RE: Two queries from DCMS

7 August 2018 at 13:30

To: [Redacted]

Cc: [Redacted]

Dear [Redacted],

In response to your query on image licensing, we have received two FOI requests and have responded (see attached). One of the requests is in the public domain on the WhatDoTheyKnow website so we can disclose the name of the requestor, but the other is not so we have redacted personal details. The Museum's views on the issue are contained in the correspondence between the Museum and the requestor(s). We reviewed our Statement of public task in June 2018.

Kind regards,

[Redacted]

The Directorate

[Redacted]

The British Museum

Great Russell Street, London WC1B 3DG

britishmuseum.org

The security classification for this email is OFFICIAL
Dear [Name],

Thank you for contacting the British Museum concerning Exclusive Arrangements under the 2015 RPSI. As described in our response to you of 16 November, as parts of your enquiry are a request for information we hold, we have dealt with this in accordance with the terms of the Freedom of Information Act (2000).

Your request for information, received in the Museum on 8 November 2017 was:

I would be grateful if you would either publish or send me the “contract or other arrangement” relating to “Image licensing in select countries.”

In response to your request please see attached copies of such agreements. Personal data is exempt from disclosure under s.40 of the Freedom of Information Act and has been redacted where disclosure would breach one or more of the principles of the Data Protection Act.

Some information has been redacted from each of the agreements attached as shown under Section 43(2) of the Freedom of Information Act where disclosure would, or would be likely to prejudice the commercial interests of the British Museum or the British Museum Company Limited (which I will refer to together as the British Museum or the Museum).

In applying the public interest test into this exemption in this case, the Museum acknowledges that there is a public interest in disclosing information that allows scrutiny of its financial arrangements to ensure that it is managing its relationships with commercial companies effectively and achieving the best value for money for the services it provides.

However, the Museum is concerned that disclosure of commercial details in contracts negotiated with third party image licensing platforms, in order to procure that collection images are available on licensed terms, would amount to publication of the general commercial terms on which the Museum is willing to bargain, which would materially weaken its bargaining position in future negotiations in respect of similar supply arrangements. The Museum therefore regards the disclosure of this information as contrary to the public interest. It is a fundamental objective of the Museum to facilitate public engagement with its collection and to encourage people of all ages and backgrounds throughout the world to do so. The Museum carries out this objective by, for example, giving free access to the collection in Bloomsbury and by making widely available to audiences around the world licensed images of objects in its collection. It makes images available on an Attribution-NonCommercial-ShareAlike 4.0 International licence (CC BY-NC-SA 4.0) or wider uses on commercial terms that ensure the economic viability of its operations as a going concern over the long term. It therefore seeks to
procure the services of third party image licensing platforms at economically advantageous rates in order that it may generate income to support the continuing viability of its wider activities. It is not in the public interest that the Museum’s negotiating position in the market place for the services of image licensing platforms should be placed at risk of weakness by the public disclosure of sums retained by licensing platforms for the distribution and licensing of images under existing arrangements. The Museum therefore concludes that the public interest is better served by withholding this information in all the circumstances of this case.

This concludes the response to your request. I hope this information is helpful. If you are dissatisfied with this response and you wish to make a complaint about how we handled your request, please contact me in the first instance. Your complaint will be handled under our internal complaints procedure and you will receive a response within 20 working days of receipt.

If you remain dissatisfied with the way your request has been handled following the outcome of our internal review, you have a further right of appeal to the Information Commissioner. To make such an application please contact

FOI/EIR Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF

You can also contact the ICO Helpline on 0303 123 1113 or visit the Information Commissioner’s Office website at https://ico.org.uk/concerns/getting/

Yours sincerely,

S.40
SUB LICENSING AGREEMENT

BETWEEN

(1) BE&W Agencja Fotograficzna Sp. z o.o. (Company number 0000030340) located at Krzywickiego 34/318, 02-078 Warsaw, Poland ("BE&W")

(2) The British Museum Company Limited trading as British Museum Images (Company number 1079888) registered at 38 Russell Square WC1B3QQ ("BMI").

WHEREAS

(A) BMI is responsible for the management of trading activities of the British Museum on terms pursuant to which the company is empowered to enter into this agreement with BE&W;

(B) BMI is the administrator of a library of archival images of works in the collection of the British Museum which BMI licenses to third parties for editorial, commercial and promotional purposes;

(C) BE&W is the owner of an image library of image files reproducing artworks from all over the world, and since BE&W, has operated a business licensing of such images to over BE&W clients, while protecting the licensed contents against piracy both legally and technologically;

(D) BE&W images are digitised and organised in one database of colour images dedicated to the visual arts and culture, allowing image searches by subject, artist, location, period etc;

(E) BMI wishes to engage the services of BE&W to license third parties throughout the 'Territory' as hereinafter defined to reproduce such images on the terms hereinafter set out.

NOW THEREFORE, the parties agree as follows:

1 DEFINITIONS

1.1 In this Agreement, the following terms shall have the meanings indicated:

Additional Collections  - digitised reproductions of those collections or parts of collections of Individual Works belonging to the Museum, which are not available for download on the BMI Website

Advertising  - public presentation or promotion of products or services to existing and potential customers involving use of paid media (such as, without limitation, television, radio, movies, magazines, newspapers, video games, the Internet, billboards etc.)

Agreement  - this Agreement signed and dated by both parties

BMI Website  - BMImages.com

Commencement Date  - the date of signature of this Agreement, on which this Agreement shall become effective

Editorial Publishing Products  - paper products – books, magazines, broadcast documentary, CD/DVD covers etc.

End-User  - any customer of BE&W granted a Sub-Licence
| Gross Revenue | gross income, exclusive of VAT, received by BE&W from granting Sub-Licences within the Territory |
| Images | photographic or digitised reproductions of the Relevant Collections and Additional Collections (if any) |
| Image Library | BE&W library of transparencies and image files |
| Intellectual Property Rights | all vested contingent and future rights of copyright, and all rights in the nature of copyright and all accrued rights of action, and all other rights of whatever nature (including so-called moral rights) whether now known, or in the future created, to which a party is now entitled, or may be entitled at any time hereafter when any work contemplated by this Agreement is undertaken or completed |
| Merchandising | merchandise intended for sale to the general public (other than Editorial Publishing Products), for example, carrier bags, ceramics, gift wrap, playing cards, place mats, t-shirts, transfers/stickers, trays, scarves, ties, umbrellas etc. |
| Museum | the British Museum Great Russell Street London WC1B 3DG |
| Museum Materials | Images and Original Reference Data |
| Net Revenue | Gross Revenue less any reasonable and validly incurred delivery charges attributable to Sub-Licences and any amounts properly credited to End-Users in respect of the Images supplied but not ultimately used by them |
| Original Reference Data | descriptions and historical information of each work of Source Material described in the English language, including but not limited to name of artist (if known), title, creation date, size of each item |
| Quarter | each successive period of three months during the Term commencing on the Commencement Date |
| Production Fee | the fee payable in relation to BMI uploading and making available Additional Collections on the BMI Website, which shall be as set out in BMI’s ‘Photography and Digital Imaging Services’ price list as amended from time to time Relevant Collections digitised reproductions of those collections or parts of collections of individual Works belonging to the Museum, which are available for download on the BMI Website |
| Research Fee | a fee to be assessed on a case by case basis for any research request requiring intensive labour and processing work to be undertaken in relation to making available an Additional Collection on the BMI Website |
| Restricted Countries | WORLD except from Poland |
| Royalty | % of Net Revenue per Quarter as specified in clause 7.2 |
| Sub-Licence | a sub-licence granted by BE&W to an End-User for a one-use-only right to reproduce in any media or format identified Images for the purposes of:
- Editorial Products,
- Merchandising and/or
- Advertising

on any existing or future platform and/or technology. This list is purely indicative and in any case is not exhaustive.

**Target Amount**

A target goal of $43,434 per year for Gross Revenue before Royalty starting on the commencement date of this agreement.

**Term**

The period of three (3) years commencing on the Commencement Date (and any renewal of the Term under clause 6.1).

**Termination Date**

The date of termination of this Agreement.

**Territory**

Poland

**Works**

The underlying artistic work or artefacts that are the subject matter of the Images.

## 2 GRANT OF RIGHTS

2.1 In consideration of BE&W's payment of the Royalty and subject to BE&W's full compliance with the terms and conditions of this Agreement, BMI hereby grants to BE&W during the Term, a non-exclusive licence to grant Sub-Licences in the Territory.

2.2 For the sole purpose of fulfilling BE&W's obligations under this Agreement and exercising BE&W's rights granted in clause 2.1 above, BMI hereby grants to BE&W the right to hire or otherwise supply to third parties copies of Images for the purposes only of promoting or publicizing the availability of the Images from BE&W's offices to End-Users within the Territory and to display Images on the web site [http://www.bew.com.pl/](http://www.bew.com.pl/).

2.3 Save as expressly permitted by the Sub-Licences, BE&W shall not permit End-Users to make copies of the Images.

2.4 BE&W shall not grant Sub-Licences for Advertising or Merchandising purposes without the prior written consent of BMI. All enquiries received by BE&W concerning licences for Advertising or Merchandising shall be promptly referred to the BMI staff member designated for this purpose. BMI shall respond to BE&W within five (5) working days after receipt of such enquiries stating whether or not the licence is authorized and, if authorized, BMI shall provide a recommended fee for such licence.

2.5 BE&W shall not grant any rights or approvals in respect of Editorial Projects, entirely devoted to or constituting a monographic study of the British Museum (where more than 40% of the imagery is the ownership of BMI) or which is intended to be a commercial product without the prior written consent of BMI. BMI reserves the right to approve proofs of BMI works, publications of a monographic or semi-monographic nature, and also reserves such rights for book covers.

## 3 SUB-LICENCES

3.1 BE&W shall ensure that each End-User enters into a Sub-Licence in relation to its intended use of any of the Images.
3.2 BMI acknowledges that, subject to clause 4.1.5, the fees BE&W charges in the Sub-Licences shall be at BE&W discretion.

3.3 BE&W shall not enter into any Sub-Licence for the grant of exclusive rights or assignment of rights in relation to any of the Images.

3.4 BE&W agrees that it will not give consent to any End-User to manipulate, adapt or alter any Images without the consent of BMI, except for cropping for editorial purposes.

4 DUTIES AND UNDERTAKINGS OF BE&W

4.1 BE&W shall at all times during the Term of this Agreement:

4.1.1 use its best efforts to promote to End-Users the availability of Sub-Licences within the Territory. The costs of advertising and promoting the licensing rights to the Images in the Territory, in professional magazines, fairs, on the Internet and in direct mailings will be borne entirely by BE&W;

4.1.2 maintain a link to the BMI Website and refer clients to BMI for all countries outside the Territory;

4.1.3 grant Sub-Licences directly, or through its offices and agents located in the Territory only;

4.1.4 not, and shall ensure that its agents shall not, grant Sub-Licences to any organisation with headquarters in the Restricted Countries;

4.1.5 ensure that the fees it charges for Sub-Licences are consistent with the prevailing market rate for the use of an image of similar commercial interest and having regard to the purpose for which the Sub-Licence was granted. The content shall not be available for discounted pricing however BE&W shall be entitled to allow special discounts within its reasonable discretion for academic, religious, charitable or other non-commercial uses;

4.1.6 take all reasonable steps for the safe keeping of the Images in accordance with the best generally accepted practices;

4.1.7 apply its best efforts to ensure that all electronic or digital copies of the Images in the possession or custody of third parties and/or End-Users are deleted as soon as they cease to be required for production or appraisal purposes in connection with any Sub-Licence or prospective Sub-Licence;

4.1.8 ensure that appropriate legal and technological protection is applied to Images and their circulation, in order to prevent illegal or unauthorized uses. Specifically, BE&W shall watermark all the Images and will lock any download in a resolution higher than 640x480 pixels, allowing only trusted customers who have an agreement in force with BE&W to download larger image files from the Internet.

5 RIGHTS AND OBLIGATIONS OF BMI

5.1 BMI shall not be under any obligation to provide Images in respect of which neither BMI nor BE&W hold the requisite copyright clearances.

5.2 Save as provided by clause 5.1, nothing in this Agreement shall limit BMI's rights during the Term and throughout the Territory to grant licences to customers approaching BMI directly for any purpose whatsoever.

5.3 BMI shall not appoint another picture library distributor of Images within the Territory for the duration of the Term.
6 TERM

6.1 The Term may be renewed by written agreement between the parties. Annually, on the anniversary of the Commencement Date, BMI and BE&W will meet in order to appraise the present agreement's results and negotiate any amendments for the rest of the term if necessary.

6.2 At the end of the Term, BMI will undertake a formal appraisal and review of the agreement.

7 TARGET AMOUNT

7.1 The Target Amount shall not be varied except by written agreement between the parties

7.2 Annually, on the anniversary of the Commencement Date, BMI and BE&W shall review whether BE&W has met the Target Amount during the previous year. Following such review, the Royalty for the previous year shall be varied as follows

7.2.1 if total Net Revenue if the Target Amount is achieved or exceeded;

7.2.2 if total Net Revenue if less than one hundred per cent (100%) of the Target Amount is achieved.

and BE&W shall pay BMI any additional amount necessary (where there is a difference between the amounts already paid for such year under clause 8 and the Royalty, as varied under this clause) within (60) days after receipt of an invoice for such amount from BMI.

8 PAYMENTS AND FINANCIAL RECORDS

8.1 In consideration of the licence granted by this Agreement, BE&W shall pay to BMI the Royalty in respect of each Quarter during the Term.

8.2 Within 30 days after the end of each Quarter, BE&W shall provide to BMI a true and complete Royalty statement:

8.2.1 giving particulars of Gross Revenues and Net Revenues during such Quarter;

8.2.2 showing the costs deducted by BE&W; and

8.2.3 showing the total amount of Royalty payable to BMI.

8.3 BMI will issue an invoice for the amount of the Royalty reported under clause 8.2 above. BE&W shall pay such Royalty within thirty (30) days after BE&W’s receipt of BMI’s invoice.

8.4 All BE&W’s costs (as described in 4.1.1) shall be deducted from BE&W’s own percentage share of the Net Revenue and none shall be apportioned to BMI, save in such circumstances as are set out in clause 13, in which case fees shall be shared equally by BE&W and BMI.

8.5 Upon or immediately before termination of this Agreement, BE&W shall provide BMI with a final Royalty statement covering the period from the date of the last statement to the Termination Date and BMI shall issue an invoice for the amount of such Royalty. BE&W shall pay such Royalty within ninety (90) days of the Termination Date. This clause shall survive termination of this Agreement.

8.6 During the Term and for one year thereafter BMI together with its authorized representative shall have the right to inspect BE&W’s books and records in relation to the transactions covered by this Agreement upon giving ten (10) days written notice to BE&W, provided that
there shall not be more than one such inspection in any year. Where such an inspection reveals that the amount stated to be due to BMI in any statement is different from the correct amount by five percent (5%) or more, BE&W shall bear the cost of the inspection. In the event that such inspection discloses that BE&W has under reported any amounts due to BMI, BE&W shall pay any sums owed to BMI at the time the inspection is concluded, and correct its books and records. BMI agrees to enter into BE&W’s then current non-disclosure agreement for the purposes of such inspection.

8.7 BE&W shall maintain its books and records during the Term and for at least twelve months thereafter, in such manner as to clearly and accurately reflect the sales, returns, refunds and payments for the Images and the monies received therefrom.

8.8 All taxes, levies and similar payments payable on the Royalties in so far as they are required by law to be deducted shall be deducted and paid by BE&W from the amount of payments actually received, net of VAT, of discounts and of agents’ commissions. Where there is a possibility of double taxation, BMI shall provide a residence certificate to BE&W.

8.9 BE&W shall pay Royalties to BMI in Euros to BMI’s bank account as notified to BE&W from time to time.

9 ORDERS AND STOCK

9.1 As soon as possible after the Commencement Date, BMI will set up a quick pick access account for the following BE&W representative(s):

so that BE&W has immediate access to all Images and Original Reference Data available on the BMI Website.

9.2 BE&W may download such Images as required from the BMI Website.

9.3 BE&W shall inform BMI if the BE&W representative is replaced at any time during the Term and provide BMI with the name of the replacement representative who will be using the quick pick access account.

9.4 If BE&W wishes to have access to an Additional Collection which is not available on the BMI Website, BE&W may contact BMI at any time and request access to such Additional Collection.

9.5 BMI shall inform BE&W of any:

9.5.1 Production Fee; and/or

9.5.2 Research Fee

payable for making such Additional Collection available to BE&W on the BMI Website.

9.6 Where BE&W confirms that it is happy with the quoted Production Fee and/or Research Fee, BMI shall upload and make available to BE&W such Additional Collection through the BMI Website.

9.7 All Images provided by BMI will contain, as a minimum, the following terms:

9.7.1 unique code (alphanumeric); unique identifier within the database;
9.7.2 file name; text field exactly corresponding to the file name of the Images. The field will also contain the file extension (Tif, Jpg) and correspond precisely to the file name;

9.7.3 artist/author including dates of birth/death;

9.7.4 title/caption including date, medium, size, inventory number;

9.7.5 location/museum;

9.7.6 city of the museum or place where the image was shot;

9.7.7 country where the image was shot;

9.7.8 credit line/documentation;

9.7.9 special copyright conditions; and

9.7.10 keywords if possible.

10 INTELLECTUAL PROPERTY RIGHTS

10.1 BE&W acknowledges and agrees that all Intellectual Property Rights in and in relation to all Museum Materials shall vest in and remain the unencumbered property of BMI and/or the Museum and belong to BMI or the Museum absolutely. BE&W hereby assigns to BMI any right, title and interest arising from its use of the Images absolutely and irrevocably.

10.2 Any Museum Materials provided by BMI which may be in the possession of BE&W shall remain the property of BMI.

10.3 This Agreement does not affect the ownership of any Intellectual Property Rights in the Works.

10.4 Nothing in this agreement shall prevent or interfere with BMI's and the Museum's exploitation of Intellectual Property Rights in the Museum Materials.

10.5 BE&W accordingly agrees to ensure that all Sub-Licences granted in respect of the Images require inclusion by the End-User of an agreed credit line '© The Trustees of The British Museum / BE&W' in relation to its use of the Images.

11 TRADEMARKS

11.1 BE&W shall enter into a separate agreement with the Museum in respect of the use of any trade marks of the Museum for the duration of the Term.

12 LOSS OR DAMAGE BY THIRD PARTY

12.1 The downloading of the Images at BE&W premises, and the production of copies of the Images as soon as they are made will be at BE&W risk.

13 INFRINGEMENTS

13.1 If BE&W becomes aware or suspects that any of the Images have been or may be intended to be reproduced by a third party otherwise than pursuant to a Sub-Licence or to a licence granted by BMI, then BE&W shall promptly notify BMI of the suspected infringement as well as the Original Reference Data of the Images and shall consult with BMI on how to act to deal with it.
13.2 No legal action will be undertaken by BE&W against a delinquent or illicit user of the Images unless BMI have given their prior written consent thereto.

13.3 BMI makes no representations about artists’ copyright ownership in the Works and will not participate in the defence of any third party claim that use of one or more of the Images violates such third party’s copyright or other rights.

14 TERMINATION

14.1 Either party may terminate this Agreement immediately at any time by giving notice in writing to the other if:

14.1.1 the other party is in material breach of any of the covenants, undertakings, obligations or conditions set forth in this Agreement and, in the case of a breach capable of being remedied, the failure to remedy such breach within twenty one (21) working days of receipt of written notice from the other party giving particular of the breach and requiring it to be remedied; or

14.1.2 the other party ceases to do business, becomes unable to pay its debts as they fall due, becomes or is deemed insolvent, has a receiver, manager, administrator, administrative receiver or similar officer appointed in respect of the whole or any part of its assets or business.

14.2 This Agreement may be terminated for convenience by BMI without limit or indemnity by thirty (30) calendar days prior written notice.

15 EFFECT OF TERMINATION

15.1 Termination of this Agreement for whatever cause, shall be without prejudice to the rights of either party which may have accrued up to the Termination Date.

15.2 Upon termination of this Agreement for whatever cause, BE&W undertakes to BMI that it will:

15.2.1 as soon as practicable remove or erase from its Image Library all of the Images including all backup and archive copies howsoever held;

15.2.2 not enter into any subsequent Sub-Licences in respect of the Images; and

15.2.3 promptly destroy or delete all Museum Materials in its possession and provide BMI with satisfactory evidence of such destruction.

15.3 On the Termination Date, BE&W shall lose any and all rights to use Museum’s name and to use the Images, directly or indirectly.

15.4 Sub-Licences already concluded shall not be affected by such termination. Upon expiration or termination of this Agreement, BE&W shall continue to pay BMI the Royalties owing under existing Sub-Licences on a quarterly basis.

15.5 In the absence of agreement between the parties as to their final financial rights and liabilities at the Termination Date, within sixty (60) days after the Termination Date the parties shall either agree to appoint an expert to carry out an audit and investigation of all necessary books of account and provide a report to both parties accordingly, with costs to be shared equally between the parties.

15.6 The expert's decision shall be binding upon the parties.

15.7 Any amount as shall thus be agreed or determined by the expert to be due and owing by either party shall be paid not later than thirty (30) days after the agreement or notification of the expert’s decision thereof.
15.8 It is expressly agreed that termination of this Agreement for whatever reason shall not entitle BE&W to any payment by BMI by way of compensation or indemnity for loss of its licence and other rights under this Agreement.

16 COMMUNICATIONS

16.1 All notices to be served by either party under this Agreement shall be written in English and delivered by UPS or any equivalent agency, with overnight delivery if requested, to the principal place of business of the party due to receive it or to such other address as either party may in writing notify to the other.

17 SCOPE OF AGREEMENT

17.1 This Agreement embodies the entire understanding of the parties and it overrides or supersedes all or any prior promises, representations or warranties made by either party and agreements or arrangements between the parties at any time whether orally or in writing and may only be varied in writing signed by a duly authorized representative of each party.

18 FORCE MAJEURE

18.1 If and to the extent that either party is hindered or prevented by circumstances not now reasonably foreseeable and not within its reasonable ability to control from performing any of its obligations under this Agreement and promptly so notifies the other party, giving full particulars of the circumstances in question, then the party so affected shall be relieved of liability to the other for failure to perform such obligations, but shall nevertheless use its best efforts to resume full performance thereof without avoidable delay, and pending such resumption shall permit and shall use its best efforts to facilitate any efforts that the other party may make to procure alternative supplies or services.

19 ASSIGNMENT

19.1 This Agreement may be not assigned, delegated or transferred wholly or partly without the prior written consent of the other party.

20 CONFIDENTIALITY

20.1 Both parties will treat all the information pertaining to this Agreement as confidential, except as necessary to perform their obligations under the Agreement. Each party may also share confidential information with its professional advisers under an obligation of confidentiality for the purpose of obtaining professional advice.

21 WAIVER

21.1 The rights of either party arising out of any provision of this Agreement or any branch thereof shall not be waived except in writing. Any waiver by either party of any of its rights under this Agreement or of any breach of this Agreement shall not be construed as a waiver of any other rights or of any other or further breach.

22 SEVERABILITY

22.1 In the event of any of the obligations contained herein being invalidated by any competent court, this Agreement shall be interpreted as if such obligations were not contained herein.

23 INTERPRETATION

23.1 The headings in this Agreement shall not affect its construction or interpretation.
GOVERNING LAW AND JURISDICTION

24.1 This Agreement shall be governed by and interpreted according to the laws of England. The parties agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement (including any non-contractual disputes and claims).

LONDON

DATE: 17.07.2015

BMI

BE&W

S.40

S.40
SUB LICENSING AGREEMENT

BETWEEN

(1) The partner institution **bpk – Bildagentur für Kunst, Kultur und Geschichte** ("BPK"), at Märkisches Ufer 16-18, 10179 Berlin, Germany, an institution of Stiftung Preussischer Kulturbesitz ("SPK"), a national public foundation, the registered headoffice of which is located at Von-der-Heydt-Strasse 16-18, 10785 Berlin, Germany

(2) **The British Museum Company Limited trading as British Museum Images** (Company number 1079888) with its Registered Office at 38 Russell Square WC1B 3QX ("BMI").

WHEREAS

(A) BMI is responsible for the management of trading activities of the British Museum on terms pursuant to which the company is empowered to enter into this agreement with BPK.

(B) BMI is the administrator of a library of archival images of works in the collection of the British Museum which BMI licenses to third parties for editorial, commercial and promotional purposes;

(C) BPK is the owner of an image library of image files reproducing artworks from all over the world, and since 1986, has operated a business licensing of such images to several thousand clients, while protecting the licensed contents against piracy both legally and technologically;

(D) BPK images are digitised and organised in one database of colour and b/w images dedicated to the visual arts and culture, allowing image searches by subject, artist, location, period etc;

(E) BMI wishes to engage the services of BPK to license third parties throughout the ‘Territory’ as hereinafter defined to reproduce such images on the terms hereinafter set out.

NOW THEREFORE, the parties agree as follows:

1 DEFINITIONS

1.1 In this Agreement, the following terms shall have the meanings indicated:

**Additional Collections**
digitised reproductions of those collections or parts of collections of individual Works belonging to the Museum, which are not available for download on the BMI Website

**Advertising**
public presentation or promotion of products or services to existing and potential customers involving the use of paid media (such as, without limitation, television, radio, movies, magazines, newspapers, video games, the Internet, billboards etc.)

**Agreement**
this Agreement signed and dated by both parties

**BMI Website**
BMImages.com

**Commencement Date**
one month after the date of signature of this Agreement, on which this Agreement shall become effective.

**Preparatory period**
one month from the date of signature where BPK will upload BMImages on its website and prepare marketing material. No license should be granted during the first month.
Editorial Products

paper products – books, magazines, broadcast documentary, CD/DVD covers etc. and editorial digital online and offline products – online newspapers and magazines, films on TV, audio books, audio DVDs, other editorial internet use etc.

End-User

any customer of BPK granted a Sub-Licence

Gross Revenue

gross income, exclusive of VAT, received by BPK from granting Sub-Licences within the Territory

Images

photographic or digitised reproductions of the Relevant Collections and Additional Collections (if any)

Image Library

BPK's library of transparencies and image files

Intellectual Property Rights

all vested contingent and future rights of copyright, and all rights in the nature of copyright in and all accrued rights of action, and all other rights of whatever nature (including so-called moral rights) whether now known, or in the future created, to which a party is now entitled, or may be entitled at any time hereafter when any work contemplated by this Agreement is undertaken or completed

Merchandising

merchandise intended for sale to the general public (other than Editorial Publishing Products), for example, carrier bags, ceramics, gift wrap, playing cards, place mats, t-shirts, transfers/stickers, trays, scarves, ties, umbrellas etc.

Museum

the British Museum Great Russell Street London WC1B 3DG

Museum Materials

Images and Original Reference Data

Net Revenue

Gross Revenue less any reasonable and validly incurred delivery charges attributable to Sub-Licences and any amounts properly credited to End-Users in respect of the Images supplied but not ultimately used by them

Original Reference Data

descriptions and historical information of each work of Source Material described in the English language, including but not limited to name of artist (if known), title, creation date, size of each item

Quarter

each successive period of three months during the Term commencing on the Commencement Date

Production Fee

the fee payable in relation to BMI uploading and making available Additional Collections on the BMI Website, which shall be as set out in BMI’s ‘Photography and Digital Imaging Services’ price list as amended from time to time

Relevant Collections

digitised reproductions of those collections or parts of collections of individual Works belonging to the Museum, which are available for download on the BMI Website

Research Fee

a fee to be assessed on a case by case basis for any research request requiring intensive labour and processing work to be undertaken in relation to making available an Additional Collection on the BMI Website
<table>
<thead>
<tr>
<th>Restricted Countries</th>
<th>world except from Germany, Switzerland and Austria. BPK's customers located in the Territories may however license images for worldwide distribution for its products, in which BMI Images are used.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Royalty</td>
<td>% of Net Revenue per Quarter as specified in clause 7.2</td>
</tr>
<tr>
<td>Sub-Licence</td>
<td>a sub-licence granted by BPK to an End-User for a one-use-only right to reproduce in any media or format identified images for the purposes of:</td>
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<tr>
<td></td>
<td>• Editorial Products,</td>
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<td>• Advertising</td>
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<td>Target Amount</td>
<td>on any existing or future platform and/or technology. This list is purely indicative and in any case is not exhaustive</td>
</tr>
<tr>
<td>Term</td>
<td>a target goal of S43 per year for Gross Revenue before Royalty starting on the Commencement Date of this agreement.</td>
</tr>
<tr>
<td></td>
<td>the period of one (1) year commencing on the Commencement Date (and any renewal of the Term under clause 8.1)</td>
</tr>
<tr>
<td>Termination Date</td>
<td>the date of termination of this Agreement</td>
</tr>
<tr>
<td>Territory</td>
<td>Germany, Switzerland, Austria; BPK's customers in these 3 countries may acquire from BPK worldwide distribution rights for its products, in which BMI Images are used.</td>
</tr>
<tr>
<td>Works</td>
<td>the underlying artistic work or artefacts that are the subject matter of the Images</td>
</tr>
</tbody>
</table>

2 GRANT OF RIGHTS

2.1 In consideration of BPK's payment of the Royalty and subject to BPK's full compliance with the terms and conditions of this Agreement, BMI hereby grants to BPK during the Term, a non-exclusive licence to grant Sub-Licences in the Territory.

2.2 For the sole purpose of fulfilling BPK's obligations under this Agreement and exercising BPK's rights granted in clause 2.1 above, BMI hereby grants to BPK the right to hire or otherwise supply to third parties copies of Images for the purposes only of promoting or publicizing the availability of the Images from BPK's offices to End-Users within the Territory and to display Images on the web site www.bpk-images.de.

2.3 Save as expressly permitted by the Sub-Licences, BPK shall not permit End-Users to make copies of the Images.

2.4 BPK shall not grant Sub-Licences for Advertising or Merchandising purposes without the prior written consent of BMI. All enquiries received by BPK concerning licences for Advertising or Merchandising shall be promptly referred to the BMI staff member designated for this purpose. BMI shall respond to BPK within five (5) working days after receipt of such enquiries stating whether or not the licence is authorized and, if authorized, BMI shall provide a recommended fee for such licence.
2.5 BPK shall not grant any rights or approvals in respect of Editorial Projects, entirely devoted to or constituting a monographic study of the British Museum or which is intended to be a commercial product without the prior written consent of BMI. BMI reserves the right to approve proofs of BMI works, publications of a monographic or semi-monographic nature, and also reserves such rights for book covers.

3 SUB-LICENCES

3.1 BPK shall ensure that each End-User enters into a Sub-Licence in relation to its intended use of any of the Images.

3.2 BMI acknowledges that, subject to clause 4.1.4, the fees BPK charges in the Sub-Licences shall be at BPK’s discretion.

3.3 BPK shall not enter into any Sub-Licence for the grant of exclusive rights or assignment of rights in relation to any of the Images.

3.4 BPK agrees that it will not give consent to any End-User to manipulate, adapt or alter any Images without the consent of BMI, except for cropping for editorial purposes.

4 DUTIES, RIGHTS AND UNDERTAKINGS OF BPK

4.1 BPK shall at all times during the Term of this Agreement:

4.1.1 use its best efforts to promote to End-Users the availability of Sub-Licences within the Territory. The costs of advertising and promoting the licensing rights to the Images in the Territory, in professional magazines, fairs, on the Internet and in direct mailings will be borne entirely by BPK.

4.1.2 use BM Images or trademarks in connection with the operation, promotion and marketing of the Image Library, and with other BPK’s performance of its obligations hereunder free of charge.

4.1.3 maintain a link to the BMI Website and refer clients to BMI for all countries outside the Territory;

4.1.4 grant Sub-Licences directly, or through its offices and agents located in the Territory only;

4.1.5 not, and shall ensure that its agents shall not, grant Sub-Licences to any organisation with headquarters in the Restricted Countries;

4.1.6 ensure that the fees it charges for Sub-Licences are consistent with the prevailing market rate for the use of an image of similar commercial interest and having regard to the purpose for which the Sub-Licence was granted and to any normal bulk discount (provided that BPK shall be entitled to allow special discounts within its reasonable discretion for academic, religious, charitable or other non-commercial uses);

4.1.7 take all reasonable steps for the safe keeping of the Images in accordance with the best generally accepted practices;

4.1.8 apply its best efforts to ensure that all electronic or digital copies of the Images in the possession or custody of third parties and/or End-Users are deleted as soon as they cease to be required for production or appraisal purposes in connection with any Sub-Licence or prospective Sub-Licence;

4.1.9 ensure that appropriate legal and technological protection is applied to Images and their circulation, in order to prevent illegal or unauthorized uses. Specifically,
BPK shall watermark all the images and will lock any download in a resolution higher than 640x480 pixels, allowing only trusted customers who have an agreement in force with BPK to download larger image files from the Internet.

4.1.10 Cease the licensing of all other sources' images representing artefacts from the British Museum in all territories;

5 RIGHTS AND OBLIGATIONS OF BMI

5.1 BMI shall not be under any obligation to provide Images in respect of which neither BMI nor BPK hold the requisite copyright clearances.

5.2 BMI shall not appoint another picture library distributor of Images within the Territory for the duration of the Term.

5.3 Save as provided by clause 5.2, nothing in this Agreement shall limit BMI's rights during the Term and throughout the Territory to grant licences to customers approaching BMI directly for any purpose whatsoever.

5.4 BMI guarantees that, either it or the Trustees of the British Museum, own the copyright in the Image and it is fully entitled to grant Licensee the rights described herein. Unless otherwise stated in the Licence Confirmation, BMI merely grants rights in the photographic work that is the Image. Licensee will be solely responsible for any other clearances that may be necessary.

6 TERM

6.1 The Term may be renewed by written agreement between the parties.

6.2 At the end of the Term, BMI will undertake a formal appraisal and review of the agreement.

7 TARGET AMOUNT

7.1 The Target Amount shall not be varied except by written agreement between the parties.

7.2 Annually, on the anniversary of the Commencement Date, BMI and BPK shall review whether or not BPK has met the Target Amount during the previous year. Following such review, the Royalty for the previous year shall be varied as follows:

7.2.1 if total Net Revenue after the first two years of duration of the contract if the Target Amount is achieved or exceeded;

7.2.2 if total Net Revenue within the first two years of the duration of the contract and further on later if less than of Gross Revenue before Royalties is achieved

and BPK shall pay BMI any additional amount necessary (where there is a difference between the amounts already paid for such year under clause 8 and the Royalty, as varied under this clause) within 30 days after receipt of an invoice for such amount from BMI.

8 PAYMENTS AND FINANCIAL RECORDS

8.1 In consideration of the licence granted by this Agreement, BPK shall pay to BMI the Royalty in respect of each Quarter during the Term.

8.2 Within 30 days after the end of each Quarter, BPK shall provide to BMI a true and complete Royalty statement:

8.2.1 giving particulars of Gross Revenues and Net Revenues during such Quarter;
8.2.2 showing the costs deducted by BPK; and
8.2.3 showing the total amount of Royalty payable to BMI.
8.2.4 showing the detail of the license granted to end users

8.3 BMI will issue an invoice for the amount of the Royalty reported under clause 8.2 above. BPK shall pay such Royalty within thirty (30) days after BPK’s receipt of BMI’s invoice.

8.4 All BPK’s costs (as described in 4.1.1) shall be deducted from BPK’s own percentage share of the Net Revenue and none shall be apportioned to BMI, save in such circumstances as are set out in clause 13, in which case fees shall be shared equally by BPK and BMI.

8.5 Upon or immediately before termination of this Agreement, BPK shall provide BMI with a final Royalty statement covering the period from the date of the last statement to the Termination Date and BMI shall issue an invoice for the amount of such Royalty. BPK shall pay such Royalty within ninety (90) days of the Termination Date. This clause shall survive termination of this Agreement.

8.6 During the Term and for one year thereafter BMI together with its authorized representative shall have the right to inspect BPK’s books and records in relation to the transactions covered by this Agreement upon giving ten (10) days written notice to BPK, provided that there shall not be more than one such inspection in any year. Where such an inspection reveals that the amount stated to be due to BMI in any statement is less than the correct amount by five percent (5%) or more, BPK shall bear the cost of the inspection. In the event that such inspection discloses that BPK has under-reported any amounts due to BMI, BPK shall pay any sums owed to BMI at the time the inspection is concluded, and correct its books and records. BMI agrees to enter into BPK’s then current non-disclosure agreement for the purposes of such inspection.

8.7 BPK shall maintain its books and records during the Term and for at least twelve months thereafter, in such manner as to clearly and accurately reflect the sales, returns, refunds and payments for the Images and the monies received therefrom.

8.8 All taxes, levies and similar payments payable on the Royalties in so far as they are required by law to be deducted shall be deducted and paid by BPK from the amount of payments actually received, net of VAT, of discounts and of agents’ commissions. Where there is a possibility of double taxation, BMI shall provide a residence certificate to BPK.

8.9 BPK shall pay Royalties to BMI in Euros from BPK’s Berlin headquarters to BMI’s bank account as notified to BPK from time to time.

9 ORDERS AND STOCK

9.1 As soon as possible after the Commencement Date, BMI will set up instant access rights for the following BPK representative(s):

- S.40 [Redacted]
- S.40 [Redacted]
- S.40 [Redacted]
- S.40 [Redacted]
- S.40 [Redacted]

so that BPK has immediate access to all Images and Original Reference Data available on the BMI’s Website. Approximately 8,000 Images with metadata are currently available.
9.2 BPK may download such Images as required from the BMI Website.

9.3 BPK shall inform BMI if the BPK representative is replaced at any time during the Term and provide BMI with the name of the replacement representative who will be using the quick pick access account.

9.4 If BPK wishes to have access to an Additional Collection which is not available on the BMI Website, BPK may contact BMI at any time and request access to such Additional Collection.

9.5 BMI shall inform BPK of any:

9.5.1 Production Fee; and/or

9.5.2 Research Fee

payable for making such Additional Collection available to BPK on the BMI Website.

9.6 Where BPK confirms that it is happy with the quoted Production Fee and/or Research Fee, BMI shall upload and make available to BPK such Additional Collection through the BMI Website.

9.7 Any Production Fees or Research Fees paid by BPK will not be included in the total Net Revenue for the purposes of reviewing whether the Target Amount has been achieved.

9.8 All Images provided by BMI will contain, as a minimum, the following terms:

9.8.1 unique code (alphanumeric); unique identifier within the database;

9.8.2 file name; text field exactly corresponding to the file name of the Images. The field will also contain the file extension (Tif, Jpg) and correspond precisely to the file name;

9.8.3 artist/author including dates of birth/death (when known)

9.8.4 title/caption including date, medium, size, inventory number;

9.8.5 location/museum;

9.8.6 credit line/documentation;

9.8.7 special copyright conditions; and

9.8.8 keywords if possible.

10 INTELLECTUAL PROPERTY RIGHTS

10.1 BPK acknowledges and agrees that all Intellectual Property Rights in and in relation to all Museum Materials shall vest in and remain the unencumbered property of BMI and/or the Museum and belong to BMI or the Museum absolutely. BPK hereby assigns to BMI any right, title and interest arising from its use of the Images absolutely and irrevocably.

10.2 Any Museum Materials provided by BMI which may be in the possession of BPK shall remain the property of BMI.

10.3 This Agreement does not affect the ownership of any Intellectual Property Rights in the Works.

10.4 Nothing in this agreement shall prevent or interfere with BMI’s and the Museum’s exploitation of Intellectual Property Rights in the Museum Materials.
10.5 BPK accordingly agrees to ensure that all Sub-Licences granted in respect of the Images require inclusion by the End-User of an agreed credit line © The Trustees of The British Museum c/o BPK in relation to its use of the Images.

11 TRADEMARKS

11.1 BPK shall enter into a separate agreement with the Museum in respect of the use of any trade marks of the Museum for the duration of the Term.

12 LOSS OR DAMAGE BY THIRD PARTY

12.1 The downloading of the Images at BPK's premises, and the production of copies of the Images as soon as they are made will be at BPK's risk.

13 INFRINGEMENTS

13.1 If BPK becomes aware or suspects that any of the Images have been or may be intended to be reproduced by a third party otherwise than pursuant to a Sub-Licence or to a licence granted by BMI, then BPK shall promptly notify BMI of the suspected infringement as well as the Original Reference Data of the Images and shall consult with BMI on how to act to deal with it.

13.2 No legal action will be undertaken by BPK against a delinquent or illicit user of the Images unless BMI have given their prior written consent thereto.

13.3 BMI makes no representations about artists' copyright ownership in the Works and will not participate in the defence of any third party claim that use of one or more of the Images violates such third party's copyright or other rights.

14 TERMINATION

14.1 Either party may terminate this Agreement immediately at any time by giving notice in writing to the other if:

14.1.1 the other party is in material breach of any of the covenants, undertakings, obligations or conditions set forth in this Agreement and, in the case of a breach capable of being remedied, the failure to remedy such breach within twenty one (21) working days of receipt of written notice from the other party giving particular of the breach and requiring it to be remedied; or

14.1.2 the other party ceases to do business, becomes unable to pay its debts as they fall due, becomes or is deemed insolvent, has a receiver, manager, administrator, administrative receiver or similar officer appointed in respect of the whole or any part of its assets or business.

14.2 This Agreement may be terminated for convenience by BMI without limit or indemnity by ninety (90) calendar days prior written notice.

15 EFFECT OF TERMINATION

15.1 Termination of this Agreement for whatever cause, shall be without prejudice to the rights of either party which may have accrued up to the Termination Date.

15.2 Upon termination of this Agreement for whatever cause, BPK undertakes to BMI that it will:

15.2.1 as soon as practicable remove or erase from its Image Library all of the Images including all backup and archive copies howsoever held;

15.2.2 not enter into any subsequent Sub-Licences in respect of the Images; and
15.2.3 promptly destroy or delete all Museum Materials in its possession and provide BMI with satisfactory evidence of such destruction.

15.3 On the Termination Date, BPK shall lose any and all rights to use Museum’s name and to use the Images, directly or indirectly.

15.4 Sub-Licences already concluded shall not be affected by such termination. Upon expiration or termination of this Agreement, BPK shall continue to pay BMI the Royalties owing under existing Sub-Licences on a quarterly basis.

15.5 In the absence of agreement between the parties as to their final financial rights and liabilities at the Termination Date, within sixty (60) days after the Termination Date the parties shall either agree to appoint an expert to carry out an audit and investigation of all necessary books of account and provide a report to both parties accordingly, with costs to be shared equally between the parties.

15.6 The expert’s decision shall be binding upon the parties.

15.7 Any amount as shall thus be agreed or determined by the expert to be due and owing by either party shall be paid not later than thirty (30) days after the agreement or notification of the expert’s decision thereof.

15.8 It is expressly agreed that termination of this Agreement for whatever reason shall not entitle BPK to any payment by BMI by way of compensation or indemnity for loss of its licence and other rights under this Agreement.

16 COMMUNICATIONS

16.1 All notices to be served by either party under this Agreement shall be written in English and delivered by UPS or any equivalent agency, with overnight delivery if requested, to the principal place of business of the party due to receive it or to such other address as either party may in writing notify to the other.

17 SCOPE OF AGREEMENT

17.1 This Agreement embodies the entire understanding of the parties and it overrides or supersedes all or any prior promises, representations or warranties made by either party and agreements or arrangements between the parties at any time whether orally or in writing and may only be varied in writing signed by a duly authorized representative of each party.

18 FORCE MAJEURE

18.1 If and to the extent that either party is hindered or prevented by circumstances not now reasonably foreseeable and not within its reasonable ability to control from performing any of its obligations under this Agreement and promptly so notifies the other party, giving full particulars of the circumstances in question, then the party so affected shall be relieved of liability to the other for failure to perform such obligations, but shall nevertheless use its best efforts to resume full performance thereof without avoidable delay, and pending such resumption shall permit and shall use its best efforts to facilitate any efforts that the other party may make to procure alternative supplies or services.

19 ASSIGNMENT

19.1 This Agreement may be not assigned, delegated or transferred wholly or partly without the prior written consent of the other party.
20 CONFIDENTIALITY

20.1 Both parties will treat all the information pertaining to this Agreement as confidential, except as necessary to perform their obligations under the Agreement. Each party may also share confidential information with its professional advisers under an obligation of confidentiality for the purpose of obtaining professional advice.

21 WAIVER

21.1 The rights of either party arising out of any provision of this Agreement or any branch thereof shall not be waived except in writing. Any waiver by either party of any of its rights under this Agreement or of any breach of this Agreement shall not be construed as a waiver of any other rights or of any other or further breach.

22 SEVERABILITY

22.1 In the event of any of the obligations contained herein being invalidated by any competent court, this Agreement shall be interpreted as if such obligations were not contained herein.

23 INTERPRETATION

23.1 The headings in this Agreement shall not affect its construction or interpretation.

24 GOVERNING LAW AND JURISDICTION

24.1 This Agreement shall be governed by and interpreted according to the laws of England. The parties agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement (including any non-contractual disputes and claims).

LONDON
DATE: 14.7.2015
BMI

S.40

By:

S.40

BERLIN
DATE: 17.7.2015
BPK

S.40

S.40

S.40

S.40
SUB LICENSING AGREEMENT

BETWEEN

(1) Scala Group SPA, via Chiantigiana 62, 50012 Bagno a Ripoli, Florence, Italy (‘SCALA’).

(2) The British Museum Company Limited trading as British Museum Images (Company number 1079888) registered at 38 Russell Square WC1B3QQ (‘BMI’).

WHEREAS

(A) BMI is responsible for the management of trading activities of the British Museum on terms pursuant to which the company is empowered to enter into this agreement with SCALA;

(B) BMI is the administrator of a library of archival images of works in the collection of the British Museum which BMI licenses to third parties for educational, illustrative, commercial and promotional purposes;

(C) SCALA is the owner of an image library of transparencies and image files reproducing artworks from all over the world, and since 1953, has operated a worldwide business licensing of such images to over 6000 clients, while protecting the licensed contents against piracy both legally and technologically;

(D) SCALA’s images are digitised and organised in one of the world’s largest database of colour images dedicated to the visual arts and culture, allowing image searches by subject, artist, location, period etc;

(E) Consultation of the Image Library as hereinafter defined is made through the supply of transparencies or of image files by e-mail, and through SCALA’s complete catalogues in the web site www.scalarchives.com/it;

(F) SCALA is also a multilingual publisher of illustrated books, museum guides, posters, prints, CD-ROM’s, DVD-ROM’s, on-line products etc., and such products are distributed in bookshops and museums’ stores worldwide; and

(G) BMI wishes to engage the services of SCALA to license content to third parties throughout the ‘Territory’ as hereinafter defined to reproduce such images on the terms hereinafter set out; and

(H) BMI and SCALA have signed a sub licensing agreement on December 16, 2011, which has expired on December 16, 2014.

NOW THEREFORE, the parties agree as follows:

1 DEFINITIONS

1.1 In this Agreement, the following terms shall have the meanings indicated:

Additional Collections digitised reproductions of those collections or parts of collections of individual Works belonging to the Museum, which are not automatically available for download on the BMI Website

Advertising public presentation or promotion of products or services to existing and potential customers involving the use of paid media (such as, without limitation, television, radio, movies, magazines, newspapers, video games, the internet, billboards etc.)

Agreement this Agreement signed and dated by both parties

BMI Website BMImages.com
<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commencement Date</td>
<td>the date of signature of this Agreement, on which this Agreement shall become effective</td>
</tr>
<tr>
<td>Editorial Products</td>
<td>books, magazines, broadcast documentary, CD/DVD covers etc.</td>
</tr>
<tr>
<td>End-User</td>
<td>any customer of SCALA granted a Sub-Licence</td>
</tr>
<tr>
<td>Gross Revenue</td>
<td>gross income, exclusive of VAT, received by SCALA from granting Sub-Licences within the Territory</td>
</tr>
<tr>
<td>Images</td>
<td>photographic or digitised reproductions of the Relevant Collections and Additional Collections (if any)</td>
</tr>
<tr>
<td>Image Library</td>
<td>SCALA’s library of transparencies and image files</td>
</tr>
<tr>
<td>Intellectual Property Rights</td>
<td>all vested contingent and future rights of copyright, and all rights in the nature of copyright in and all accrued rights of action, and all other rights of whatever nature (including so-called moral rights) whether now known, or in the future created, to which a party is now entitled, or may be entitled at any time hereafter when any work contemplated by this Agreement is undertaken or completed</td>
</tr>
<tr>
<td>Merchandising</td>
<td>merchandise and stationery intended for sale to the general public (other than Editorial Products), for example, carrier bags, ceramics, gift wrap, playing cards, place mats, t-shirts, transfers/stickers, trays, scarves, ties, umbrellas, calendars, posters, agendas, greeting cards, jigsaw puzzles, leaflets, brochures, playbills, etc.</td>
</tr>
<tr>
<td>Museum</td>
<td>the British Museum Great Russell Street London WC1B 3DG</td>
</tr>
<tr>
<td>Museum Materials</td>
<td>Images and Original Reference Data</td>
</tr>
<tr>
<td>Net Revenue</td>
<td>Gross Revenue less any reasonable and validly incurred carriage and delivery charges attributable to Sub-Licences and any amounts properly credited to End-Users in respect of the Images supplied but not ultimately used by them</td>
</tr>
<tr>
<td>Original Reference Data</td>
<td>descriptions and historical information of each work of Source Material described in the English language, including but not limited to name of artist (if known), title, creation date, size of each item</td>
</tr>
<tr>
<td>Quarter</td>
<td>each successive period of three months during the Term commencing on the Commencement Date</td>
</tr>
<tr>
<td>Production Fee</td>
<td>the fee per image payable in relation to BMI uploading and making available Additional Collections on the BMI Website, which shall be as set out in BMI’s ‘Photography and Digital Imaging Services’ price list as amended from time to time</td>
</tr>
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<td>Relevant Collections</td>
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<td>a fee to be assessed on a case by case basis for any research request requiring intensive labour and processing work to be undertaken in relation to making available an Additional Collection on the BMI Website</td>
</tr>
<tr>
<td>Restricted Countries</td>
<td>WORLD except from Territories</td>
</tr>
<tr>
<td><strong>Restricted Collections</strong></td>
<td>Photographic archives</td>
</tr>
<tr>
<td>---------------------------</td>
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</tr>
<tr>
<td><strong>Royalty</strong></td>
<td>% of Net Revenue per Quarter as specified in clause 7.2</td>
</tr>
<tr>
<td><strong>Sub-Licence</strong></td>
<td>a sub-licence granted by SCALA to an End-User for a one-use-only right to reproduce in any media or format identified Images for the purposes of:</td>
</tr>
<tr>
<td></td>
<td>• Editorial Products,</td>
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<tr>
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<td>• Merchandising and/or</td>
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<td>on any existing or future platform and/or technology. This list is purely indicative and in any case is not exhaustive</td>
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<td><strong>Target Amount</strong></td>
<td>a target goal of ₹43 per year for Gross Revenue before Royalty starting on the commencement date of this agreement</td>
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<td><strong>Term</strong></td>
<td>the period of three (3) years commencing on the Commencement Date (and any renewal of the Term under clause 6.1)</td>
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<tr>
<td><strong>Termination Date</strong></td>
<td>the date of termination of this Agreement</td>
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<tr>
<td><strong>Territory</strong></td>
<td>Italy, Spain, Portugal</td>
</tr>
<tr>
<td><strong>Works</strong></td>
<td>the underlying artistic work or artefacts that are the subject matter of the Images</td>
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<td>the date of signature of this Agreement, on which this Agreement shall become effective, but which is understood to date back to December 17, 2014</td>
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</table>

### 2 GRANT OF RIGHTS

2.1 In consideration of SCALA’s payment of the Royalty and subject to SCALA’s full compliance with the terms and conditions of this Agreement, BMI hereby grants to SCALA during the Term, a non-exclusive licence to grant Sub-Licences in the Territory.

2.2 For the sole purpose of fulfilling SCALA’s obligations under this Agreement and exercising SCALA’s rights granted in clause 2.1 above, BMI hereby grants to SCALA the right to hire or otherwise supply to third parties copies of Images for the purposes only of promoting or publicizing the availability of the Images from SCALA’s offices to End-Users within the Territory and to display Images on the web site www.scalarchives.com.

2.3 Save as expressly permitted by the Sub-Licences, SCALA shall not permit End-Users to make copies of the Images.

2.4 SCALA shall not grant Sub-Licences for Advertising or Merchandising purposes without the prior written consent of BMI. All enquiries received by SCALA concerning licences for Advertising or Merchandising shall be promptly referred to the BMI staff member designated for this purpose. BMI shall respond to SCALA within five (5) working days after receipt of such enquiries stating whether or not the licence is authorized and, if authorized, BMI shall provide a recommended fee for such licence.

2.5 SCALA shall not grant any rights or approvals in respect of Editorial Publishing Projects, entirely devoted to or constituting a monographic study of the British Museum (where more than 40% of the imagery is the ownership of BMI) or which is intended to be a product bearing the British museum logo or branding without the prior written consent of BMI. BMI reserves
the right to approve proofs of BMI works, publications of a monographic or semi-monographic nature, and also reserves such rights for book covers.

3 SUB-LICENCES

3.1 SCALA shall ensure that each End-User enters into a Sub-Licence in relation to its intended use of any of the Images.

3.2 BMI acknowledges that, subject to clause 4.1.5, the fees SCALA charges in the Sub-Licences shall be at SCALA’s discretion.

3.3 SCALA shall not enter into any Sub-Licence for the grant of exclusive rights or assignment of rights in relation to any of the Images.

3.4 SCALA agrees that it will not give consent to any End-User to manipulate, adapt or alter any Images without the consent of BMI, except for cropping for editorial purposes.

4 DUTIES AND UNDERTAKINGS OF SCALA

4.1 SCALA shall at all times during the Term of this Agreement:

4.1.1 use its best efforts to promote to End-Users the availability of Sub-Licences within the Territory. The costs of advertising and promoting the licensing rights to the Images in the Territory, in professional magazines, fairs, on the Internet and in direct mailings will be borne entirely by SCALA according to the marketing plan detailed in annex 1.

4.1.2 maintain a link to the BMI Website and refer clients to BMI directly for all Restricted Countries;

4.1.3 grant Sub-Licences directly, or through its offices and agents located in the Territory only;

4.1.4 not, and shall ensure that its agents shall not, grant Sub-Licences to any organisation with headquarters in the Restricted Countries;

4.1.5 ensure that the fees it charges for Sub-Licences are consistent with the prevailing market rate for the use of an image of similar commercial interest and having regard to the purpose for which the Sub-Licence was granted and to any normal bulk discount (provided that SCALA shall be entitled to allow special discounts within its reasonable discretion for academic, religious, charitable or other non-commercial uses). Scala’s general price list, which is enclosed as Annex 2, should be used as a reference of the prevailing market rate.

4.1.6 take all reasonable steps for the safe keeping of the Images in accordance with the best generally accepted practices;

4.1.7 apply its best efforts to ensure that all electronic or digital copies of the Images in the possession or custody of third parties and/or End-Users are deleted as soon as they cease to be required for production or appraisal purposes in connection with any Sub-Licence or prospective Sub-Licence;

4.1.8 ensure that appropriate legal and technological protection is applied to Images and their circulation, in order to prevent illegal or unauthorized uses. Specifically, SCALA shall watermark all the Images and will lock any download in a resolution higher than 640x480 pixels, allowing only trusted customers who have an agreement in force with SCALA to download larger image files from the Internet.

4.1.9 send a yearly report of marketing activities related to the BMI’s collections

4.1.10 cease the licensing of all other sources images representing artefacts from the British Museum in all territories;
5 RIGHTS AND OBLIGATIONS OF BMI

5.1 BMI shall not be under any obligation to provide Images in respect of which neither BMI nor SCALA hold the requisite copyright clearances.

5.2 Collections provided to Scala shall be at BMI’s sole discretion

5.3 BMI shall not appoint another picture library distributor of Images within the Territory for the duration of the Term.

5.4 Save as provided by clause 5.3, nothing in this Agreement shall limit BMI’s rights during the Term and throughout the Territory to grant licences to customers approaching BMI directly for any purpose whatsoever.

5.5 BMI guarantees that, either it or the Trustees of the British Museum, own the copyright in the image and is fully entitled to grant Licensee the rights described herein. Unless otherwise stated in the license confirmation, BMI merely grants rights in the photographic work that is the Image. Licensee will be solely responsible for any other clearances that may be necessary.

6 TERM

6.1 The Term may be renewed by written agreement between the parties. Annually, on the anniversary of the Commencement Date, BMI and SCALA will meet in order to appraise the present agreement’s results and negotiate any amendments for the rest of the term if necessary. The appraisal should take into account any refunds of withholding taxes obtained by BMI which would, as a consequence, increase Scala’s net Royalty (see article 8.8)

6.2 At the end of the Term, BMI will undertake a formal appraisal and review of the agreement.

7 TARGET AMOUNT

7.1 The Target Amount shall not be varied except by written agreement between the parties.

7.2 Annually, on the anniversary of the Commencement Date, BMI and SCALA shall review whether or not SCALA has met the Target Amount during the previous year. Following such review, the Royalty for the previous year shall be varied as follows,

7.2.1 \[ \left( \frac{S.43}{S.43} \right) \text{ of total Net Revenue if the Target Amount is achieved or exceeded;} \]

7.2.2 \[ \left( \frac{S.43}{S.43} \right) \text{ of total Net Revenue if less than one hundred per cent (100%) of the Target Amount is achieved.} \]

and SCALA shall pay BMI any additional amount necessary (where there is a difference between the amounts already paid for such year under clause 8 and the Royalty, as varied under this clause) within sixty (60) days after receipt an invoice for such amount from BMI.

8 PAYMENTS AND FINANCIAL RECORDS

8.1 In consideration of the licence granted by this Agreement, SCALA shall pay to BMI the Royalty in respect of each Quarter during the Term.

8.2 Within 30 days after the end of each Quarter, SCALA shall provide to BMI a true and complete Royalty statement:

8.2.1 giving particulars of Gross Revenues and Net Revenues during such Quarter;

8.2.2 showing the costs deducted by SCALA; and

8.2.3 showing the total amount of Royalty payable to BMI.

8.3 BMI will issue an invoice for the amount of the Royalty reported under clause 8.2 above. SCALA shall pay such Royalty within sixty (60) days after SCALA’s receipt of BMI’s invoice.
All SCALA’s costs (as described in 4.1.1) shall be deducted from SCALA’s own percentage share of the Net Revenue and none shall be apportioned to BMI, save in such circumstances as are set out in clause 13, in which case fees shall be shared equally by SCALA and BMI.

Upon or immediately before termination of this Agreement, SCALA shall provide BMI with a final Royalty statement covering the period from the date of the last statement to the Termination Date and BMI shall issue an invoice for the amount of such Royalty. SCALA shall pay such Royalty within ninety (90) days of the Termination Date. This clause shall survive termination of this Agreement. In case of termination before the end of the Term, the yearly royalty will be set at 50%.

During the Term and for one year thereafter BMI together with its authorized representative shall have the right to inspect SCALA’s books and records in relation to the transactions covered by this Agreement upon giving ten (10) days written notice to SCALA, provided that there shall not be more than one such inspection in any year. Where such an inspection reveals that the amount stated to be due to BMI in any statement is different from the correct amount by five percent (5%) or more, SCALA shall bear the cost of the inspection. In the event that such inspection discloses that SCALA has under reported any amounts due to BMI, SCALA shall pay any sums owed to BMI at the time the inspection is concluded, and correct its books and records. BMI agrees to enter into SCALA’s then current non-disclosure agreement for the purposes of such inspection.

SCALA shall maintain its books and records during the Term and for at least twelve months thereafter, in such manner as to clearly and accurately reflect the sales, returns, refunds and payments for the Images and the monies received therefrom.

All taxes, levies and similar payments payable on the Royalties in so far as they are required by law to be deducted shall be deducted and paid by SCALA from the amount of payments actually received, net of VAT, of discounts and of agents’ commissions. Where there is a double taxation liability, BMI shall provide a residence certificate to SCALA, in order for Scala to withhold from BMI’s invoice, instead of 30%, the 8% withdrawing tax in force between Italy and the UK. It is understood that the royalties agreed in article 7, in respect of which such 8% withholding is required to be made from BMI’s share of revenue, have been increased to the extent necessary to ensure that, after the making of such deduction or withholding, BMI receives a net sum equal to 49.68% and 59.80% of the Gross Revenue before Royalty.

SCALA shall pay Royalties to BMI in Euros from SCALA’s Florence headquarters to BMI’s bank account as notified to SCALA from time to time.

For the duration of this Agreement, SCALA shall ensure that the fees it pays to BMI for Scala publications and other products are consistent with the prevailing market rate for the use of an image of similar commercial interest and having regard to the purpose for which the license was granted and to any normal bulk discount. This is applicable to all publications directly published by Scala or by another publisher under licence from Scala. Scala’s general price list, which is enclosed as Annex 2, should be used as a reference of the prevailing market rate. BMI will receive its part of the revenue share as per clause 7 of the agreement. A bespoke fee agreement can also be agreed for more than 10 images used per project.

9 ORDERS AND STOCK

As soon as possible after the Commencement Date, BMI will set up instant access rights for the following SCALA representative(s):

S.40

S.40

so that SCALA has immediate access to all Images and Original Reference Data available on the BMI Website.

SCALA may download such Images as required from the BMI Website.
9.3 SCALA shall inform BMI if the SCALA representative is replaced at any time during the Term and provide BMI with the name of the replacement representative who will be using the quick pick access account.

9.4 If SCALA wishes to have access to an Additional Collection which is not available on the BMI Website, SCALA may contact BMI at any time and request access to such Additional Collection.

9.5 BMI shall inform SCALA of any:

9.5.1 Production Fee; and/or

9.5.2 Research Fee

payable for making such Additional Collection available to SCALA on the BMI Website.

9.6 Where SCALA confirms that it is happy with the quoted Production Fee and/or Research Fee, BMI shall upload and make available to SCALA such Additional Collection through the BMI Website.

9.7 Any Production Fees or Research Fees paid by SCALA will not be included in the total Net Revenue for the purposes of reviewing whether the Target Amount has been achieved.

9.8 All Images provided by BMI will contain, as a minimum, the following terms:

9.8.1 unique code (alphanumeric); unique identifier within the database;

9.8.2 file name; text field exactly corresponding to the file name of the Images. The field will also contain the file extension (Tif, Jpg) and correspond precisely to the file name;

9.8.3 artist/author including dates of birth/death;

9.8.4 title/caption including date, medium, size, inventory number;

9.8.5 location/museum;

9.8.6 city of the museum or place where the image was shot;

9.8.7 country where the image was shot;

9.8.8 credit line/documentation;

9.8.9 special copyright conditions; and

9.8.10 keywords if possible.

10 INTELLECTUAL PROPERTY RIGHTS

10.1 SCALA acknowledges and agrees that all Intellectual Property Rights in and in relation to all Museum Materials shall vest in and remain the unencumbered property of BMI and/or the Museum and belong to BMI or the Museum absolutely.

10.2 Any Museum Materials provided by BMI which may be in the possession of SCALA shall remain the property of BMI absolutely and irrevocably.

10.3 This Agreement does not affect the ownership of any Intellectual Property Rights in the Works.

10.4 Nothing in this agreement shall prevent or interfere with BMI’s and the Museum's exploitation of Intellectual Property Rights in the Museum Materials.
10.5 SCALA accordingly agrees to ensure that all Sub-Licences granted in respect of the Images require inclusion by the End-User of an agreed credit line '© The Trustees of The British Museum c/o SCALA' in relation to its use of the Images.

11 TRADEMARKS

11.1 SCALA shall enter into a separate agreement with the Museum in respect of the use of any trade marks of the Museum for the duration of the Term.

12 LOSS OR DAMAGE BY THIRD PARTY

12.1 The downloading of the Images at SCALA's premises, and the production of copies of the Images as soon as they are made will be at SCALA's risk.

13 INFRINGEMENTS

13.1 If SCALA becomes aware or suspects that any of the Images have been or may be intended to be reproduced by a third party otherwise than pursuant to a Sub-Licence or to a licence granted by BMI, then SCALA shall promptly notify BMI of the suspected infringement as well as the Original Reference Data of the Images and shall consult with BMI on how to act to deal with it.

13.2 No legal action will be undertaken by SCALA against a delinquent or illicit user of the Images unless BMI have given their prior written consent thereto.

13.3 BMI makes no representations about artists' copyright ownership in the Works and will not participate in the defence of any third party claim that use of one or more of the Images violates such third party's copyright or other rights.

14 TERMINATION

14.1 Either party may terminate this Agreement immediately at any time by giving notice in writing to the other if:

14.1.1 the other party is in material breach of any of the covenants, undertakings, obligations or conditions set forth in this Agreement and, in the case of a breach capable of being remedied, the failure to remedy such breach within twenty one (21) working days of receipt of written notice from the other party giving particular of the breach and requiring it to be remedied; or

14.1.2 the other party ceases to do business, becomes unable to pay its debts as they fall due, becomes or is deemed insolvent, has a receiver, manager, administrator, administrative receiver or similar officer appointed in respect of the whole or any part of its assets or business.

14.2 In addition to the provisions of article 14 ("TERMINATION"), this Agreement may be terminated for convenience by BMI, without limit by ninety (90) calendar days prior written notice. If such notice is given less than 12 months after the Commencement Date, 50% of BMI's accrued share of royalties since the Commencement date shall be paid to SCALA in order to compensate the costs incurred for BM images management and marketing activities.

15 EFFECT OF TERMINATION

15.1 Termination of this Agreement for whatever cause, shall be without prejudice to the rights of either party which may have accrued up to the Termination Date.

15.2 Upon termination of this Agreement for whatever cause, SCALA undertakes to BMI that it will:

15.2.1 as soon as practicable remove or erase from its Image Library all of the Images including all backup and archive copies howsoever held;

15.2.2 not enter into any subsequent Sub-Licences in respect of the Images; and
15.2.3 promptly destroy or delete all Museum Materials in its possession and provide
BMI with satisfactory evidence of such destruction.

15.3 On the Termination Date, SCALA shall lose any and all rights to use Museum’s name and to
use the Images, directly or indirectly.

15.4 Sub-Licences already concluded shall not be affected by such termination. Upon expiration or
termination of this Agreement, SCALA shall continue to pay BMI the Royalties owing under
existing Sub-Licences on a quarterly basis.

15.5 In the absence of agreement between the parties as to their final financial rights and liabilities
at the Termination Date, within sixty (60) days after the Termination Date the parties shall
either agree to appoint an expert to carry out an audit and investigation of all necessary books
of account and provide a report to both parties accordingly, with costs to be shared equally
between the parties.

15.6 The expert’s decision shall be binding upon the parties.

15.7 Any amount as shall be thus agree or determined by the expert to be due and owing by
either party shall be paid not later than thirty (30) days after the agreement or notification of
the expert’s decision thereof.

15.8 It is expressly agreed that termination of this Agreement for whatever reason, save for the
circumstances mentioned in article 14.2, shall not entitle SCALA to any payment by BMI by
way of compensation or indemnity for loss of its licence and other rights under this
Agreement.

16 COMMUNICATIONS

16.1 All notices to be served by either party under this Agreement shall be written in English and
delivered by UPS or any equivalent agency, with overnight delivery if requested, to the
principal place of business of the party due to receive it or to such other address as either
party may in writing notify to the other.

17 SCOPE OF AGREEMENT

17.1 This Agreement embodies the entire understanding of the parties and it overrides or
supersedes all or any prior promises, representations or warranties made by either party and
agreements or arrangements between the parties at any time whether orally or in writing and
may only be varied in writing signed by a duly authorized representative of each party.

18 FORCE MAJEURE

18.1 If and to the extent that either party is hindered or prevented by circumstances not now
reasonably foreseeable and not within its reasonable ability to control from performing any of
its obligations under this Agreement and promptly so notifies the other party, giving full
particulars of the circumstances in question, then the party so affected shall be relieved of
liability to the other for failure to perform such obligations, but shall nevertheless use its best
efforts to resume full performance thereof without avoidable delay, and pending such
resumption shall permit and shall use its best efforts to facilitate any efforts that the other
party may make to procure alternative supplies or services.

19 ASSIGNMENT

19.1 This Agreement may be not assigned, delegated or transferred wholly or partly without the
prior written consent of the other party.

20 CONFIDENTIALITY

20.1 Both parties will treat all the information pertaining to this Agreement as confidential, except
as necessary to perform their obligations under the Agreement. Each party may also share
confidential information with its professional advisers under an obligation of confidentiality for
the purpose of obtaining professional advice.
21 WAIVER

21.1 The rights of either party arising out of any provision of this Agreement or any branch thereof shall not be waived except in writing. Any waiver by either party of any of its rights under this Agreement or of any breach of this Agreement shall not be construed as a waiver of any other rights or of any other or further breach.

22 SEVERABILITY

22.1 In the event of any of the obligations contained herein being invalidated by any competent court, this Agreement shall be interpreted as if such obligations were not contained herein.

23 INTERPRETATION

23.1 The headings in this Agreement shall not affect its construction or interpretation.

24 GOVERNING LAW AND JURISDICTION

24.1 This Agreement shall be governed by and interpreted according to the laws of England. The parties agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement (including any non-commercial disputes and claims).

LONDON

DATE: ___________ 17.07.2015

BMI

By: ___________ 16.07.2015

Scala Group SpA

S.40
Thank you again for your reply.

Your answer is at odds with the museum’s statement on its website, that:

This statement of the Museum’s public task is reviewed regularly and is due to be considered again in July 2016

suspect what happened, in view of the fact that RoPSI became effective in July 2015, is that the museum published a statement of public task in conformity with the rules and also, as required, stated that a review would take place one year hence. However, attention internally has moved on, and probably nothing has happened since 2015 for the museum to consider a review a particularly good use of its time, and this is why the ‘July 2016’ date has remained on the museum’s website.

You mention that there is “not a requirement for us to have a mechanism for members of the public to request reviews to the Museum’s public task and we do not consider that a mechanism of this kind is needed by the Museum”. I’m sorry to tell you that this is simply untrue: one of the “public task principles” is that the Museum “Be open to challenge.”

I have already drawn your attention to the National Archives Guidance on public task statements (July 2015), from which I quote below:

Re-users of your information (or an independent body representing them) will be free to challenge your statement of public task and its scope. You should publish your public task and your complaints process up front, in particular on your website. You will need to take proper account of legitimate challenges and concerns. [p.6]

Remember that one of the public task principles is that it should be open to challenge. Anyone may challenge the statement at any time and you must take account of and respond appropriately to such challenges. [p.15]

In view of your disinclination to engage with the questions I posed in my 16 November email, and so as not to further occupy your valuable time, I would be grateful if you would refer our correspondence to the appropriate higher authority at the museum to undertake an internal review/complaint within the next 20 working days, as envisaged by the public task statements guidance. To be clear, I am seeking a substantive response to my questions of 16 November.

Thank you again for replying to my emails.
requires any amendment. As I mentioned in my previous communication, we have been very pleased to find that our statement of public task has proved robust and well aligned with public and governmental expectations of the British Museum. Therefore, although we keep the question under review, we do not intend to make changes to it at this time.

There is not a requirement for us to have a mechanism for members of the public to request reviews to the Museum’s public task and we do not consider that a mechanism of this kind is needed by the Museum.

Yours sincerely,

[Redacted]

Resources

The security classification for this message is OFFICIAL

From: [Redacted] Sent: 01 December 2017 13:10 To:

Subject: Re: Exclusive Arrangements under the 2015 RPSI

Dear [Redacted]

Thank you for this interesting reply.

Could you please tell me when the BM will be reviewing its statement of public task next? The website states that it will be reviewed in July 2016 which obviously has passed now.

Could you please tell me what mechanism exists, if any, for members of the public to request that the BM reviews its statement of public task?

Thank you,

[Redacted]

On 1 Dec 2017, at 12:43 pm [Redacted] wrote:

Dear [Redacted]

The British Museum holds in trust for the nation and the world a collection that represents the history of humankind, and is committed to ensuring that this collection is available for anyone to enjoy and explore. The Museum’s activities related to the collection include conservation and research, gallery developments, special exhibitions, educational activities and national and international engagement with other museums and galleries, to name a few. All of these are activities that the government and the public expect the Museum to engage in as part of its public task (http://www.britishmuseum.org/pdf/British_museum_management_2016.pdf). In addition, in 2016, 6.4 million people visited the British Museum at Bloomsbury. While this number of visitors is a measure of the Museum’s success in delivering its public task, it also creates a severe strain on the building and requires significant investment in order to maintain appropriate and safe conditions for the collection, visitors and staff.

As a Non-Departmental Public Body, the Museum is funded by grant-in-aid allocated by the DCMS. This grant-in-aid, however, covers about half of the Museum’s total expenditure. In the
year 2016/17, for example, the grant-in-aid amount was £54m while the Museum’s total expenditure was £100m. The gap left by public funding is bridged by income secured through commercial, fundraising, sponsored and charging activities, all of which we are permitted to pursue.

Our Statement of Public Task is aligned with the activities listed above and is, as such, a description of the core activities that the government and the public expect the Museum to engage in. We hold and use documents for the purpose of carrying out all of those activities and, where we are able, allow re-use of those documents under fair and equitable conditions that support the continued economic viability of our operations. Providing access to the collection and fostering its study are our paramount priorities, but we must operate within the financial constraints to which we are subject in order to guarantee the sustainability of our activities.

As such, we are not at this time considering significantly altering our Statement of Public Task since we consider it accurately represents the Museum’s core activities and complies with the requirements of RPSI.

If you require further information, the annual reports and accounts for the Museum are available on our public website (http://www.britishmuseum.org/about_us/management/annual_reports_and_accounts.aspx).

Yours sincerely,

The security classification for this message is OFFICIAL

From: Sent: 16 November 2017 16:27 To:
Permissions Subject: Re: Exclusive Arrangements under the 2015 RPSI

Dear 

Thank you for your reply, and for the clarification about the BM’s public task. I believe the public task has been drawn too broadly and I would like to ask the BM to re-consider its public task statement. Public task statements are open to challenge by members of the public (p.5 item 2 in the guidance here).

Would you kindly take these three points into consideration?

1. The government’s guidance on drawing up a public task (here) states that the “creation and maintenance” of information within the public task (e.g. the BM’s digital images) should be “funded through taxation rather than revenues or private investment”. Yet your email to me ends by justifying fees for image usage as a way of funding your digitisation efforts.

2. This same guidance provides a pro-forma public task statement for libraries, museums and archives which includes the following (p.14):

Other work we carry out under contract (e.g., for research purposes) through organisations paying for the hire of the Library/Museum/Archive’s accumulated staff expertise and information is outside our public task. Information relating to products derived from public task activities for re-sale in the commercial market are outside our public task.

To my mind this would include the provision, under contract, of information such as digital images which are then made available for re-sale in the commercial market.

Example: transfer of information from a museum to its commercial trading arm is considered re-use; therefore the information must be made available to all other re-users on the same terms and conditions (non-discrimination).

Again, this would suggest that the BM ought to classify its image licensing as re-use not use. Yet you have explained that the BM’s public task statement classifies it as use.

In the meantime, could you please clarify if the appearance of BM images on the website www.bmimages.com, part of the British Museum Company Ltd, constitute re-use?

Concerning fees, I think it was simply a typo but it is regulation 15(8) not 15(6) which applies. 15(6) applies to public bodies that come under 15(3)(a) and 15(3)(b); 15(8) applies to bodies - like the BM - that come under 15(3)(c). As you point out, the regulations tether this right to the museum’s costs and investment - however broadly it’s defined. The important bit of the phrase is “a reasonable apportionment” which has a specific meaning in government accounting and that’s the test that would be applied.

I am grateful to you for pro-actively considering my request for information about licensing contracts under FoI. Just as an aside, presumably I also have a right to request that information under RPSI - in the sense that these contracts are also Public Sector Information (unless your FoI person says they are exempt under FoI).

Thank you again for your reply and the information it contained.

Many thanks,

S.40

On 16 Nov 2017, at 3:27 pm, Permissions <Permissions@britishmuseum.org> wrote:

Dear S.40

Thank you for your enquiry.

Regarding your interest in the British Museum’s exclusive arrangements for image licensing in select countries, if you refer to the British Museum’s Public Task, you will see that, “the distribution of documents: whether in printed, filmed, digital or any other format or media; and whether directly or through partnerships with museums, art galleries, research, educational or cultural establishments nationally or internationally; or through Museum-associated companies; or through third parties commercially or non-commercially” is part of the British Museum’s Public Task.

As such, the contracts we have relating to image licensing in select countries do not fall under clause 14 of RPSI. Under clause 14.(13), an “exclusive arrangement” is defined as “a contract or other arrangement granting an exclusive right to re-use a document.” Our exclusive arrangements, which facilitate the distribution of documents, deliver our Public Task (and therefore do not constitute a re-use of a document for a purpose other than the initial purpose within our Public Task for which it was produced).

However, under the Freedom of Information Act, you are entitled to ask to see those documents, and this part of the request is being addressed by the British Museum’s Information Manager. Please note that Freedom of Information requests can take up to 20 days from request, so you can expect to receive a response by the 4th of December 2017.
With regards to our fees, our power to charge is discretionary and we take into account RPSI 12 (2), 15.(3) (c), 15.(6), 15.(11) (where “‘indirect and overhead costs’, in relation to a public sector body” are defined as costs “which are incurred by the body in connection with – (a) chargeable activity; and (b) any of the body’s activities”) and 16.

Most of our standard fees are published on the image licensing website, www.bmimages.com. You just need to register, select an image and click on “calculate price”. For low print run scholarly publications, subject to a peer-review process and targeted to an audience of scholars, we offer reduced and simplified fees, which do not differentiate according to reproduction size or language and territory rights. I have attached the reduced fees here.

The Museum has made great efforts in digitizing the collection in order to make objects available for private research and easily accessible online, with over 4 million objects available to study on the British Museum website and over 1 million with images. There is a significant cost to undertaking this and other museum activities, and we hope that licensees will recognise the need for them to participate in this process to pay licence fees for the use of our images. All profits are gift-aided to the British Museum for these purposes.

We are of course sensitive to financial constraints faced by authors and some publishers. We endeavour to make things as fair and as easy as we can through the attached reduced fees and the Museum’s online free non-commercial image use services, which benefits many users and academics.

Yours sincerely,

The security classification for this message is OFFICIAL

From: Sent: 07 November 2017 22:13 To: Permissions Subject: Exclusive Arrangements under the 2015 RPSI

Dear British Museum,

I am interested in the 2015 RPSI and wanted to ask you questions about two aspects of the regulations.

**Exclusive Arrangements**

I saw on your website here that “In the public interest, the British Museum has exclusive arrangements in relation to the following activities: Book publishing [and] Image licensing in select countries.” You invited users of the website to contact you to make further enquiries about these arrangements.

I think that your mention of the public interest means that you consider these arrangements to be valid under Regulation 14(2) of the 2015 RPSI. Regulation 14(13) defines an exclusive arrangement as “a contract or other arrangement” and regulation 14(4) states that an exclusive arrangement permitted under 14(2) and entered into on or after 31 Dec 03 “must be published” by the museum.

In the light of these regulations, I would be grateful if you would either publish or send me the “contract or other arrangement” relating to “Image licensing in select countries.”

**Charging**
I would be grateful if you would please supply me with information about the fees the museum charges for different types of document.

Under regulation 15(8), museums are permitted to make charges comprised of three elements: (a) direct costs; (b) a reasonable apportionment of indirect and overhead costs attributable to chargeable activity; and (c) a reasonable return on investment. The Guidance on the Implementation of the Re-use of Public Sector Information Regulations 2015 for the cultural sector, published by the National Archives and which is the official guidance, states that while ‘a reasonable return on investment’ is not defined in RPSI, “normally the standard cost of capital, currently 3.5% in real terms, will apply.” It’s noteworthy that none of these three elements relates to the proposed usage of a document. Whether an image is to be used across the full page of a book with a large print run, or a 1/4 page image in a small journal, the direct costs, proportion of indirect costs, and the 3.5% / reasonable return on the capital required to create the image are the same. It’s doubtful, therefore, that the 2015 RPSI support a variable charging regime.

Thank you.
Dear [Name],

Thank you very much for making these points clearer, and offering the gross figures for bmimages.

Best wishes,

On 18 Jan 2018, at 12:58 pm, [Name] wrote:

Dear [Name],

Thank you for your email requesting clarifications to the information sent to you by my colleague on 15 December 2017.

Your questions, received on 15 December 2017, were:

**Question 1**

I think you meant to tell me that the answer to my question is: £0. Is that right? That, because the transfer of images from museum to image-licensing website is not re-use but use for the purpose of the museum fulfilling its public task (disseminating information about its collection etc), no fee has been paid by the BM Company to the museum for the right to license the museum’s images? Your reply was that “the question of an annual license fee to the British Museum does not arise.” I understand that you wrote that in good faith in an attempt to answer my question, but as it doesn’t tackle it absolutely head on, I’m now seeking that explicit confirmation.

**Question 3**

I sincerely apologise but I simply didn’t understand where to place the first sentence of your answer here in relation to my question. I think you were telling me that the main collections
website and bmimages.com host the same (number of) images, subject to various qualifications such as 3rd party rights. That’s ok but my question was: does bmimages.com offer any museum images for which it has paid no fee to the museum for the right to offer those images? Maybe (if I understood your answer to question 1 correctly) you meant to answer me ‘yes’ to this part of the question. Part two of my question then comes into play: can you please tell me what gross income has been generated from sales of licences of them? You suggested in answer to question 2 that this information was contained in the 2016-17 annual accounts but I have not found the information - if you could do me the favour of pointing me to the page where that information appears, I would be very grateful.

Response to your first question (relating to your question 1 of 23 November 2017):

That is correct, the answer is £0

Response to your second question (relating to your question 3 of 23 November 2017):

Does bmimages.com offer any museum images for which it has paid no fee to the museum for the right to offer images?

Yes, you understood correctly, the answer is yes.

The gross income generated by the British Museum Company Limited (which includes image licensing) is consolidated within the accounts of the British Museum (see page 59 in The British Museum Accounts 2016-17).

However, the specific bmimages.com amounts are not disclosed, therefore for your reference here are the figures as per internal management reporting:

2012/13 £495k
2013/14 £645k
2014/15 £477k
2015/16 £487k
Thank you for this reply.

I hope you won’t mind me seeking clarification about the answers you gave me. You have doubtless had a lot of experience in answering FOI questions - I am a beginner at asking them - and frankly I did not understand everything you wrote.

Question 1

I think you meant to tell me that the answer to my question is: £0. Is that right? That, because the transfer of images from museum to image-licensing website is not re-use but use for the purpose of the museum fulfilling its public task (disseminating information about its collection etc), no fee has been paid by the BM Company to the museum for the right to license the museum’s images? Your reply was that “the question of an annual license fee to the British Museum does not arise.” I understand that you wrote that in good faith in an attempt to answer my question, but as it doesn’t tackle it absolutely head on, I’m now seeking that explicit confirmation.

Question 3

I sincerely apologise but I simply didn’t understand where to place the first sentence of your answer here in relation to my question. I think you were telling me that the main collections website and bmimages.com host the same (number of) images, subject to various
qualifications such as 3rd party rights. That’s ok but my question was: does bmimages.com offer any museum images for which it has paid no fee to the museum for the right to offer those images? Maybe (if I understood your answer to question 1 correctly) you meant to answer me ‘yes’ to this part of the question. Part two of my question then comes into play: can you please tell me what gross income has been generated from sales of licences of them? You suggested in answer to question 2 that this information was contained in the 2016-17 annual accounts but I have not found the information - if you could do me the favour of pointing me to the page where that information appears, I would be very grateful.

Thank you for your help and I am sorry to bother you with these further clarifications - I just want to be secure in what you’ve told me.

On 15 Dec 2017, at 11:14 am, [name] wrote:

Dear [name],

Thank you for your request for information sent to BMCO SalesImages which has been forwarded to me for reply. Your request has been dealt with in accordance with the terms of the Freedom of Information Act (2000).

Your request, received in the Museum on 23 November 2017, was:

(1) What annual fee, if any, does the British Museum Company Limited pay to the Trustees of the British Museum for the right to licence its images on www.bmimages.com? Could you kindly supply this information for the past five years if you are able to gather that info together?

(2) What gross annual revenue does the British Museum Company Limited generate from sales of licences of British Museum-copyright images that it licences in consequence of the fee it pays to the Trustees of the British Museum as in (1) above? Again could you please supply five years’ data?

(3) Are there any British Museum images offered by the British Museum Company Limited on www.bmimages.com for which it has paid no fee to the British Museum for the right to offer licences on www.bmimages.com? If the answer is yes, could you please tell me how many these are, and (if possible) what gross income has been generated from sales of licences of them?

In response to parts 1 and 2 of your request, as described to you in previous correspondence with the Museum, the public task of the British Museum includes for example the production of documents related to the collection: whether directly or through Museum-associated companies or third parties. It also includes the distribution of those documents through Museum-associated companies; or through third parties commercially or non-commercially. The image licensing service operated through the www.bmimages.com website of The British Museum Company Limited (a charity wholly owned by the British Museum whose principle objects are the advancement of education and the charitable objects of the British Museum) is carried on in fulfilment of the public task and charitable objects of the British Museum, and the question of an annual license fee to the British Museum does not arise. The accounts of The British Museum Company Limited (which include image licensing) are consolidated within the Annual Report and Accounts of the Trustees of the British Museum and are published. The latest accounts may be inspected at: http://www.britishmuseum.org/pdf/BM-report-and-accounts-2016-2017.pdf. Information is therefore exempt from disclosure in response to this request where this is accessible to you by other means (FoI Act s. 21).
In response to part 3 of your request, the number of images offered by www.bmimages.com for licensing on terms exceeding those offered on the Collection online service is commensurate with the number available on that page, subject to quality, cultural sensitivity and third party rights. The entire collection of high resolution images (subject to quality, cultural sensitivity and third party rights) is available for non-commercial use, on Collection online.

This concludes the response to your request. I hope this information is helpful. If you are dissatisfied with this response and you wish to make a complaint about how we handled your request, please contact me in the first instance by reply to this email. Your complaint will be handled under our internal complaints procedure and you will receive a response within 20 working days of receipt.

If you remain dissatisfied with the way your request has been handled following the outcome of our internal review, you have a further right of appeal to the Information Commissioner. To make such an application please contact

FOI/EIR Complaints Resolution
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF
You can also contact the ICO Helpline on 0303 123 1113 or visit the Information Commissioner’s Office website at https://ico.org.uk/concerns/getting/

Should you wish to make further requests for information from the Museum please send these to info@britishmuseum.org

Yours sincerely,

<image002.jpg>
(1) What annual fee, if any, does the British Museum Company Limited pay to the Trustees of the British Museum for the right to licence its images on www.bmimages.com? Could you kindly supply this information for the past five years if you are able to gather that info together?

(2) What gross annual revenue does the British Museum Company Limited generate from sales of licences of British Museum-copyright images that it licences in consequence of the fee it pays to the Trustees of the British Museum as in (1) above? Again could you please supply five years’ data?

(3) Are there any British Museum images offered by the British Museum Company Limited on www.bmimages.com for which it has paid no fee to the British Museum for the right to offer licences on www.bmimages.com? If the answer is yes, could you please tell me how many these are, and (if possible) what gross income has been generated from sales of licences of them?

You will receive a response as soon as possible and in any case within 20 working days following the date of receipt.

Thank you for your interest in the British Museum.

Yours sincerely,

Legal Services British Museum

From: Sent: 23 November 2017 16:35 To: BMCO SalesImages Subject: Freedom of Information Request

Dear British Museum Company Limited,

I am writing to you under the Freedom of Information Act 2000, as amended by the Protection of Freedoms Act 2012.

The British Museum Company Limited is a wholly owned subsidiary of the Trustees of the British Museum. As such, it is a ‘public authority’ under sections 6(1)(b) and 6(2)(b) of the Freedom of Information Act, as amended in the Protection of Freedoms Act 2012. As such, the British Museum Company Limited is liable to comply with the terms of the FOI Act in the same way as any other public authority. Details of section 6 can be found here: https://www.legislation.gov.uk/ukpga/2000/36/section/6

This was the only email address I could find online for the British Museum Company Limited, but if it is not the best one to use, could you kindly give me the details of whom to contact, or perhaps forward it to them for me? Thank you.

I would be grateful if you would kindly tell me the following:

(1) What annual fee, if any, does the British Museum Company Limited pay to the Trustees of the British Museum for the right to licence its images on www.bmimages.com? Could you kindly supply this information for the past five years if you are able to gather that info together?

(2) What gross annual revenue does the British Museum Company Limited generate from sales of licences of British Museum-copyright images that it licences in consequence of the fee it pays to the Trustees of the British Museum as in (1) above? Again could you please supply five years’ data?
(3) Are there any British Museum images offered by the British Museum Company Limited on www.bmimages.com for which it has paid no fee to the British Museum for the right to offer licences on www.bmimages.com? If the answer is yes, could you please tell me how many these are, and (if possible) what gross income has been generated from sales of licences of them?

I would be very grateful if you could kindly supply this information electronically in an excel spreadsheet or similar by email to

Under the FOI Act, public authorities have 20 working days to respond.

Thank you for your help,
Dear [Name],

Re-use of Public Sector Information Regulations 2015; the public task of the British Museum

I write in reply to your email to my colleague, [Name], dated 15 December 2017 seeking a substantive response to your questions of 16 November 2017.

Although I endorsed earlier replies to you, I think that as I was closely involved in the drafting of our public statement I should respond further to your questions. I have however discussed my reply with our Keeper of Prints and Drawings, [Name].

Your questions were:

1. The government’s guidance on drawing a public task (here) states that the “creation and maintenance” of information within the public task (eg the BM’s digital images) should be “funded through taxation rather than revenues or private investment”. Yet your email to me ends by justifying fees for image usage as a way of funding your digitisation efforts.

2. This same guidance provides a pro-forma public task statement for libraries, museums and archives which includes the following (p.14): Other work we carry out under contract (e.g., for research purposes) through organisations paying for the hire of the Library/Museum/Archive’s accumulated staff expertise and information is outside our public task. Information relating to products derived from public task activities for re-sale in the commercial market are outside our public task.

To my mind this would include the provision, under contract, of information such as digital images which are then made available for re-sale in the commercial market.

3. The Guidance on the Implementation of the Re-use of Public Sector Information Regulations 2015 for the cultural sector states (p.10): Example: transfer of information from a museum to its commercial trading arm is considered re-use; therefore the information must be made available to all other re-users on the same terms and conditions (non-discrimination). Again, this would suggest that the BM ought to classify its image licensing as re-use not use. Yet you have explained that the BM’s public task statement classifies it as use.
In the meantime, could you please clarify if the appearance of BM images on the website www.bmimages.com, part of the British Museum Company Ltd, constitute re-use?

In relation to your first question, I see that had referred you to our statement of the public task on 16 November and in your email to her of the same day you said that you believe our public task has been drawn too broadly and that you would like to ask us to re-consider it. I will answer your questions and hope also to explain why our public task is worded as it is and to set out our current position on its reconsideration.

In your first question you referred to a criterion in the National Archives Guidance on Public Task Statements intended to help public sector bodies in general to identify documents falling within their public tasks (“Generally, information produced as part of your public task: … its creation and maintenance is funded through taxation rather than revenues or private investment”). This criterion appears with others under the heading “What information falls within my public task?” which begins “Any information you produce, hold, collect or disseminate to fulfil your core role and functions is within your public task.”

When we were thinking about the effect of the Public Sector Information Directive 2003, as amended in 2013, we spent a lot of time reflecting on our public task. On 15 December 2017 referred to some of the consultations we undertook at that time.

The terms of our governing statute, the British Museum Act 1963, says nothing about the information we create. Taken on its terms the Act suggests only that the Museum must make its collections available for public inspection. Since the construction of the Directive envisages that public sector bodies could create documents for purposes outside the scope of their public tasks, we considered whether it might be the case that no information produced, held or disseminated by the Museum (or its associated companies) fell within its public task. Against this perspective, we noted that the Office of Public Sector Information’s advice was that “Any information you produce, collect, hold or disseminate to fulfil your core role and functions is within your public task” and that “Your core role and functions may be statutory or established through custom and practice.” Our conclusion was that the public task of the Museum ought to be understood more broadly than the terms of the British Museum Act; and that, since in practice the Museum does create information to fulfil more roles than those minimally described in the British Museum Act, and because we understand our funding government department and the visiting public and other stakeholders to expect us to create information, it must be a part of our public task to create, hold and disseminate information about the collection and our exhibitions and a certain other functions that we carry out through custom and practice (and to some extent under other legislation).

Therefore, we decided that most things the Museum does directly or indirectly (including, for instance, publishing exhibition catalogues, research papers and books about the collection as well as online materials and digital images) are inherent in what is expected of it, as a modern, international museum that receives public funding. An exploration of our published annual reviews (which are available on our website) offers insight into the diversity of the Museum’s extensive range of activities year by year, all of which go to create a picture of the information the Museum produces, holds or disseminates pursuant to its public task was making this point in her email of 1 December.

In light of the above, we recognised that we needed to draft our public task in a way that would be flexible enough to reflect the varied, innovative and collaborative ways that the Museum works, having regard to the ‘mixed-economy model’ in which the government requires us to operate referred to this operational
model on 1 December 2017. The government does not fully fund the Museum. We are expected to obtain charitable donations and to undertake trading activities (i.e. charitable trading; or commercial trading, through our trading subsidiaries) to generate additional income in order to support the full range of our public activities.

As charities, the Museum itself and its wholly owned charitable company, The British Museum Company Limited, are able to engage in primary purpose trading in the course of carrying out of their primary (charitable) purposes. Non primary purpose trading must be carried out through commercial trading subsidiaries, whose profits may be gift aided back to their charitable parents. This is a governance model which is the recognised best practice for charities and the income of trading companies is a fundamental economic dependency of the British Museum and most of its peer institutions, which have operated in this way for many years. One of the questions we had to consider was how the Public Sector Information Regulations 2015 should interface with this operating model in a way that did not undermine our funding requirements.

We took into account The National Archives Guidance on Public Task Statements (including their model public task statement which you mention in your second question) and The National Archives Guidance on the Implementation of the Re-use of Public Sector Information Regulations 2015 for the Cultural Sector and consulted with the Office of Public Sector Information's representatives face to face. We have tried to be clear about the way in which we apply the Re-use of PSI Regulations and to publish and make readily available for re-use as much information as we reasonably can, given our operational restraints and resource limitations. However, we came to the conclusion that although one part of our public task should be to make our information available freely in some cases, in others our information should be available, directly or indirectly, on commercial terms, where that is in our public and charitable interest.

We have published our public task statement on our website together with a schedule setting out how we enable re-use of our information. Where a re-use is sought for non-commercial purposes we permit it on the creative commons licence Attribution-Non Commercial- ShareAlike 4.0 International (CC BY-NCSA 4.0) where we are able. If, however, a re-use will be for commercial gain we make a licence charge, because we expect a reasonable return on a commercial re-use of our assets, in furtherance of the public and charitable purposes of the Museum.

We recognise that academic publishers tend to expect their authors to clear image rights at their own expense; and we are aware that it is difficult for an academic author to pay for image rights clearance for a publication if that author is in effect paying for the publication of his or her work. In so far as we are able, we have tried to ameliorate the effects of this problem on academic authors writing about our collections. I say more about this below.

A particular point that emerged in our drafting deliberations, which we understand the Office of Public Sector Information to agree, was that the Museum’s public task does not have to be carried out, solely and directly, by the Museum itself. The Directive and the Re-use of PSI Regulations do not prevent a public sector body from carrying out its public task through authorised third parties; and in the case of the Museum its public task in relation (for example) to image licensing is carried on its behalf, and in collaboration with, its wholly owned charitable company, The British Museum Company Limited. Some of the arrangements we have made for the discharge of our public task by authorised third parties are, of necessity, exclusive, as you discussed with between 7 and 16 November 2017.

In your second and third questions you refer to the division on information between the public task and re-use as described in The National Archives guidance, in one case in its model statement of the public task and in the other on page 10 of the
public sector guidance on implementation of the regulations. If I may, I will take these points together. I confirm that pursuant to the Museum’s public task:

- In the case of what the National Archives describes on page 14 of its guidance on public task statements (i.e. “Other work we carry out under contract (e.g., for research purposes) through organisations paying for the hire of the Library/Museum/Archive’s accumulated staff expertise and information is outside our public task”), we too would make this distinction. Such work would not fall within the four bullet points set out in our public task statement. Rather, it would result in “Documents commissioned by the Museum’s trading subsidiaries for commercial consultancy, training or services for supply to other museums and institutions” or “Documents commissioned from the Museum by third parties for their own purposes” which are described in our schedule as “Outside the public task and the scope of the PSI Regulations”. Therefore, information relating to products derived from public task activities for re-sale in the commercial market is indeed outside our public task.

- We would not demur from The Guidance on the Implementation of the Re-use of Public Sector Information Regulations 2015 for the cultural sector (where it refers at page 10 to “Example: transfer of information from a museum to its commercial trading arm is considered re-use; therefore the information must be made available to all other re-users on the same terms and conditions (non-discrimination)” in a case where a Museum commercial trading arm sought to re-use a document created for the public task for a commercial purpose outside the public task.

Where I think we differ from you is that we regard the provision of information such as digital images as both primary purpose charitable trading and a part of the public task of the British Museum. We do not regard our licensing activity as a re-use of our images, because one of the reasons they were created was to promote and provide access to the Museum’s collection and exhibitions in all and any media formats. Therefore the appearance of Museum images on the website www.bmimages.com, part of The British Museum Company Ltd, does not constitute re-use. By custom and practice The British Museum Company Ltd has for many years been authorised to carry out some core functions of the British Museum, on its behalf; and other third parties work with us in the same way under contract.

When we drew up our public task we very much wanted to reflect accurately the way in which the Museum works, and we wanted to retain flexibility to ensure that we could, for instance, collaborate with reciprocity on projects with third parties that should fairly be brought within our public task, because their outputs added to the value of research or education about, or the public promotion of, Museum exhibitions or its collections.

A point inherent in the Re-use of PSI Regulations is that, in making charges we are not permitted to discriminate between, for example, purely commercial re-users and the needs of re-users who are academic or scholarly authors, contracted by academic publishers. An advantage of the way in which we drafted our public task has been that we have been able to meet the special needs of scholars and academics who are collaborating with our curators on projects that further the Museum’s public task interest in, for instance, the publication of research and educational information about the collection. In this way we think that our public task statement strikes the right balance between what is within and what is outside the scope of our public task; and experience in practice has, we believe, confirmed that it works well. It has enabled the Museum to work collaboratively with third parties in a number of sectors on a range of significant collection and exhibition based projects whilst at the same enabling the supply of high quality images for free re-use for non-commercial purposes and protecting our commercial interest in an income from the re-use of our assets by third
parties for commercial gain on terms that do not restrict competition or discriminate between users.

The National Archive publishes a link to our public task statement, which I hope means that it is regarded as an example of good practice (http://www.nationalarchives.gov.uk/information-management/re-using-public-sector-information/about-psi/public-task/); and I also note that as a result of the published guidance on the implantation of the Re-use of PSI Regulations:

1. We began to make high resolution images available on Collections On-Line for purposes not previously authorised (for example, non-commercial online re-use);

2. We have reduced and simplified fees for low print run scholarly publications (please see email of 16 November)

3. We have introduced new, lower fees for small images in plate sections of academic volumes.

4. We continue to simplify our image licensing processes, which I understand will include reduced fees for low print run scholarly publications

Although we believe we succeeded in capturing our public task in 2015, we continue to regard our statement of the public task as a working document, even though no proposals for any substantive change to it have emerged since its first approval. Thank you for your comments about the review of the public statement which we will take into account.

I apologise for the length of this letter and hope I have answered your questions.

Kind regards
From: [redacted]
Sent: 18 January 2018 22:25
To: [redacted]
Cc: [redacted]
Subject: Re: Re-Use of Public Sector Information Regulations 2015

Dear [redacted],

I am grateful to have such a comprehensive description of the Museum’s thinking behind this aspect of its public task statement, and for your comments on other matters. I don’t know how closely [redacted] was involved in your reply, but I have copied him into mine just in case.

As you say, the Museum's public task is not covered adequately by the British Museum Act alone and, as the National Archives website states, “your core role and functions may be statutory or established through custom and practice.” Like you, other national museums include in their statements of public task an element of researching and communicating information about their collections, so when you write that “we decided that most things the Museum does directly or indirectly (including, for instance, publishing exhibition catalogues, research paper and books about the collection as well as online modern materials and digital images)” that is absolutely in line with, as you say, “a modern, international museum that receives public funding.” (For what it is worth, other museums treat their own trading exploitation as re-use not use; Tate, for example, now requires its trading arm to pay it a very large annual fee in return for the right to re-license its images).

However, this is where, from my perspective, things go wrong. It is one thing to consider the exploitation of images for scholarly and educational use part of the Museum’s core role and purpose, because this tends towards the greater public understanding of the Museum’s collections. But their plain commercial exploitation - ie for no purpose other than to raise funds, and however important that income has grown to be - cannot, surely, be part of the museum’s core role and purpose - any more than selling sandwiches is. Museums may have shops, but they are not shops.

Museums are not among the public bodies identified under RPSI section 15(3)(a), that is, who are “required to generate revenue to cover a substantial part of its costs relating to the performance of its public task”; nor do they come under 15(3)(b), that is, holding “documents for which the public sector body making the charge is required to generate sufficient revenue to cover a substantial part of the costs relating to their collection, production, reproduction or dissemination.” Therefore, while being sympathetic to the Museum’s financial needs, arguments bringing the museum’s self-generated income raising activities within its public task aren’t justified under RPSI, I think. In addition to the foregoing, the example on p.10 of the Guidance for the cultural sector (which I cited and you quoted from in the 2nd bullet point of your letter), supports this view, in treating as re-use a museum’s transfer of information from itself to its trading arm, rather than use. You wrote that the Museum does ‘not demur’ from this guidance, but only by adding a qualifier to the end of it that significantly alters its meaning; in effect, therefore, the Museum does actually demur from the guidance. The National Museum Directors’ Council guidance on RPSI (here) also states that “museums may not be able to give their trading companies preferential access to information” because they are “independent of the museum and are wholly commercial in nature.” Yet the British Museum has done exactly that.
In your para beginning ‘A point inherent…’ you describe how the Museum’s approach is a good thing, because it gives the museum the freedom to discriminate between re-users - for example, by favouring scholars. However, I see its main effect as frustrating the intent of the legislation; for the point of RPSI is to place the circulation of information on a transparent and level footing for all re-users, which is for the wider benefit of society and the economy. And museums, libraries and archives were brought into the scope of the revised EU Directive in order to regulate the re-use of museum images. Not being bound by RPSI means not being obliged to respond to re-use requests at all, and certainly not within the 20 days limit; the applicant has no recourse to an internal review, as envisaged in section 17(2); charges are not governed by section 15; and the museum is not bound to justify the basis for its charges, as set out in section 16 - the charging scheme remains opaque. Crucially, also, it absolves the museum of the obligation to not ‘unnecessarily restrict’ the re-user through its licensing conditions.

I have two recent examples of the way that BM Images has dealt with plainly academic requests to use its images. I have email exchanges between the museum and two students (of a globally leading university) who were publishing their first articles in a highly respected academic journal. I undertook not to identify them, so cannot share the actual correspondence with you, but I’d say that its public mission was not a huge part of the museum’s approach. The first instinct was to suggest that one author should pay (more than £100) for fresh photography, on top of the licence fee, and both were denied the right to publish on anything other than commercial terms, because the journal is for sale and not distributed free of charge (as almost every academic journal in the world is); neither author, of course, was being paid anything. I know from both that they were left thinking of the Museum not as an amazing museum committed to supporting their first steps as published authors, but rather as only interested to extract the maximum value from them, knowing that they would fall into line. One ended up using a smaller version of the image, being unable to afford the Museum’s financial demands. What’s sad is that interactions like these shape students’ perceptions of our great museums at a point in their lives when they are considering whether to pursue a museum or academic career.

If there is no possibility of movement from the Museum on its statement of public task, or a further stage in the internal review process to go through, I will explore whether the Information Commissioner can issue a Decision Notice on this (I’m not entirely clear whether, since the Office of PSI was folded into the National Archives, issues relating to statements of public task are dealt with by the National Archives or the IC’s Office). RPSI are new regulations and untested, so it will be helpful to get an independent body with a close knowledge of the legislation to clarify the propriety of the museum’s approach.

**Creative Commons (CC)**

You mention that “where a re-use is sought for non-commercial purposes we permit it on the creative commons licence” CC BY NC SA 4.0 “where we are able.” I think that needs some qualification.

As a preamble, I mention that, as someone who spends hours every week using the BM’s image database (of 17th to 19th century prints and drawings), I don’t recall ever having seen the Creative Commons logo on a page featuring a BM image. I’m not saying they don’t exist somewhere, but for this user, at any rate, they play no role (the Museum’s website states that materials are available for re-use under the CC licence only where the CC logo appears). At the very least, therefore, many examples exist
where the Museum “are able” to permit re-use under a CC licence but have chosen not to.

The second point is more substantial. Creative Commons themselves make it clear that the Museum’s modifications to the CC licence are “not allowed” and are “strongly discouraged” by CC. CC’s guidance on the meaning of non-commercial states that:

*Creative Commons NC licenses expressly define NonCommercial as “not primarily intended for or directed towards commercial advantage or monetary compensation.” The inclusion of “primarily” in the definition recognizes that no activity is completely disconnected from commercial activity; it is only the primary purpose of the reuse that needs to be considered.*

Yet the Museum treats as commercial “anything that is in itself charged for” among a long list of exclusions, so goes much further than CC by insisting on the elimination of any trace of monetary exchange, not recognising that, in CC’s words, ’no activity is completely disconnected from commercial activity’. The Museum does not make a judgment based only on the primary purpose rather it extends its judgment to the entire monetary context.

Further, the Creative Commons Trademark Policy, quoted below, makes it clear that modifications to CC licences don’t have to be modifications to ‘the legal code directly’ - they can be restrictions expressed in a website’s terms of use, or other ‘legal tool’, as in the museum’s website explanation of “How can I use the content published under a Creative Commons licence?” on its Copyright and permissions page:

*Modification of CC Licenses: To prevent confusion and maintain consistency, you are not allowed to use CREATIVE COMMONS, CC, the CC Logo, or any other Creative Commons trademarks with modified versions of any of our legal tools or Commons deeds, including modifications that do not modify the legal code directly but that further restrict or condition the rights granted by the particular legal tool. These modifications are often contained in a website’s terms of use, and where they are present you may not suggest that you are offering works under a Creative Commons legal tool.*

The CC Non Commercial Interpretation guidance emphasises how reprehensible they consider attempts by licensors to tighten up the terms of the CC licence, and repeat the point that licensors should not consider these modified licences to be CC licences:

*Some licensors or website providers state expectations or interpretations about what NC means. Those explanations never form part of the CC license, even if included in terms of service or another resource designed to contractually bind reusers. CC strongly discourages the practice when such statements carve back (rather than expand) on reuses allowed by the NC definition or contradict the plain meaning of the licenses. When those statements are intended to bind reusers or to modify the CC license, no CC trademarks may be associated with either the work or the terms under which it is offered.*

In case it is of interest, Tate has a very similar formulation of its CC licence to the Museum’s and, when presented with the above bits of CC guidance, responded by committing to bring their terms and conditions into compliance with CC’s rules.
You ended your letter with an apology for having written at such length; I fear that I have outdone you in that respect.

Best wishes

On 18 Jan 2018, at 3:46 pm, wrote:

Dear

Please find attached my reply to your email to my colleague of 15 December 2017.

Kind regards

The British Museum
Great Russell Street, London WC1B 3DG
www.britishmuseum.org

British Museum Security Classification: OFFICIAL.

<2018-01-18 Response Letter.pdf>
RE: Image Licensing

1 message

29 August 2018 at 15:14

Hi,

is on annual leave at the moment, and I was on leave when your original email came through regarding image licensing hence the delay in getting a response to you. We did not recall or find any reference to a previous FOI request, and so have no formal response to this.

I have however, attached our T&C’s regarding image use and a comment from our as:

There are different rates according to usage specifications – i.e. publication usage rates depend on size of image reproduction, placement (e.g. inside or cover), language and geographical rights (UK, Europe, Worldwide etc). Cultural and academic institutions are given custom rates (usually 40% discount), Picture Library (PL) registered users can download low res images for free for personal use and study. Like most organisations – our PL has usage rates but these are often customised for the client.

Kind Regards,

The Geffrye Museum of the Home
136 Kingsland Road, London E2 8EA
DL: 020 7749
www.geffrye-museum.org.uk

The Geffrye is now closed for a transformational, two-year development. Donate now to help us unlock the Geffrye.

Keep in touch with the latest news and events while we’re closed:
TERMS AND CONDITIONS OF SUBMISSION AND REPRODUCTION OF IMAGES

This is a legal agreement between you, the client, and us, the image supplier. You will be deemed to have accepted all the terms of this Agreement in respect of any image you receive or download (including preview images and thumbnails).

1. DEFINITIONS AND INTERPRETATION

1.1 “Agreement”: all the terms of this Agreement including these terms and conditions, all terms set out in the delivery note and any terms set out in the invoice. The terms set out in the delivery note and the invoice replace these terms and conditions to the extent of any inconsistency.

1.2 “Digital Image”: any Image other than a Physical Image.

1.3 “End User”: your customer or client for, and the ultimate user of, the Images.

1.4 “Image”: any image which has been selected (whether by you or by us on your behalf) for the purposes of licensing reproduction rights.

1.5 “Image Carrier”: any disk, memory stick, hard drive or other physical medium containing Digital Images.

1.6 “Licence”: the licence set out in clause 4.

1.7 “Licence Fee”: any sum(s) payable by you to us in respect of the Licence.

1.8 “Physical Image”: any transparency, negative, print or other image in analogue physical form.

1.9 “we”: the image supplier.

1.10 “you”: our client.

1.11 References to clauses are to the clauses of these terms and conditions.

2. DIGITAL DELIVERY OF IMAGES

2.1 This clause 2 applies to Digital Images (including preview images and thumbnails) downloaded by you, delivered to you online, or delivered to you by email or other purely digital means.

2.2 You agree to be bound by all the terms of this Agreement when you set up your user account with us and you confirm your acceptance of these terms and conditions each time you download any image, whether or not you have logged in or set up a user agreement.

3. GRANT OF LICENCE

3.1 Subject to the terms of this Agreement, we grant to you a non-transferable, non-exclusive (unless otherwise agreed in writing) licence, on payment of the Licence Fee, to reproduce the Images during the licence period, in the territory and for the purposes specified in the delivery note or the invoice.

3.2 Use of the Images is strictly limited to the purpose, medium, licence period, print run, placement, size of licensed material, territory and any other terms agreed. Unless otherwise specified in the delivery note or invoice, the Licence is for single use, meaning a reproduction in one size for one edition of a single publication in one medium only, published in one language only. The licence period commences on the date specified on the invoice (or if no date is specified, on the date of the invoice itself) and is for the full duration specified on the
invoice, but the Licence only comes into effect on payment in full of the Licence Fee. If the Licence is for online use no licence for offline use is implied, and vice versa. For example, a licence to reproduce Images in a printed book does not imply any licence to reproduce the Images in an e-book. Digital use will be treated as a separate use from physical use, requiring payment of an additional fee to be agreed in advance.

3.3 You may not grant sub-licences of any of the rights included in the Licence, or sub-contract any aspects of exploitation of the rights licensed to you, without our prior written consent. However, you may grant sub-licences to End Users to reproduce the Images on terms that prohibit those End Users from granting any further sub-licence and require those End Users to comply with all the terms of this Agreement. You may also sublicense reproduction rights to printers and other production suppliers solely to the extent necessary for production purposes.

3.4 We reserve all rights in relation to the Images that are not expressly granted to you under this Agreement, whether known now, or created later, and whether or not in the contemplation of the parties at the time of this Agreement.

3.5 We may require you to cease all use of any of the Images if we reasonably believe that your use of such Images infringes the intellectual property rights of any third party, or breaches any applicable law or regulation. In this instance, we may, at our option either:

(a) provide you with alternative Image(s) so as to avoid the infringement; or
(b) terminate this Agreement immediately on written notice in respect of the relevant Images.

4. RESTRICTIONS AND OBLIGATIONS

4.1 You must comply with all applicable laws and regulations in performing your obligations and exercising your rights under this Agreement.

4.2 You must not incorporate Images (or any part of them) into a logo, trade mark or service mark.

4.3 Images must not be used as references for creating drawings or other visual works unless expressly agreed by us in writing.

4.4 Images must not be used in comps, presentations or layouts, nor may Images be used in slide projections or other presentations, unless expressly agreed by us in writing.

4.5 Images must not be reproduced more than once within any design, editorial piece, advertisement or other work product, unless expressly agreed by us in writing.

4.6 A licence to use an Image on or in a product, including a book or magazine cover, does not imply any licence on your part to use the Image in the advertising or promotion of that product, except as part of an image of the product itself showing the Image in its context.

4.7 You must not use Images in a pornographic, obscene, defamatory, misleading, unlawful or offensive manner, whether directly or in context or by juxtaposition with other materials.

4.8 You must comply with any special instructions or restriction on use notified to you by us before, after or at the time of delivery of the Images, either in the information or metadata accompanying the Images, the delivery note, the invoice or by any other means.

4.9 Images shall not be altered or manipulated, added to or have any part cropped or deleted without our prior written consent.

4.10 The Images must not be made available for use or distribution separately or detached from a product or web page. For example, the Images may be used as an integral part of a
web page design, but may not be made available for downloading separately or in a format designed or intended for storage or re-use by website users. Similarly, End Users may be provided with copies of the Images as an integral part of your work product, but must not be provided with the Images or permitted to use the Images separately. Images must not be made available on or linked to via websites, products or services such as Pixazza, Stipple or Clic2c.

4.11 Images may not be modified, reconfigured or repurposed for use in any mobile-directed web sites or mobile applications that are specifically created for viewing of material on mobile devices, without our prior written consent which might require payment of an additional licence fee. For clarification, this restriction on mobile use is not breached if an Image that is licensed for web site use can be viewed via mobile devices in a “pull” (as opposed to “push”) fashion, provided it is not so specifically modified, reconfigured or repurposed for this purpose.

4.12 The Images must not, unless expressly agreed by us in writing, be posted on social networking or file-sharing sites such as Flickr, Plixi, YouTube, Facebook or MySpace.

4.13 You acknowledge the original nature of and agree not to challenge on the ground of non-originality the subsistence of copyright in Images consisting of skilled photographic reproductions of artistic works such as paintings, photographs and sculptures.

5. DIGITAL RIGHTS MANAGEMENT

5.1 You acknowledge that the Images are our valuable property, as are any Digital Images created from the Images.

5.2 You may store the Images in a digital library, network configuration or similar arrangement to allow them to be viewed within your organisation or within the End User’s organisation for planning or production purposes, but you must retain the copyright symbol, our name, the Image identification numbers and any other information which may be embedded in the electronic files containing the original Images. Please note under EU Directive 2001/29/EC it is illegal to remove or alter metadata associated with digital images or publish images on the internet that have had metadata removed or altered. We are a member of BAPLA which is committed to the IPTC embedded metadata manifesto (www.embeddedmetadata.org). You must not remove metadata information supplied in Images under any circumstances including without limitation from Images published online.

5.3 When the work product for which the Images were licensed has been created or within 90 days, whichever is sooner, the Images, including any pre-press or pre-production copies, must be promptly deleted from your and any End User’s computer or other electronic storage systems.

6. CREDITS

6.1 Unless otherwise agreed, you must credit us and the photographer or other author of the Image whenever the Image is used in the form indicated in the credit field or, if there is no such indication, “© [photographer’s name]/The Geffrye, Museum of the Home, London”. If a credit line is omitted an additional fee equal to 50% of the original amount invoiced attributable to the Image in question shall be payable by you. Failure to provide a credit may also breach the photographer’s moral right to be identified under section 77 of the Copyright, Designs and Patents Act 1988 and equivalent laws in other jurisdictions.

7. PAYMENT

7.1 No reproduction of any Image is authorised until payment in full has been received by us. Any reproduction by you or the End User before payment in full has been received constitutes an infringement of copyright and a breach of this Agreement entitling us to terminate this Agreement immediately on written notice to you.
7.2 Unless otherwise agreed by us in writing, all invoices are payable by you within 30 days. If you do not make full payment of an invoice on time we reserve the right to charge interest on the outstanding amount at the rate prescribed by the Late Payment of Commercial Debts (Interest) Act 1998 from the date payment was due until payment is made.

7.3 All amounts due under this Agreement are exclusive of VAT which shall, where applicable, be paid by you at the prevailing rates on the due date for payment and on receipt of a VAT invoice from us.

7.4 All payments to be made by you under this Agreement (except any deduction or withholding which is required by law) shall be paid free and clear of any deductions or withholdings for or on account of set-offs or counterclaims.

8. MODEL AND OTHER RELEASES; CAPTIONS AND OTHER INFORMATION

8.1 We give no warranties whatsoever as to the existence of any model, property or other releases associated with the Images.

8.2 We give no warranties whatsoever as to the use of names, trade marks, logos, uniforms, registered or unregistered designs, artistic works or other material depicted in any Image which may be subject to intellectual property rights or other restrictions.

8.3 You must satisfy yourself that all releases, consents, licences or permissions as may be required for use of the Images have been secured. You are solely responsible for obtaining all such releases, consents, licences or permissions and the Licence is conditional in each case on your obtaining them. You must not rely on any representation in this connection which may be made on our website and may only rely on an express representation given specifically to you by us in writing.

8.4 We do not warrant the accuracy of the captioning, keywording or any other information associated with the Images. You must satisfy yourself that all such information is correct.

9. AUDIT

9.1 You shall keep separate and detailed records of all uses of the Images to enable us to verify your compliance with the terms of this Agreement. After giving written notice of 10 days, we, or any other person authorised by us, may inspect your records, premises and/or servers during normal business hours, and take away copies to verify the information provided by you. This right of inspection shall remain in effect for a period of one year after the expiry or termination of this Agreement.

10. INDEMNITY

10.1 You agree to indemnify and hold us harmless against any claims, damages, losses, expenses or costs (including any direct, indirect or consequential losses, loss of profit and loss of reputation and all interest, penalties and legal costs and other expenses) arising in any manner whatsoever from or as a result of your unauthorised use of any Image supplied by us to you, or any other breach by you of any of your obligations under this Agreement.

11. TERMINATION

11.1 We may (by written notice to you) terminate this Agreement immediately if:

(a) you fail to pay any amount due under this Agreement in full within 14 days of its due date and this failure is not remedied within 7 days of receipt of written notice to this effect; or

(b) you commit any material breach of your obligations under this Agreement which is incapable of remedy, or if capable of remedy, is not remedied within 14 days of our giving written notice requiring the breach to be remedied; or
you cease, or threaten to cease, to carry on business, or any of the following events occur in respect of you or any of your holding companies:

(i) a proposal is made for a voluntary arrangement or for any other composition scheme or arrangement with or assignment for the benefit of creditors;
(ii) a resolution for winding-up is passed;
(iii) a petition for winding-up is presented, or an application is made for the appointment of a provisional liquidator, or a creditors’ meeting is convened;
(iv) a receiver, administrative receiver or similar officer is appointed over the whole or any part of your business or assets; or
(v) an application is made either for the appointment of an administrator or for an administration order.

11.2 On any expiry or termination of this Agreement the Licence shall automatically terminate and there must be no further use of the Images. All Physical Images and any Image Carrier must be promptly returned to us and any other Digital Images must be promptly deleted from your and any End User’s computer or other electronic storage systems.

12. WARRANTY AND LIMITATION OF LIABILITY

12.1 We warrant that (a) the Images will be free from defects in material and workmanship for 30 days from delivery (your sole remedy for a breach of this warranty being the replacement of the defective Image); (b) we have all necessary rights and authority to enter into and perform this Agreement; and (c) your use of the Images in accordance with this Agreement and in the form delivered by us will not infringe any copyright in the Images or any moral rights of the authors of the Images.

12.2 Save where expressly provided, all terms which might be implied into this Agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded to the maximum extent permitted by law.

12.3 Nothing in this Agreement shall operate to exclude or limit our liability for (a) death or personal injury caused by our negligence; (b) any breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; (c) fraud; or (d) any other liability which cannot be excluded or limited under applicable law.

12.4 We shall have no liability for any losses or damages which may be suffered by you (or any person claiming under or through you), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories: (a) loss of profits; (b) loss of business opportunity; (c) loss of contracts; (d) loss of goodwill; or (e) loss arising from damaged, corrupted or lost data; provided that this clause 12.4 shall not prevent claims for direct financial loss that are not excluded by any of categories (a) to (e) inclusive of this clause 12.4.

12.5 Subject to clause 12.3, our liability, whether in contract, tort (including negligence) or otherwise and whether in connection with this Agreement or any collateral contract, shall not exceed the Licence Fee multiplied by 10.

13. ASSIGNMENT

13.1 You shall not, without our prior written consent, assign, transfer or deal in any manner with this Agreement or any of your rights and obligations under this Agreement.

14. COPYRIGHT AND PUBLICATION RIGHT

14.1 No interest in the copyright in any Image shall pass to you by virtue of this Agreement. Any publication right (as defined in the Copyright and Related Rights Regulations 1996) and equivalent rights in all other jurisdictions arising from your or the End User’s use of
any Image shall vest in us and you hereby assign and agree to procure the assignment of all such rights arising to us.

14.2 You will promptly notify us of any actual or suspected infringement of the copyright in the Images within the licensed territory ("Infringement") that comes to your attention. You will co-operate fully with us by taking all steps required by us (in our sole discretion) in connection with any Infringement including, without limitation, where the Licence is exclusive, proceedings in our name or in the joint names of the parties. You will use your best endeavours to assist us in any legal proceedings relating to any Infringement.

15. MISCELLANEOUS TERMS

15.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter. Each party agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement. No party shall have any claim for innocent or negligent misrepresentation based upon any statement in this Agreement.

15.2 No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives). If there is an inconsistency between any of the provisions of this Agreement and the provisions of your purchase order, your standard terms and conditions or any other document, the provisions of this Agreement shall prevail.

15.3 If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected. If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

15.4 No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

15.5 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims), save for infringement of copyright or non-payment of the Licence Fee where it shall be non-exclusive.

© The Geffrye, Museum of the Home, June 2013
Dear [REDACTED],

We did not receive a FOI request from [REDACTED] (or a colleague), requesting information about our image licensing policy.

For your info, our approach is that images requested for use in non-commercial work are not charged for but any requests for images which will be used in commercial activity have a charge for their reproduction rights.

At the moment, all requesters, commercial and non-commercial, come through the web team and are required to complete a form so that we can track how images of the Horniman Collections are being used.

We are currently investigating opportunities with Wikimedia about how we can share some of the collections images under creative commons (exact license still under discussion), as well as pursuing avenues for income generation for commercial projects, and how these two approaches will fit together.

Let us know if you need any more info.

Best wishes,

Horniman Museum and Gardens

T  (Switchboard – ext.

E  

Out of Scope
Hi S.4,

Sorry for the delay in this but we went for short and sweet in the end:

IWM makes much of its image, sound and film collections available to the public to purchase and license for use in commercial and non-commercial projects and for private use, as well as some materials being available for free such as through our First World War Centenary Partnership. We follow the National Archives Information Fair Traders Scheme, as well as the principles enshrined in the PSI Regulations (Public Sector Information) Regulations.

We charge for the use of our material to recover the cost of making our vast and unique collection available for use. The income raised through the purchase and licensing of our collection is used to support the care of our collection so it is preserved and available to the public for generations to come.

I hope this helps and good luck with the debate next week.

Thanks,

S.4
Dear [Name],

I am on leave this week, as am I from this Thursday, so am quickly responding to your enquiry.

**FOI(s) on Image Licensing**

The Gallery licences all its images to the National Gallery Company Limited which undertakes commercial licensing of those images.

The National Gallery Company Limited is a separate corporate entity which is not owned by the Gallery. NGC is not a public authority nor owned by one and is therefore not subject to Freedom of Information legislation.

I have attached the two email responses we sent to [Name] if this helps.

Best wishes,

[Name]

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T: +44 (0) 20 7747
M: +44

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Out of Scope

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Out of Scope

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Out of Scope
Dear [Name],

Thank you for your request for information under the Freedom of Information Act 2000. You asked:

First, what if any legal advice is the National Gallery operating on when it comes to selling licenses for images in which you claim copyright?

Second, how much the Gallery has raised in revenue by selling images and licences for the last five years, annually, after all costs have been accounted for?

Third, how are the image licensing department’s annual costs calculated, and what are they?

Fourth, what action if any you have or would take against other image libraries offering to sell licenses for images of out of copyright artworks in the Gallery’s collection?

Finally, when is the Gallery’s image licensing policy next due to be reviewed?

Following an exchange of emails, you provided a date range in regard to question 4 of the last five years.

Before turning to your specific requests, please may I note that the Gallery licences all its images to the National Gallery Company Limited which undertakes commercial licensing of those images. The National Gallery Company Limited is a separate corporate entity which is not owned by the Gallery.

Out of Scope
I will now respond to your five points in turn.

1. We have taken your request to refer to legal advice specifically regarding our entitlement to claim copyright in the images we create. Following the appropriate searches we have found that the Gallery does not hold any information and therefore has nothing to release. The Gallery did take legal advice when it became subject to the Re-Use of Public Sector Information Regulations (2015). The advice concerned the way in which the Gallery should comply with the Regulations. Whilst we have taken this advice to be outside the scope of your request, you can find further information about our compliance with the Regulations on our website at https://www.nationalgallery.org.uk/about-us/organisation/policies/statement-of-public-task.

2. Over the past five full years, the amounts received from the National Gallery Company from licensing of images are as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012/13</td>
<td>£121,014.95</td>
</tr>
<tr>
<td>2013/14</td>
<td>£108,147.83</td>
</tr>
<tr>
<td>2014/15</td>
<td>£107,847.00</td>
</tr>
<tr>
<td>2015/16</td>
<td>£100,000.00</td>
</tr>
<tr>
<td>2016/17</td>
<td>£100,000.00</td>
</tr>
</tbody>
</table>

There are no direct costs to the Gallery for this licensing activity. There is a photographic/imaging capability run within the National Gallery whose purposes include documentation of the Collection, scientific research and photography for broader photographic needs. It plays no direct part in the licensing of images.

3. The Gallery does not have an Image Licensing department and therefore no direct costs are incurred or calculated. Consequently, the Gallery does not hold any information and has nothing to release.

4. Following the appropriate searches, the Gallery can find no record of legal action brought against third parties in relation to the selling of images of works in the Gallery’s collection in the last five years.

5. The Gallery’s policy on licensing of images was approved by the Board in 2015 in the context of our ensuring the Gallery’s compliance with the Re-Use of Public Sector Information Regulations (2015). There is currently no date fixed for the Gallery’s policy to be reviewed.

Finally, I would like to add that, separate to the commercial licensing of images undertaken by the National Gallery Company, the National Gallery makes images of paintings from the collection available for download from our website free of charge under a Creative Commons license.

If you are unhappy with the way the National Gallery has handled your request you may ask for an internal review, by writing to: Susan Foister, Deputy Director, The National Gallery, Trafalgar Square, London, WC2N 5DN. We would ask that you submit your request for an internal review within two months of the date of this response.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at: Information Commissioner’s Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

If you have any queries about this email, please do not hesitate to contact me.

Yours sincerely
Original Message-----
From: Visitor-Engagement-Department
Sent: 09 January 2018 21:14
To: Visitor-Engagement-Department
Subject: FOI Request

Hi there,

I would like to please make the following enquiries under the Freedom of Information Act:

First, what if any legal advice is the National Gallery operating on when it comes to selling licenses for images in which you claim copyright?

Second, how much the Gallery has raised in revenue by selling images and licences for the last five years, annually, after all costs have been accounted for?

Third, how are the image licensing department's annual costs calculated, and what are they?

Fourth, what action if any you have or would take against other image libraries offering to sell licenses for images of out of copyright artworks in the Gallery's collection?

Finally, when is the Gallery's image licensing policy next due to be reviewed?

Many thanks

---------- Forwarded message ----------
From: Visitor-Engagement-Department
To: Visitor-Engagement-Department
Cc: 
Bcc: 
Date: Tue, 6 Feb 2018 14:57:04 +0000
Subject: RE: F440 FOI Request

Dear Visitor-Engagement-Department,

Thank you for your emails.

Out of Scope
The National Gallery Company is a separate corporate entity and is owned by the National Gallery Trust, not the National Gallery. The National Gallery Company is not a public authority nor owned by one and is therefore not subject to Freedom of Information legislation. However, if you would like to pursue this matter directly with them, they can be contacted at St. Vincent House, 30 Orange Street, London, WC2H 7HH.

We believe that we are correct to limit our response to information held by the National Gallery and I hope this email makes clear our reason for doing so. However, please let me know if you would like our handling of your request to be investigated through an internal review.

Yours,

From: [Redacted] Sent: 06 February 2018 10:00
To: [Redacted] Subject: Re: F440 FOI Request

Hi, and for the purposes of clarity, I think you need, when reviewing your response to me below, to clarify that your answer for questions one and four also applies to the National Gallery Company.

On 6 Feb 2018, at 09:41, [Redacted] > wrote:

Ref: F440

Dear [Redacted] Thank you for your request for information under the Freedom of Information Act 2000. You asked:

First, what if any legal advice is the National Gallery operating on when it comes to selling licenses for images in which you claim copyright?

Second, how much the Gallery has raised in revenue by selling images and licences for the last five years, annually, after all costs have been accounted for?

Third, how are the image licensing department’s annual costs calculated, and what are they?
Fourth, what action if any you have or would take against other image libraries offering to sell licenses for images of out of copyright artworks in the Gallery’s collection?

Finally, when is the Gallery’s image licensing policy next due to be reviewed?

Following an exchange of emails, you provided a date range in regard to question 4 of the last five years.

Before turning to your specific requests, please may I note that the Gallery licences all its images to the National Gallery Company Limited which undertakes commercial licensing of those images. The National Gallery Company Limited is a separate corporate entity which is not owned by the Gallery.

I will now respond to your five points in turn.

1. We have taken your request to refer to legal advice specifically regarding our entitlement to claim copyright in the images we create. Following the appropriate searches we have found that the Gallery does not hold any information and therefore has nothing to release. The Gallery did take legal advice when it became subject to the Re-Use of Public Sector Information Regulations (2015). The advice concerned the way in which the Gallery should comply with the Regulations. Whilst we have taken this advice to be outside the scope of your request, you can find further information about our compliance with the Regulations on our website at https://www.nationalgallery.org.uk/about-us/organisation/policies/statement-of-public-task.

2. Over the past five full years, the amounts received from the National Gallery Company from licensing of images are as follows:

- 2012/13 – £121,014.95
- 2013/14 – £108,147.83
- 2014/15 – £107,847.00
- 2015/16 – £100,000.00
- 2016/17 – £100,000.00

There are no direct costs to the Gallery for this licensing activity. There is a photographic/imaging capability run within the National Gallery whose purposes include documentation of the Collection, scientific research and photography for broader photographic needs. It plays no direct part in the licensing of images.

3. The Gallery does not have an Image Licensing department and therefore no direct costs are incurred or calculated. Consequently, the Gallery does not hold any information and has nothing to release.

4. Following the appropriate searches, the Gallery can find no record of legal action brought against third parties in relation to the selling of images of works in the Gallery’s collection in the last five years.

5. The Gallery’s policy on licensing of images was approved by the Board in 2015 in the context of our ensuring the Gallery’s compliance with the Re-Use of Public Sector Information Regulations (2015). There is currently no date fixed for the Gallery’s policy to be reviewed.
Finally, I would like to add that, separate to the commercial licensing of images undertaken by the National Gallery Company, the National Gallery makes images of paintings from the collection available for download from our website free of charge under a Creative Commons license.

If you are unhappy with the way the National Gallery has handled your request you may ask for an internal review, by writing to: Susan Foister, Deputy Director, The National Gallery, Trafalgar Square, London, WC2N 5DN. We would ask that you submit your request for an internal review within two months of the date of this response.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at: Information Commissioner’s Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

If you have any queries about this email, please do not hesitate to contact me.

Yours sincerely
Fourth, what action if any you have or would take against other image libraries offering to sell licenses for images of out of copyright artworks in the Gallery's collection?

Finally, when is the Gallery's image licensing policy next due to be reviewed?

Many thanks
Dear [Name],

Thank you for your message, forwarded to me by the Department for Digital, Culture, Media & Sport. Please find attached, and below, our response detailing our image licensing policy at the National Portrait Gallery. Please also find attached our FOI requests and responses related to this matter.

Kind regards,

National Portrait Gallery Image Licensing Policy

On 12 September 2018 the House of Lords will debate the following question:

“What steps is/should Government be taking to encourage national museums and galleries to balance public access and commercial reuse of digital content?"

This document provides the National Portrait Gallery's position on image licensing, as requested by the Department for Digital, Culture, Media & Sport. Please also see accompanying Freedom of Information (FOI) requests and responses related to this matter.

The National Portrait Gallery carefully balances free public access to the Collection alongside commercial licensing activities aimed at generating revenue to support the Gallery's activities. The Gallery is a charity and has to self-generate over 70% of the funds needed to be open and accessible to all. 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 free entry and the Gallery's main functions caring for its Collection and engaging people with its works.
The entire digitised Collection is made available to view free of charge via the Gallery website, and for re-use as low-resolution images via a non-commercial Creative Commons licence. Through the Rights & Images team, the Gallery has, since 2012, offered hi-resolution images free of charge for a range of academic and non-commercial uses. These include personal non-commercial research and private study, classroom use in educational establishments, student theses and dissertations, and qualifying non-commercial/scholarly publications where the primary purpose is non-profit making (criteria for the academic/non-commercial licence are available on the Gallery website here: https://www.npg.org.uk/collections/search/use-this-image/academic-licence-details).

Alongside free licences, the Gallery offers paid-for licences to cover standard editorial and commercial use of images. Where there is a value chain, and Gallery images are part of that, it is important that some of that value comes back to the Gallery. A good example of this is a coffee table book published by a commercial publisher. Although the print run might be low, the book will be sold to generate profit for the publisher. It is entirely appropriate that some of this profit finds its way back to the public sector organisations who provided that content. We are well aware that certain European and US museums have moved to offer free use of images for all types of use. However, museums such as the Rijksmusem (Netherlands) and the Met (USA) charge entry fees. DCMS sponsored museums are committed to supporting free entry, and we cannot rely on the same model.

Image licensing has generated income of over the last 5 years. All income generated by image licensing goes to the National Portrait Gallery enabling the Gallery to remain open and accessible to all and supporting a range of conservation and curatorial activities, preserving and making available the Collection for audiences now and in the future, and educational projects through improved interpretation and access to the Collection. Continued cataloguing, digitisation and expert intellectual property rights (IPR) management helps makes more images available on the Gallery website, improving access, public engagement, and supporting the wider aims and objectives of the Gallery. The value of image and IPR management is recognised beyond just the income generated by licensing the images. They are widely used in Gallery projects, delivering value to the entire organisation, the wider sector, and the public.

29 August 2018

National Portrait Gallery  St Martin's Place  London WC2H 0HE

www.npg.org.uk

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This e-mail, and any attachments, are intended only for the attention of the addressee(s). Its unauthorised use, disclosure, storage or copying is not permitted. If you are not the intended recipient, please destroy all copies and inform the sender. The Gallery does not accept any liability arising from interception, corruption, loss or destruction of this e-mail, or if it arrives late, incomplete or with viruses. Please note that any information sent, received or held by the Gallery may be disclosed under the Freedom of Information Act 2000.

Please consider the environment before you print this email
Dear [Redacted],

Thank you for your information request under the Freedom of Information Act, dated 22nd November 2017.

Please see below the answers to your questions.

1. What is your or the Gallery’s response, if anything, to the recent call by a group of leading British art historians to make all images in national collections of out of copyright artworks free for the public to reproduce?

   [Redacted]

   Please see the attached Statement on Image Licensing charges for academic publications, which we released in response to the British Art Journal editorial piece in August 2017.

   In addition, we also offer a free Creative Commons BY-NC-ND licence for selected low resolution images. Information on the suite of licences available can be found here - [Redacted]

2. What is the NPG’s view on the specific issue of claiming copyright in photographs of out of copyright artworks, and what if any legal advice you are operating on when it comes to selling licenses for such images (in which you also claim copyright)?

   We refer to the Copyright, Designs and Patents Act 1988 (as amended) (CDPA). s.1(1)(a) of the CDPA affords copyright protection to original literary, dramatic, musical or artistic works. Artistic work is defined as a graphic work, photograph, sculpture or collage, irrespective of artistic quality. The digitised images created and made available by the Gallery are the product of a significant time, skill, effort, artistry and judgement on behalf of the photographic and digitisation teams, at the point of image capture and in post-production, to deliver the images currently available on the Gallery’s website and for licensing. The Gallery has taken legal advice relating to this.

3. I see that on your website you refer to IPO guidance; what is your or the Gallery’s response to the fact that the IPO’s most recent guidance on images of out of copyright artworks, which implies that copyright cannot in fact be claimed?

   Please refer to the above response to question 2.

4. How much has the NPG’s image licensing department raised in revenue for the Gallery for the last five years, after all costs have been accounted for?

   Revenue raised by the Rights & Images department is via licences that do not fall under the free academic and non-commercial use licences.

   The total amount the Rights & Images department has raised from image licensing for the financial years 2012/13 to 2016/17, after all costs have been accounted for, is £801,489.20.

   All profit goes to the National Portrait Gallery in helping it to deliver its public service remit, including continuing to catalogue and digitise the Collection, thereby making more images available on the Gallery website and more images available under the free academic and non-commercial licences. This profit also enables the Rights & Images department to continue administering academic and non-commercial licence requests and enquiries.

5. How are that department’s annual costs calculated, and what are they?

   This information has not been provided, under section 43(2) of the Freedom of Information Act 2000, which states that:

   “(2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it)”.
6. What action if any you have or would take against other image libraries offering to sell licenses for images of out of copyright artworks in the NPG’s collection? For example - http://www.alamy.com/stock-photo-william-wilberforce-n1759-1833-english-philanthropist-and-abolitionist-95462935.html

If/when we find Gallery images on other image sites, we contact the relevant site to find out how the images were obtained and open a dialogue on how to resolve any issues that might arise.

7. When is the NPG’s image licensing policy next due to be reviewed?
The Gallery’s Intellectual Property Rights (IPR) Policy is due for review in May 2018. The current version can be found on our website at the following link - http://www.npg.org.uk/about/corporate/gallery-policies/copyright-policy

I hope you find the response to your questions satisfactory.

After 3 months from the last meaningful correspondence this case will be closed. For an internal review request please contact us within a 3 month period, otherwise your request will be treated as a new enquiry.

Under the terms of the Act, we are required to inform you of our appeals procedure in case you are not satisfied with response. A copy of our public leaflet on Freedom of Information, which advises how to appeal to the Gallery and your right to appeal to the Information Commissioner, can be found on the Gallery website at: http://www.npg.org.uk/about/foi.php.

Kind regards,

S.
First, what is your or the Gallery’s response, if anything, to the recent call by a group of leading British art historians to make all images in national collections of out of copyright artworks free for the public to reproduce?

Second, what is the NPG’s view on the specific issue of claiming copyright in photographs of out of copyright artworks, and what if any legal advice you are operating on when it comes to selling licenses for such images (in which you also claim copyright)?

Third, I see that on your website you refer to IPO guidance; what is your or the Gallery’s response to the fact that the IPO’s most recent guidance on images of out of copyright artworks, which implies that copyright cannot in fact be claimed?

Fourth, how much the NPG’s image licensing department has raised in revenue for the Gallery for the last five years, after all costs have been accounted for?

Fifth, how are that department’s annual costs calculated, and what are they?

Sixth, what action if any you have or would take against other image libraries offering to sell licenses for images of out of copyright artworks in the NPG’s collection? For example: http://www.alamy.com/stock-photo-william-wilberforce-n1759-1833-english-philanthropist-and-abolitionist-95462935.html

Finally, when is the NPG’s image licensing policy next due to be reviewed?

Please consider these questions requests for information under the Freedom of Information Act.

Many thanks

All best wishes

From:

To:

Subject: In Confidence - Enquiry via

Dear

I read with interest the article on ”Museums and image reproduction fees“ at http://www.arthistorynews.com/articles/2234_Museums_and_image_reproduction_fees

The National Portrait Gallery is mentioned in this, but in an article about reproduction fees for scholarly and non-commercial publications, I was surprised to see no mention of our free academic licensing service. In July 2012, the Gallery launched a new licensing interface where over 70,000 hi-res images were made available to license, free of charge, for qualifying academic and non-commercial publications.

The criteria limit the print run to 3,000 copies, which for specialist academic and non-commercial publications, is usually sufficient, and we have received a great deal of good feedback since the service was launched. The case mentioned by Dr Mortimer in the article refers to a book where the publishers are requesting extensive rights (a print run of 25,000 copies plus additional ebook rights, in all languages) which falls outside of the academic/non-commercial criteria, but as Dr
Mortimer states, it is because the publisher wants to clear for the possibility of finding a foreign agent, and to avoid having to clear additional rights at a later date. It is entirely reasonable that the fees reflect the level of rights being cleared, and although we are always open to negotiation, it does not seem fair that publishers budget for a low-print run, but want to clear for a higher one.

We make no secret of the fact that, in these financially austere times, our primary purpose as an image licensing service is to raise revenue for the Gallery. All the money we raise goes back to the Gallery, to support further digitisation of the collection, to make images freely available online (we have currently digitized 100,000 from a collection of circa 330,000), and to support the curatorial and educational work of the organization. However, alongside this commercial remit, we do make images freely available for academic and non-commercial use, and in the interests of providing a balanced viewpoint, I think it would be worthwhile posting a follow up to this, outlining the support provided to the academic community, which was not touched upon in the original article. Please let me know how best to go about this.

Many thanks,
Statement on Image Licensing charges for academic publications in response to British Art Journal Editorial Aug 2017

“The British Art Journal editorial omits the fact that the National Portrait Gallery has, since 2012, offered hi-resolution images under a free Academic Licence. Hi-resolution images are available free-of-charge via the National Portrait Gallery website for use inside scholarly and non-commercial publications where the print run is up to 4,000 copies for journals, or 2,000 copies for books. The licence allows the publication to be posted on an open access website, provided that access to the website and the publication is at no cost to the end user, for the life of the website. In addition, images are free to students for use in dissertations, by students and teachers for classroom use and for other private, non-commercial uses. The British Art Journal has obtained images from the National Portrait Gallery, via this free licence, within the last year. The full criteria for the Academic Licence are available here: http://www.npg.org.uk/collections/search/use-this-image/academic-licence-details

Alongside the free Academic Licence, the Gallery also licences images for a range of commercial uses. All proceeds from image licensing support the wider work of the National Portrait Gallery, including making more images available via the website which in turn are made available under the fee Academic Licence.

Press Office, August 2017
Thank you for your follow-up information request under the Freedom of Information Act, dated 13th December 2017.

In relation to question 2 in your original request, (What is the NPG’s view on the specific issue of claiming copyright in photographs of out of copyright artworks, and what if any legal advice you are operating on when it comes to selling licenses for such images (in which you also claim copyright)?), the details of the legal advice The Gallery has taken are exempt from disclosure under section 41 of the Freedom of Information Act 2000, which states that:

“Information is exempt information if -
(a) it was obtained by the public authority from any other person (including another public authority), and
(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.”

To release this information would constitute a breach of confidence and therefore has not been provided.

In relation to question 5 of your original request, (How are that department’s annual costs calculated, and what are they?), we are currently reviewing our response to this question and will provide a reply to this within 20 working days of your request for the review.

The other elements of your email below will be treated as a new FoI request, as they are requests for additional information following on from your original request. We will therefore respond to these queries within 20 working days, as required under the FoI Act.

Please send all FoI requests about either the National Portrait Gallery and/or its subsidiary company National Portrait Gallery Company Ltd to xxxxxxxxxx@xxx.xxx.xx. The Freedom of Information Manager (currently myself) will access and respond to FoI requests from there.

Kind regards,

S.4

---------------------------------------------------------------------------

From: S.40
Sent: 13 December 2017 13:46
To: FOI Request <xxxxxxxxxxx@xxx.xxx.xx>
Subject: Re: In Confidence - Enquiry via S.40

Dear S.40

Thank you for all of this information. I would like further clarity around my questions 2, 4 and 5, the costs and revenue of the NPG’s image licensing operation. As you’ll know, in September 2015 the National Museum Director’s Council concluded an 18-month study into the re-use of digital content, which they described in their
report *Striking the Balance*. In its own words, “perhaps the most difficult aspect of this study has been the lack of generally-available information about both the costs and the revenue model associated with the commercial activities of NMDC member institutions.”(p.37). My aim through FOI is to help meet this deficit by building a body of evidence about the way that image licensing operates within national museums, including the NPG.

You’ll know that FOI places on you a duty to provide me with advice and assistance concerning my request (section 16) and I am writing to you in good faith, from a position of relative ignorance about the NPG. In each case below, I explain the reasons for my questions to help you work out what data might best satisfy my search for information, in case a narrowly-constructed answer would not be as informative.

In relation to my question 2, I asked what the legal advice was on the matter of copyright in images of out of copyright artworks. You have referred me to a passage in an act of parliament, and told me that you have taken legal advice on this - but you have not said what the legal advice is. Nor have you given any grounds for not answering my question. I must therefore ask again for evidence of the legal advice you are operating on on this issue. I do not expect to have to wait another 20 working days for an answer.

In relation to my question 4, I am aware that gross income from Rights and Images is (from NPG annual reports):

- 2013 - £348,000
- 2014 - £406,000
- 2015 - £371,000
- 2016 - £380,000
- 2017 - £321,000

TOTAL - £1,826,000

You’ve stated the total net sum for the same period, for image licensing alone, was £801,489.20. Could you please break this figure down into individual years as above?

In relation to these annual sums, could you please state what figure or proportion of this revenue is generated by licensing the re-use of images of works of art that are themselves out of copyright? Or, another way of putting this question, for images for which the NPG itself asserts copyright, rather than images for which copyright is held by artists and their representatives? If not for all five years, please choose the most convenient single year. My reason for asking this is that I am principally concerned with the re-use of images of historic art.

In relation to question 4, you stated that the revenue generated by the rights and images department has enabled the museum to make more images available on its website under academic and non-commercial licences. Purely for 2016/17, could you please tell me how many new images were added to the NPG website under academic and non-commercial licences? My reason for asking this is: (1) museums frequently make this case in justification for image licensing operations, and it is a perfectly reasonable case on paper; but it is rarely tested against the evidence of museums’ actual practice. (2) I limit my question to 2016/17 in order that it is not onerous to answer it.

In answer to question 4, you implied there was a cost to the rights & image department in administering academic and non-commercial licensing of images - a process now entirely managed automatically via the NPG website. Could you please estimate the cost, either in a monetary sum or in man-hours or in the number of enquiries and requests received, involved in administering these requests and enquiries manually? Again, to explain my interest: I acknowledge the logic of your response, but I would like to test its validity against evidence. Indeed, the section in the NPG 2016/17 annual report that concerns Rights & Images (here, p.16) begins with a statement that more clients than ever were “self-serving through the Gallery’s licensing website, proof that the system is working well.”

Concerning my two questions under 5 (the costs, and the rationale for calculating costs), you decline to answer, citing exception 43(2) of the FOI Act 2000. I must admit I was a bit surprised so I wonder if I could ask you please to review that? You may not know that the NPG has already provided information about the costs of its picture library between 2002/3 and 2012/13 in response to an FOI request submitted in 2013. In the most recent year (ie 2012/13), NPG confirmed that its picture library salaries cost £265,000, picture library cost of sales was £25,000 and picture library expenditure was £21,000. Further details are here. I doubt that that NPG’s commercial interests have changed sufficiently in the past 5-6 years such that it has become necessary to refuse to answer. I am assuming you will answer this question in good faith, and be as open as you can be within the boundaries of genuine commercial interests.

I will look forward to your further answers to the above. In the meantime, could you please confirm if you are also the person to whom I should address an FOI request to the NPG’s Trading Company? If you are not, could you kindly advise me who that person is?

Thank you,
On 11 Dec 2017, at 16:01, FOI Request <xxxxxxxxxx@xxx.xxx.xx> wrote:

Dear [Name]

Thank you for your information request under the Freedom of Information Act, dated 22nd November 2017.

Please see below the answers to your questions.

1. What is your or the Gallery’s response, if anything, to the recent call by a group of leading British art historians to make all images in national collections of out of copyright artworks free for the public to reproduce?

   Please see the attached Statement on Image Licensing charges for academic publications, which we released in response to the British Art Journal editorial piece in August 2017.

   In addition, we also offer a free Creative Commons BY-NC-ND licence for selected low resolution images. Information on the suite of licences available can be found here - http://www.npg.org.uk/collections/search/use-this-image.php?mkey=mw02079

2. What is the NPG’s view on the specific issue of claiming copyright in photographs of out of copyright artworks, and what if any legal advice you are operating on when it comes to selling licenses for such images (in which you also claim copyright)?

   We refer to the Copyright, Designs and Patents Act 1988 (as amended) (CDPA). s.1(1)(a) of the CDPA affords copyright protection to original literary, dramatic, musical or artistic works. Artistic work is defined as a graphic work, photograph, sculpture or collage, irrespective of artistic quality. The digitised images created and made available by the Gallery are the product of a significant time, skill, effort, artistry and judgement on behalf of the photographic and digitisation teams, at the point of image capture and in post-production, to deliver the images currently available on the Gallery’s website and for licensing. The Gallery has taken legal advice relating to this.

3. I see that on your website you refer to IPO guidance; what is your or the Gallery’s response to the fact that the IPO’s most recent guidance on images of out of copyright artworks, which implies that copyright cannot in fact be claimed?

   Please refer to the above response to question 2.

4. How much has the NPG’s image licensing department raised in revenue for the Gallery for the last five years, after all costs have been accounted for?

   Revenue raised by the Rights & Images department is via licences that do not fall under the free academic and non-commercial use licences.

   The total amount the Rights & Images department has raised from image licensing for the financial years 2012/13 to 2016/17, after all costs have been accounted for, is £801,489.20.

   All profit goes to the National Portrait Gallery in helping it to deliver its public service remit, including continuing to catalogue and digitise the Collection, thereby making more images available on the Gallery website and more images available under the free academic and non-commercial licences. This profit also enables the Rights & Images department to continue administering academic and non-commercial licence requests and enquiries.

5. How are that department’s annual costs calculated, and what are they?

   This information has not been provided, under section 43(2) of the Freedom of Information Act 2000, which states that:

   “(2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it)“.

6. What action if any you have or would take against other image libraries offering to sell licenses for images of out of copyright artworks in the NPG’s collection? For example - http://www.alamy.com/stock-photo-william-wilberforce-n1759-1833-english-philanthropist-and-abolitionist-95462935.html

   If/when we find Gallery images on other image sites, we contact the relevant site to find out how the images were obtained and open a dialogue on how to resolve any issues that might arise.
7. When is the NPG’s image licensing policy next due to be reviewed?

The Gallery’s Intellectual Property Rights (IPR) Policy is due for review in May 2018. The current version can be found on our website at the following link - http://www.npg.org.uk/about/corporate/gallery-policies/copyright-policy

I hope you find the response to your questions satisfactory.

After 3 months from the last meaningful correspondence this case will be closed. For an internal review request please contact us within a 3 month period, otherwise your request will be treated as a new enquiry.

Under the terms of the Act, we are required to inform you of our appeals procedure in case you are not satisfied with response. A copy of our public leaflet on Freedom of Information, which advises how to appeal to the Gallery and your right to appeal to the Information Commissioner, can be found on the Gallery website at: http://www.npg.org.uk/about/foi.php

Kind regards,

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National Portrait Gallery
St Martin’s Place
London WC2H 0HE

T 020 7321 4040  F 020 7306 4040  www.npg.org.uk

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Please consider the environment before you print this email

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From: S.40
Sent: 22 November 2017 12:31
To: FOI Request <xxxxxxxxxxx@xxx.xxx.xx>
Subject: Fwd: In Confidence - Enquiry via

Begin forwarded message:

From: S.40
Date: 21 November 2017 at 21:15:23 GMT
To: S.40
Subject: Re: In Confidence - Enquiry via

Dear S.40,

I wonder if I could ask you some questions.

First, what is your or the Gallery’s response, if anything, to the recent call by a group of leading British art historians to make all images in national collections of out of copyright artworks free for the public to reproduce?

Second, what is the NPG’s view on the specific issue of claiming copyright in photographs of out of copyright artworks, and what if any legal advice you are operating on when it comes to selling licenses for such images (in which you also claim
Third, I see that on your website you refer to IPO guidance; what is your or the Gallery’s response to the fact that the IPO’s most recent guidance on images of out of copyright artworks, which implies that copyright cannot in fact be claimed?

Fourth, how much the NPG’s image licensing department has raised in revenue for the Gallery for the last five years, after all costs have been accounted for?

Fifth, how are that department’s annual costs calculated, and what are they?

Sixth, what action if any you have or would take against other image libraries offering to sell licenses for images of out of copyright artworks in the NPG’s collection? For example: 

Finally, when is the NPG’s image licensing policy next due to be reviewed?

Please consider these questions requests for information under the Freedom of Information Act.

Many thanks

All best wishes

S.40

From: S.40
Sent: 02 June 2013 09:59
To: S.40
Sub: S.40 via S.40

Dear S.40

I read with interest the article on “Museums and image reproduction fees” at http://www.arthistorynews.com/articles/2234_Museums_and_image_reproduction_fees

The National Portrait Gallery is mentioned in this, but in an article about reproduction fees for scholarly and non-commercial publications, I was surprised to see no mention of our free academic licensing service. In July 2012, the Gallery launched a new licensing interface where over 70,000 hi-res images were made available to license, free of charge, for qualifying academic and non-commercial publications.

The criteria limit the print run to 3,000 copies, which for specialist academic and non-commercial publications, is usually sufficient, and we have received a great deal of good feedback since the service was launched. The case mentioned by Dr Mortimer in the article refers to a book where the publishers are requesting extensive rights (a print run of 25,000 copies plus additional ebook rights, in all languages) which falls outside of the academic/non-commercial criteria, but as Dr Mortimer states, it is because the publisher wants to clear for the possibility of finding a foreign agent, and to avoid having to clear additional rights at a later date. It is entirely reasonable that the fees reflect the level of rights being cleared, and although we are always open to negotiation, it does not seem fair that publishers budget for a low-print run, but want to clear for a higher one.

We make no secret of the fact that, in these financially austere times, our primary purpose as an image licensing service is to raise revenue for the Gallery. All the money we raise goes back to the Gallery, to support further digitisation of the collection, to make images freely available online (we have currently digitized 100,000 from a collection of circa 330,000), and to support the curatorial and
educational work of the organization. However, alongside this commercial remit, we do make images freely available for academic and non-commercial use, and in the interests of providing a balanced viewpoint, I think it would be worthwhile posting a follow up to this, outlining the support provided to the academic community, which was not touched upon in the original article. Please let me know how best to go about this.

Many thanks,

S.40
Dear [Name]

Thank you for your email dated 13th December 2017, in which you requested that the National Portrait Gallery undertake an internal review of part of the response we provided to your information request under the Freedom of Information Act, dated 22nd November 2017.

For the purposes of clarity and context, your original request and our accompanying response are summarised below as follows:

**Original request**

"Dear [Name]

I wonder if I could ask you some questions......

Fifth, how are [the NPG’s image licensing department’s] annual costs calculated, and what are they?.....

Please consider these questions requests for information under the Freedom of Information Act.

Many thanks

All best wishes

[Name]"

**Original National Portrait Gallery response**

"Dear [Name]

Thank you for your information request under the Freedom of Information Act, dated 22nd November 2017.

Please see below the answers to your questions. ....

5. How are [the NPG’s image licensing department’s] annual costs calculated, and what are they? 

This information has not been provided, under section 43(2) of the Freedom of Information Act 2000, which states that: “(2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it)”. ..... 

I hope you find the response to your questions satisfactory.”

**Internal review**

The basis upon which you requested an internal review to be undertaken was as follows:

"Concerning my two questions under 5 (the costs, and the rationale for calculating costs), you decline to answer, citing exception 43(2) of the FOI Act 2000. I must admit I was a bit surprised so I wonder if I could ask you please to review that? You may not know that the NPG has already provided information about the costs of its picture library between 2002/3 and 2012/13 in response to an FOI request submitted in 2013. In the most recent year (ie 2012/13), NPG confirmed that its picture library salaries cost £265,000, picture library cost of sales was £25,000 and picture library expenditure was £21,000. Further details are here. I doubt that that NPG’s commercial interests have changed sufficiently in the past 5-6 years such that it has become necessary to refuse to answer. I am assuming you will answer this question in good faith, and be as open as you can be within the boundaries of genuine commercial interests.”

An internal review has been conducted which concluded that information about what departmental costs are made up of, and a breakdown of those costs in line with data that has previously been released, should be provided on this occasion. In light of this, please find included below a revised answer to your question 5.

5. How are that department’s annual costs calculated, and what are they?

The Rights & Images department’s annual costs are made up of salaries, cost of sales and other expenditure related to the work of the department such as marketing, software maintenance and general overheads. It is important to note that not all departmental work is related to image licensing or to income-generating image licensing, and therefore their annual departmental costs reflect all the department’s activities, not just those related to image licensing.

As you already have the figures for 2012/13, the annual costs for the Rights & Images department for the financial years 2013/14 to 2016/17 are made up as follows:

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[Details of annual costs for 2013/14 to 2016/17 provided here]
<table>
<thead>
<tr>
<th>Financial Year</th>
<th>Salaries</th>
<th>Cost of Sales</th>
<th>Other Expenditure</th>
<th>TOTAL COSTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013/2014</td>
<td>£174,176</td>
<td>£16,885</td>
<td>£25,100</td>
<td>£216,161</td>
</tr>
<tr>
<td>2014/2015</td>
<td>£175,585</td>
<td>£5,661</td>
<td>£37,015</td>
<td>£218,261</td>
</tr>
<tr>
<td>2015/2016</td>
<td>£200,290</td>
<td>£15,000</td>
<td>£54,883</td>
<td>£270,173</td>
</tr>
<tr>
<td>2016/2017</td>
<td>£191,723</td>
<td>£15,318</td>
<td>£38,900</td>
<td>£245,941</td>
</tr>
</tbody>
</table>

This concludes our internal review process on this matter.

If you remain dissatisfied with our response to this question, under the terms of the Freedom of Information Act we are required to inform you that you have the right to appeal to the Information Commissioner’s Office (ICO). This should be done within three months of your last meaningful contact with the National Portrait Gallery in relation to this request. The ICO’s website can be found at [http://ico.org.uk](http://ico.org.uk).

Kind regards,
You’ve stated the total net sum for the same period, for image licensing alone, was £801,489.20. Could you please break this figure down into individual years as above?

In relation to these annual sums, could you please state what figure or proportion of this revenue is generated by licensing the re-use of images of works of art that are themselves out of copyright? Or, another way of putting this question, for images for which the NPG itself asserts copyright, rather than images for which copyright is held by artists and their representatives? If not for all five years, please choose the most convenient single year. My reason for asking this is that I am principally concerned with the re-use of images of historic art.

In relation to question 4, you stated that the revenue generated by the rights and images department has enabled the museum to make more images available on its website under academic and non-commercial licences. Purely for 2016/17, could you please tell me how many new images were added to the NPG website under academic and non-commercial licences? My reason for asking this is: (1) museums frequently make this case in justification for image licensing operations, and it is a perfectly reasonable case on paper, but it is rarely tested against the evidence of museums’ actual practice. (2) I limit my question to 2016/17 in order that it is not onerous to answer it.

In answer to question 4, you implied there was a cost to the rights & image department in administering academic and non-commercial licensing of images - a process now entirely managed automatically via the NPG website. Could you please estimate the cost, either in a monetary sum or in man-hours or in the number of enquiries and requests received, involved in administering these requests and enquiries manually? Again, to explain my interest: I acknowledge the logic of your response, but I would like to test its validity against evidence. Indeed, the section in the NPG 2016/17 annual report that concerns Rights & Images (here, p.16) begins with a statement that more clients than ever were “self-serving through the Gallery’s licensing website, proof that the system is working well.”

Concerning my two questions under 5 (the costs, and the rationale for calculating costs), you decline to answer, citing exception 43(2) of the FOI Act 2000. I must admit I was a bit surprised so I wonder if I could ask you please to review that? You may not know that the NPG has already provided information about the costs of its picture library between 2002/3 and 2012/13 in response to an FOI request submitted in 2013. In the most recent year (ie 2012/13), NPG confirmed that its picture library salaries cost £265,000, picture library cost of sales was £25,000 and picture library expenditure was £21,000. Further details are here. I doubt that NPG’s commercial interests have changed sufficiently in the past 5-6 years such that it has become necessary to refuse to answer. I am assuming you will answer this question in good faith, and be as open as you can be within the boundaries of genuine commercial interests.

I will look forward to your further answers to the above. In the meantime, could you please confirm if you are also the person to whom I should address an FOI request to the NPG’s Trading Company? If you are not, could you kindly advise me who that person is?

Thank you,

On 11 Dec 2017, at 16:01, FOI Request <xxxxxxxxxx@xxxx.xxx.xx> wrote:

Thank you for your information request under the Freedom of Information Act, dated 22nd November 2017.

Please see below the answers to your questions.

1. What is your or the Gallery’s response, if anything, to the recent call by a group of leading British art historians to make all images in national collections of out of copyright artworks free for the public to reproduce? http://www.arthistorynews.com/articles/4889_UK_art_historians_call_for_abolition_of_image_fees

Please see the attached Statement on Image Licensing charges for academic publications, which we released in response to the British Art Journal editorial piece in August 2017.

In addition, we also offer a free Creative Commons BY-NC-ND licence for selected low resolution images. Information on the suite of licences available can be found here - http://www.npg.org.uk/collections/search/use-this-image.php?mkey=mw02079

2. What is the NPG’s view on the specific issue of claiming copyright in photographs of out of copyright
artworks, and what if any legal advice you are operating on when it comes to selling licenses for such images (in which you also claim copyright)?

We refer to the Copyright, Designs and Patents Act 1988 (as amended) (CDPA). s.1(1)(a) of the CDPA affords copyright protection to original literary, dramatic, musical or artistic works. Artistic work is defined as a graphic work, photograph, sculpture or collage, irrespective of artistic quality. The digitised images created and made available by the Gallery are the product of a significant time, skill, effort, artistry and judgement on behalf of the photographic and digitisation teams, at the point of image capture and in post-production, to deliver the images currently available on the Gallery’s website and for licensing. The Gallery has taken legal advice relating to this.

3. I see that on your website you refer to IPO guidance; what is your or the Gallery’s response to the fact that the IPO’s most recent guidance on images of out of copyright artworks, which implies that copyright cannot in fact be claimed?

Please refer to the above response to question 2.

4. How much has the NPG’s image licensing department raised in revenue for the Gallery for the last five years, after all costs have been accounted for?

Revenue raised by the Rights & Images department is via licences that do not fall under the free academic and non-commercial use licences.

The total amount the Rights & Images department has raised from image licensing for the financial years 2012/13 to 2016/17, after all costs have been accounted for, is £801,489.20.

All profit goes to the National Portrait Gallery in helping it to deliver its public service remit, including continuing to catalogue and digitise the Collection, thereby making more images available on the Gallery website and more images available under the free academic and non-commercial licences. This profit also enables the Rights & Images department to continue administering academic and non-commercial licence requests and enquiries.

5. How are that department’s annual costs calculated, and what are they?

This information has not been provided, under section 43(2) of the Freedom of Information Act 2000, which states that:

“(2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it)”.

6. What action if any you have or would take against other image libraries offering to sell licenses for images of out of copyright artworks in the NPG’s collection? For example - http://www.alamy.com/stock-photo-william-wilberforce-n1759-1833-english-philanthropist-and-abolitionist-95462935.html

If/when we find Gallery images on other image sites, we contact the relevant site to find out how the images were obtained and open a dialogue on how to resolve any issues that might arise.

7. When is the NPG’s image licensing policy next due to be reviewed?

The Gallery’s Intellectual Property Rights (IPR) Policy is due for review in May 2018. The current version can be found on our website at the following link - http://www.npg.org.uk/about/corporate/gallery-policies/copyright-policy

I hope you find the response to your questions satisfactory.

After 3 months from the last meaningful correspondence this case will be closed. For an internal review request please contact us within a 3 month period, otherwise your request will be treated as a new enquiry.

Under the terms of the Act, we are required to inform you of our appeals procedure in case you are not satisfied with response. A copy of our public leaflet on Freedom of Information, which advises how to appeal to the Gallery and your right to appeal to the Information Commissioner, can be found on the Gallery website at: http://www.npg.org.uk/about/foi.php.

Kind regards,

S.4
I wonder if I could ask you some questions.

First, what is your or the Gallery’s response, if anything, to the recent call by a group of leading British art historians to make all images in national collections of out of copyright artworks free for the public to reproduce? [http://www.arthistorynews.com/articles/4889_UK_art_historians_call_for_abolition_of_image_fees](http://www.arthistorynews.com/articles/4889_UK_art_historians_call_for_abolition_of_image_fees)

Second, what is the NPG’s view on the specific issue of claiming copyright in photographs of out of copyright artworks, and what if any legal advice you are operating on when it comes to selling licenses for such images (in which you also claim copyright)?

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Fourth, how much the NPG’s image licensing department has raised in revenue for the Gallery for the last five years, after all costs have been accounted for?

Fifth, how are that department’s annual costs calculated, and what are they?

Sixth, what action if any you have or would take against other image libraries offering to sell licenses for images of out of copyright artworks in the NPG’s collection? For example: [http://www.alamy.com/stock-photo-william-wilberforce-n1759-1833-english-philanthropist-and-abolitionist-95462935.html](http://www.alamy.com/stock-photo-william-wilberforce-n1759-1833-english-philanthropist-and-abolitionist-95462935.html)

Finally, when is the NPG’s image licensing policy next due to be reviewed?

Please consider these questions requests for information under the Freedom of Information Act.

Many thanks
I read with interest the article on “Museums and image reproduction fees” at http://www.arthistorynews.com/articles/2234_Museums_and_image_reproduction_fees

The National Portrait Gallery is mentioned in this, but in an article about reproduction fees for scholarly and non-commercial publications, I was surprised to see no mention of our free academic licensing service. In July 2012, the Gallery launched a new licensing interface where over 70,000 hi-res images were made available to license, free of charge, for qualifying academic and non-commercial publications.

The criteria limit the print run to 3,000 copies, which for specialist academic and non-commercial publications, is usually sufficient, and we have received a great deal of good feedback since the service was launched. The case mentioned by Dr Mortimer in the article refers to a book where the publishers are requesting extensive rights (a print run of 25,000 copies plus additional ebook rights, in all languages) which falls outside of the academic/non-commercial criteria, but as Dr Mortimer states, it is because the publisher wants to clear for the possibility of finding a foreign agent, and to avoid having to clear additional rights at a later date. It is entirely reasonable that the fees reflect the level of rights being cleared, and although we are always open to negotiation, it does not seem fair that publishers budget for a low-print run, but want to clear for a higher one.

We make no secret of the fact that, in these financially austere times, our primary purpose as an image licensing service is to raise revenue for the Gallery. All the money we raise goes back to the Gallery, to support further digitisation of the collection, to make images freely available online (we have currently digitized 100,000 from a collection of circa 330,000), and to support the curatorial and educational work of the organization. However, alongside this commercial remit, we do make images freely available for academic and non-commercial use, and in the interests of providing a balanced viewpoint, I think it would be worthwhile posting a follow up to this, outlining the support provided to the academic community, which was not touched upon in the original article. Please let me know how best to go about this.

Many thanks,
Dear [Name]

Thank you for your email dated 18th January 2017, in which you requested that the National Portrait Gallery undertake an internal review of part of the response we provided on 18th December 2017 to your information request under the Freedom of Information Act, dated 21st November 2017.

For the purposes of clarity and context, your original request, our accompanying response, your follow-up reply and our response to that reply are summarised below as follows:

Original request, dated 21st November 2017 –
“Dear [Name],

I wonder if I could ask you some questions......

Second, what is the NPG’s view on the specific issue of claiming copyright in photographs of out of copyright artworks, and what if any legal advice you are operating on when it comes to selling licenses for such images (in which you also claim copyright)? ....

Please consider these questions requests for information under the Freedom of Information Act.

Many thanks

All best wishes

Original National Portrait Gallery response, sent 11th December 2017 –
“Dear [Name],

Thank you for your information request under the Freedom of Information Act, dated 22nd November 2017.

Please see below the answers to your questions. ..... 

2. What is the NPG’s view on the specific issue of claiming copyright in photographs of out of copyright artworks, and what if any legal advice you are operating on when it comes to selling licenses for such images (in which you also claim copyright)?

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Follow-up reply, dated 13 December 2017 –

“Dear

Thank you for all of this information. I would like further clarity around my questions 2, 4 and 5, the costs and revenue of the NPG’s image licensing operation. ....

In relation to my question 2, I asked what the legal advice was on the matter of copyright in images of out of copyright artworks. You have referred me to a passage in an act of parliament, and told me that you have taken legal advice on this - but you have not said what the legal advice is. Nor have you given any grounds for not answering my question. I must therefore ask again for evidence of the legal advice you are operating on on this issue. I do not expect to have to wait another 20 working days for an answer. ....

Thank you,

National Portrait Gallery response to follow-up reply, sent 18th December 2017 –

“Dear

Thank you for your follow-up information request under the Freedom of Information Act, dated 13th December 2017.

In relation to question 2 in your original request, (What is the NPG’s view on the specific issue of claiming copyright in photographs of out of copyright artworks, and what if any legal advice you are operating on when it comes to selling licenses for such images (in which you also claim copyright)?), the details of the legal advice The Gallery has taken are exempt from disclosure under section 41 of the Freedom of Information Act 2000, which states that:

“Information is exempt information if -
   (a) it was obtained by the public authority from any other person (including another public authority), and
   (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.”

To release this information would constitute a breach of confidence and therefore has not been provided.”

**Internal review**

The basis upon which you requested an internal review to be undertaken was as follows:

“On the matter the Gallery has withheld under Section 41, I am not satisfied that this would require a breach of confidence - having acted as a government adviser on FOI for seven years - and will therefore take this up with the Information Commissioner.” (from email dated 18th December 2017)

An internal review has been conducted which concluded that the details of the legal advice have been correctly withheld under section 41 – Information provided in confidence of the Freedom of Information Act 2000. In addition, this information is also exempt from disclosure under section 42 – Legal professional privilege of the Freedom of Information Act 2000, which states that:

“Information in respect of which a claim to legal professional privilege or, in Scotland, to
confidentiality of communications could be maintained in legal proceedings is exempt information."

The National Portrait Gallery have been informed by the external party who provided the legal advice that, if we were to release the details of the advice, this would constitute a breach of confidence. Therefore, we will continue to withhold this information under the sections stated above.

This concludes our internal review process on this matter.

If you remain dissatisfied with our response to this question, under the terms of the Freedom of Information Act we are required to inform you that you have the right to appeal to the Information Commissioner’s Office (ICO). This should be done within three months of your last meaningful contact with the National Portrait Gallery in relation to this request. The ICO’s website can be found at http://ico.org.uk.

Kind regards,

-----------------------------------------------------------------------------------------------------------------
National Portrait Gallery  St Martin’s Place  London WC2H 0HE

www.npg.org.uk

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This e-mail, and any attachment, is intended only for the attention of the addressee(s). Its unauthorised use, disclosure, storage or copying is not permitted. If you are not the intended recipient, please destroy all copies and inform the sender by return e-mail.

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-----------------------------------------------------------------------------------------------------------------
From: On Behalf Of FOI Request
Sent: 23 January 2018 15:46
To: RE: In Confidence - Enquiry via

Dear

Thank you for your internal review request under the Freedom of Information Act, dated 18th January 2018.

We are currently reviewing our response to your request as you detailed below, and will provide our decision within 20 working days of your request for the review.

Kind regards,

S.40
FOI Request <xxxxxxxxxx@xxx.xxx.xx>

**Subject:** RE: In Confidence - Enquiry via e-mail

Hi, before I take this point (below) to the Information Commissioner, I think it would be simpler to ask you to review your response. Thanks.

From: [xxxxxxxxxx@xxx.xxx.xx]

Dear FOI Request,

Thank you for your follow-up information request under the Freedom of Information Act, dated 13th December 2017.

In relation to question 2 in your original request, (What is the NPG’s view on the specific issue of claiming copyright in photographs of out of copyright artworks, and what if any legal advice you are operating on when it comes to selling licenses for such images (in which you also claim copyright)?), the details of the legal advice The Gallery has taken are exempt from disclosure under section 41 of the Freedom of Information Act 2000, which states that:

“Information is exempt information if -

(a) it was obtained by the public authority from any other person (including another public authority), and

(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.”

To release this information would constitute a breach of confidence and therefore has not been provided.
Dear [S.40]

Thank you for your additional information request under the Freedom of Information Act, dated 13th December 2017.

Please see below the answers to your questions.

1. You’ve stated the total net sum for 2012/13 to 2016/17, for image licensing alone, was £801,489.20. Could you please break this figure down into individual years?

   For each financial year from 2012/13 to 2016/17, the total amount the Rights & Images department raised from image licensing after all costs have been accounted for, was as follows:
   - 2012/13 - £131,614.20
   - 2013/14 - £225,001.20
   - 2014/15 - £188,009.40
   - 2015/16 - £142,726.60
   - 2016/17 - £114,137.80

2. In relation to these annual sums, could you please state what figure or proportion of this revenue is generated by licensing the re-use of images of works of art that are themselves out of copyright?

   Our invoicing system treats all images the same, whether they are in copyright or out of copyright. Therefore we are not able to report on what proportion of the income is generated by licensing the re-use of images of works of art where copyright in the original work has expired.

3. For 2016/17, could you please tell me how many new images were added to the NPG website under academic and non-commercial licences?

   11,746 new images were digitised during the financial year 2016/2017. Of these:
   - 8,436 are available through the Creative Commons [non-commercial] licence
   - 9,227 are available through the Academic licence
   - 9,243 are available through the Professional (commercial) licence

   Please note, some images are available under more than one licence

4. You implied there was a cost to the rights & image department in administering academic and non-commercial licensing of images - a process now entirely managed automatically via the NPG website. Could you please estimate the cost, either in a monetary sum or in man-hours or in the number of enquiries and requests received, involved in administering these requests and enquiries manually?

   Academic and non-commercial requests are not entirely managed automatically via the National Portrait Gallery website. Although the website handles the process for final image and permissions delivery, requests will often have involved correspondence with customers before they use the website. The Rights & Images department's staff time is spent on a range of activities, including managing and updating the Gallery's image and copyright databases, and in internal training and advice. Although this isn't directly licensing Collection images, some of this work supports our ability to license them.

   We estimate that approximately 36 working hours of staff time per week in the Rights & Images department is spent on non-income generating activities. Please note that this is an estimate of staff time spent on all non-income generating work, which includes handling academic and non-commercial image licence related enquiries. It is not possible to accurately estimate staff time spent on this activity alone.

I hope you find the response to your questions satisfactory.

After 3 months from the last meaningful correspondence this case will be closed. For an internal review request please contact us within a 3 month period, otherwise your request will be treated as a new enquiry.

Under the terms of the Act, we are required to inform you of our appeals procedure in case you are not satisfied with response. A copy of our public leaflet on Freedom of Information, which advises how to appeal to the Gallery and your right to appeal to the Information Commissioner, can be found on the Gallery website at:

Dear [Name],

Thank you for all of this information. I would like further clarity around my questions 2, 4 and 5, the costs and revenue of the NPG’s image licensing operation. As you’ll know, in September 2015 the National Museum Director’s Council concluded an 18-month study into the re-use of digital content, which they described in their report *Striking the Balance*. In its own words, “perhaps the most difficult aspect of this study has been the lack of generally-available information about both the costs and the revenue model associated with the commercial activities of NMDC member institutions.” (p.37). My aim through FOI is to help meet this deficit by building a body of evidence about the way that image licensing operates within national museums, including the NPG.

You’ll know that FOI places on you a duty to provide me with advice and assistance concerning my request (section 16) and I am writing to you in good faith, from a position of relative ignorance about the NPG. In each case below, I explain the reasons for my questions to help you work out what data might best satisfy my search for information, in case a narrowly-constructed answer would not be as informative.

In relation to my question 2, I asked what the legal advice was on the matter of copyright in images of out of copyright artworks. You have referred me to a passage in an act of parliament, and told me that you have taken legal advice on this - but you have not said what the legal advice is. Nor have you given any grounds for not answering my question. I must therefore ask again for evidence of the legal advice you are operating on on this issue. I do not expect to have to wait another 20 working days for an answer.

In relation to my question 4, I am aware that gross income from Rights and Images is (from NPG annual reports):

- 2013 - £348,000
- 2014 - £406,000
- 2015 - £371,000
- 2016 - £380,000
- 2017 - £321,000
- TOTAL - £1,826,000

You’ve stated the total net sum for the same period, for image licensing alone, was £801,489.20. Could you please break this figure down into individual years as above?

In relation to these annual sums, could you please state what figure or proportion of this revenue is generated by licensing the re-use of images of works of art that are themselves out of copyright? Or, another way of putting this question, for images for which the NPG itself asserts copyright, rather than images for which copyright is held by artists and their representatives? If not for all five years, please choose the most convenient single year. My reason for asking this is that I am principally concerned with the re-use of images of historic art.

In relation to question 4, you stated that the revenue generated by the rights and images department has enabled the museum to make more images available on its website under academic and non-commercial licences. Purely for 2016/17, could you please tell me how many new images were added to the NPG website under academic and non-commercial licences? My reason for asking this is: (1) museums frequently make this case in justification for...
image licensing operations, and it is a perfectly reasonable case on paper; but it is rarely tested against the evidence of museums’ actual practice. (2) I limit my question to 2016/17 in order that it is not onerous to answer it.

In answer to question 4, you implied there was a cost to the rights & image department in administering academic and non-commercial licensing of images - a process now entirely managed automatically via the NPG website. Could you please estimate the cost, either in a monetary sum or in man-hours or in the number of enquiries and requests received, involved in administering these requests and enquiries manually? Again, to explain my interest: I acknowledge the logic of your response, but I would like to test its validity against evidence. Indeed, the section in the NPG 2016/17 annual report that concerns Rights & Images (here, p.16) begins with a statement that more clients than ever were “self-serving through the Gallery’s licensing website, proof that the system is working well.”

Concerning my two questions under 5 (the costs, and the rationale for calculating costs), you decline to answer, citing exception 43(2) of the FOI Act 2000. I must admit I was a bit surprised so I wonder if you could you please to review that? You may not know that the NPG has already provided information about the costs of its picture library between 2002/3 and 2012/13 in response to an FOI request submitted in 2013. In the most recent year (ie 2012/13), NPG confirmed that its picture library salaries cost £265,000, picture library cost of sales was £25,000 and picture library expenditure was £21,000. Further details are here. I doubt that that NPG’s commercial interests have changed sufficiently in the past 5-6 years such that it has become necessary to refuse to answer. I am assuming you will answer this question in good faith, and be as open as you can be within the boundaries of genuine commercial interests.

I will look forward to your further answers to the above. In the meantime, could you please confirm if you are also the person to whom I should address an FOI request to the NPG’s Trading Company? If you are not, could you kindly advise me who that person is?

Thank you,

S.40

On 11 Dec 2017, at 16:01, FOI Request <xxxxxxxxxxxx@xxx.xxx.xx> wrote:

Dear S.40

Thank you for your information request under the Freedom of Information Act, dated 22nd November 2017.

Please see below the answers to your questions.

1. What is your or the Gallery’s response, if anything, to the recent call by a group of leading British art historians to make all images in national collections of out of copyright artworks free for the public to reproduce? [http://www.arthistorynews.com/articles/4889_UK_art_historians_call_for_abolition_of_image_fees]

Please see the attached Statement on Image Licensing charges for academic publications, which we released in response to the British Art Journal editorial piece in August 2017.

In addition, we also offer a free Creative Commons BY-NC-ND licence for selected low resolution images. Information on the suite of licences available can be found here: [http://www.npg.org.uk/collections/search/use-this-image.php?mkey=mw02079]

2. What is the NPG’s view on the specific issue of claiming copyright in photographs of out of copyright artworks, and what if any legal advice you are operating on when it comes to selling licenses for such images (in which you also claim copyright)? We refer to the Copyright, Designs and Patents Act 1988 (as amended) (CDPA). s.1(1)(a) of the CDPA affords copyright protection to original literary, dramatic, musical or artistic works. Artistic work is defined as a graphic work, photograph, sculpture or collage, irrespective of artistic quality. The digitised images created and made available by the Gallery are the product of a significant time, skill, effort, artistry and judgement on behalf of the photographic and digitisation teams, at the point of image capture and in post-production, to deliver the images currently available on the Gallery’s website and for licensing. The Gallery has taken legal advice relating to this.

3. I see that on your website you refer to IPO guidance; what is your or the Gallery’s response to the fact that the IPO’s most recent guidance on images of out of copyright artworks, which implies that copyright cannot in fact be claimed?
Please refer to the above response to question 2.

4. How much has the NPG’s image licensing department raised in revenue for the Gallery for the last five years, after all costs have been accounted for?

Revenue raised by the Rights & Images department is via licences that do not fall under the free academic and non-commercial use licences.

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All profit goes to the National Portrait Gallery in helping it to deliver its public service remit, including continuing to catalogue and digitise the Collection, thereby making more images available on the Gallery website and more images available under the free academic and non-commercial licences. This profit also enables the Rights & Images department to continue administering academic and non-commercial licence requests and enquiries.

5. How are that department’s annual costs calculated, and what are they?

This information has not been provided, under section 43(2) of the Freedom of Information Act 2000, which states that:

“(2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it)”.


If/when we find Gallery images on other image sites, we contact the relevant site to find out how the images were obtained and open a dialogue on how to resolve any issues that might arise.

7. When is the NPG’s image licensing policy next due to be reviewed?

The Gallery’s Intellectual Property Rights (IPR) Policy is due for review in May 2018. The current version can be found on our website at the following link - [http://www.npg.org.uk/about/corporate/gallery-policies/copyright-policy](http://www.npg.org.uk/about/corporate/gallery-policies/copyright-policy)

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Kind regards,
Dear [Name],

I wonder if I could ask you some questions.

First, what is your or the Gallery’s response, if anything, to the recent call by a group of leading British art historians to make all images in national collections of out of copyright artworks free for the public to reproduce? [Link]

Second, what is the NPG’s view on the specific issue of claiming copyright in photographs of out of copyright artworks, and what if any legal advice you are operating on when it comes to selling licenses for such images (in which you also claim copyright)?

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Fifth, how are that department’s annual costs calculated, and what are they?

Sixth, what action if any you have or would take against other image libraries offering to sell licenses for images of out of copyright artworks in the NPG’s collection? For example: [Link]

Finally, when is the NPG’s image licensing policy next due to be reviewed?

Please consider these questions requests for information under the Freedom of Information Act.

Many thanks

All best wishes

[Signature]
I read with interest the article on “Museums and image reproduction fees” at http://www.arthistorynews.com/articles/2234_Museums_and_image_reproduction_fees

The National Portrait Gallery is mentioned in this, but in an article about reproduction fees for scholarly and non-commercial publications, I was surprised to see no mention of our free academic licensing service. In July 2012, the Gallery launched a new licensing interface where over 70,000 hi-res images were made available to license, free of charge, for qualifying academic and non-commercial publications.

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We make no secret of the fact that, in these financially austere times, our primary purpose as an image licensing service is to raise revenue for the Gallery. All the money we raise goes back to the Gallery, to support further digitisation of the collection, to make images freely available online (we have currently digitized 100,000 from a collection of circa 330,000), and to support the curatorial and educational work of the organization. However, alongside this commercial remit, we do make images freely available for academic and non-commercial use, and in the interests of providing a balanced viewpoint, I think it would be worthwhile posting a follow up to this, outlining the support provided to the academic community, which was not touched upon in the original article. Please let me know how best to go about this.

Many thanks,

Martin's Place  
London WC2H OHE  
Direct T 020 7312  F 020 7312  www.npg.org.uk  
www.mediastorehouse.com/

You can buy prints and other image-based products from our collections at http://npg.mediastorehouse.com/ 

Please consider the environment; do you really need to print this email?

<Statement on Image Licensing charges for academic publications Aug 17.doc>
Dear [Name],

Thank you for your information request under the Freedom of Information Act, dated 17th May 2018.

Please see below the answers to your questions.

Does the NPG possess any legal analysis or advice regarding the existence of copyright (or not) in faithful two dimensional representations of artworks in its collection holdings that are now in the public domain?

The National Portrait Gallery refers to the Copyright, Designs and Patents Act (CDPA) 1988 (as amended) s.1(1)(a) which affords copyright protection to original literary, dramatic, musical or artistic works. Artistic work is defined as a graphic work, photograph, sculpture or collage, irrespective of artistic quality. The digitised images created and made available by the Gallery of artworks in its Collection are the product of a significant time, skill, effort, artistry and judgement on behalf of the photographic and digitisation teams, at the point of image capture and in post-production, to deliver the images currently available on the Gallery’s website and for licensing. The Gallery has taken legal advice relating to this.

If so, please can you provide the documents, emails and other records that contain this analysis or advice?

The details of the legal advice that the National Portrait Gallery has taken are exempt from disclosure under section 41 - Information provided in confidence of the Freedom of Information Act 2000, which states that:

“Information is exempt information if –
(a) it was obtained by the public authority from any other person (including another public authority),
and
(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.”

And are also exempt from disclosure under section 42 – Legal professional privilege of the Freedom of Information Act 2000, which states that:

“Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.”

To release this information would constitute a breach of confidence and be against the Gallery’s legal professional privilege, and therefore has not been provided.

I hope you find the response to your questions satisfactory.

After 3 months from the last meaningful correspondence this case will be closed. For an internal review request please contact us within a 3 month period, otherwise your request will be treated as a new enquiry.

Under the terms of the Act, we are required to inform you of our appeals procedure in case you are not satisfied with response. A copy of our public leaflet on Freedom of Information, which

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From: on behalf of FOI Request
To: RE: Website contact query
Date: 18 May 2018 12:26:09

---
advises how to appeal to the Gallery and your right to appeal to the Information Commissioner’s Office (ICO), can be found on the Gallery website at: http://www.npg.org.uk/about/foi.php.

Kind regards,

------------------------------------------
National Portrait Gallery  St Martin’s Place  London WC2H 0HE

www.npg.org.uk
Keep in Touch  Enewsletter  |  Facebook  |  Twitter  |  Instagram

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Please consider the environment before you print this email

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From: On Behalf Of FOI Request
Sent: 18 May 2018 09:41
To: RE: Website contact query

Dear

Thank you for your information request under the Freedom of Information (FoI) Act, dated 17th May 2018.

Please accept this message as an acknowledgement of the receipt of your request. We will respond to your specific queries within 20 working days, as required under the FoI Act.

Kind regards,

------------------------------------------
National Portrait Gallery  St Martin’s Place  London WC2H 0HE

www.npg.org.uk
Keep in Touch  Enewsletter  |  Facebook  |  Twitter  |  Instagram

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I wish to make a request for information under the Freedom of Information Act.

Does the NPG possess any legal analysis or advice regarding the existence of copyright (or not) in faithful two dimensional representations of artworks in its collection holdings that are now in the public domain? This includes legal analysis or advice provided by another institution, or shared with the NPG through any avenue.

If so, please can you provide the documents, emails and other records that contain this analysis or advice?

Best wishes
Thank you for your email. I can confirm that we have not received any FOI requests regarding this matter.

I've set our position on image sales below which I hope is useful.

The Royal Armouries Image Licensing Services.

The Royal Armouries collection comprises some objects and images where the original work is “out of copyright” and others where copyright does not apply to the originals.

The original however is not the same as a photograph of the original. Images of out of copyright images are not “free for us to create”, and they are facsimiles of objects which are themselves expensive to care for and store in perpetuity.

Significant financial investment is required in photography, digitisation processes and technology and in highly-skilled staff to produce, caption, catalogue, store digitally and share these images.

Above and beyond the core level of service as a public museum, The Royal Armouries also strives to invest some of its grant in aid in photography and digitisation of the collections to a high professional standard. To support this important activity, substantial and regular investment must be made by the museum in special professional digital collections management software systems within which images may be safely stored, catalogued and made accessible.

The museum can then share good quality, usable quality images of the works in our collection with the general public for non-commercial use -free of charge. Doing so makes our museum collection more accessible, whilst heeding the wider conservation needs.

The Royal Armouries openly supports and encourages free photography of the collections displayed within our museum, for non-commercial, personal use by visitors. All of this we believe helps to disseminate and broaden the reach of the collection (for instance via social media sharing), and thereby helps to excite people about arms and armour, which is a core objective.

It is well-known that some European museums now offer certain collections images free of charge for all types of use. These institutions don’t form a realistic comparator however, since the comprehensive funding models by which they are sustained fundamentally differ to those used in U.K. Museums. National Museums in the UK exist under a far leaner model, where there is a clear expectation that public funding will be significantly complemented by self-generated income, created through intense commercial activity by the museums. The expectation is that the ratio of self-generated commercial income to grant-in-aid will need to continue to increase in future years to bridge the shortfall between museum running costs and GIA.
Image sales and other licensing incomes will be an essential component of future income streams, helping to relieve the burden on the public purse, accordingly.

Like many other public and academic organisations the realities of national museums’ funding model is complex and like universities it is necessary to charge for some services. We charge business clients for the commercial use of our images, since they will profit by the use of those images in their products and services. We are very careful and specific about what we charge for and how we define commercial use (see our policy for detail). In the manner of any commercial picture library, where heavy investment has been made in developing the image stock, the museum will charge where the client buying the images will in some way also be charging for the book, television programme, advertising campaign or other product in which the image will appear, and where it makes their service, more commercially appealing or profitable. Such use is clearly ‘secondary use’—and additional to the core function of the museum.

Controlling such commercial licensing also very importantly, allows the Royal Armouries to ensure appropriate regulation and sensitive use of our images. It is vital to retain the right to protect the museum and its collections by only placing images wisely within commercial associations or, in certain cases declining to do so, in the best and long term interests of the museums brand, profile and reputation. From time to time circumstances occur, where wholly inappropriate commercial associations have been suggested which had they been entered into, would have surely brought the Royal Armouries into disrepute and created damaging public controversy.

Commercial IP licensing can be directly measured as a contribution to U.K. PLC and the value of IP generation in the U.K and as an export internationally (to non-U.K. Tax payers).

The Royal Armouries policy approach provides a fair way to ensure wide public benefit from easy access to our collection and that businesses can benefit from commercial use of our images and at the same time help support and offset the cost of our producing and professionally archiving these images for public use.

https://collections.royalarmouries.org/page/copyright.html


Kind Regards,

S.40

S.40

Please note my working days are Monday - Thursday

ROYAL ARMOURIES

Armouries Drive, Leeds, LS10 1LT

Tel: 0113 220

Fax: 0113 220
Please find attached the Museum’s response to request of 9 January 2018.

Royal Museums Greenwich

National Maritime Museum | Cutty Sark
Royal Observatory | The Queen’s House

-------- Forwarded message --------
From: S.40
To: S.40
Cc:
Bcc:
Date: Fri, 2 Feb 2018 13:59:11 +0000
Subject: FOI request
Dear S.40

Thank you for your email of 9 January which I confirm has been dealt with in accordance with the Freedom of Information Act 2000.

The information you requested is noted on your email below and on the .pdf attachment.

I hope that you are happy with the service you have received in relation to your request but if not and you wish to make a complaint you should write to me, Museum Secretary at the Park Row address below.

If you are not content with the outcome of your complaint, you may apply directly to the Information Commissioner for a decision. (Generally, the Information Commissioner cannot make a decision unless you have exhausted the above complaints procedure provided by the National Maritime Museum.)
Hi there,

I would like to please make the following enquiries under the Freedom of Information Act:

First, what if any legal advice is the RMG operating on when it comes to selling licenses for images in which you claim copyright?
RMG: This information does not exist.

Second, how much the RMG has raised in revenue by selling images and licences for the last five years, annually, after all costs have been accounted for?
RMG: Please see attached file "Picture Library FOI.pdf"

Third, how are the image licensing department's annual costs calculated, and what are they?
RMG: All costs are budgeted each year and performance is monitored monthly. Please see attached file "Picture Library FOI.pdf"

Fourth, what action if any you have or would take against other image libraries offering to sell licenses for images of out of copyright artworks in the RMG's collection?
RMG: Our first action would be to enquire of the image library how it had come by the image.

Finally, when is the RMG's image licensing policy next due to be reviewed?
RMG: Our prices http://images.rmg.co.uk/en/pages/pricelist_page.html are reviewed every two years. The next review is due in April 2018.

Many thanks
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<thead>
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<td>Income</td>
<td>J02</td>
<td>Other Income : Film Archive</td>
<td>1,090.00</td>
<td>146,540.03</td>
<td>126,160.12</td>
<td>154,496.50</td>
<td>180,966.71</td>
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<td>Other Income : Image Licensing</td>
<td>161,134.45</td>
<td>8,561.19</td>
<td>7,325.57</td>
<td>5,767.88</td>
<td>7,563.49</td>
<td>4,917.03</td>
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<td>Other Income : Image Licensing - Agents</td>
<td>14,497.40</td>
<td>16,474.68</td>
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<td>Other Income : Licensing</td>
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<td></td>
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<tr>
<td></td>
<td></td>
<td>Other Income : Print Sales</td>
<td>6,541.81</td>
<td>10,625.33</td>
<td>8,420.77</td>
<td>10,608.41</td>
<td>11,306.76</td>
<td>8,280.34</td>
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<tr>
<td></td>
<td>J04</td>
<td>Other Income : Licensing</td>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>

| Income Total | 183,263.66 | 165,726.55 | 158,381.14 | 183,630.86 | 211,654.10 | 150,547.22 |

| Expenditure | J02 | Staff Costs : Gross                           | 90,720.10            | 52,775.30              | 52,863.38            | 55,028.00            | 52,475.72            |
|            |     | C&M : Design & Production                    |                      | 899.32                 |                       |                       | 435.00                |
|            |     | C&M : Marketing                              | 222.79               |                       | 575.00                |                       | 100.00                |
|            |     | C&M : Printing                               | 262.36               |                       |                       |                       | 10.00                 |
|            |     | C&M : Royalty Payments                       | 111.40               | 2,612.59               | 3,064.40             | 212.03                | 3,575.86             |
|            |     | C&M : Subscriptions                          | 488.50               |                       |                       |                       | 693.00                |
|            |     | C&M : Trade Shows                            | 725.00               | 1,738.82               | 1,193.00             | 1,350.92             | 1,188.97             |
|            |     | Assets : Equip & Other                       |                      |                       |                       |                       | 10,807.76            |
|            |     | ICT : Office Machinery & Equipment           | 69.00                |                       |                        | 2,730.24             |                      |
|            |     | ICT : Service Contracts                      | 6,649.34             | 3,396.40               | 2,464.64             | 3,742.40             |                      |
|            |     | Exp T&E : Staff Travel Expenses              | 280.30               | 2,037.84               | 1,694.86             | 278.01               | 731.05               |
|            |     | Exp F&S : Bad Debts W Offs                   | 1,056.48             | 5,011.34               | 5.00                  | 164.27               |                      |
|            |     | Exp F&S : Bank Fees                          |                      | 95.53                  |                        | 30.00                |                      |
|            |     | Exp F&S : WHS Activities                     |                      | 95.00                  |                        |                      |                      |
|            |     | Staff Costs : Pensions                       |                      | 4,479.42               |                        |                      |                      |
|            |     | Staff Costs : Employers NIC                  |                      | 4,707.96               |                        |                      |                      |
|            |     | Exp T&E : Travel                             |                      | 231.38                 |                        |                      |                      |
|            |     | Exp T&E : Accommodation                      |                      | 325.23                 |                        |                      |                      |
|            |     | Exp T&E : Subsistence                        |                      | 81.48                  |                        |                      |                      |

| Expenditure Total | 93,644.14 | 76,641.63 | 63,669.10 | 71,383.86 | 65,351.23 | 64,187.81 |

| Grand Total | 183,263.66 | 165,726.55 | 158,381.14 | 183,630.86 | 211,654.10 | 150,547.22 | 150,547.22 | 64,187.81 |

Net income after costs
- 2012-13: 89,619.52
- 2013-14: 89,084.92
- 2014-15: 94,712.04
- 2015-16: 112,247.00
- 2016-17: 146,302.87
- 2017-18 ytd (Periods1-9): 86,359.41

2012-13: 89,619.52
2013-14: 89,084.92
2014-15: 94,712.04
2015-16: 112,247.00
2016-17: 146,302.87
2017-18 ytd (Periods1-9): 86,359.41
Dear [Redacted]

Thank you for your Freedom of Information Act ("FOIA") request dated 22 November 2017.

Please refer to the attached spreadsheet for the data you have requested. On this occasion, we are unable to provide a detailed income breakdown as this area is currently under review, accordingly this information is withheld under s.43(2) FOIA as information which, if released, would be likely to prejudice the commercial interests of the Science Museum Group. We have also been unable to provide detailed cost lines as this relates to staff salaries in a small team and is therefore withheld under s.40 FOIA.

If you are dissatisfied with the handling of your request, you have the right to ask for an internal review. Internal review requests should be submitted within two months of the date of receipt of the response to your original letter and should be addressed to: freedomofinformation@sciencemuseum.ac.uk

Please remember to quote the reference number in the subject of this email in any future communications.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision (please be aware that the Commissioner will be unlikely to make a decision until you have been through our internal complaints procedure first). The Information Commissioner can be contacted at: Information Commissioner’s Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

Yours sincerely
Freedom of Information Team
Science Museum Group

From: [mailto:request-448183-b687b63b@whatdotheyknow.com]
Sent: 22 November 2017 19:35
To: SCM Freedom of Information <FreedomofInformation@ScienceMuseum.ac.uk>
Subject: Freedom of Information request - Images sales

Dear Science Museum Group,

In 2013 you supplied data relating to image sales by the Science Museum picture library, in response to an FOI request by [Redacted]. Here is the link to your correspondence:

https://www.whatdotheyknow.com/request/images_sales#incoming-423463

I wondered if you would kindly supply me with the same information, updated to the most recently available year?

Yours faithfully,

[Redacted]
## SMGE Picture Library

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<th></th>
<th>£k</th>
<th>16/17</th>
<th>15/16</th>
<th>14/15</th>
<th>13/14</th>
<th>12/13</th>
<th>11/12</th>
<th>10/11</th>
<th>09/10</th>
<th>08/09</th>
<th>07/08</th>
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<th>05/06</th>
<th>04/05</th>
<th>03/04</th>
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<td>437.9</td>
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<td>419.1</td>
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<td>340.4</td>
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<td>377.2</td>
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<td>167.8</td>
<td>163.8</td>
<td>183.6</td>
<td>189.4</td>
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<td>242.8</td>
<td>237.5</td>
<td>271.1</td>
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<td>177.2</td>
<td>166.9</td>
<td>196.2</td>
<td>219.9</td>
<td>248.5</td>
<td>219.1</td>
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<td>9.2</td>
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<td><strong>Spend related to content generation</strong></td>
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<td>Salaries (based on % time)</td>
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<td>33.7</td>
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<td>42.0</td>
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<td>5.4</td>
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<td>0.0</td>
<td>11.7</td>
<td>0.0</td>
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<td>49.1</td>
<td>57.2</td>
<td>59.2</td>
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<td>66.8</td>
<td>74.0</td>
<td>71.7</td>
<td>71.5</td>
<td>56.5</td>
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</table>
Dear S.40

Request under the Freedom of Information Act (2000); Tate Ref. #691

Thank you for your recent letter requesting information under the terms of the Freedom of Information Act (2000). This was received and acknowledged by Tate on 24 November 2017.

For clarity, we will address each of your requests in turn.

First, what is the Tate’s view, and/or Tate Enterprises Ltd’s view, on the specific issue of claiming copyright in photographs of out of copyright artworks, and what if any legal advice you are operating on when it comes to selling licenses for such images (in which you also claim copyright)?

The Freedom of Information Act provides for the communication of information in recorded form: your request is for ‘Tate’s view’ and so, in the terms provided for under the Freedom of Information Act, neither Tate nor Tate Enterprises holds specific information relating to your request.

However, in the absence of documented information, we can clarify general principles. Tate is a charity and, in accordance with Governmental policy, it has the obligation to generate revenues to support the fulfilment of its mission. By statute, the Board of Trustees is entitled to establish a body corporate with this as its objects and has done so by creating Tate Enterprises. In this way, the revenues of Tate Enterprises contribute to meeting the operational costs of the range of Tate’s activities, including learning, the care of the collection and the free public displays.

Turning specifically to the matter of copyright, Tate follows UK law, and copyright subsists in photographs of 2D, copyright-expired artworks. Section 1(1)(a) of the copyright, Designs and Patents Act 1988 (as amended) (“CDPA 1988”) defines Copyright as:

*a property right which subsists in accordance with this Part in the following descriptions of work—

(a) original literary, dramatic, musical or artistic works,
Section 4(1) of the CDPA 1988 defines 'artistic work' as meaning:

(a) a graphic work, photograph, sculpture or collage, irrespective of artistic quality...

The creation, availability and quality of photographs of the Tate Collection depends on significant professional time, skill, industry and artistry on the part of Tate’s specialist and trained fine art photographers. The photographs meet the originality required for conferring copyright in the UK, i.e. that they originated from the creator and are not copies of another photograph and so are considered copyright works under s.1(1)(a) of the CDPA 1988. The copyright in those images belongs to the Tate Gallery.

The production of these images involves the use of state of the art photographic equipment and studios in which Tate has invested and specialist lighting techniques designed to portray the art work with accuracy and consistency, true to the nature of the work. Strict colour management controls ensure accurate and full tonal range. Every image file produced includes extensive metadata and research. The post-production skills of the photographer then ensure high resolution original images of the highest quality. The images issued for non-commercial use under Creative Commons licenses are versions of these images, scaled to be of a quality such that can be available, free of charge, on Tate’s website, and also reproducible in formats such as lecture slides and academic theses. This is undertaken within Tate’s core photographic resource and budget, making the images available for all.

Second, how much Tate Enterprises has raised in revenue for Tate for the last five years, after all costs have been accounted from the sale of images of out of copyright artworks?

Tate Enterprises accounts for revenues from the licensing of photography according to categories based on purpose, but not the copyright status of the work. We therefore do not have the information requested in any pre-existing form.

That said, the experience of the image-licensing team is that the majority of the income earned from image licensing overall is from photographs of out of copyright artworks. Although the terms of the Freedom of Information Act require that we do not create information anew for the purposes of disclosure, we recognise your interest in the subject and have done some calculations that give an idea of the financial importance of income from such licensing. It would be a huge task to go back through each sale, identifying whether or not it related to an out of copyright work. We have therefore used the database of issued licences to eliminate photographs around which there are restrictions noted in any category: broadly speaking, it is likely that a restriction would relate to copyright and so the figures can be considered a reasonable estimate (rounded to the nearest whole pound).

<table>
<thead>
<tr>
<th>Year</th>
<th>Total income (excluding photographs with restrictions)</th>
<th>Total income (including photographs with restrictions)</th>
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<tbody>
<tr>
<td>2013-14</td>
<td>£191,316</td>
<td>£396,261</td>
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<tr>
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<td>£171,904</td>
<td>£400,704</td>
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<td>2015-16</td>
<td>£163,059</td>
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<td>2016-17</td>
<td>£161,535</td>
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<tr>
<td>2017-18 so far</td>
<td>£162,595</td>
<td>£300,984</td>
</tr>
</tbody>
</table>
Third, what action if any you have or would take against other image libraries offering to sell licenses for images of out of copyright artworks in Tate’s collection?

Tate has taken action against significant infringements in a number of instances, and would do so in similar circumstances in the future. This has included:

1) The issue of cease and desist notices to at least five major image libraries for displaying, and making available for licensing, images of Tate collection works (both in and out of copyright). All of them removed the content.

2) Instructing photographers to remove content based on Tate collection works that they have supplied to image libraries. This was done on grounds of copyright infringement (of Tate-owned copyright as well as of third-party copyright) as well as a breach of our terms and conditions of entry, which says that only personal, non-commercial photography may be taken. All photographers complied.

3) Issuing cease and desist letters to commercial websites which have harvested large numbers of images from our website, offering for sale printed or hand-painted copies, or digital files facilitating the production of 3D replicas of sculptures. The 3D site deleted its Tate content.

Tate reserves the right to act on all cases of infringement of copyright.

If you are not satisfied with this response to your request for information, you may seek an internal review of this response by replying in writing to this letter. Tate will respond to your request for a review within 20 working days of the receipt of your request.

If you remain dissatisfied with Tate’s response following an internal review, you may seek an independent adjudication on the matter from the Information Commissioner, who can be contacted at:

Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF

Or you may telephone on:
Tel: 01625 545 745

Yours sincerely
I am interested to know what income the Tate Gallery receives from the sale of licences of its digital images. I am aware that the sale of these licences is undertaken by its wholly owned subsidiary, Tate Enterprises Ltd. I have been informed in writing by the Tate Gallery that it currently receives an annual fee from Tate Enterprises Ltd of £822,021 per annum for 7,500 images which is roughly 5% of the entire digitised content (collection plus archive). However, Tate Enterprises Ltd (via its website www.tate-images.com) offers many tens of thousands of Tate Gallery images for licencing, many of which are from the Tate Gallery's collection of historic art such as the Turner Bequest.

Please would you let me know:

(1) If the Tate Gallery currently receives an annual fee of £822,021 for 7,500 images, what fee does it currently receive annually (even if zero) for the remaining several tens of thousands of images that it permits Tate Enterprises Ltd to offer for sale on www.tate-images.com?

(2) If £822,021 is the fee currently received each year for 7,500 images, please would you supply the equivalent figure for each of the past ten years? Or for as long a historical period as can reasonably be discovered without undue work on your part.

(3) Would you kindly tell me the annual fee over the same historical period as in (2) in respect of images supplied by the Tate Gallery to Tate Enterprises Ltd which are not part of the 7,500 images covered by the £822,021 fee?

(4) Please would you share with me whatever financial, status, management, usage, marketing or any other reports that Tate Enterprises Ltd has submitted to the Tate Gallery since 1 January 2016 in respect of its contract to sell licences of Tate Gallery images on www.tate-images.com? If the Tate Gallery is informed by Tate Enterprises Ltd about the number of licences and type of licences sold on its behalf by Tate Enterprises Ltd, then I intend by this question to receive such information.

(5) Please would you tell me how the Tate Gallery determined the annual fee of £822,021 as the price at which it would sell to Tate Enterprises Ltd the right to licence 7,500 Tate Gallery images?

(6) Please would you share the reasoning for the calculation of the annual fee (even if zero) in respect of all the images not among the 7,500 which are covered by the £822,021 fee?
(7) In addition to annual fee or fees received from Tate Enterprises Ltd in return for the right to license the Tate Gallery's images, the Tate Gallery receives income from Tate Enterprises in the form of profits resulting from Tate Enterprises Ltd's trading activities. Could you please tell me, for the same historical period as in (2) and (3), what is the value of the income that the Tate Gallery receives from Tate Enterprises Ltd annually in respect of its profit from image licencing activities? Please would you state whether this includes or excludes the Gift Aid element.

 Previously, Tate provided a simplified response to the calculation of the PSI Licence fee, focussing only on image licensing. However, this does not take into account all usages included in the fee calculation. This usage is defined in detail in the Tate Gallery – Statement of Public Task http://www.tate.org.uk/download/file/fid/50807 under the following categories:

- High resolution images of objects in the collection
- Staff texts and other substantial documents which are Tate copyright
- Documents, other than the above, which have been used for a purpose other than the initial public task purpose for which they were created

To clarify, there are a total of approximately 146,000 data files available relating to each artwork in the collection, of which 105,000 contain either a thumbnail or other preview image, 32,000 have no image and 10,000 have a hi-res image attached and available for licensing via www.tate-images.com.

In recent years, Tate Images has invoiced an average of 3,500 image licences annually. The remaining 4,000 uses of images and data included in the PSI Licence fee are unrelated to the Picture Library income, but are related to Tate Enterprises’ other uses including books, catalogues and merchandise.

The ‘annual fee’ for the remaining images online is zero as they are available only as thumbnails or data files. Although in theory images of other works in the collection could be made available for licensing, in practice they are not. Tate Gallery provides these files to Tate Enterprises without charge as the licence fee is calculated on expected (or actual) usage of files rather than on the potential offer.

Should another picture library be responsible for the sale of Tate licensed images, these thumbnails and data files would be provided without charge in the same way.

2. As explained in more detail above, the PSI fee of £822,021 is not a charge for the sale of 7,500 images per annum. Previous to PSI incorporating museums, no fee was chargeable from Tate Gallery to Tate Enterprises Limited; therefore we do not hold this data.

3. The distinction between those images available to license and those actually licensed by Tate Images is incorrect as explained (in 1 above). Historically no annual fee was charged to Tate Images by Tate Gallery. Tate Images is responsible for running costs of its own website and other costs, none of which are borne by Tate Gallery.

4. Each year we determine how many images have been licensed and the licence fee is reviewed accordingly. As the Tate Gallery/Tate Enterprises licence has been in existence only since July 2015, no material variance has been observed in this period. Therefore the licence fee has not been amended up or down and no detailed reports have so far been submitted.

5. The annual fee for all relevant usage was determined by collecting information from Gallery cost centres to show the proportion of activity in those departments which relates to support for Tate
Enterprises’ work. This proportion was applied to departmental budgets with the breakdown as below:

<table>
<thead>
<tr>
<th>Cost Centre</th>
<th>£</th>
</tr>
</thead>
<tbody>
<tr>
<td>Registrars</td>
<td>29,478</td>
</tr>
<tr>
<td>Art Handling</td>
<td>56,899</td>
</tr>
<tr>
<td>Conservation</td>
<td>120,088</td>
</tr>
<tr>
<td>Photography</td>
<td>96,865</td>
</tr>
<tr>
<td>Collection Care Management</td>
<td>9,096</td>
</tr>
<tr>
<td>Curatorial</td>
<td>272,009</td>
</tr>
<tr>
<td>Research</td>
<td>23,368</td>
</tr>
<tr>
<td>General Overhead</td>
<td>214,218</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>822,021</strong></td>
</tr>
</tbody>
</table>

6. The reasoning for the zero charge is covered in (1).

7. Tate Enterprises’ Picture Library cost centre is responsible for revenue streams other than Tate Images. We do not attribute all direct and indirect costs to these separate streams including image licensing so a net profit figure for image licensing alone is not held by Tate or Tate Enterprises.

However, to give an idea of the size of gross revenues earned from all image licensing activities in the past five years, we can confirm total sales income generated as:

<table>
<thead>
<tr>
<th>Year</th>
<th>Sales Income (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013/14</td>
<td>£396,261</td>
</tr>
<tr>
<td>2014/15</td>
<td>£400,704</td>
</tr>
<tr>
<td>2015/16</td>
<td>£366,765</td>
</tr>
<tr>
<td>2016/17</td>
<td>£383,069</td>
</tr>
<tr>
<td>2017/18 (to date)</td>
<td>£300,984</td>
</tr>
</tbody>
</table>

I hope this information is useful.

If you are not satisfied with this response to your request for information, you may seek an internal review of this response by replying in writing to this letter. Tate will respond to your request for a review within 20 working days of the receipt of your request.

If you remain dissatisfied with Tate’s response following an internal review, you may seek an independent adjudication on the matter from the Information Commissioner, who can be contacted at:

Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF

Or you may telephone on:
Tel: 01625 545 745

Yours sincerely
01 March 2018

By email only to:

Dear [Name],

Freedom of Information Act Requests – Our References 694 and 689

I am writing in response to your request for information under the Freedom of Information Act (“FOIA”) dated 20 December 2017 (our reference 694) and your request for clarification of our response to your previous request (our reference 689).

I am aware that Tate has been responding to a number of other requests for information from you under both FOIA and the Re-use of Public Sector Information Regulations 2015 (“RPSI 2015”). I apologise profusely for the delay in responding to this request.

Request 694
I have now had an opportunity to discuss your request with a number of colleagues across Tate and its wholly owned trading subsidiary, Tate Enterprises which, as you are aware from our responses to your other requests, deals with image licensing on Tate’s behalf.

You requested the following information:
[1] What research, discussions, reports etc have been undertaken at your institution to measure the profitability or return on investment of the institution’s licensing of either or both of (a) any images in its collection; and (b) its images of out-of-copyright works of art specifically, as distinct from measuring the gross income that such activities might produce?

[2] Given the findings of the NMDC report ‘Striking the Balance’, about the benefits of open access for both non-commercial and commercial re-users, could you please tell me what research, discussions, reports etc have been undertaken at your institution to assess the idea of moving to open access for digital images of works of art in your collection? (ie its general desirability and/or feasibility)

[3] If any such work has taken place as envisaged under [1] and [2] could you please share the main documents or written communications with me, to the extent that this is compatible with the museum’s commercial interests? I will understand, obviously, if you would need to redact certain financial details from documents.

TATE BRITAIN, MILLBANK, LONDON SW1P 4RG
T 020 7887 8000  F 020 7887 8007  TATE.ORG.UK
[4] Has your institution considered whether licensing images is compatible with its legal obligations under charity law to deploy the charity’s assets in the best possible way for its beneficiaries and to act with reasonable care and skill? To explain: I am wondering if this may have been something your Trustees have felt necessary to consider, (a) if a proper assessment hasn’t been made as to profitability, and (b) in view of NMDC’s finding of the superiority of the open licensing model, and (c) in view of the fact that preservation of jobs was cited in the NMDC’s report to justify the current model rather than maximising charity assets for the public benefit.

[5] Concerning the NMDC report ‘Striking the Balance’ specifically, can you please tell me what discussion and/or actions that report prompted at your institution? Could you very kindly give me particulars?

Tate Enterprises has been managing image licensing on behalf of Tate for many years. I am advised that during this time, it is very likely that many discussions will have been had regarding the “... profitability or return on investment of the institution’s licensing (business)”. However, these would have been in the course of usual day to day business and part of wider discussions and so information would not necessarily be held in written form. Also, as explained in our response to your FOIA request reference #689, Tate does not gather information on its image licensing business in the way that you break it down – i.e. (a) any images in its collection and (b) out-of-copyright works.

Both Tate and Tate Enterprises are technically able to search through archive materials, hard drives and emails to determine if either organisation holds information generally relevant to your request. However, you will appreciate that, as large institutions, Tate and Tate Enterprises hold many thousands of emails and many terabytes of data and, furthermore, it would be difficult to narrow searches down to determine whether or not we hold the information that you seek in relation to the first part of your request alone. In our reasonable estimation, it is therefore likely that locating the information you have requested will exceed the appropriate limit prescribed by the Act and the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulation 2004 SI 2004 No 3244.

In addition, some of the questions you raise relate to discussion and opinion which, unless documented, is not “information held” under FOIA.

In accordance with FOIA, you may seek an internal review of this response by replying in writing to this letter, and Tate will respond to your request for a review within 20 working days of the receipt of your request. If you remain dissatisfied with Tate’s response following an internal review, an independent adjudication can be sought on Tate’s handling of the request from the Information Commissioner, who can be contacted at:

Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF
T: 0303 123 1113 or 01625 545 745

I hope that you will appreciate that Tate is not trying to avoid the issues that you raise. We are very aware of your concerns in relation to the general debate around licensing images of out of copyright works and recognise that it is of importance both to you and others. It is also very important to Tate.

The subject matter is highly specialised and is of course a topic of current debate. We think that raising questions under FOIA and the RPSI Regulations, which you are of course entitled to do, is not the most constructive way to engage in discussion and debate about these issues.

We believe that a meeting would be more helpful and constructive than using FOIA and RPSI to engage in debate. I would add that Tate cannot make decisions in isolation about image licensing practices adopted by the majority of publicly funded museums and galleries in the UK. I therefore invite you to contact me at your convenience to arrange a meeting with myself and relevant colleagues at Tate.

Clarification of our response to your request reference 689

2015 was the first year in which RPSI affected museums. In determining the cost of the licence fee that Tate would charge to Tate Enterprises Limited under RPSI, we had to start by considering in practice how much content Tate Enterprises had previously re-used (please note that Tate Enterprises Limited is responsible for all of Tate’s commercial activity, including publishing, retail and catering). We calculated that annual re-use of Tate’s images by Tate Enterprises in previous years was around 5%.

The licence fee reflects the cost to Tate of generating the 5% of content that Tate Enterprises re-uses (or, at least, had re-used in previous years). You must appreciate that, when PSI began affecting museums for the first time in 2015, we were consequently obliged for the first time to calculate the costs of generating the materials being re-used. So the £822k is based on calculations from years leading up to 2015, and it so happens that the amount re-used in 2016-17 remained almost exactly the same. Naturally we will review the 2017-18 in due course.

I hope that this clarifies the way that the licence fee was calculated.

Yours sincerely
RE: [EXTERNAL EMAIL] Re: DCMS Query - FOIs in Image Licensing

1 message

28 August 2018 at 11:06

Dear [REDACTED]

I attach the V&A's paper. Let me know if you have any questions on it.

Kind regards

Victoria and Albert Museum
Office: 020 7942 [REDACTED]
Mobile: [REDACTED]

This email and the information it contains are confidential and may be subject to legal privilege. If you have received this email in error please notify me immediately and refrain from disclosing its contents to any other person.
V&A Image Licensing Policy

On 12 September 2018 the House of Lords will debate the following question:

“What steps is/should Government be taking to encourage national museums and galleries to balance public access and commercial reuse of digital content?”

This paper provides the V&A’s response to that question and describes the V&A’s Image Licensing Policy more generally.

Regulatory and Government Policy Background

1. **Striking the Balance**: In 2014 the NMDC commissioned the Collections Trust to undertake an 18-month study of the different methods and approaches by which national museums were seeking to balance or reconcile the twin objectives of maximising public access to their digital content while promoting their financial sustainability. Their report entitled “Striking the Balance” was issued in September 2015. One of the findings from that report was that no two museums are the same, and their approach to the balance between open access and commercial reuse is highly sensitive to their specific circumstances, capabilities, leadership, collections, audience, location and prior business model.

2. **The Re-use of Public Sector Information Regulations 2015 (RPSI)**: Since July 2015 the V&A has been required under the RPSI to permit the re-use of its documents (including the commercial re-use of its images). The V&A complies with this statutory obligation through its image licensing policies (mentioned in more detail below). Under s.15 of the RPSI the V&A, as a museum, is entitled to charge for any such re-use and generate a reasonable return on the investment that it has made in creating the document and administering access to it. This statutory concession to permit museums to charge for re-use was allowed in recognition of the fact that museums like the V&A need to fund the activity necessary to make this material available under the RPSI.

3. **Strategic review of DCMS-sponsored museums**: In November 2017 DCMS published a document entitled “Strategic review of DCMS-sponsored museums”. That review:
   a. acknowledged the need for national museums to be encouraged to maintain and maximise efficiencies and examine both their reserves policies and income-generation strategies;
   b. commended museums on the manner in which they have developed their income generation and commercial operations; and
   c. suggested that museums should share ideas and best practice on how to optimise their commercial strategies, to provide both the best possible visitor experience and return on the use of their assets.

What is the V&A for?

In conceiving its image licensing policies, the V&A considered carefully what its public task was or should be and then sought to create image licensing policies that helped fulfil that public task. The current iteration of the V&A’s Public Task can be found on the V&A’s website and reflects its governing statute, the Management Agreement that it has agreed with DCMS and its strategic plan.
The V&A’s public task contains many elements but for the purposes of image licensing the key parts of the public task are to:

- “secure that the [V&A’s] objects are available to persons seeking to inspect them in connection with study or research, and generally promote the public’s enjoyment and understanding of art, craft and design both by means of the Board’s collections and by such other means as they consider appropriate;
- Focus and deepen the relevance of our collections to the UK creative and knowledge economy; and
- Showcase the best of digital design, and deliver an outstanding digital experience.”

The V&A has taken the view that insofar as public access and commercial reuse of digital content is concerned its public task is best satisfied by adopting mixed policy that permits some educational and non-commercial use of its images for free but which subsidises that free use by making modest charges for commercial use.

What free use does the V&A permit?

The V&A has developed a comprehensive online collections database called “Search the Collections”. The V&A’s collection contains over two and a quarter million objects. Search the Collections contains over a million catalogue records and over half a million images of objects in our collections. The Search the Collections database is constantly growing as objects are digitised and records and images are added to the database.

The Search the Collections database is freely accessible throughout the world (in the sense that it is not locked behind any sort of firewall). Under the Search the Collections terms of use the V&A allows users, free of charge, to download and use images of out of copyright works on the database for non-commercial purposes. By way of example:

- Members of the public are entitled to download high resolution (hi-res) images and store them on their home computers to look at at their leisure;
- A teacher or lecturer is entitled to download a hi-res image and include it within a PowerPoint presentation that is shown in a school or university;
- A post-graduate student is entitled to download a hi-res image, use it in a thesis, publish up to 4,000 copies of that thesis and give those copies away to friends, family, colleagues and potential employers;
- The publishers of academic journals are entitled to download a hi-res image and use it within an academic journal provided that no more than 4,000 copies are published; and
- The publishers of electronic academic journals are entitled to download a hi-res image and use it within an online academic journal for up to five years provided that they reduce the resolution to a maximum 768 pixels along the longest side (which is what we describe as a “low-res” image).

When does the V&A charge for the use of images?

The V&A draws a distinction between commercial and non-commercial usage. This distinction can sometimes be difficult to define but we generally take the view that use that is intended for or directed towards commercial advantage or monetary compensation will be commercial. Also, where printed use exceeds 4,000 copies or online use exceeds 5 years we take the view that the usage should be
regarded as commercial. Similarly, we take the view that the all use of hi-res images online should be regarded as commercial.

Commercial image use is managed by the V&A’s image licensing team which we call V&A Images. Image licences are issued by V&A Images for commercial use of images such as in books, newspapers and magazines, television programmes, commercial products or advertising campaigns. Licence fees are based on industry standards taking in to account the size an image will be used, the print run, distribution and the licence period required.

The V&A Image licences are designed to be fair and proportionate. So, for example, the current fee for the use of a full page high-resolution image within a coffee-table art book with a print-run of 20,000 could be as little as £120 and would rarely exceed £1000 even if the image is used on the front cover of a book with a print-run of 500,000.

**Why does the V&A charge at all?**

Image licensing provides a valuable service contributing to the accessibility of the V&A’s collections in accordance with the V&A’s public task. V&A Images facilitates access to the collections by advising clients and enquirers on a range of topics including collections information, intellectual property and image quality, while also providing services such as digitisation, filming and location hire, photography and rights clearance.

This service comes at a cost and V&A Images licence fees raise revenue which covers the cost of providing this service as well as making a valuable contribution towards funding the museum’s broader activities. V&A Images generates on average £4.3 million annually, with image licensing raising 4.3 million in the 2017-18 financial year. However, image licensing cannot be looked at in isolation, it is part of a complex ecosystem involved in managing the museum’s intellectual property and making the collections accessible which includes the V&A’s digitisation, publishing, promotional, commercial and online activity as well as collections management, research, curation and learning.

Museums must cover the cost and resource of photographing and digitising their collections as well as storing, cataloguing and managing that data. There is a huge amount of skill and experience involved in photographing artworks to a high professional standard and then cataloguing and managing those photographs and the related rights and metadata to ensure they can be easily searched for and accessed online.

The resource and costs involved in undertaking this work are significant. The photography/digitisation investment per item varies wildly. A piece of furniture will take a photographer and 2 to 4 technicians at least half a day to capture. A mounted costume will take a couple of hours for a photographer, but up to half a day for a conservator to mount. Small 2D art collections such as photographs can be digitised at a rate of between 100 and 150 a day if they are in good condition, but a photographer would need the help of technicians and specialist lighting to capture a large oil painting accurately.

In 2016, before we acquired the RPS Collection from the Science Museum Group, we calculated the cost of digitising the V&A’s photography collection at approximately £5 million. The latest estimates, based on a more detailed audit of the collection, show that the addition of the RPS Collection could add another £1 million to that total.
Where businesses from the private sector seek to use the V&A’s images in order to generate profit for their shareholders the V&A believes that it is appropriate for those businesses to pay a modest fee for such use. We take the view that it is not part of our public task to subsidise private enterprise in this way at our own cost (or that of the British taxpayer) whilst also covering the cost of digitising and managing our collections to make them publicly accessible.

What do other museums do?

Many other UK museums and galleries have adopted similar image licensing schemes to those of the V&A. However, as the “Striking the Balance” paper mentioned above observed, every museum and gallery is distinct, has a different public task and enjoys a different relationship with the private sector. Thus, it should come as no surprise to learn that there are subtle differences between the policies adopted by different museums on digitisation and image licensing.

Two things that all UK grant-in-aid funded museums have in common is that:

a) since 2001 they have been required to make access to their permanent collections free to the public; and

b) the grant-in-aid that they receive from the Government is not enough on its own to cover their operating costs.

This differentiates the British museum sector from the sector in continental Europe and the US where funding for museums often either comes entirely from the state, wealthy benefactors or ticket revenue.

For example, the Rijksmuseum in Amsterdam charges each adult €17.50 for entry to the museum. This means that the business model adopted by the Rijksmuseum is fundamentally different from the model adopted by UK grant-in-aid funded museums. Where British museums must work hard to generate revenue from assets (such as the IP rights in their images) to supplement grant-in-aid the Rijksmuseum is primarily concerned with driving visitor numbers through its doors and thus raising ticket revenue. The Rijksmuseum makes all its images available to download for free because it knows that the more people that it enables to see its images, the more people will be likely to pay €17.50 for entry to the museum. It is also worth noting that the Rijksmuseum only introduced its free image policy during the 10 years that it was closed (from 2003 to 2013) when it needed to keep the knowledge and profile of its collection in the public domain in circumstances where the collection itself was unavailable for viewing.

Conclusion

The V&A constantly considers the balance between public access and commercial reuse of digital content. When it does so it must do so against a backdrop of fiscal efficiency and the likelihood that grant-in-aid could be reduced in the future. Administering both digitisation and image licensing schemes requires funding. The V&A, like other museums, is in the fortunate position that it has legislative, commercial and moral justifications for seeking a contribution to those schemes from businesses that derive value from those schemes.

Were the Government to encourage museums to shift the current balance further in favour of private enterprise by requiring museums to further subsidise the private sector, the effect would be to remove essential revenue and thus require the V&A’s grant-in-aid to be stretched more finely across
the V&A’s activities. In the current economic climate there are very limited funds available to redistribute which would make it inevitable that many of the V&A’s activities would need to be scaled back. As well as making the collections less accessible to the public, academics and researchers, this would also result in a poorer user experience for our commercial clients.

The image licensing activity undertaken by the V&A and other museums under which the private sector contributes funds that help make museum collections more accessible is a good example of a harmonious public/private relationship which enables museums to provide the best possible visitor experience whilst simultaneously generating a return on the use of their assets. Any attempt to tamper with this “almost perfect” business model should be resisted.

28 August 2018