

Intellectual Property Policy

1. Introduction

This policy sits within the context of UK law with particular reference to

- 1988 Copyright, Designs and Patents Act;
- 1989 Copyright (Librarians and Archivists) Regulations;
- 1997 Database Regulations;
- Any other related legislation which has an impact on management of intellectual property rights¹.

The nature of the Library's collections and activities mean that it must appropriately manage third party intellectual property rights (IPR) as well as IPR created and controlled by the Library and its partners.

This policy is intended to support the Library's goal of advancing the world's knowledge by making its collections available to anyone that wants to do research. This must be done in a way that respects and makes full use of the restrictions that intellectual property law places on items within the collection and created as part of Library business.

The policy will be reviewed following legislative change or other relevant factors.

1.1. Aims and Objectives

The aim of this policy is to support the Library's position as a world class library through the appropriate treatment of intellectual property rights in relation to its activities. This has become particularly important in the digital world, although best practice must apply to both analogue and digital content.

The policy will help manage risk and maximise value in the use of third party rights through providing clear frameworks for Library employees, freelancers/contractors, users, visitors and partners of the Library. It will ensure appropriate assertion and management of British Library rights.

1.2. Scope

This policy covers Library employees, freelancers/contractors, collection users (both on and off-site), visitors and partners of the Library.

The policy covers the following areas of intellectual property (IP):

- Access to IP
- Acquisition of IP
- Creation of IP
- Management of IP
- Communication of IP

The policy is in line with, but a separate document from, the Library's advocacy position on IP as stated at www.bl.uk/ip.

¹ the policy will encompass and adapt to any new regulations which may come into force and resultant updates/enactments to the legislation listed.

1.3. Definitions

- **Intellectual Property Rights (IPR)** refers to copyright, designs, trade marks, patents, databases, moral rights and performance rights.
- **Copyright** - As defined in the Copyright, Designs and Patents Act 1988 (CDPA). The Library preserves, curates and creates large volumes of copyright material from published books and journals to maps, sound recordings, music scores, unpublished manuscripts, 'grey literature' and many other types of collection item.

1.4. Roles and Responsibilities

The Senior Responsible Owner (SRO) of the IP Policy is the Director of Finance & Corporate Services on behalf of the Executive Team. The SRO manages the creation and review of the policy through the cross-directorate IP Policy Steering Group.

Head of Intellectual Property (operational responsibility) – ensures policy is aligned with business needs and manages licensing processes and copyright/IPR guidance.

Copyright Assurance Manager (operational responsibility) – first point of contact for IP policy issues, holder of IP Risk Register, handles copyright enquiries, ensures best practice.

Heads of Department – ensures policy is being followed in their teams.

Senior Responsible Owners (SROs) of individual projects – accountable for management of IPR and decisions on risk management around IPR within projects.

Project Managers – responsible for management of IPR and decisions on risk management around IPR within projects.

Legal Services Manager and Legal and Contract Services Team (LCS) – advises on legal risk and contractual issues around IPR.

All British Library Staff – ensure they act within the framework of the policy and the IPR guidelines within employee handbook, and will respect rights holder interests as defined in the Copyright, Designs and Patents Act and other applicable laws

2. Access to IP

2.1. Access to and copying of collection items including preservation activities.

Any copying that takes place on Library premises or as part of Library activities must be in accordance with UK law (1988 Copyright, Designs and Patents Act etc).

Library Staff will advise readers on allowable copying in accordance with the guidelines held on the intranet (Policies & Procedures/Copyright and IP) and communicated by the Copyright Assurance Manager.

Library staff will only copy collection items as part of Library business where there are no copyright restrictions, where permissions have been received or where a risk managed approach has been adopted following appropriate due diligence activity. Copyright Assurance Manager will advise on application of appropriate risk management of IPR. For more details on due diligence in digitisation projects see paragraph 2.2 - Digitisation. Staff will also ensure that pre-existing conditions of use from third parties (such as those relating to collections held in trust) are adhered to in such contexts.

Fair dealing – copying should take place only as allowed under UK law following CILIP guidelines on fair dealing (e.g. copying for private study or non-commercial research).

Appropriate signage will be clearly on display in public areas advising readers and staff of copyright restrictions and fair dealing provisions.

Commercial copying (i.e. outside the scope of fair dealing) can take place in reading rooms under auspices of the Copyright Licensing Agency (CLA) library licensing scheme or with express permission from rights holders.

The British Library Document Supply Service will provide copies of copyright material under licence from rights holders or under limitations and exceptions within copyright law.

Copying for preservation purposes, or to provide copies to other libraries or library users, will be compliant with 'Library Privilege' provisions in the 1989 Copyright (Librarians and Archivists) Regulations. Where risk management of IPR in relation to preservation and access activities is required, this may be recorded on the Library's IP Risk Register.

2.2. Digitisation

Management of IP is a key element of all digitisation projects and must be considered at the outset of each project.

Internal guidelines are available on best practice in IPR clearance and these should be referred to by staff involved in digitisation projects.

Third party rights will be identified and appropriate clearance or 'due diligence' activity will be undertaken as appropriate.

Rights clearance for digitisation may be undertaken by third parties (i.e. project partners) who will be subject to the same obligations as the Library. Such third parties may be required to provide proof of rights clearance activities.

Ownership of IPR created as part of any digitisation project involving British Library collections (digitised objects, OCR, metadata) will be asserted by the British Library in accordance with the Key Licensing Principles.

Where a 'risk managed' approach to the copying of orphan works (works where the copyright holder is unknown or uncontactable) is taken, this must be signed off by the project SRO or Head of Department following referral to rights holders or rights holder representatives where appropriate.

Where it is deemed appropriate, an overview of rights clearance activities relating to a digitisation project or initiative will be recorded on the central IP Risk Register by the Copyright Assurance Manager. The decision whether to record any activity on the IP Risk Register can be made by the Digitisation Initiatives and Monitoring Group (DIAM), the relevant Project SRO/Head of Department, Head of Intellectual Property or Legal Services Manager as appropriate.

3. Acquisition/Creation of IP

3.1. Acquisition of content

As stated on the Library's [Content Acquisition Form](#), the Library's policy is to acquire any transferable intellectual property rights from the donor/vendor in the property. This is in line with the Library's role as the UK's leading research institution. Transfer of any applicable intellectual property rights is optional.

All British Library staff acquiring content will request such rights where appropriate and ensure that clear documentation is held and logged with CPU. Records of rights clearance may be held locally if CPU agree that this is more practical and appropriate.

3.2. Key Licensing Principles

Where projects, partnerships or Library business involve the acquisition or creation of IPR and management of these rights through licence, the Library's Key Licensing Principles will apply.

The Principles define best practice to which the Library will always attempt to adhere to:

Key Licensing Principles- Licensing Out

1	No contract shall undermine limitations and exceptions in copyright law such as fair dealing or library privilege.
2	All licences will be subject to English law (exclusive jurisdiction of English courts).
3a	<u>The British Library claims ownership of any digitised objects from its own collections (including derived data such as OCR and metadata) that result from Public Private Partnerships, or any other third party funding. On termination of the contract the British Library will be free to use this content to support its goal of encouraging re-use and enabling access to its collections for anyone who wants to do research.</u>
3b	<u>The British Library will assert IP rights (such as copyright and/or database rights) that may be created in the process of digitisation or arrangement of public domain digitised objects where these are funded by a third party. This is to ensure there are no legal conflicts over the ownership of these objects, therefore guaranteeing maximum access to the collection for the Library as well as others who wish to reuse this content.</u>
4	The British Library will not provide any kind of indemnity to a third party.
5	All licences will be non-exclusive. However there can be a Period of Preferential Access (POPA) which allows the partner to get a return on investment.
6	Any contract to licence rights out should be limited in its duration to a period of not more than 5 years.
7	Upon digitisation a copy of the digital object and derived data (e.g. OCR, metadata) is given to the British Library, and free access to the object/data is given on British Library premises during the POPA. On termination of contract the British Library will be free to use data as it sees fit.
8	British Library IP rights are acknowledged and appropriate branding (as defined by brand guidelines) is used with the digital object (e.g. a dynamic logo linking back to the British Library website).
9	As a memory institution it is important that the British Library ensures items are represented and used appropriately. As a default position digitisation should ensure objects are reproduced "in facsimile". Specific services may permit adaptation and re-use of material as defined by British Library strategy.
10	The partner must adhere to technical standards / formats as agreed with the British Library.
11	All licences should be for a named, specific use.
12	Notice and Takedown procedures for partner to manage removal of potentially infringing content will be enshrined in licence contract.
13	For the purposes of risk management in mass-digitisation projects, items created more than 145 years ago shall be regarded as out of copyright, those created between 145 and 110 years ago will be subject to appropriate clearance activities and those created less than 110 years ago assumed to be in copyright.
14	All agreements should consider, where relevant, issues such as cultural property (items on loan or subject to restitution claims), defamation, obscenity, data protection, freedom of information and environmental impact regulations.

Key Licensing Principles – Licensing In

15	No contract shall undermine the role of the library in law with particular reference to the limitations and exceptions in the Copyright, Designs and Patents Act 1988 and the British Library Act 1972 etc.
16	All licences should be subject to English law (exclusive jurisdiction of English courts).
17	Where appropriate the Library shall ensure appropriate business continuity measures are in place including: reserving the right to receive and store content, the right to access content from the information provider's website and ensuring the information provider has an archiving solution.
18	Licensors must provide appropriate warranties and indemnities.

In the first instance, any intention to deviate from the principles should be taken up with Head of Intellectual Property, Head of Strategic Partnerships and Licensing or Legal Services Manager. Any unresolved dispute arising from this referral is to be raised with Director of Finance and Corporate Services.

If further escalation is required, the Executive Team will be the ultimate arbiter of any decision to deviate from the Key Licensing Principles.

3.3. Staff Created IP

Full guidelines on ownership of intellectual property created by staff is included within the employee handbook.

As a general point of principle, intellectual property created by Library staff as part of their official duties shall be the property of the Library, whereas intellectual property created by Library staff outside of their official duties shall be the property of the individual staff member. Other factors that will determine the IPR ownership of the resulting work include:

- Whether the author produced all or part of the work during official time and/or using Library resources e.g. IT or photocopiers etc;
- Whether the author uses his/her Library official position as a key element in identifying the nature and provenance of the work created;
- Whether the work is based on Library copyright sources;
- If there are any confidentiality implications.

Each case will be judged on its own merits. Any questions or concerns with regard to the ownership of intellectual property created by a Library staff member should be raised with the individual's line manager. Library colleagues are strongly advised to discuss such matters before any work is undertaken and advice can be sought from HR, Head of Intellectual Property or the Legal and Contract Services team. The final decision lies with a member of staff's director, having taken legal advice if necessary.

4. Management of IP

4.1. Use of Library Name and Logos

It is important that the Library's activities are supported by appropriate association of the British Library brand through the use of intellectual property assets. The use of Library Name and Logo should be in accordance with Brand Guidelines as produced by Strategic Marketing and Communications. Legal advice can be sought from LCS.

4.2. Access and Reuse – open forms of licensing

The British Library's long term strategy – the 2020 Vision² – sets out a clear objective of enabling access to everyone who wants to do research. This strategic aim is not simply limited to the analogue environment and is to be achieved, in part, by ensuring that users are “able to download, share and re-use public domain digital content for the benefit of the economy and society”³. It also clarifies that users of the Library should be able to “integrate our out-of-copyright digitised content into their services, enabling users to create new insights and innovations from our content through re-use, and creating economic benefits for the UK.”⁴ This relates to one of the key statutory duties of the British Library to make its services ‘available in particular to institutions of education and learning, other libraries and industry’⁵.

To this end the British Library seeks to realise the opportunities for sharing content through the use of digital licences and signposting tools developed as part of the ‘open licensing’ movement.

Guidelines for colleagues that outline the conditions under which content can be made available, and the procedures to follow will be made available to Library staff. However the following statements define the principles under which the British Library provides access to its collections within digital contexts:

- The Library's mission to advance the world's knowledge involves maximising free access to its collections for the purposes of scholarship, education and deepening understanding of our own culture.
- The Library will continue to raise revenue from commercial services to reinvest back into supporting the running of the Library. However, the internet creates layers of different values, where commercial and free propositions can exist in parallel on the web differentiated by format, aggregation, context etc. Therefore access to collection items via individually negotiated licences and simultaneous ‘open’ re-use will, where possible, be the ideal.⁶
- Digitised content ranging from textual material to metadata, sound recording and audio visual material can be provided in a format and resolution which is appropriate for use and reuse by Library users of all kinds.
- Clear and interoperable usage terms and signposting of applicable intellectual property rights will be included with the content to maximise potential reuse.

For more information on applicable forms of licensing and practical guidance see guidelines on digital access and re-use of collection items.

4.3. File Formats and Digital Rights Management

The British Library uses a great many file formats and delivery technologies in its mission of preserving and making available the nation's cultural imprint. The formats and technologies used depend on the activity being undertaken and the following describes some examples of approaches taken in various areas of the Library:

Content Production – The British Library produces digital content including reports, images, sound recordings, public communications and datasets. These documents are released in formats which are widely used and accessible to the widest range of users. The most frequently used are: PDF, JPEG 2000, TIFF, WAV, MP3 and XML. The Library monitors

² The British Library 2020 Vision <http://www.bl.uk/aboutus/stratpolprog/2020vision/2020A3.pdf>

³ Ibid p.7.

⁴ Ibid

⁵ British Library Act 1972

⁶ Where a third party invests in digitisation of Library content, or the Library purchases content from a third party there are often restrictions of re-use that staff should be aware of. For further information please contact the appropriate Departments.

formats that are available for use in producing content and selects an appropriate one for each specific usage.

Ingest – The Library receives digital content in a wide variety of formats. This includes content that is purchased and donated. The Library ingests and archives digital content in its original format. For example, if we receive an author’s original, word processed “digital manuscripts” in Microsoft Word format then the items will be added to the Library’s digital collection in that format. Similarly, if files are received in the Open Document Format they will be preserved in the Open Document Format.

Published content will also be ingested into the Library’s collection in the format in which it is received from the publisher, whether that be PDF, ePub, SGML, NLM-DTD XML, publisher specific XML or any other format used.

Preservation – The Library faces significant challenges in preserving digital content. Unlike books, the properties of which are well understood, digital data and the media on which they are stored are subject not just to deterioration but also obsolescence. The Library will always seek to preserve primary digital material in the format that it was provided in order to allow researchers to analyse and appraise the original source material. Where copyright law permits, preservation copies may be made and format shifting may take place to ensure the information can still be accessed for future generations.

Management and Delivery – In order to make best use of its resources the Library may choose to reformat material for storage and delivery purposes. For example TIFF image files have in some cases been converted to the lossless JPEG2000 format which has reduced file sizes (and the associated storage costs) whilst maintaining the level of detail required by researchers.

Document Supply – The British Library Document Supply service makes journal articles and research materials available to remote users under licence from publishers and the Copyright Licensing Agency (CLA). Digital documents are supplied as standard in PDF format with Secure Electronic Delivery (SED) digital rights management technology which prevents further unauthorised distribution of the files. For more details please see the following [link](#) to Document Supply SED page on British Library website.

The British Library will continue to review its approach to management of digital assets in line with its role as custodian of the nation’s cultural and scientific memory. To date this has included input into developing new formats intended to support the activities of libraries, archives and preservers of content as well as users and other stakeholders across the digital sphere.

5. Communication of IP

Copyright enquiries relating to British Library services can be sent by both British Library staff and external parties to copyright@bl.uk.

5.1. External Communication of IP

The Library shall include appropriate copyright notices on its website, asserting rights in material to which it controls the rights and attributing third party copyright owners where their material is made available. Appropriate terms of use relating to intellectual property rights should be applied to individual services or content as appropriate.

5.2. Internal Communication of IP

IPR guidelines are available on the intranet for staff.

IPR training and support to be delivered by Copyright Assurance Manager. All staff whose roles interact with copyright will receive copyright refresher training at least annually.