



ReCreating Europe

**Rethinking digital copyright law for a culturally diverse,
accessible, creative Europe**

**The future of digital cultural heritage:
Policy Recommendations from reCreating Europe**

Rome, 2 March 2023



The project, the WP 5 – Galleries, libraries, archives, museums (GLAM)

WP leader UNITN

Partners SSSA, UGLA, LIBER, NUIM, UTARTU, USZ

- Objectives**
- Comparative **cross-national legal mapping** within **GLAM**
 - Focus on Open Knowledge, digitisation, digital preservation
 - Online **surveys and semi-structured interviews** with GLAM
 - Engagement with **stakeholders** to promote awareness (Guidelines and FAQs) and harmonization (bottom-up approach)
 - Effects and uses of **digitization in place-making**
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The Future of Digital Cultural Heritage

WP5 POLICY RECOMMENDATIONS

1. Reform the EU copyright framework systematically
2. Clarify and simplify the EU copyright framework for cultural heritage
3. Expand and safeguard the public domain
4. Boost the EU role in cultural heritage
5. Safeguard the public value of cultural heritage through EU initiatives
6. Educate and engage with glam stakeholders to ensure fair balance of interests

Some premises

While acknowledging the noteworthy, auspicious contribution of EU policy makers, revealed in Dir. UE 2019/790 providing promising means for digital progress in cultural heritage, especially regarding the provisions on:

- Text and data mining (Articles 3 and 4 DSMD)
- Preservation of cultural heritage (Article 6 DSMD)
- Use of out-of-commerce works and other subject matter by cultural heritage institutions (Article 8-11 DSMD)
- Reproduction of public domain works of visual art (Article 14 DSMD)

Copyright is still not fit for the digital future of CHIs



1. Reform the EU copyright framework systematically

- Undertake a **systematic and holistic reform of copyright** where all E&Ls are mandatory and cannot be overridden by contract or TPMs
- Especially consider the introduction of **purpose-oriented provisions** to support legislative implementation of the CJEU's doctrines
- Consider introducing an **open-ended norm** to establish broad conditions to fulfill and protect the universal right to culture



2. Clarify and simplify the EU copyright framework for CH

- Harmonise all E&Ls concerning CH and **make them as expansive as possible** to cover free uses for the cultural heritage sector
 - E.g., make Article 5(3)(d) InfoSoc a maximum harmonization norm, introduce a mandatory EU “Freedom of Panorama” (FoP), amend Article 6 DSMD to make the exception less discretionary
- **Modify norms** vague in the language, presenting optional traits and features that depend on technology, market, and society. Likewise, **reduce** the number of norms
- OR consider introducing **mandatory purpose-oriented provisions** allowing free uses for the cultural heritage sector, including but not limited to CHIs



3. Expand and safeguard the public domain

- **Reduce** copyright term, e.g. consider bringing it back to 50 years after the DoA
- Setting EU competences (cf. point 4), introduce an encompassing norm to **uphold public domain** against any potential detriment of E&Ls or excess of exclusive rights, providing a broader and stronger notion of public domain
 - e.g., reinforce provisions like article 14 DSMD, to avoid that the use of public domain works could be excluded
- **Define the boundaries** of public domain in the EU copyright framework, by specifying the notion of protected works, and applying more strictly the idea/expression dichotomy principle.



4. Boost the EU role in cultural heritage

- **Clarify** the relationship between private copyright norms and public cultural heritage norms
- **Avoid the override** of copyright E&Ls and **settle the conflicts** arising from cultural heritage law imposing new limitations impeding free uses in CH
- **Explore the option of modifying** the EU Treaties
 - i.e., Article 3(3) of the Treaty on European Union (TEU), Articles 6 and 167 of the Treaty on the Functioning of the European Union (TFEU)



5. Safeguard the public value of CH through EU initiatives

- Acknowledge and **safeguard the public mission** of CHIs
- **Highlight and further protect the public value of cultural heritage**, particularly when addressing regulation of copyright (cf. point 3) and data from CHIs
- **Make all CHIs data and metadata open by default**, accompanied by initiatives to support the related efforts of CHIs to do so
 - Amend the Open Data legislation to include CHIs not currently considered and mitigate existing derogations in place for CHIs
- **Clarify norms** on cultural heritage and data, including PSI law, to avoid conflict emerging from different legal provisions



6. Educate and engage with GLAMs

- **Guide** legal actors and stakeholders to interpret norms ensuring a fair balance of fundamental rights and interests at stake in CH
 - * Especially provide guidance for an effective use of promising but articulated provisions on use of out-of-commerce works and other subject matter by CHIs
- **Guarantee a bottom-up** and not top-down approach to copyright regulation, and ensure public participation
- **Endorse and facilitate actions** promoting life-long education and training that can help CHIs filling the gaps of limited copyright and data regulation knowledge
- **Highlight the opportunities** offered by open access and open science policies

The Public Mission of CHIs in the Digital Age: an Open Manifesto

- A **joint initiative** of reCreating Europe and inDICEs (interim version)
- It digests **five principles, practices, pledges** to guide CHIs in their public «digital» mission:
 1. Cultural heritage and cultural heritage institutions have a fundamental public value
 2. The regulatory framework for CH in the digital age needs to be clearer, consistent, effective
 3. Copyright law should allow CHIs to fulfil their public mission
 4. Cultural heritage data needs to be open and accessible by everyone
 5. The policy-and law-making process with regards to cultural heritage needs enhanced public participation



References

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Thank you

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