

Digitization of cultural heritage and copyright

The new EU commission has made the modernisation of the EU copyright rules one of its first priorities (in the context of creating a true single digital Market). Cultural heritage Institutions are an important, albeit often overlooked stakeholder in the copyright system. Bringing together more than 1700 members in the Europeana Network and 3,500 data providers Europeana represents the largest network of cultural heritage institutions and professionals across Europe. From the perspective of the Europeana Network the following elements must be part of the upcoming effort to modernize the EU copyright rules:

In line with the demands from users, **cultural heritage institutions support the need to harmonize the European copyright system.** The current system with a list of largely optional exceptions and limitations creates legal uncertainty and makes cross border collaboration needlessly difficult. It means that citizens and institutions in some member states enjoy different rights and access to culture vis a vis those in other member states. This situation creates unnecessary friction (costs) and undermines the support for the copyright system among citizens.

The special role of cultural heritage institutions is recognized by the InfoSoc Directive which allows two specific exceptions benefitting Museums, Libraries and Archives. Unfortunately both exceptions are outdated and don't align with the operational requirements of cultural heritage institutions that see it as their task to provide online access to their collections.

Cultural heritage institutions find themselves in the middle of one of the most fundamental shifts in how they preserve and provide access to their collections. Digitization provides opportunities to make collections more accessible, reach new audiences and to allow them to engage with collections in new ways. At the same time many of these opportunities are limited by a copyright system that has been last revised before the opportunities existed.

Article 5.2.c of the InfoSoc directive allows 'publicly accessible libraries, educational establishments or museums, or archives' to undertake 'specific acts of reproduction' which 'are not for direct or indirect economic or commercial advantage' without having to obtain permission from rights holders. **This article needs to be expanded to allow all acts of reproduction of works in the collections of beneficiary institutions (including mass digitization) that are not for direct or indirect economic or commercial advantage.** Digitization of works that are already contained in the collections of these institutions does not interfere with the normal exploitation of these works by their rights holders, while all stakeholders can be expected to benefit from digitization of cultural heritage collections.

More importantly, article 5.3.n of the InfoSoc directive also needs to be updated and expanded in scope. The current exception allows institutions to make available 'works in their collections'

that are 'not subject to purchase or licensing terms' 'for the purpose of research or private study, to individual members of the public by dedicated terminals on their premises' without having to obtain permission from rights holders.

Citizens expect to be able to consult the collections of cultural heritage institutions online from their own devices. Limiting an exception aimed at enabling research and private study to dedicated terminals on the premises of the institutions is anachronistic in a world where citizens have universal internet access from almost everywhere. **In this light the exception needs expansion to also allow online access to those works in the collections of cultural heritage institutions that are not anymore available via commercial channels, or that are not otherwise actively managed by their rights holders.**

As part of the Commission's public consultation on a review of the EU copyright rules rights holders and their representatives have expressed concerns that expanding the scope of this directive would enable cultural heritage institutions to unfairly compete with them. As long as the ability to provide online access is limited to works that are not in commercial circulation (including available for licensing via collecting societies) anymore the activities of cultural heritage institutions enabled by the exception would be complementary to those of creators, publishers and other rights holders:

Creators and Publishers	Cultural Heritage Institutions
produce and engage in the primary exploitation of creative works (need to be protected from unfair competition by © law)	ensure that creative works that are not in commercial exploitation anymore remain available for the public (enabled by exceptions to © law)

The current exceptions in the InfoSoc directive fail to enable cultural heritage institutions to carry out this role online. By carefully updating these exceptions the EU can ensure that all citizens of Europe will be able to enjoy unprecedented access to the full riches of our shared cultural heritage, without causing harm to rights holders who are not limited in their ability to exploit their works.

Finally there is also a need to have clear rules for e-lending separate from the broadened exceptions described above. Such a new exception should allow libraries to electronically lend all works contained in their collections (commercially available or not) as long as they pay compensation to the rights holders.

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