

Snapshot study on the use of open content licences in the UK cultural heritage sector

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The author asserts his right to be identified as the author of this work.

1. Executive Summary

This study investigates the awareness and use of open content licences in the UK cultural heritage community by way of a survey. Open content licensing generally grants a wide range of permission in copyright for use and re-use of works such as images, sounds, video, and text, whilst retaining a relatively small set of rights: often described as a ‘some rights reserved’ approach to copyright. For those wishing to share content using this model, Creative Archive (CA) and Creative Commons (CC) represent the two main sets of open content licences available for use in the United Kingdom. The year of this survey, 2007, marks five years from the launch of the Creative Commons licences, two years since the launch of the UK-specific CC licences and two years as well since the launch of the UK-only Creative Archive licence.

This survey targeted UK cultural heritage organisations — primarily museums, libraries, galleries, archives, and those in the media community that conduct heritage activities (such as TV and radio broadcasters and film societies). In particular, this community produces trusted and highly valued content greatly desired by the general public and the research and education sectors. They are therefore a critical source of high-demand content and thus the focus for this project. The key objective has been to get a snapshot of current licensing practices in this area in 2007 for use by the sector and funding bodies wishing to do more work in this area.

Over 100 organisations responded to this web-based survey. Of these respondents:

- Only 4 respondents out of 107 indicated that they held content but were not making it available online nor had plans to make it available online;
- Images and text are the two content types most likely to be made available online;
- Sound appears to be the most held content type not currently available online and with no plans to make it available in the future;
- Many make some part of their collection available online without having done any formal analysis of the impact this may have;
- 59 respondents were aware of Creative Archive or Creative Commons;
- 10 use a CA or CC licence for some of their content; and
- 12 have plans to use a CA or CC licence in the future.

Because so many were either making content available or had plans to bring content online for the first time, the long term impact of sharing their collections — and how in terms of copyright they will be shared — will be central questions moving forward. As many of the cultural heritage organisations surveyed operate without a designated member of staff to deal with copyright issues, practical tools and information in this area will be increasingly important.

What is the level of interest two years from the launch of the UK Creative Commons licences and the Creative Archive? Out of those aware of CA and CC, about half were either using the licences, had plans to use one of them in the future, or had formally or informally examined the licences for their materials. This could indicate a strong interest in the sector to use open content licences, with potential for increasing demand as more organisations become aware of the licences: note that this report and survey only reflect those organisations that participated, and do not purport to represent the entire sector. But because this survey uncovered significant ongoing interest among respondents in open content licences, further investigation into the exact nature of their use by current licence users could bring forward important lessons for the entire community.

2. Background to Project

Intent of this survey

The cultural heritage community sits on a goldmine of images, texts, sounds, films, video, data and metadata of immense interest to wide variety of specific sectors and the general public. The resources that these organisations hold increasingly come as digital files and objects: either ‘born digital’ or older works freshly reformed for the media and formats of the internet age. The digital resources produced by the cultural heritage community – and often funded by the public purse – form a set of highly valued and trusted materials particularly desired by the research and education sectors, and general public. This community, especially those partaking of public funds, faces pressure to place their digital resources online and to make them available to the research and education sectors.

Simply placing digital resources on a website, without any licensing information or terms and conditions, does not necessarily make these resources truly accessible to users of the resource. From the standpoint of the public, this content must be assumed to be fully covered by copyright and therefore permission from the rightsholder needed for use and re-use of the resource (subject to possible fair dealing defences). An image of a painting available on a museum’s website would not without a licence come with permission to place that image on your own website, use it in a presentation, or place it in a Virtual Learning Environment (VLE).

It has been suggested that the wider use of open content licences would facilitate greater use and re-use of these digital resources by the general public and specifically for the research and education sectors. Open content licences are copyright licences following a ‘some rights reserved’ approach to copyright, and generally allow for use and re-use of the work without further permission (but still within certain restrictions). It is often important that cultural heritage organisations retain some control over the use of their resources and may wish or need to impose restrictions such as non-commercial use. Open content licensing can allow for these controls.

How to share resources whilst maintaining long-term sustainability can be a difficult question for cultural heritage organisations, and there are no easy answers. For those that have decided to move content online, there have been several studies and investigations into the appropriateness of open content licences such as Creative Commons or Creative Archive.¹ Shortly summing up such detailed work can be a bit unfair, but in general these licences can be used in certain circumstances by the UK cultural heritage sector. They do not work in every situation, and their use by any organisation must be carefully considered. One important but often overlooked element is that organisations can only license what they own or have permission to license.

This survey does not intend to repeat work done elsewhere on the applicability of these licences to public-sector organisations or to the cultural heritage community, but rather to gauge their use in the UK cultural heritage sector. We’ve tried to engage in some horizon scanning to get an idea of the direction of the sector in terms of sharing content online and using open content licences. The result is this snapshot of current practices among our respondents.

¹ See for example E. Barker, C. Duncan, A. Guadamuz, J. Hatcher, and C. Waelde, *The Common Information Environment and Creative Commons* (2005) <http://www.intralelect.com/cie-study/>

Copyright

Copyright is one of three main types of Intellectual Property Rights (IP or IPRs) and covers original works of authorship, mostly creative and artistic works such as paintings, sculpture, literature, films, television, and music. Copyright can also include broadcasts, typographical layouts, sound recordings, and databases. This right operates automatically: you do not need to register or apply for a copyright in any way. As a rule copyright does not protect ideas – that is the domain of patents – but rather the ‘expressions of ideas’, and this right generally lasts for the life of the author plus seventy years.

Among others, copyright covers the right to reproduce, publicly display, adapt, and distribute the work. These rights have a number of exceptions to them under what is known as ‘fair dealing’ (‘fair use’ in the United States). Use of the work in ways not covered by fair dealing or other exception requires permission from the copyright holder. Permission to use a copyrighted work comes in the form of a licence, which is a legal document outlining what can and can’t be done with the work.

Open content licensing

Open content licensing is a way of generally granting a wide range of permission in copyright for use and re-use of the work via a copyright licence, whilst retaining a relatively small set of rights. As mentioned above, copyright operates so that permission is needed for any use except for a limited number of cases. In contrast, open content licensing reverses this default and grants permission for a very wide range of uses but asks that users seek permission only in a limited number cases – often known as a ‘some rights reserved’ model. This style of licensing, like any other, can only be used on works by someone who owns the rights over the work or otherwise has permission to do so.

Creative Commons

One major example of open content licensing is that of Creative Commons (CC).² This organisation, founded in 2001, maintains a number of easy to use licences available via their website. These licences allow for further distribution and copying of the work without further permission from the rightsholder. The main set of CC licences all offer a series of ‘baseline rights’ together with four ‘licence elements’ that can be mixed and matched to produce a licence through a point-and-click web interface:

- **Attribution (BY)** – you must credit the licensor of the work;
- **Non-Commercial (NC)** – you can only use the work for non-commercial purposes;
- **No-Derivatives (ND)** – you may not create adaptations of the work; and
- **Share Alike (SA)** – you may create adaptations of the work, but these must be under the same licence as this work.

Attribution now forms a part of all current licences, thus these four elements form the six basic CC licences,³ with their common abbreviations in brackets:

Attribution (BY)

Attribution | No Derivatives (BY-ND)

² <http://www.creativecommons.org>

³ Note that No-Derivatives and Share Alike are mutually exclusive.

Attribution | Non-Commercial | No Derivatives (BY-NC-ND)

Attribution | Non-Commercial (BY-NC)

Attribution | Non-Commercial | Share Alike (BY-NC-SA)

Attribution | Share Alike (BY-SA)

The generic or ‘unported’ set of CC licences only reflect the rules present in international treaties on copyright and related rights and not the actual law of the various world jurisdictions. Legal teams in over 40 jurisdictions have therefore ‘ported’ these licences to meet their jurisdiction-specific legal needs, including licences available for Scotland and England and Wales.

Creative Archive

A second key open content licence available for the UK cultural heritage community is the Creative Archive licence.⁴ This licence operates the same as the Creative Commons Attribution Non-Commercial Share Alike (CC-BY-NC-SA) licence. It adjusts the language to UK law, as well as adds some additional restrictions, including:

No endorsement – you cannot use the work to promote, among others uses, political purposes; and

UK use only – the licence only gives permission for use within the United Kingdom.

The Creative Archive licence was developed by the Creative Archive Licence Group, which consists of the BBC, the British Film Institute, Channel 4, the Open University, Teachers’ TV, and the Museum, Libraries and Archives Council. The project launched in 2005, with an initial test phase by the BBC using the Creative Archive licence for some of its content concluding in 2006.

3. Methodology

Overview

The goal of this study has been to receive responses from at least 50 cultural heritage organisations in the UK in order to determine their plans for sharing their collections online and whether they make use of an open content licence to do so. The intention was to collect information about the type of content being made available, the types of open licences used, and other relevant information.

Project timeline:

Date	Event
June – July 2007	Development of questions and peer review.
2 August to 3 October 2007	Release of survey, responses collected.
October 2007	Analysis of data.
October 2007	This report.

⁴ <http://creativearchive.bbc.co.uk/>

The primary deliverable is this report and accompanying data summarising the attitudes of the UK cultural heritage organisations participating in the survey.

Scope

Defining open content

There are primarily two approaches to the term ‘open content’. One uses the term only with a relatively strict definition of ‘open’. As an example, the Open Knowledge Foundation (OKFN) has created the Open Knowledge Definition, which defines a set of criteria of what constitutes ‘open’, including open content.⁵ Under this definition, Creative Commons licences involving the Non-Commercial restriction (CC-BY-NC for example) would not be considered an open content licence because they violate a requirement in the definition that a licence not discriminate ‘against a field of endeavour’, in this case commercial enterprise.⁶ A second approach applies the term to copyright licensing schemes that are generally permissive in what they allow – for licences somewhere between no permission (all rights reserved) and the work being out of copyright entirely (public domain). Under this approach, licences such as the CC-BY-NC licence would be considered ‘open content licences’ because they still allow for a great variety of uses without the need to seek further permission.

The other major movement towards permissive copyright licensing of content centres around the definition of ‘free cultural works’.⁷ This movement very much reflects the ideals and thinking behind such software licences as the GNU GPL and the work of the Free Software Foundation,⁸ but within the context of non-software copyrighted works. This definition and approach is also relatively strict as to what it classifies as a ‘free cultural work’.

This survey, whilst recognising the utility of having stricter definitions of what an ‘open content licence’ or ‘free cultural work’ actually is, takes the broader view of the term with the licences and approaches examined. This is largely in recognition that licences with such restrictions as ‘Non-Commercial’ or ‘No Derivatives’ are still very beneficial to researchers, educators, and the general public, despite not following these definitions. Use of these restrictions may be desirable or even necessary from the standpoint of the licensing organisation and can represent a compromise position of allowing greater use and re-use but also acknowledging current licensing practices and the need for sustainable business models. Finally, explaining the nuances of more permissive copyright licences and whether they conform to a definition of ‘open’ or ‘free’ causes a not insignificant difficulty in terms of designing an easily accessible survey.

Licences covered

The initial approach of the project was to try to construct a series of detailed questions about the copyright policies of UK cultural heritage organisations. The results of these questions would then have been assessed on whether they met a definition (broadly or narrowly defined) of open content licensing. It soon became apparent that this approach would require too many questions and would limit our respondents to those well-versed on copyright. Because both of these requirements

⁵ <http://www.opendefinition.org> Open Knowledge Foundation <http://okfn.org/>

⁶ <http://www.opendefinition.org/licenses> Neither would licences using the No-Derivatives element.

⁷ <http://freedomdefined.org/Definition>

⁸ See <http://www.gnu.org> and <http://www.fsf.org>

would have constricted our respondent pool, this approach thus conflicted with our goal of having a survey with a 5-10 minute timeframe and over 50 respondents.

The consensus that arose from the steering group meeting was that the survey should concentrate on the most clearly identifiable sets of licences together with an option for respondents to provide details about similar licences. We settled on the six basic Creative Commons licences, detailed above, and the Creative Archive licence.⁹ We then asked if the organisation used a licence ‘based on a Creative Commons or Creative Archive licence’ or one that ‘allows users of the work to use, re-use, and redistribute the work without payment.’ (Ques. 6:5).

Defining cultural heritage organisations

The broad meaning of ‘cultural heritage organisations’ dictated an agnostic approach towards the organisations and institutions that fit under this heading. Potential respondents were encouraged to take the survey if they felt that they conducted any cultural heritage activities, and we did not eliminate any responses based on this requirement. However museums, galleries, archives, and libraries sector formed the core target group as they clearly engage in cultural heritage activities. Whilst we did receive a few responses from outside the United Kingdom — which were excluded — the scope of the survey was limited to UK-based organisations, though we have included responses from Crown dependencies such as the Channel Islands.

Survey methodology

We used a web-based platform for the survey, but respondents also had the opportunity to take the survey by postal mail or telephone if needed. In addition, we asked respondents if they would be open to follow up telephone or email interviews about their answers.

Concerning data protection, the survey platform complied with EU Safe Harbor provisions, and was available via a secure URL. Survey respondents were advised that a list of organisations participating in the study would be released; however this report and the data set accompanying it do not directly identify any one respondent or institution. This approach was used to foster more candour by respondents.

Encouraging participation

Methods to develop contacts within the sector and solicit responses to the survey included:

- Posts to blogs and mailing lists of interest to the cultural heritage and Creative Commons and Creative Archive communities;
- A formal press release and dissemination of survey information through a PR agency;
- Prize giveaway for one of three portable mp3 devices pre-loaded with (appropriately licensed) music;
- Requests to regional museum library and archive councils and national cultural heritage organisations to pass survey details on to their members; and
- Direct email requests to museums, galleries, archives, and libraries throughout the United Kingdom.

Whilst we had success at soliciting responses through all the above methods, direct email requests resulted in the most success by far.

⁹ Note that Creative Commons does offer other licences, which we did not include, as we wanted to concentrate on the most visible set of licences and those licences ported to meet the needs of UK law.

Survey issues

It should be noted that this survey is not a representative sample and should only reflect those that responded. Because the direct email campaign was the most successful of our efforts at encouraging participation, responses reflect those areas where organisational email addresses could be easily obtained. In addition, questions soliciting awareness only reflect the knowledge of the individual taking the survey and not every staff member in the organisation as a whole. Furthermore, those already using an open content licence or interested in their use are probably more likely to take a survey about this area.

Survey questions

The survey consisted of 20 questions broken down into several substantive sections.

- 1. Introductory information** – (0 questions) Text setting out the scope of the survey, survey length, and who should respond.
- 2. Data protection and accessibility** – (1 question) Text outlining the data protection policy and providing information for ways to take the survey via post or telephone for those with a need or preference for these formats. One question acknowledging acceptance of the data protection policy.
- 3. Contact information** – (3 questions) Basic details about the organisation and the job title of the respondent.
- 4. The organisation's collection** – (1 question) A chart asking about the type of material the organisation holds and their plans for making this material available online.
- 5. Awareness** – (3 questions) Knowledge and analysis of key terms related to making content available online and about open content licensing.
- 6. Use of certain licences** – (5 questions) Use of open content licences by the organisation.
- 7. Copyright policies** – (2 questions) The existence of a copyright policy on their website and if there was someone responsible for copyright issues within the organisation.
- 8. Interest in future activities** – (5 questions) The level of interest in possible future activities, including interest in follow up contact as well as additional contact information.
- 9. Thank you for your interest** – (0 questions) A final page thanking respondents and asking them to let others know about the survey.

Please consult Appendix B for the full text of the survey. This report cites the questions by section and then question number (for example '5:2' for the second question in the Awareness section).

The only required answers were an acknowledgement of the data protection policy (2:1), the name of the organisation (3:1), and the position or relationship of the respondent to that organisation (3:2). Other than these three questions, respondents could skip questions or drop out of the survey at any time.¹⁰ Questions about the status of the organisation's collection came at the beginning in order to gather this information – seen as key to the overall picture of the survey – for respondents who later dropped out (thus making sure we at least has this information from them).

¹⁰ Responses which only included the three required entries and no other details were not included in our data analysis.

4. Analysis of data

Survey respondents

Our 107 respondent organisations included the public and private, and came from throughout the UK and Channel Islands.¹¹ Respondents ranged in size from a one bedroom council flat in Manchester used as an exhibition space¹² to several of the most-visited museums in the UK. Survey respondents have come almost exclusively from the museums, libraries, archives, and galleries sector, as these are the most clearly defined ‘cultural heritage organisations’ and have been the main target of this survey.

The level of knowledge of the respondents is in part indicated by the positions of those taking part in the survey. Job titles of respondents include:

- Copyright Officer;
- Archivist;
- Curator;
- Collection Manager;
- Head of Collections;
- Head of Digital Media; and
- Head of Intellectual Property.

These indicate that the survey results should be reasonably accurate as to the institutions represented. In addition, over 65 of 107 total respondents indicated that they would be open for further contact from the survey team and provided their personal details — indicating a level of trust in the survey.

Appendix A contains a full list of responding organisations.

Sharing the organisation's collection

Respondents were asked whether they hold certain types of materials in their collections, and if they currently make these materials available online or had plans to make them available online in the future. (Ques. 4:1).

Types of material were broken into the following in *Figure 1*:

Images – Photographs and other visual representations.

Sound – Music, spoken word, and other recordings of sounds.

Audiovisual – Videos, films, and similar materials.

Text – Manuscripts, books, periodicals, and similar materials.

Multimedia – Content that is a mixture of many different types of materials in one single work.

Data sets – A collection of related sets of information.

Metadata – A set of data that describes other data, such as rights information.

¹¹ Though all 35 museums listed on the Northern Ireland Museum Council website and the Museum Council itself were contacted by email, we had no survey responses from Northern Ireland.

¹² Apartment <http://www.apartmentmanchester.blogspot.com/>

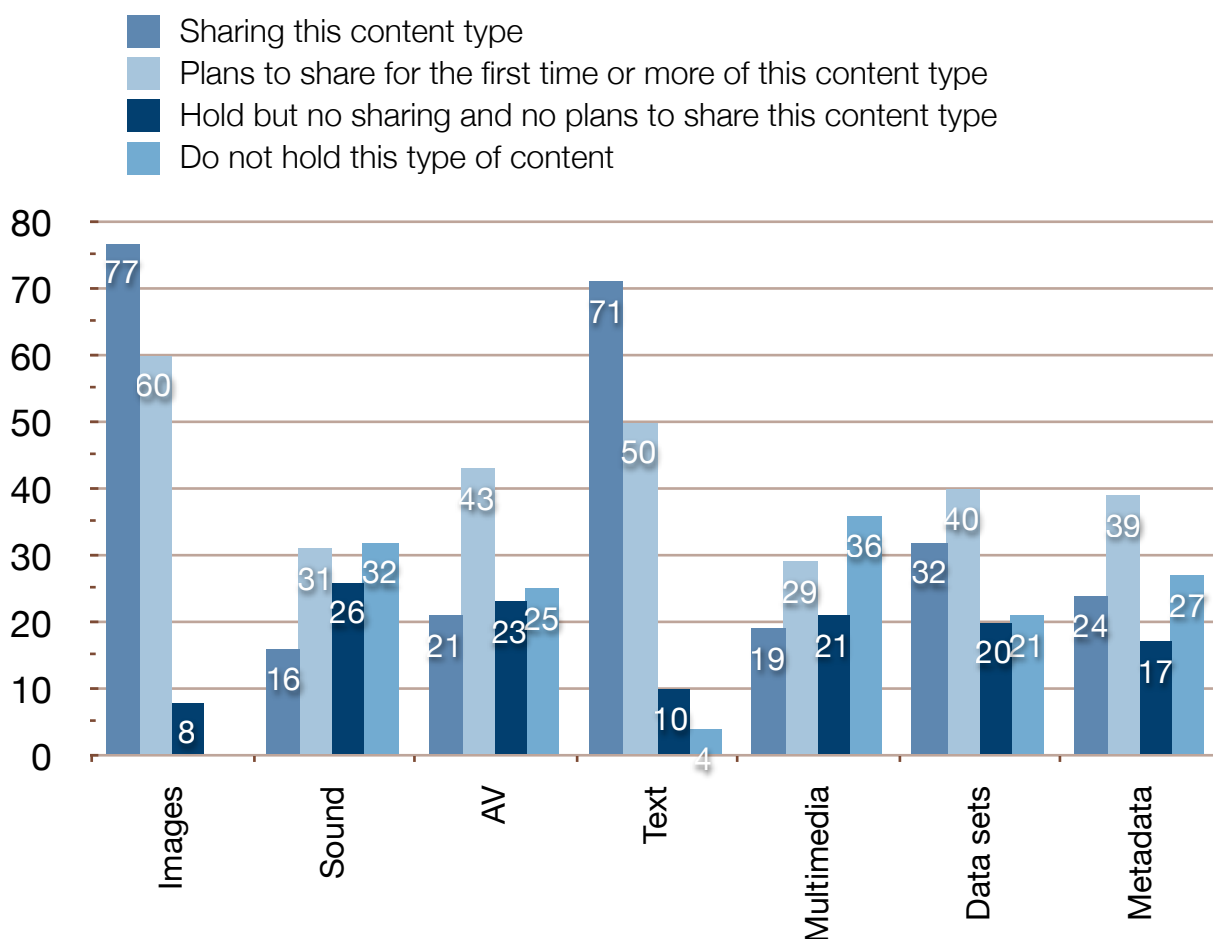


Figure 1: Sharing practices by content type (by # of respondents)

Images and text are by far the most held and shared material, with every respondent indicating that they held images in their collection.¹³ Multimedia, sound, and metadata were among the least held types of content.

Because respondents could be currently sharing content and have plans to share more (or not) in the future, this data further breaks down into *Figure 2*, with those that indicated that they do not hold the type of materials eliminated.

In *Figure 2*:

Plans/new – those that are not currently sharing any content of this type, but have plans to share it in the future

Plans/more – those that are currently sharing the content type and have plans to share more in the future

Sharing/no plans – those that are sharing the content type but have no plans to share more in the future

No sharing/no plans – those that have indicated that they hold the type of material, but they do not have currently share it nor do they have any plans to share the content in the future. Note that this is the same as in *Figure 1*.

¹³The high number of respondents indicating text and images could be a result of a misunderstanding of the question and confusing text and images on a website with text and images held as part of a collection.

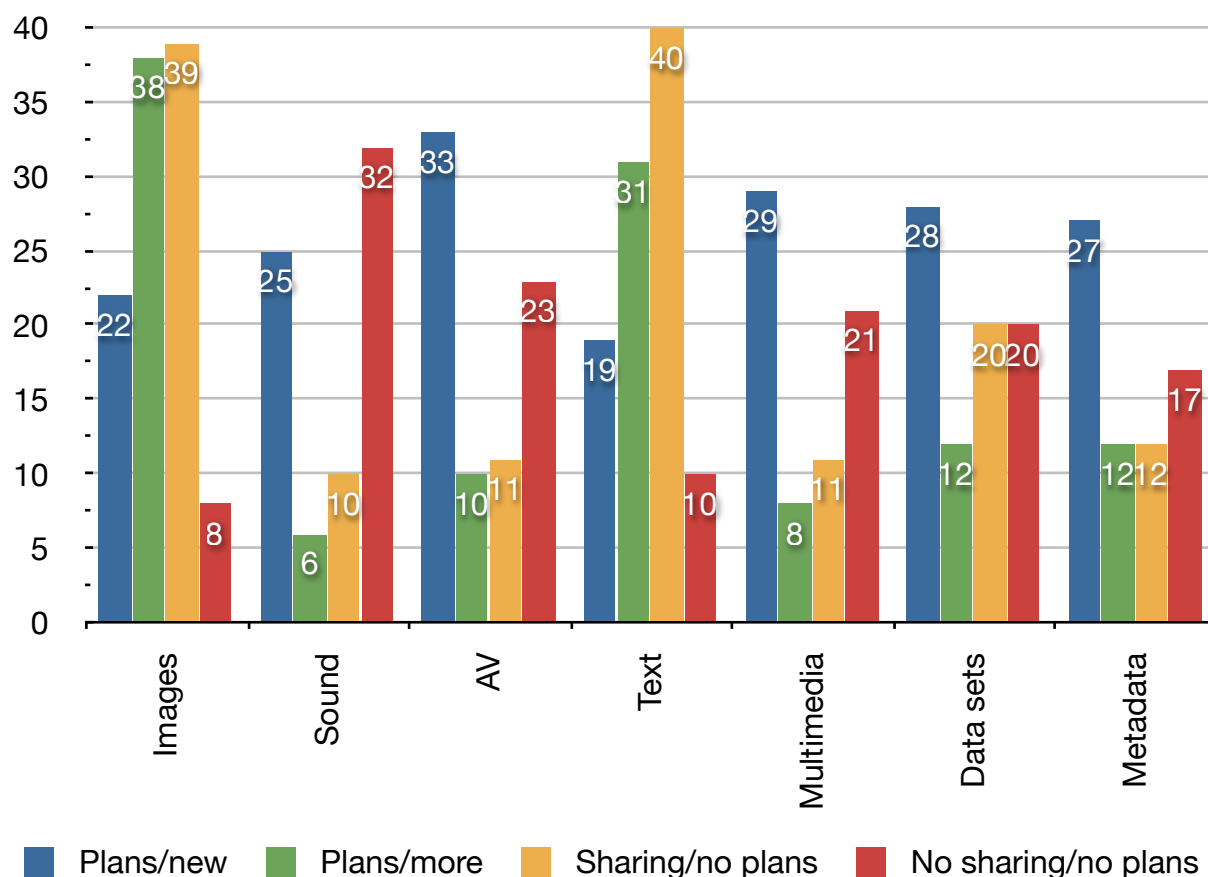


Figure 2: Currently sharing and future plans further compared (by # of respondents)

Sound appears to be the most held content type not currently available via the web and with no plans to share it in the future. Audiovisual and multimedia materials, as well as data sets, and metadata are top areas where organisations have plans to share their collections online for the first time. Many respondents also share images and text and have plans to share more.

Only 4 respondents indicated that they held some of the types of materials but were not sharing these online nor did they have any plans to share their collections online. The remaining 103 respondents all either were sharing content already or had plans to share content for the first time. Out of these 103 respondents, 92 were sharing content currently on their website, and 11 have plans to share content (of any type) but were not already sharing any of the content types. 3 respondents noted they currently shared all seven content types.

Considering the above figures, the vast majority of cultural heritage organisations share or have plans to share some part of their collection online. This indicates a high level of interest in sharing at least part of their collections online among those surveyed.

Key points

- The majority of cultural heritage organisations surveyed currently share some part of their collection online;
- Only four of 107 respondents did not share any part of their collections online nor have plans to share their collection online;
- Images and text are the two most shared types of content;
- Sound appears to be the most held content type not currently available via the web and with no plans to share it in the future; and
- Audiovisual and multimedia materials, as well as data sets, and metadata are top areas where organisations have plans to share their collections online for the first time.

Copyright and resources

The survey contained two questions concerning in-house copyright people and whether they had a copyright policy on their website.

Does your organisation have an in-house legal department or designated person that deals with copyright issues (such as a Copyright Officer)? (Ques. 7:1)

Yes	No	I don't know
34 (36.9%)	48 (52.2%)	10 (10.9%)

92 responded to this question.

Does your organisation have a copyright policy publicly stated on its website? (Ques. 7:2)

Yes	No	Do not have a website	I don't know
33 (35.9%)	47 (51.1%)	0	12 (13%)

92 responded to this question.

Out of the 34 respondents with an in-house copyright person, 18 (52.9%) indicated that they had a copyright policy on their website, 13 (38.2%) had no copyright policy, and 3 (8.8%) did not know if there was a policy available.

When compared with the 92 respondents who currently share one of the content types (Ques. 4:1), 32 were sharing content and had a copyright policy, 40 were sharing content with no copyright policy, and 9 were sharing and unsure if they had a copyright policy.¹⁴

¹⁴ 1 respondent indicated that they did have a copyright policy but that they were not currently sharing content online and 10 answered the sharing question (Ques. 4:1) and did not respond to the copyright policy question (Ques. 7:2).

Sharing w/copyright policy available	Sharing w/o copyright policy available	Sharing and unsure if policy available
32	40	9

The survey did not look at the intentions of 40 organisations who shared content without a copyright policy, so it is difficult to draw any conclusions about their intent that the content be used and re-used by the public. But from a legal perspective, the lack of a copyright policy means that users of the material cannot assume that they have any rights to use the content, except for those exceptions to copyright such as fair dealing.

We should also note that the lack of a designated copyright person does not necessarily mean that these organisations lack tools or resources concerning copyright. Many regional and UK-wide councils and associations such as the MDA ¹⁵ offer a variety of training and tools on copyright available for use by the cultural heritage sector.

Key points

- Only 34 out of 92 organisations have an in-house legal department or have someone on staff designated to deal with copyright issues; and
- 40 organisations shared at least one type of content online and indicated that they had no copyright policy on their website.

Awareness

This question investigated the level of awareness of related terms among respondents of the licences and concepts at issue. It should be noted that this question only reflects the awareness among the individual respondent and not the organisation as a whole.

99 responded to this question (Ques 5:2), which is represented in *Figure 3* (following page). Respondents were asked if they had heard any of the following, and asked to check all that apply: Creative Commons, Creative Archive, open content, and free cultural works.

Between the two different licensing schemes, Creative Commons is the more well known. Comparing the two reveals the following:

CA only	CA and CC	CC only	Total aware CA/CC
3	24	32	59

¹⁵ <http://www.mda.org.uk/>

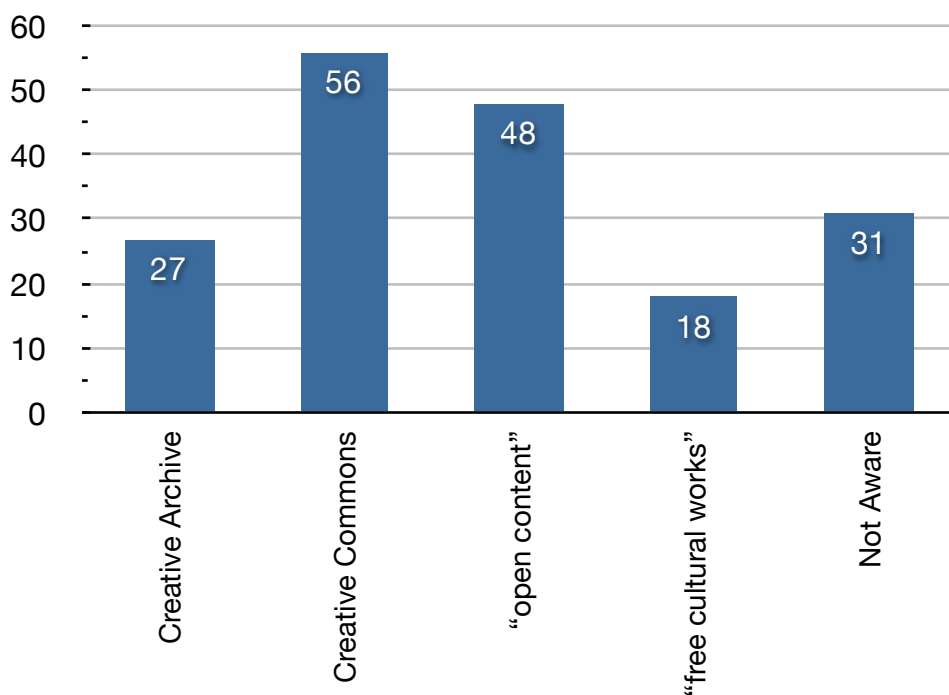


Figure 3: Awareness of related terms by # of respondents

12 had heard of all four terms and 61 had heard of at least one of the four terms. 59 out of the total 99 respondents however were at least aware of Creative Commons or Creative Archive. This still leaves over a third (40 or 40.4%) of respondents in the cultural heritage sector unaware of the two major open content licensing schemes, with 31 unaware of any of the 4 terms. 21 of those unaware of Creative Archive or Creative Commons did not have a designated copyright person or in-house legal department.¹⁶

Key points

- 31 out of 99 respondents were unaware of any of the related terms: 'Creative Archive', 'Creative Commons', 'open content' or 'free cultural work';
- 59 out of 99 respondents have heard of either Creative Archive or Creative Commons; and
- More respondents were aware of Creative Commons than Creative Archive.

Analysis by the organisation

This pair of questions asked whether the organisation had undertaken any analysis about making their collection available online or analysis on the use of a Creative Commons or Creative Archive licence. Note that in regards to analysis of sharing their collections online, respondents were asked about *formal* analysis and about *formal or informal* analysis about using CC or CA licences.

¹⁶ 36 answered both questions. 7 did not know if they had an in-house copyright person and 8 stated that they did have an in-house copyright person.

102 responded to each of these two questions.

Has your organisation undertaken any formal analysis of the impact of making materials in your collection available on the internet? (Ques. 5:1)

Yes	No
24 (23.5%)	78 (76.5%)

Has your organisation undertaken any analysis (formal or informal) of the possibility of using the Creative Archive or Creative Commons licences for the material in its collection? (Ques. 5:3)

Yes	No	Not previously aware
29 (28.4%)	40 (39.2%)	33 (32.4%)

When Question 5:3 on analysis of CA or CC is crossed with 5:2 on awareness, there may have been some misunderstanding between the two questions.¹⁷ However, out of the 59 who had heard of CA or CC in Question 5:2:

- 28 indicated that they were aware of CA or CC in 5:2 and had undertaken some analysis of CA or CC in 5:3; and
- Another 28 indicated that they were aware of CA or CC but had undertaken no analysis in 5:3.¹⁸

The responses do suggest though that out of those surveyed between 40-50% who were aware of the licences had done some sort of formal or informal analysis of using them for their collection.¹⁹

The 29 who answered 'Yes' to Question 5:3 on informal or formal analysis of CA or CC breaks down in comparison to 5:1 on formal analysis of making their collection available on the internet:

	Yes - formal analysis internet	No - formal analysis internet
Yes - formal/informal CA/CC analysis	15	14

Question 5:1 on formal analysis of making their collections available online further compares to the data collected on in-house copyright people (7:1) and website copyright policies (7:2).²⁰

¹⁷ 12 indicated that they were unaware of the terms in 5:2 but selected 'No' (analysis) in 5:3 rather than 'not previously aware'. One additional respondent stated that they were unaware of any of the 4 terms in 5:2 but that their organisation had undertaken some sort of analysis of CA or CC in 5:3.

¹⁸ The other three respondents (for a total of 59) indicated awareness of CA or CC in 5:2 but stated their organisation was previously unaware of these licences in 5:3.

¹⁹ 28 out of the 59 respondents (47.5%) indicating awareness of CA or CC in 5:2 also indicated some sort of analysis of the licences in 5:3.

²⁰ Note, all 92 respondents of the in house and copyright policy questions answered the formal analysis questions. The respondents who indicated that they 'did not know' about the copyright policy (9) or in-house copyright people (10) are not included in this table.

	Yes - formal analysis internet	No - formal analysis internet
Yes - in house copyright person	14	20
No - in house copyright person	7	41
Yes - copyright policy on site	12	21
No - copyright policy on site	8	39

The 102 respondents to Question 5:1 on formal analysis of the impact of making their collection available over the internet also broke out into *Figure 4* when compared with the responses for whether the organisation was already sharing content:

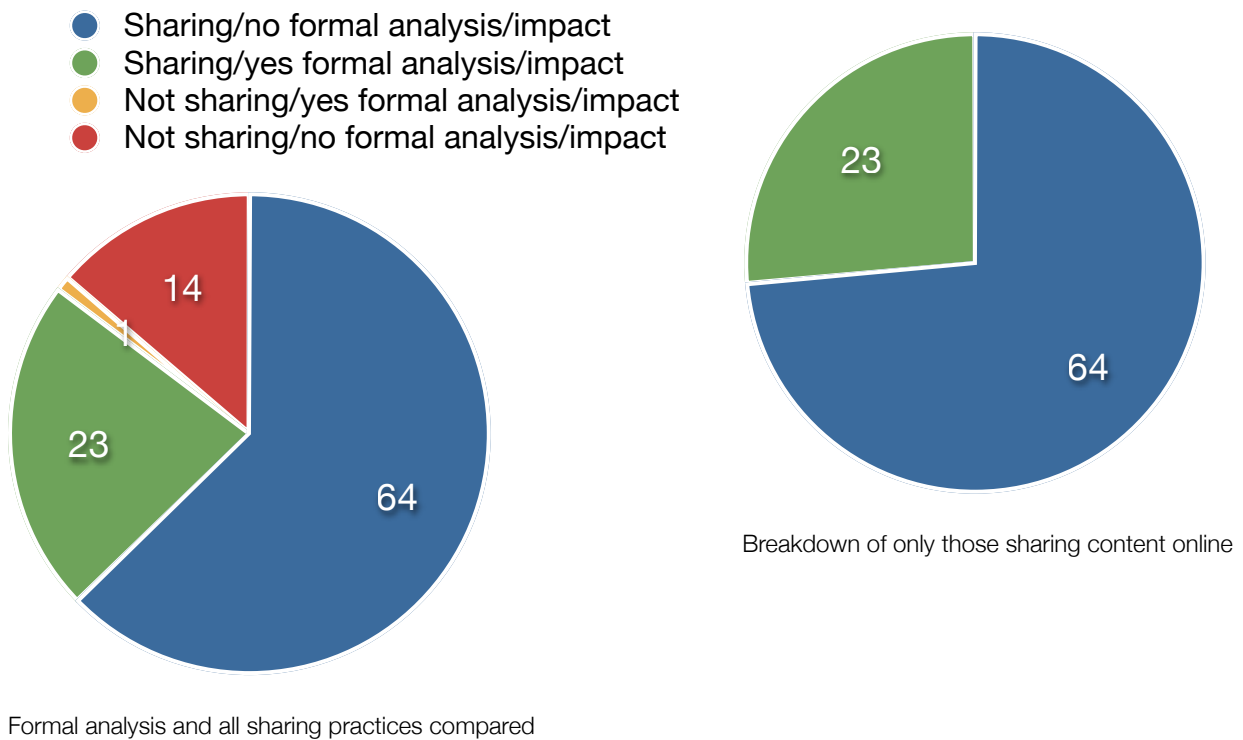


Figure 4: Formal analysis and sharing practice

Only one respondent appears to have done a formal analysis of making their content available over the internet and is not currently sharing part of their collection.²¹ The majority — 64 respondents — indicated that they were sharing content online and had not done a formal analysis of the impact of this practice. 23 respondents had both done a formal analysis and were sharing content online.

²¹ Nor have they indicated that they have plans to share their collection online.

Key points

- The responses suggest that out of those surveyed between 40-50% who were aware of CA or CC licences had done some sort of formal or informal analysis of using them for their collection;
- The majority of organisations surveyed have not done any formal analysis of the impact of making their content available online; and
- The majority of organisations surveyed share part of their collection online without having done a formal analysis of the impact that this may have.

Licence use

Respondents were asked to identify in Question 6:1 if they were using the Creative Archive licence or one of the six main Creative Commons licences (for a total of seven licences). Out of the 88 responses to this question, 10 stated use of these seven licences. Some organisations use multiple licence types.

Creative Archive	2
CC-BY	1
CC-BY-NC	3
CC-BY-ND	2
CC-BY-SA	5
CC-BY-NC-SA	4
CC-BY-NC-ND	3
CC but not sure	0
Do not use	78
Total using at least one of the 7 licences	10

Out of the two users of the Creative Archive licence, one also used Creative Commons licences and the other *only* used the Creative Archive licence. Among the ten using one of the CA or CC licences, all were aware of Creative Commons, and all but one was also aware of the Creative Archive.

Respondents were also asked in Question 6:4 whether they had any plans to use one of the seven licences:

12 additional respondents indicated that they have plans to use one of the seven, making a total of 22 respondents either using one of the licences or with plans to use them in the future.²²

²² Note that the 12 respondents with plans does not include one respondent who indicated that they had plans to use one of the licences but were previously unaware of them.

Out of the 85 respondents to both the awareness question (Ques. 5:2) and the question on future plans to use one of the licences (Ques. 6:4), 30 were aware of CA or CC and had no future plans to use one of the licences. The awareness question however only notes awareness of the term and does not necessarily indicate awareness of how the respective licensing systems work, or indeed that the terms represent a set of copyright licences.

The ten licence users also indicated length of use (Ques. 6:2).

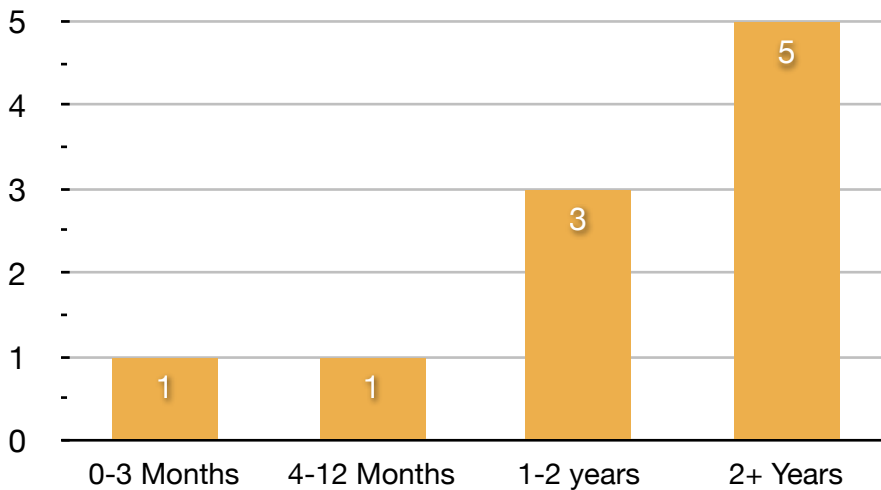


Figure 5: Length of use of a Creative Archive or Creative Commons licence

It is hard to draw any conclusions on overall trends from such a small sample, but among the ten respondents using an open content licence, the majority (8) started their use over 1 year from the survey period (August to October 2007). This could indicate a slower rate of adoption from 2006-07, though note that 12 respondents indicated that they have plans to use one of the licences in the future. Note also that length of use does not indicate whether organisations with a longer history of use have expanded or contracted their collections available under an open content licence within a more recent timeframe.

The 10 licence users and 12 organisations with plans to use one of the licences break down into the following when compared with the two analysis questions (5:1 and 5:3):

	Use of one of the 7 licences	Plans to use one of the 7 licences in the future
Yes - formal analysis of internet	6	5
No - formal analysis of internet	4	7
Yes - formal /informal analysis of CC/CA	10	7
No - formal /informal analysis of CC/CA	0	5

A significant number (11 out of 22) of those using an open content licence or planning to use one had not done any formal analysis of the impact of making their collections available on the

internet. Several respondents had indicated that they have plans to use one of the licences but have not undertaken any analysis of their use – though certainly undertaking such an analysis could be part of their future plans.

Out of the 29 identified earlier as having done an informal or formal analysis of Creative Archive or Creative Commons (Ques. 5:3), 10 currently use the licences, 7 have plans to use one of the licences, 10 have done a formal or informal analysis of CA or CC but have no plans to use the licences and 2 did not answer both questions.

In total there were 10 licence users, 12 with plans to use a CA or CC licence, and 10 respondents who had done some sort of formal or informal analysis on using a CA or CC licence but were not using one of the licences nor had plans to use one.

The ten Creative Archive and Creative Commons licence users were also asked:

Does your organisation have a written policy on the use of any of the 7 licences? (Ques. 6:3)

Yes	No
3	7

Without a comprehensive picture of how the organisations use the licences, it is difficult to say whether the organisations using the licences *need* a written policy on their use. However the majority were using one of the licences without a written policy on their use.

Key points

- 10 organisations indicated use of either a Creative Archive or Creative Commons licence, and 12 additional organisations noted plans to use one of these licences in the future;
- Out of the two sets of licences, Creative Commons licences are more common, with the CC-BY-SA and CC-BY-NC-SA the most used among respondents;
- The majority of those using a CA or CC licence (8 out of 10) started their use over one year prior to taking the survey;
- Half of those surveyed using a CA or CC licence or planning to use one (11 out of 22) have not undertaken a formal analysis of the impact of making their content available over the internet; and
- 7 out of the 10 using a CA or CC licence in this study have no written policy on their use.

Self-identified similar licences

Along with asking about the use of CA or CC licences, the survey also asked if respondents used a licence similar to a CA or CC licence or had a licence that ‘allows users of the work to use, re-use,

and redistribute the work without payment.’ (Ques. 6:5). 86 responded, and out of this number 22 answered ‘Yes’ and left a comment:

- Six clarified their use of CA or CC licences or linked to the pages outlining their use or examples of content available under one of the licences;
- One identified use of the CC public domain dedication, which is a document based on US law designed to immediately take the work out of copyright;²³
- Two noted use of one or both copyleft software licences, the GPL and LGPL, for software that they release;²⁴ and
- None indicated a licence directly based on a CC or CA licence.

Several respondents did outline their policies on use and re-use of material, or linked to their site’s copyright policy. These responses however concentrated on academic and non-commercial use rather than the broader permissions explicitly present in an open content licence. Comments and policies included:

- One respondent who stated that they thought local policy would allow for ‘re-use for non-profit making / educational reasons’;
- Two respondents noting a policy allowing use for ‘non-commercial purposes’, with non-commercial not further defined;
- One allowing use without payment only on written application; and
- One allowing for ‘individual use only’ without permission.

One comment in particular summed up some of the likely problems with establishing a website copyright policy for a cultural heritage organisation:

- ‘Opinions within our museum vary somewhat on these issues, but all the collections staff are agreed that essentially anything on the public online catalogue can be freely used for personal, academic, and non-commercial use. Nailing down the small print on this is more contentious, which is one of the reasons we haven’t done this.’

Certainly many struggle with defining exactly what might be non-commercial, academic, or private (personal or individual) use, especially with drafting a copyright policy. It does appear though among those that left comments that generally some form of non-commercial use is considered acceptable. It might be useful to note here that UK copyright law does not provide for a general ‘non-commercial use’ or ‘private use’ exception to copyright by way of fair dealing. The law does allow exceptions for non-commercial research and private study as well as limited educational use exceptions.²⁵ It is not clear from the incidental comments in this survey how closely the opinions of those allowing for educational, non-commercial, or private use follow existing exceptions in fair dealing or move beyond to a greater set of permissions, such as one of the non-commercial licences like the Creative Archive or a Creative Commons BY-NC licence.

Though respondents were not directly questioned on specifically *what* they share online, one respondent indicated that they only offered online lower resolution images (but still up to 750px)

²³<http://creativecommons.org/licenses/publicdomain/> The public domain dedication has not been ported to other jurisdictions such as the UK. This respondent also indicated use of other CC or CA licences.

²⁴ Content, rather than software was the focus of this survey. More information, including the actual text of these licences, is available at <http://www.gnu.org/licenses/>

²⁵ See Chapter III of the Copyright, Designs and Patents Act 1988 (as amended) for a full list of exceptions.

that fell under their non-commercial use policy – users must request and license higher resolution images.

Key points

- Other licences used were the GPL and LGPL (for software) and the Creative Commons Public Domain Dedication; and
- Several respondents consider non-commercial, academic, or private use acceptable, but don't necessarily have a policy outlining the contours of what falls in this area.

Open comments

At the end of the survey, respondents had the opportunity to openly comment. 27 left some sort of comment in this section, some of whom elaborated on their responses in the survey or provided further links to their site's copyright policies.

Out of the remaining respondents, several expressed a desire for more information on copyright and open content licensing, and mentioned the time pressures on trying to deal with this area:

- 'Any further information about Creative Commons will be gratefully received';
- 'More information about the types of licences and their application to heritage materials would be greatly appreciated';
- 'Vaguely aware of the move towards common licences, but unaware of the context, or implications of them';
- 'I know that many organisations are frightened by the concept of Creative Commons [and Creative] Archive, because it's different from the good old "All Rights Reserved" - I'd love to see a toolkit that might help explain in an official voice how it can actually benefit them'; and
- 'I'd like to do something with Creative Commons but don't know much about the area and would need to have the time to do something (time is lacking at present – supposed to be doing more to sort out copyright at present but too many other projects!)

One comment in particular reflected some possible misinformation in the cultural heritage community:

- 'I am surprised you bothered to contact a public sector organisation – your licensing is really only applicable to private bodies or individuals.'

As mentioned earlier in the report, several studies have concluded that these licences may be used under appropriate circumstances by public sector organisations – and indeed as found in this survey several of them do currently use a CC or CA licence.

One group of cultural heritage organisations also mentioned the struggle with finding appropriate models for sharing content online and the role of open content licences:

- [The organisation is] happy to share information but keen to protect their rights to the material (in some cases, rights that they have assumed rather than been granted). In general most [organisation members] are reluctant to allow the material (principally

photos) to be used without their express content and possibly a fee, as this is one of the few ways they have of earning income (though in practice they earn very little). We have considered and, for now, decided against a Creative Commons licence of any kind, but may like to revise this concept in future. So very interested to participate in further discussion on this.

Key points

- One respondent (incorrectly) thought that Creative Archive, Creative Commons, and similar licensing schemes were wholly inapplicable to the public sector; and
- Several respondents expressed a desire for more information or tools about the licences.

5. Conclusion

Overwhelmingly, out of the UK cultural heritage organisations surveyed most either currently share some part of their collection online or have plans to share some part of their collection online. Many of those already sharing some content have plans to add to their online collection. But many of these organisations do so without having done a formal analysis on the impact that sharing their collection online may have. Because many indicated plans to bring certain content types online for the first time, the long term impact of sharing their collections — and how in terms of copyright they will be shared — will be central questions moving forward.

In regard to open content licensing, 40% of respondents were unaware of the two main licensing schemes: Creative Commons and Creative Archive. Out of those aware of the licences, about half were either using them, had plans to use one of them, or had formally or informally examined their use for their materials. This could indicate a strong interest in the sector to use open content licences, with potential for increasing demand as more organisations become aware of the licences.

The majority of the 10 current CC and CA licence users started their use more than one year prior to the survey, with 5 of the 10 licence users starting over two years before the survey date. This perhaps reflects an initial spike in interest and publicity in 2005 — the year the UK-specific CC licences launched and the Creative Archive Licence Group started. This survey did not unpack these five organisations' experiences over their 2+ years of use, and further work would be needed to fully explore their current practices and the lessons learnt during their experiences.

Between the two licence schemes, more organisations were aware of Creative Commons than Creative Archive. This fact also matched patterns of use between the two licences, as only two organisations used a Creative Archive licence, one of whom also used a Creative Commons licence. Moving forward, 12 organisations have indicated plans to use a Creative Commons or Creative Archive licence. These two schemes are not the only open content licences available, and as the use of open content licensing in the UK further develops so could usage patterns shift to other licences or between CA and CC licences.

We should also note that this survey has not investigated the *context* of the use of open content licences in the UK cultural heritage sector, which is an important avenue for future qualitative work in this area. With both established and future users of open content licences in the UK cultural heritage sector, this kind of work could benefit the wider community by providing more in-depth information concerning the reasoning behind their use, what kinds of content the licences cover (and if used appropriately), and the impact of their use.

The complexities of copyright law and the technicalities of licensing pose difficulties for those wishing to make use of an open content licence – or to develop a website copyright policy reflective of the organisation's stance on use and re-use. Several respondents noted a desire for tools to find out the appropriate application of open content licences. As many of the respondents operate without a designated person to deal with copyright issues, easily accessible content on copyright and licensing will be needed.

The responses collected here should only be taken to reflect the organisations and individuals who participated – whom we thank very much for taking the time to respond. The underlying anonymised data set from the survey is available for further use by those wishing to apply their own analysis.

About Eduserv

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- Content management (CMS) and Web development.

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You can find out more about them at: <http://www.eduserv.org.uk/>

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About the author

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