



Assessing and Mitigating Risk

Setting risk tolerances for your open access programme

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About the GLAM-E Lab

The GLAM-E Lab is a joint initiative between the Centre for Science, Culture and the Law at the University of Exeter and the Engelberg Center on Innovation Law & Policy at NYU Law to work with smaller and less well-resourced UK and US cultural institutions and community organisations to build open access capacity and expertise.

The GLAM-E Lab provides legal counsel to GLAM institutions and cultural organisations as they develop open access programs. The solutions created for those institutions are then integrated into model internal policies and external terms of service that can be adopted by others. The goal of this approach is to use lessons learned from directly representing individual institutions to create self-serve model policies that work “off the shelf” for as many organisations as possible. We supplement these model policies with additional guides and resources to address common challenges.

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Contact us at info@glamelab.org or <https://glamelab.org/>

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About the GLAM-E Lab Open GLAM Toolkit

This handbook is part of the GLAM-E Lab Open GLAM Toolkit for cultural heritage organisations. The toolkit includes:

- [Onboarding Document](#), to introduce you to the GLAM-E Lab method of building an open access programme. It will give you a clearer picture of what open means in practice for you, your institution, your collections, and your community.
- [Internal Open Access Policies](#) will help you identify works in your collection that may be good candidates for your open access programme.
- [Assessing and Mitigating Risk](#), an overview of how to set and apply risk tolerances and takedown procedures for your images and data.
- [Copyright Clearance Handbook for Public Domain Publication of Digital Collections](#) and [Copyright Clearance Log](#), which guides you through the process of clearing copyright with the goal of assigning the [CC0 1.0 Universal Public Domain Dedication](#) when it is appropriate and lawful to do so. Once you have cleared copyright, you can then add the creator or work to the Copyright Clearance Log to document that process.
- [Image and Metadata Handbook for Wikimedia Commons](#) and [Sandbox Template for Wikimedia Commons Metadata Management](#), which guides you through the process of organising your images and metadata for upload to Wikimedia Commons.
- [Selecting an Alternative License or Label](#) addresses which machine readable statements to use when CC0 cannot be applied.
- [External Open Access Policies](#), which contains a model open access policy you can modify and use on your website or other communications.
- [Glossary](#), a list of terms used in this handbook and other GLAM-E Lab resources.

Together, these materials will help you identify, prepare, and publish your digital collections for open access using public domain statements or other machine readable statements.

Before using this handbook, you will likely benefit from reading the [Onboarding Document](#) and [Assessing and Mitigating Risk](#). These resources will help you to understand open access and how to clear copyright in digital collections.

This toolkit is not intended to be legal advice. You should always contact a qualified professional for legal support.

Risk Assessment Overview

Creating an open access program and assessing the copyright status of the works may involve some ambiguity or risk. Fortunately, this risk can be managed with advanced planning and discussion.

Risk emerges because collections are complex. Collections are created over extended periods, from a variety of sources, containing a dizzying array of objects. Over time, record keeping standards evolve, information changes, and institutional knowledge may go undocumented.

Copyright law can also be complicated. Works created at different times in history have different relationships with copyright protection, and small variations in national copyright laws can make obscure edge cases or anecdotes highly relevant to certain collections.

The risk associated with this complexity is something that cultural institutions wrestle with in many contexts, and open access is no different. Managing any risks in open access starts by defining your risk tolerance and designing your workflow accordingly. In reality, risk management is something that every cultural institution does on a daily basis, including your own organisation.

The risk will never be zero, and zero risk cannot be the goal of the risk assessment process. Instead, as with other activities at your institution, the goal of this process is to set a risk tolerance that allows you to confidently move forward with the development of your open access program.

The steps below are intended to support that process.

Step 1. Identify who sets risk tolerances

First, identify who is responsible for scoping and setting your organisation's risk tolerance. This might be an individual or group of individuals within your organisation. It is important to bring this person or team into the open access program's development at an early stage.

While it may not be possible or appropriate to set firm rules at the outset of the program, it is highly beneficial to start conversations about those rules as early as possible. This gives

everyone involved a chance to scope risk, discuss possible approaches, and calibrate expectations accordingly. It also provides an opportunity to identify any areas of heightened concern for your organisation.

Ultimately, identifying the person or team early in the process provides you with the first opportunity to both mitigate risk and build risk tolerance into the structure of your open access program. This is easier to do at the start of the process.

Step 2. Discuss the knowns and unknowns

Risk assessments must account for the specific dynamics of your organisation, its needs, and collections. Nonetheless, there are some key questions that almost all organisations should consider when setting their risk tolerance.

Are you comfortable assessing risk at the group level?

Most institutions start by identifying categories of works that share common characteristics, and work from there.¹ This involves grouping collections according to certain relevant information, such as when the work was created, when the creator died, or if use is restricted by a donor agreement. As a result, all works in the collection that meet that categorical criteria can be assessed for risk according to that criteria. Assessing risk for a group of works in this way is referred to as “bulk clearance.”

Bulk clearance does not prevent your institution from evaluating works individually. Rather, the bulk clearance process quickly identifies and green lights the easy cases, freeing up resources to examine edge cases more closely.

While it can be efficient, the accuracy of bulk clearance depends on the accuracy of information known about the collections. You should decide early on if you are comfortable with any risks that might follow bulk clearance, including which ones, so you may better shape the development of your open access program.

Are there specific concerns or sensitivities that attach to parts of your collection that you can identify in advance?

The process of reviewing collections for inclusion in the open access program often starts with a review of copyright. This is because copyright law impacts so many different types of works, and because copyright protection applies to a work from the moment of creation. You should assume a work is in-copyright unless you have information or other reasons for determining otherwise.

¹ See our Copyright Clearance Handbook for Public Domain Publication of Digital Collections, available at <https://www.glamelab.org/tools/>.

Many collections might include items that are subject to other concerns. For example, they might contain sensitive information or personal data, relate to Indigenous communities with different approaches to access, or be subject to donor or partnership agreements that may raise contractual restrictions. Identifying these issues at the start of your process can make it easier to avoid running afoul of them later.

Are there objects subject to donor-imposed restrictions?

One type of restriction that is often relevant to the development of an open access program are restrictions imposed by object donors. Sometimes these restrictions are expressly included in donor contracts. Others are less formal understandings between your institution and an item's donor. The formality of this restriction, and any consequences of violating it, might impact the level of concern you have for it.

It may be also possible to contact a donor and ask for permission to include an item or collection in your open access program.

Step 3. Mitigate risk with good practice

Independent of your organisation's risk tolerance, there are many straightforward steps you can take to actively mitigate risk that might flow from your open access program.

First, ensure there is publicly available contact information (such as an email address) that concerned parties can use to raise issues. This email address should be monitored regularly, and you should designate someone to perform an initial evaluation of any messages you receive.

Second, ensure there is a publicly available takedown policy on your website. This policy should invite concerned parties to contact you directly with those concerns and provide evidence of why they believe their rights to be affected.

In the event you are contacted with such a request, you should decide whether to remove access to the content while you investigate the claim.

The GLAM-E Lab's model [External Open Access Policies](#) contain both of these elements. You can use or modify our template policies to create your own website terms of service.

Finally, it is important to document the rules you develop to mitigate risk. This ensures that future colleagues (and even your future self) will understand why specific works are approved for inclusion in the open access program, and what additional measures you have taken to mitigate risk.

Useful Resources

- **GLAM-E Lab Onboarding Document.** This [document](#) introduces you to the GLAM-E Lab method of building an open access program. It will give you a clearer picture of what 'open' means in practice for you, your institution, your collections and your community. It contains practical explanations on open access, keywords and concepts, and covers technical, legal and ethical implications of open GLAM.
- **Copyright Clearance Handbook for Public Domain Publication of Digital Collections.** Designed for organisations in the US, UK, and EU Member States, this [handbook](#) and [Copyright Clearance Log](#) which guides you through the process of clearing copyright with the goal of assigning the [CC0 1.0 Universal Public Domain Dedication](#) when it is appropriate and lawful to do so. Once you have cleared copyright, you can then add the creator or work to the Creators Log to document that process.
- **Image and Metadata Handbook for Wikimedia Commons and Sandbox Template for Wikimedia Commons Metadata Management.** This [handbook](#) and [template](#) from the GLAM-E Lab guides you through the process of organising your CC0 images and metadata for upload to Wikimedia Commons.
- **Selecting an Alternative License or Label.** This [handbook](#) addresses which machine readable statements to use when CC0 cannot be applied.
- **Glossary.** [A list](#) of terms used in this handbook and other GLAM-E Lab resources.

United Kingdom

- **Checklists: Rights, Risks and Rewards.** These [checklists](#) by Naomi Korn Associates provide a level of clarity about what you need to do regarding rights, permissions and keeping risks to a minimum.
- **Museums, Orphan Works and Risk Management.** This [document](#) by Naomi Korn Associates explains how organisations should deal with Orphan Works solutions and the role of risk management in dealing with these.
- **Copyright & Risk: Scoping the Wellcome Digital Library Project.** This [report](#) by Victoria Stobo with Ronan Deazley and Ian G. Anderson from 2013 assesses the merits of the risk-managed approach to copyright clearance adopted by the Wellcome Library (WL) in the course of their pilot digitisation project Codebreakers: Makers of Modern Genetics.
- **Copyright Risk Assessment Tool.** This [checklist](#) by the Copyright Licensing Agency helps organisations easily assess whether they are at risk of copyright infringement.
- **UK Intellectual Property Office.** The UK IPO website has a section on [Intellectual Property: Copyright](#) which includes information on how to manage copyright, [copyright in digital images, photographs and the internet](#) and [the duration of copyright](#).

United States

- **Finding Balance: Collaborative Workflows for Risk Management and Sharing Cultural Heritage Collections Online.** Written by Melanie Kowalski, Sarah Quigley, and Jody Bailey, [this open educational resource](#) offers guidance for “creating scalable, cross-functional workflows using a risk-management approach.”
- **Digital Copyright Slider: Is it Protected by Copyright?** The American Library Association has created a helpful [online copyright clearance tool](#) for users to identify whether a work is protected by copyright in the US.

European Union

- **Copyright Management: Guidelines for Cultural Heritage Institutions.** Written by the Europeana Copyright Committee, [these guidelines](#) are designed to support best practice in copyright management, including risk management.