

# **Copyright Law and Personal Data Protection: on the Example of the Photographic Collection of the Tartu City Museum**

Eevi Kärdda, 2012

One of the most significant museums in Tartu is the Tartu City Museum. Our photographic collection focuses on Tartu and comprises about 43,700 photographs. Photographs of the old Tartu have always been popular with the researchers and museum visitors. This is one of the reasons why it is the most frequently used collection at the museum.

By today 67.5% of our collection's photographs have been entered into the MuIS database (Information System of Estonian Museums) and can therefore be found on the Internet.

Work in the photographic collection could roughly be divided into three:

- 1) use of existing photographs both by the museum workers and researchers outside the museum.
- 2) photographing of contemporary Tartu, above all, changes in the city sights, enterprises of Tartu, to a smaller extent also events taking place in the city.
- 3) adding photographs into the electronic database of Estonian museums MuIS (Information System of Estonian Museums / [www.muis.ee](http://www.muis.ee)).

Within all the three topics we have to deal with copyright law and personal data protection issues.

## **I. Copyright**

Photographs in the photographic collection of the Tartu City Museum reflect life in the city from the end of the 19th century until the present time.

Generally, there are no problems with the usage of very old photographs, as more than seventy years have passed since the author's death and therefore, according to copyright law, their works are available for everybody free of charge.

The photographs that from time to time cause problems at our museum date back to the Soviet period. They mainly come from the 1950s–1990s.

The main problem is that today the museum lacks more detailed information about the photographers who took these pictures during the Soviet period. Are they still alive, are they dead or who are their heirs? Their copyright is still valid, but how could researchers outside

the museum use their photographs without coming into conflict with the copyright law.

Quite often private persons and companies (e.g., design companies, publishing houses, etc.) would like to use photographs in our collection dating from the Soviet period *for business purposes*, but they usually give up the idea when they face the difficulties related to copyright issues.

*According to copyright law the author has to give his or her consent and also royalties have to be paid to them.*

But where do you find an author holding a valid copyright if there is no detailed information about them? There is no one single answer to this.

Therefore, in comparison to old photographs, the ones dating from recent past are used for business purposes to a much smaller extent.

However, we cannot be sure that photographs from the museum are not used illegally for business purposes by third parties.

In order to protect itself from the litigations related to copyright issues, the Tartu City Museum has drawn up the material use agreement. According to this contract concluded between the museum and the customer, legal responsibility in authorship issues lies with the customer.

It is self-evident that the museum uses all the photographs in its collections in the activities relating to the museum – for staging exhibitions, introducing its collection, in educational programmes.

So far our museum has not encountered any problems resulting from copyright issues. But not always do photographers know what kind of rights they have or do not have regarding the use of their works in different cases. Not every photographer knows that the museum has the right to use photographs from its collections free of charge in museum publications. This is a regulation that the museum workers have to explain to the photographers time and again.

## **II. Personal data protection**

At present personal data protection is a very topical issue.

In Estonia as well as all over Europe the protection of personal data in the possession of enterprises deserves scrupulous attention. But personal data protection concerned with the

databases related to museum collections is also essential.

Museum collections often comprise objects that can yield very personal information about individuals, households, and families (for example, photographs, diaries, documents, case histories, biographies, and so on).

Throughout times museum workers have been obliged to create a possibly comprehensive legend on the museum object and persons related to it, that is, to collect the corresponding background information (for example, photographs, names, dates, places of residence, occupations, hobbies, biography, opinions, and so on). All this, in turn, renders greater meaning to museum objects.

In the paper era the museum worker recorded the collected information in the inventory book of the corresponding collection. This kind of detailed personal information remained between the four walls of the museum and was known only to a few museum workers. This sort of information was and is used at exhibitions selectively.

In the modern computer era all the descriptions from old inventory books are gradually inputted into the open-access electronic database. However, in the course of this work, we have repeatedly been faced with the question of how much information about a concrete person is allowed to be made visible in an open-access database. Where does the so-called ordinary information end and the too personal or sensitive information begin? *Data selection has become essential*: what could be entered in the open-access electronic database for everybody to see and read and what should remain invisible (accessible only for those working with the database).

As a rule, the museum worker entering data is the one who decides what kind of personal information about a concrete person should be available in the open-access electronic database. But what do museum workers proceed from in their selection? Certainly, they have to keep themselves informed about the personal data protection issues. For us the main criterion is that the person should not be violated.

However, sometimes the museum worker is not even aware of how the information ordinary for to the museum, can within time turn into sensitive information in an open-access database, which people are unwilling to publish.

For example:

- 1) In the Soviet period a person handed over to the museum collection a number of

photographs of his family with pertinent information. Now the younger members of the family discovered these pictures in an open-access database and this resulted in an angry argument between different generations. Not every person thinks that the photographs of their family members should be available for everybody to see on the Internet. So they turned to the museum with a request to remove both the pictures and the information.

2) Years ago a person donated to the museum collection several pictures of his wedding. By now the couple's marriage has ended in divorce. When they discovered their wedding pictures in an electronic database, one of them addressed the museum rather angrily.

In brief: the meaning of information included in an open-access database can change throughout time; yet, there is no problem until someone complains.

In order to avoid the problem, the current MuIS database regulations explicitly state that this database does not disclose personal data. At the person's request his or her personal data and/or images (copy of a digitised image) are made inaccessible for the public in the museum information system.

*One of the tasks of the Tartu City Museum is to record contemporary city life in photographs: especially city views and the work of more significant institutions.* Here also personal data protection issues arise, as when taking pictures of institutions and their employees, pertinent information (person's name, occupation, position, work-related activities, work process) is also gathered. Here a question may arise about the recording of contemporary city life – does it mean recording people's private or working lives? We are of the opinion that what we record is the open city space and people's working life.

Permission for photographing work processes in an institution is usually granted by the manager. The contract concluded between the museum and the manager stipulates the conditions for inputting the photographs and the pertinent information into the electronic database.

For example, in 2011 we took pictures of the employees, working environment, and work cycles of the editorial board of the newspaper Tartu Postimees (Tartu Courier).

According to the rules, we should have concluded individual written contracts with each person in the picture (in all, about thirty people).

As this is not concerned with the private life of the employees but the work in a city

institution, it is easier for the museum to conclude the contract with the manager of the institution, and not separately with nearly thirty people. Certainly, the amount of paperwork for the museum is also much smaller.

However, as it turned out in practice, later on several employees unofficially asked me not to publish their pictures.

One of the sensitive topics in recording the contemporary city views is graffiti. Although it is officially prohibited, it can often be encountered in the city views, and in case it is not merely scribbling, we also take pictures of it. Graffiti pictures are characterised by temporality: they appear and disappear and do not necessarily persist for long.

From time to time we can see politically coloured graffiti on walls and bridges, being accompanied by textual messages expressing sharp criticism. As a matter of fact, this kind of graffiti testifies to the states of mind prevailing in society.

For example two graffiti of concrete Estonian politicians:

- 1) An anonymous author, graffiti entitled *Demagogue*, referring to a politician relatively unpopular among a certain electoral group (on a bridge, 2009).
- 2) An anonymous author, graffiti entitled *Let's JOKK* (on a bridge, August 2012). It is an acronym from the phrase 'Legally everything is okay' (meaning that ethically it could be rotten to the core but legally everything is okay. This is a widely spread expression in Estonia used to characterise mainly politicians' disreputable acts.) This particular graffiti depicts a politician who is connected with the covert financing of his party. In the press this topic popped up acutely in May this year.

What to do with these pictures?

To what extent and if ever should a museum worker input this kind of concrete information into an open-access database? To what extent and if ever should a private person feel offended or affected? To what extent and if ever is a politician as a public figure affected here?

The solution at the museum is that such graffiti from anonymous authors is available in the open-access database, yet the person's name and comments to the picture are visible only to the people working with the database.

In addition, the author/authors of all these anonymous pictures are protected by valid

copyright.

## **Conclusion**

Estonian museum workers proceed in their work from Estonian Museum Law; yet, their work also implies knowledge and consideration of Copyright Law and Personal Data Protection Act.

Currently, alterations to the Estonian Museum Law (enacted in December 1996) are under discussion in Estonia. For the first time the new bill deals with the issues of copyright and personal data processing. It is a hot topic and has emerged in Estonian museums in connection with the transition to the museum information system.

The bill will become law as of January 1, 2013.