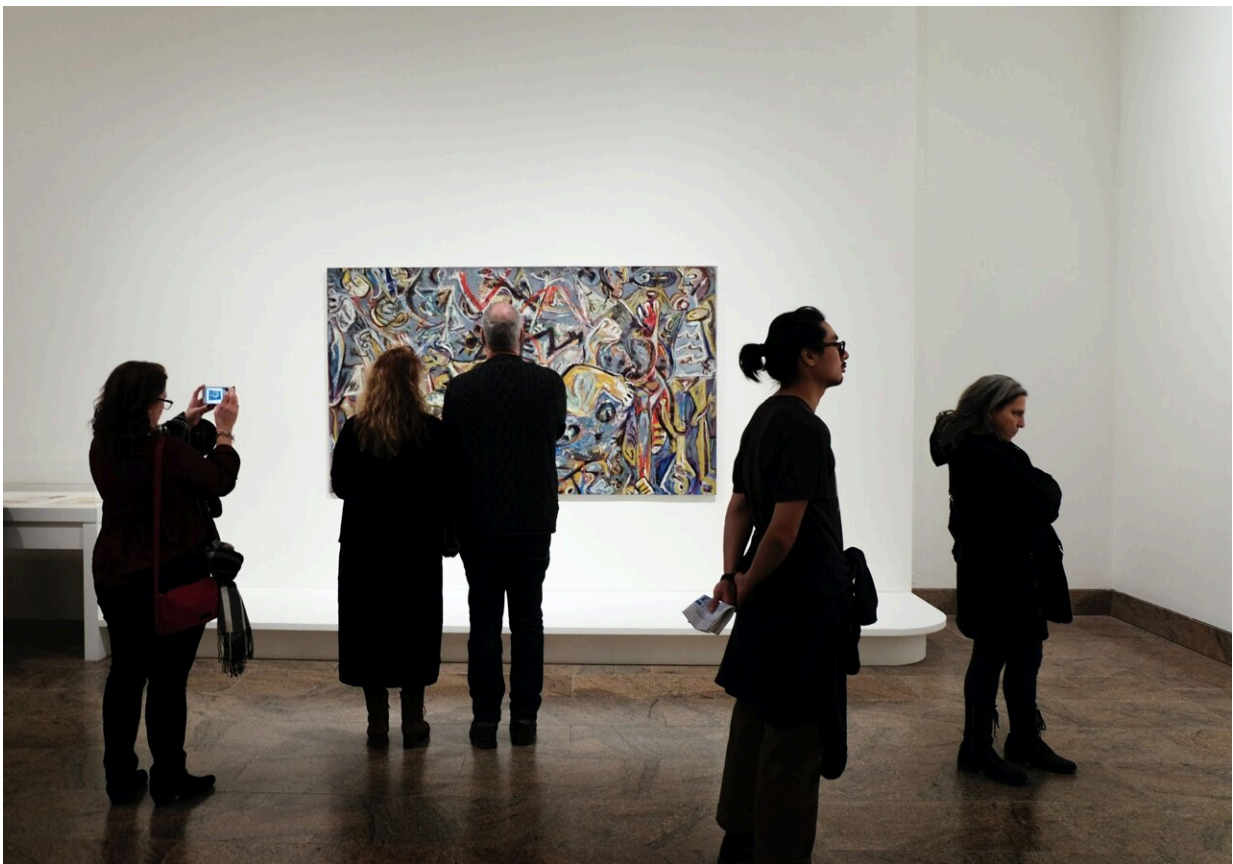


Wrongly-enforced rules over 'digital surrogates' by museums censors research and creative use, study warns

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Credit: Unsplash/CC0 Public Domain

Cultural institutions are censoring research, learning and creativity

because of the way they police the reuse of digital copies of out-of-copyright artworks and artifacts, a new study warns.

Cultural institutions have created a "mess" by claiming and enforcing new rights over the reproduction images of works in their collections.

This allows museums and other organizations to refuse requests for the use of the images in education or research or charge high fees. This impedes free and creative expression and amounts to censorship, according to Dr. Andrea Wallace from the University of Exeter Law School.

Researchers, educators and others regularly ask to use images of objects in museum and art gallery collections, but it is often complicated, too expensive or difficult to get permission. The way organizations charge or refuse rights to use "digital surrogates" are outdated and conflict with public missions, the study says.

It warns the UK cultural sector has not kept up with efforts to promote open access to digital collections ongoing elsewhere around the world and there is more concern with generating income through image licensing. This impedes the legitimate use of the public domain for those researching and studying, as well as for artists, the [creative industries](#), and the public for learning and new creations.

The [study](#) proposes a new framework to help staff in cultural institutions make more accurate assessments of [copyright](#) rights in digital surrogates.

Dr. Wallace said, "The current system is a mess, but this new framework can help to disentangle the use of surrogate rights from the ways that cultural institutions manage their collections. It allows lawyers, directors, and heritage practitioners to mend things themselves by distinguishing original from non-original reproduction media. This better captures the

vast potential of our public domain [cultural heritage](#) in this digital age.

"Of course, cultural institutions cannot and should not uncritically digitize and publish all collections and data for free and unfettered reuse. But there is a clear need to provide access and improve legal certainty for the public who would like to use out-of-copyright collections."

The framework aims to reduce barriers to people using collections while protecting legitimate intellectual property, curatorial and educational expertise. By encouraging cultural institutions to publish high-quality images online, visitors onsite and online will know they can get the best possible surrogate directly from the source.

Experience shows this can bring new relevance to cultural institutions and drive new income streams, as there may be business opportunities and partnerships made possible by open access.

Dr. Wallace said, "The framework can also improve legal certainty around public reuse of surrogate images in the public domain while bolstering their compliance with legitimate reuse restrictions. Imagine how simple it would be if we could identify the artwork and assess its copyright status using the lifetime of the original artist, rather than the claim of the cultural [institution](#) asserting a surrogate copyright in the image.

"The data already tells us that most cultural institutions lose money by operating a copyright licensing service. They rarely bring in enough income to cover the costs of running them. Nor is a surrogate copyright necessary to generate revenue or enforce rights in the [collection](#). Cultural institutions can still charge service fees for image creation and delivery. And rather than basing claims on surrogate copyright, institutions can focus infringement notices on legitimate claims, such as trademark, false advertising, or concerns with the specific use, thereby reducing operating

costs and inefficiencies.

"The short-term benefits will be to help cultural institutions comply with copyright law, meet their public missions in a digital age and explore more sustainable business models around [open access](#) collections. The long-term benefits will be to support the publication of data that is better fit for purpose in the 21st century.

"Open datasets are invaluable for computational processing, machine learning, and artificial intelligence. If cultural institutions view collections data as within [public domain](#) and therefore are more wary of these risks, it may improve the pre-publication assessments of what materials should be digitized. Cultural institutions can then use technological safeguards to revise or restructure data, embed relevant context or information in the metadata, and provide guidelines to support more appropriate reuse and reduce harm."

More information: Andrea Wallace, Surrogate Intellectual Property Rights in the Cultural Sector, Journal of Law, Technology & Policy (2023). illinoisjltp.com/file/213/Wallace_2023_Issue%202.pdf

Provided by University of Exeter

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