the public or host live performances of music are required to have a PPL PRS TheMusicLicence. TheMusicLicence is a single blanket licence that covers the playing of music by rights holders who are represented by the PPL and PRS. It is the responsibility of venue owners to ensure they have a licence in place.

However, Lecturers may be able to use short clips of music in venues without a licence where the use is fair dealing and falls within the quotation or illustration for instruction exceptions to copyright.

Promoting Arts Society events

As a local Society, you may wish to publicise your events online, on social media or by creating leaflets or posters. This might include using works such as images of artworks that are in copyright or images of public domain works protected by the terms of use of the website on which they are published.

Under the terms of use of social media platforms, you will need to ensure that you have the permission of any rights holders to post content. If rights are not sought, remedies for rights holders include their ability to contact social media platforms to remove their content from the platform and take legal action against you. Social media platforms may also suspend your accounts.

Exceptions to copyright such as the quotation exception are unlikely to cover promotional uses in the UK and so you will need to ensure that you have the permission of the copyright holder or use images released under a CC licence.

Tracing copyright holders can be resource-heavy in terms of the time required. Sometimes copyright holders cannot be identified or traced. These are known as 'orphan works'. Using orphan works carries a degree of risk as you are still liable for copyright infringement should a rights holder emerge. In the UK, orphan work can be registered and licensed (for a fee) for use in the UK only through the Orphan Works Licensing Scheme. Note that you will also need to provide evidence of the searches you conducted to identify a copyright holder.

Summary and top tips

- Lecturers are legally responsible for ensuring that their lectures and the use of any promotional material they supply do not infringe copyright.

- The delivery of lectures is relatively low risk for Member Societies regards copyright infringement. The level of risk increases if lectures are recorded or live streamed.

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- Member Societies are liable for any copyright infringements resulting from live streaming or providing access to recordings of lectures. If you are disseminating lectures, ensure that you follow the steps outlined in this guide to mitigate the risks.

- The use of copyright materials to promote lectures carries higher levels of risk of copyright infringement. Don't use copyright protected material to promote events unless you have permission from the rights holder, preferably in writing.

- Confirm with Lecturers that your promotional use of any copyright protected works they supply is permitted. Ask if they have a licence that permits promotional use by the Member Societies or if the work was used under a CC licence.

- Always retain copies of any licences or permissions agreements.

- Ensure your use of works issued under CC Licences is allowed under the licence terms.

- Consider the Moral Rights of the creators of copyright protected works. Any adaptations or changes to works may be considered derogatory treatment

- Remember to credit creators and copyright holders where known.

Useful sources of copyright information

- UK Intellectual Property Office
- IPO advice on tracing rights holders
- National Archives charts for the duration of copyright
- Copyright User
- Creative Commons Organisation FAQs
- Naomi Korn Associates

Appendix

Exceptions to copyright

Exceptions to copyright enable certain specific uses of copyright-protected works without needing the permission from the copyright owner. They are intended to balance the exclusive rights of rights holders with wider societal considerations such as education, research and culture. Exceptions to copyright that apply to uses in the UK are found in the CPDA.

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Exceptions to copyright are country specific. Each country will have its own exceptions which may vary. If you are based outside the UK, you will need to check the exceptions that apply to uses in your jurisdiction. Reproducing works online by relying on exceptions to copyright will be harder to justify and can be higher risk because images of these works will be available globally.

Many UK exceptions are also subject to 'fair dealing', a legal term used to establish whether a use of a copyright protected work is lawful or infringes copyright. There is no statutory definition of fair dealing, and it will vary from case to case. The use of works under fair dealing exceptions are not rights but legal defences and so there are risks if you rely on exceptions to use a work. Uses need to be both reasonable and justifiable, for example:

- Does the use affect the market for the work or act as a substitute for it causing the rights holder to lose revenue?
- Was the amount used necessary, reasonable and appropriate?

UK exceptions relevant to Arts Society activities

Illustration for instruction
This fair dealing exception enables copyright works to be used by an individual giving or receiving instruction for non-commercial purposes.

Non-commercial purposes are not defined in the legislation. Arts Society lectures are primarily educational in nature rather than profit driven, however charging fees to non-members could undermine the non-commercial status.

Many UK Universities consider their use of exceptions that include a non-commercial purpose requirement to be valid. Although students pay for their courses, they do not pay directly to attend lectures. They also consider the payment of lecturers to deliver lectures not to invalidate non-commercial purpose exceptions.

Subject to fair dealing and taking into consideration the ambiguities on what qualifies as a non-commercial purpose this exception could permit lecturers to use works in lectures delivered to Arts Society members and non-member visitors if there were sufficient acknowledgement of the creator and the source of the work.

It could also apply when providing online access to recordings or streaming of lectures if access was strictly limited to Arts Society members and non-member visitors.

This exception would not apply for uses associated with promoting lectures.

Criticism, review and quotation
Subject to fair dealing, under this exception an extract of a work such as a film clip or a limited amount from literary work, or sometimes a copy of a whole work such as an

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artwork, could be used if the work was being written about or the use supports exploration of a specific theme or subject provided that:

- The work has been made available to the public with the consent of the rights holder.
- The extent of the quotation is no more than is required by the specific purpose for which it is used. Purely decorative uses of works will not be covered under the exception; the use must be justifiable as illustrating a point.
- The quotation is accompanied by a sufficient acknowledgement (unless this would be impossible for reasons of practicality or otherwise)

The UK's Intellectual Property Office advises that in most circumstances the use of photographs under the quotation exception would not qualify as 'fair dealing'.
Most countries will have a similar quotation exception.

Freedom of panorama
This exception covers the photography or filming of all buildings in the UK, and three-dimensional works, such as sculptures or works of artistic craftsmanship, that are situated in public places or in premises open to the public.

Photographs and films of these works in public places can be used for any purpose in the UK, although permission from the copyright holder of the photograph or film would be required.

This exception is not evident in legislation globally, which means that online publishing of these images or including images in lectures delivered overseas could entail some risks.

Public reading or citation
This exception enables a person to recite in public a 'reasonable extract' from a published literary or dramatic work if it is accompanied by a sufficient acknowledgement.

It also enables a recording of the recitation and communicating it to the public.

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Copyright Guidelines For Arts Society Accredited Lecturers

The purpose of these guidelines is to help you understand your copyright responsibilities and to ensure your lectures do not infringe copyright and minimise the legal financial and reputational risks to you, The Arts Society and their Member Societies. The information is for general guidance only and does not constitute legal advice. Although based on UK copyright law many of its key principles will also apply in other jurisdictions.

Copyright & Moral Rights

What is copyright?
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What does copyright protect?
Copyright in the UK only protects original creative works that are specified in the CDPA that have been fixed or recorded in any physical or digital medium. Original means that that the work is the creator's own intellectual creation, in the sense that it has not been substantially copied from another work and results from 'free and creative choices' made by the creator.

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How are works protected?
There is no need to register copyright in the UK: it exists automatically as soon as a work in one of the eight categories is fixed or recorded.

Whilst the use of a copyright symbol does not confer copyright protection to a work, its usage is good practice and may also be a requirement associated with the reproduction of a work.

In the UK the standard term of copyright protection is for 70 years from the end of the year in which the creator dies regardless of whether they are the copyright owner. There are however variations to the standard duration, including:

- Typographical arrangements: 25 years from publication.
- Broadcasts: 50 years from the year the broadcast was made
- Sound recordings: 50 years from the year in which the sound recording was made. If during that period the sound recording is published or made available to the public (e.g. by being played in public or broadcast), copyright lasts for 70 years from that year.

Once the term of copyright protection expires, a work enters the public domain and can be used without permission. Some cultural institutions and commercial image libraries may make assertions of copyright ownership in their images of public domain works.

UK case law and guidance from the UK's Intellectual Property Office indicates that faithful reproductions of 2D public domain artworks are unlikely to qualify for copyright protection due to an absence of creative input. Works must be 'original' to be protected by copyright, and originality requires that 'free and creative choices' have been made in their production. Arguably images of 3D artworks may be protected due to the creative choices made in the image's composition and lighting.

However, many cultural institutions seek to restrict the use of their images of public domain works by through contract law through their website terms of use and the terms of their image licences and continue to charge fees for the use images of their images.

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Moral rights can last as long as copyright because they can be inherited. Unlike copyright they cannot be assigned to anyone else, but they can be waived.

Using copyright protected works in lectures

As an accredited Lecturer, you own the copyright in the lecturer materials you produce but this will not include any third party copyright material included in your lectures. Third -party materials are any copyright protected works not owned by you or The Arts Society. They can include images of artworks or playing extracts from music or films, which may also be protected by the terms of use of the website, or other platform on which they are published.

Under the terms of The Arts Society's accreditation agreement, you warrant that you have cleared all necessary permissions with rights holders for your use of any third-party copyright material in your lectures and indemnify The Arts Society and their Member Societies against any legal action.

This means that when you use any third-party copyright material in your lectures, you will need to ensure that:

- You have obtained permission for the use from the copyright holder preferably in writing, or;
- You are using a work issued by the rights holder under a CC licence with terms appropriate for the use, or;
- Your use of the work is done so under an exception to copyright

Obtaining permission from rights holders

The lowest risk approach to ensuring your use of copyright works is legal is to obtain written permission in the form of a licence from the rightsholder. If your use stays within the terms specified in a licence agreement you will not be infringing copyright.

Tracing copyright holders can be resource heavy in terms of the time required and for the potential licence fees that rights holders may require for the use of their works.

Sometimes copyright holders cannot be identified or traced, these are known as 'orphan works'. Using orphan works still carries a degree of risk as you are still liable for copyright infringement should a rights holder emerge. In the UK orphan works can be registered and licensed (for a fee) for use in the UK only through the Orphan Works Licensing Scheme. Note that you will also need to provide evidence of the searches you conducted to identify a copyright holder.

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Always ensure that any Creative Commons licensed content used in your lectures includes a credit if required and is identified with the Creative Commons licence under which it was used.

Exceptions to copyright

Exceptions to copyright enable certain specific uses of copyright-protected works without needing the permission from the copyright owner. They are intended to balance the exclusive rights of rights holders with wider societal considerations such as education, research and culture. Exceptions to copyright that apply to uses in the UK are found in the CPDA.

Exceptions to copyright are country specific. Each country will have its own exceptions which may vary. If you are based outside the UK, you will need to check the exceptions that apply to uses in your jurisdiction. Reproducing works online by relying on exceptions to copyright will be harder to justify and can be higher risk because images of these works will be available globally.

Many UK exceptions are also subject to 'fair dealing', a legal term used to establish whether a use of a copyright protected work is lawful or infringes copyright. There is no statutory definition of fair dealing, and it will vary from case to case. The use of works under fair dealing exceptions are not rights but legal defences and so there are risks if you rely on exceptions to use a work. Uses need to be both reasonable and justifiable, for example:

- Does the use affect the market for the work or act as a substitute for it causing the rights holder to lose revenue?
- Was the amount used necessary, reasonable and appropriate?

UK exceptions relevant to your lectures

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Many UK Universities consider their use of exceptions that include a non-commercial purpose requirement to be valid. Although students pay for their courses, they do not pay directly to attend lectures. They also consider the payment of lecturers to deliver lectures not to invalidate non-commercial purpose exceptions.

Subject to fair dealing and taking into consideration the ambiguities about what qualifies as a non-commercial purpose, this exception could be used within the context of lectures delivered to Arts Society members and non-member visitors if:

- The use is solely for teaching rather than for decoration or entertainment and limits the amount copied to what is required to illustrate your teaching point.
- There are sufficient acknowledgement of the creator and the title of the work.

It could also apply when providing online access to recordings or streaming of lectures if access was strictly limited to Arts Society members and guests; however, the non-commercial status could be undermined if Member Societies charge fees.

Criticism, review and quotation
Subject to fair dealing, under this exception an extract such as a film clip or a limited amount of a literary work, or sometimes a copy of a whole work such as an artwork, could be used if the work was being written about or the use supports exploration of a specific theme or subject provided that:

- The work has been made available to the public with the consent of the rights holder.
- The extent of the quotation is no more than is required by the specific purpose for which it is used. Purely decorative uses of works will not be covered under the exception; the use must be justifiable as illustrating a point.
- The quotation is accompanied by a sufficient acknowledgement (unless this would be impossible for reasons of practicality or otherwise)

The UK's Intellectual Property Office advises that in most circumstances the use of photographs under the quotation exception would not qualify as 'fair dealing'.
Most countries will have a similar quotation exception.

Freedom of panorama
This exception covers the photography or filming of all buildings in the UK, and three-dimensional works, such as sculptures or works of artistic craftsmanship, that are situated in public places or in premises open to the public.

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Photographs and films of these works in public places can be used for any purpose in the UK, although permission from the copyright holder of the photograph or film would be required.

This exception is not evident in legislation globally, which means that online publishing or including images in lectures delivered outside the UK could entail some risks.

Public reading or citation
This exception enables a person to recite in public a 'reasonable extract' from a published literary or dramatic work if it is accompanied by a sufficient acknowledgement.

It also enables a recording of the recitation and communicating it to the public.

Recording your lectures

The recording of your lectures is not covered under The Arts Society accreditation agreements.

Member Societies will need to obtain your consent to record or live stream your lectures as you own the copyright in your words and your presentation slides and in addition lecturers also have performers rights. Your consent is also required on how recordings may be used. This would ideally be agreed with you in advance and in writing.

Member Societies will be liable for any copyright infringements resulting from their streaming of your lecture or by providing access to recordings.

Material used to promote you and the Arts Society

You should ensure that any materials you supply to The Arts Society or its Member Societies to promote you, The Arts Society and its events can be used without infringing the rights of third-parties.

Third-party content included in lecturer materials used under a copyright exception may not be used for promotional purposes and should not be supplied for those purposes unless you have permission from the rights holder.

Any material licensed for use in the lecturer materials must also have been licensed for promotional use by The Arts Society and or its Member Societies if it is to be used for those purposes.

Summary and top Tips

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- You are legally responsible for ensuring that your lectures and the use of any promotional material you supply do not infringe copyright.

- Your use of the exceptions to copyright are not rights but defences in law. Exceptions may be subject to qualifying as 'fair dealing' or require that the use is for a 'non-commercial purpose' neither of which are defined in the legislation.

- Member Societies may not record or live stream your lectures without your permission.

- Member Societies would be liable for any copyright infringement resulting from live steaming or dissemination of recordings unless you enter into an agreement accepting liability.

- Ensure you have the necessary permissions from the photographer of any images of you that you supply to promote your lectures and ask how they should be credited.

- Do not use copyright protected works in your lecturer materials for purely decorative purposes unless you have permission from the rights holder, or its use is permitted under a CC licence.

- Clearing permission to use copyright protected works can take time so factor this in when creating lecturer materials.

- Consider the Moral Rights of the creators of copyright protected works. Any adaptations or changes to works may be considered derogatory treatment

- Remember to credit creators and copyright holders where known.

- Ensure your use of works issued under CC Licences is allowed under the specific terms of the licence.

- The Arts Society or Member Societies may contact you for confirmation that materials you have supplied can be used for promotional purposes. To ensure you can confirm how works can be used, always keep copies of any licences or agreements you receive from rights holders.

Further sources for copyright information

- UK Intellectual Property Office
- IPO advice on tracing rights holders
- National Archives charts for the duration of copyright

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- Copyright User
- Creative Commons Organisation FAQs
- Naomi Korn Associates

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