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FAQS
AUTHOR'S RIGHT,
COPYRIGHT AND
FREE LICENSES
FOR CULTURE ON
THE WEB
By Digital Cultural Heritage Research Group
ICOM ITALY - first draft 2020

FAQs

AUTHOR'S RIGHT, COPYRIGHT AND FREE LICENSES FOR CULTURE ON THE WEB

100 questions and answers

for museums, archives and libraries

By Digital Cultural Heritage Research Group - ICOM ITALY

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INTRODUCTION TO THE FAQS

FAQ with practical guidance for museums, archives and libraries, with the aim of clarifying the opportunities and legal limits related to the reuse and dissemination of digital reproductions of cultural resources on the web, in order to be able to take decisions on topics of a complex world with a better awareness.

Among cultural heritage professionals there is a lack of knowledge on these issues that concern the daily life of online cultural communication but which have legal implications that require the utmost attention in the re-use of cultural content online. How to clarify to the cultural community? We will never publish a book without mentioning the author, title and date of publication. On the web we run the risk of doing so with texts, images or audiovisual documents: on websites and social platforms it is easy to come across numerous offenses related to the violation of copyright or other types of rules.
But in the era of global content sharing, museums, libraries and archives and, more generally, cultural heritage institutions, do not seem to be sufficiently aware of the extraordinary opportunities in terms of cultural, social and economic development or the community that derive from the adoption of open licenses on content in the public domain. This is demonstrated by a growing number of cultural institutes that have taken this path for years and by an increasingly international bibliography that analyzed the impact of open licenses for cultural institutes and for the public.

Our research group works in close contact and dialogue with experts from national and international associations and stakeholders so that with a general reflection on digital cultural contents we may hope for a greater flexibility and balance between exclusive rights and freedom of reproduction.

Important: T*he FAQS make reference to the European copyright law, considering - whenever possible - also for the aim of practical format of the research work - the differences among the various legal systems, if relevant. When we use the term "copyright law", we also refer to author's rights. This document is for information and disclosure purposes and does not constitute a technical and/or legal opinion. For specific cases, we recommend seeking advice on the particular situation.*

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DYNAMIC INDEX

FAQ. QUESTIONS AND ANSWERS

I DEFINITIONS

What is meant for the author's right/copyright?

The set of rules that protect original literary and artistic works is called "author's right" in civil law countries and "copyright" in common law countries (United Kingdom, United States, Australia, Canada).

Author's right/copyright includes a series of rules that regard the relationship between the author and the work, recognizing to him exclusive rights over the latter. It is part of the discipline of intellectual property which includes both copyright/author's right and industrial property (patents, trademarks, designations of origin, utility models, topographies of semiconductor products, trade secrets and new plant varieties).

Author's right consists of moral rights, aimed at protecting the author's personality, and economic rights, aimed at guaranteeing the author a remuneration through the economic exploitation of the work. Author's right arises at the moment of the creation of the work, without any formality and protects "literary and artistic works", whatever the way or form of their expression. The Bern Convention (an international agreement that establishes for the first time the mutual recognition of copyright/author's right among the signatory parts) recognizes to the subscribing States the faculty to prescribe that literary and artistic works are protected only if fixed on a material support. The requirement of fixing the work on a material support, admitted by the Bern Convention, is typical of common law countries and, for example, has not been adopted by the Italian legislation on the matter.

The two systems of author's right and copyright traditionally focus on two different profiles: the first on the author as "person", and the second on the "right to copy the work". Although this different approach has some differences between each other (such as, for example, the different regulation of moral rights), they have the same purpose and increasingly tend to conform over time in relation to the evolution of forms of online exploitation of works.

Ref: Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, completed at PARIS on May 4, 1896,revised at BERLIN on November 13, 1908,completed at BERNE on March 20, 1914,revised at ROME on

June 2, 1928,at BRUSSELS on June 26, 1948,at STOCKHOLM on July 14, 1967,and at PARIS on July 24, 1971,and amended on September 28, 1979

Which works are protected by the law?

The author's right/copyright rules vary from country to country, although there are common aspects of protection because of the signature of the Berne Convention and the World Intellectual Property Organization (WIPO) Treaty. Within the European Union, the process of/author's right harmonization has greatly reduced the differences between the member states legislations through at least 12 different directives since the early 1990s. In particular, aspects such as: economic exploitation rights, exceptions and limitations, technological measures of protection, originality, concept of work, duration of economic rights, have been harmonized and we can certainly say that, right now, they receive a very similar protection at European level. However, author's right/copyright remains a national prerogative (and therefore there is the Italian, French, German, etc. copyright law which will be similar in the many aspects subject to harmonization indicated above, but it will maintain their own peculiarities). The original works within the literary, scientific and artistic genre, are protected by the law whatever the mode or form of their expression (even if it must have a certain stability) if they are original, as a result of the intellectual creation of their author. Originality is manifested through free and creative choices that allow the author to imprint his own personality in the work. Databases are protected by the author's right only if the choice or arrangement of the material can be considered as the author's own intellectual creation. In this case, the protection regards the structure of the database and does not extend to the contents of the database, without prejudice to any rights.

Ref: Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights; Judgment of the Court of 16 July 2009. Infopaq International A/S v Danske Dagblades Forening; Berne Convention for the protection of literary and artistic works; WIPO Copyright Treaty.

Does an author always exist?

Yes, the work is always the result of the author's intellectual creation.

The author can choose how to reveal his authorship if under his own name, or under a pseudonym, or if remain anonymous. There are also some works, called orphan works, which are presumed to be still under copyright/author's right law protection, but whose rights holders are unknown or untraceable.

Ref: Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works Text with EEA relevance

What is meant for joint works and collective works?

Joint works are formed by several authors' contributions that cannot be separated or distinguished from each other (as in the case of a book written by several authors); collective

works are, instead, created by several authors but the individual contributions remain distinct and autonomous and, therefore, separable from each other (such as an anthology).

What are the characteristics of the author's moral rights and economic rights?

All European states grant the author a series of exclusive rights that differ in moral and economic rights. Moral rights are born with the intent to protect the artistic personality of the author. The Bern Convention requires the adhering States to recognize two forms of moral rights: the right of authorship and the right of integrity of the work, i.e. to oppose any deformation, mutilation or other modification, as well as any other act to the detriment of the work itself, which would harm his honor or his reputation as an artist. The specific discipline is left to the legislation of the individual States. Moral rights, which have not been subject to specific harmonization, are untransferable and often not renounceable (even if in some jurisdictions renunciation is possible). Their duration can vary considerably: the minimum established at international level is at least the same duration as economic rights, but often, particularly in continental Europe, they last much longer, for example in Italy they are not subject to term. Economic rights, on the other hand, concern the use and economic exploitation of the work. The author, in fact, can decide to transfer or license the use of these rights, freely or in exchange of a payment. Economic rights are the right to: publish, reproduce, transcribe, perform, represent or act in public, communicate and make available to the public, distribute, translate, elaborate, modify, lend or rent the work.

Ref: Bern Convention for the Protection of Literary and Artistic Works of September 9, 1886.

What is the term of protection granted by the author's right/copyright?

All European states grant the author a series of exclusive rights that differ in moral and economic rights. Moral rights are born with the intent to protect the artistic personality of the author. The Bern Convention requires the adhering States to recognize two forms of moral rights: the right of authorship and the right of integrity of the work, i.e. to oppose any deformation, mutilation or other modification, as well as any other act to the detriment of the work itself, which would harm his honor or his reputation as an artist. The specific discipline is left to the legislation of the individual States. Moral rights, which have not been subject to specific harmonization, are untransferable and often not renounceable (even if in some jurisdictions renunciation is possible). Their duration can vary considerably: the minimum established at international level is at least the same duration as economic rights, but often, particularly in continental Europe, they last much longer, for example in Italy they are not subject to term. Economic rights, on the other hand, concern the use and economic exploitation of the work. The author, in fact, can decide to transfer or license the use of these rights, freely or in exchange of a payment. Economic rights are the right to: publish, reproduce, transcribe, perform, represent or act in public, communicate and make available to the public, distribute, translate, elaborate, modify, lend or rent the work.

Ref: Bern Convention for the Protection of Literary and Artistic Works of September 9, 1886.

Who does the author's right/copyright belong to when the work is created by an employee or is made for hire?

In general, moral rights and economic rights belong to the author for the fact of creation and from the moment the work comes into existence. In some cases, economic rights belong to different subjects through a mechanism of transfer of the rights by way of derivative title or original ones. For example, in case of work created on commission or by an employee, economic rights do not belong to the author but to the employer or the commissioning party, always within the limits indicated by the contract. It is controversial, however, if this rule has general validity or applies only to the specific cases provided by law (software, databases, photographs and industrial design works). In cases of doubt it will be necessary to examine the contract, in which it's always appropriate to specify who is the rights holder and for which specific uses.

What is meant for related rights?

Related Rights (or "neighbouring rights") intend to recognize and encourage the creative effort (such as performing artists of musical or audiovisual works) or the economic investment of those who make a work accessible by the public (phonographic producers, radio and television broadcasters, film producers and now also publisher of press publications shared on the web, to whom the new DSM Directive recognizes a particular and short-time related right to receive economic compensation in case of online uses).

Ref. Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society and Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC

Which materials are protected by the law?

The materials protected by related rights provided by European Copyright law are:

- for performers, the fixations of their performances;
- for phonogram producers, the phonograms;
- for the producers of the first fixations of films, the original and copies of their films;
- for broadcasting organisations, the fixations of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite.

There are also other cases of works protected by EU Copyright law that are not mandatory (e.g. non-original photographs, critical editions, fonts, etc.).

Ref. Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society

Are there any exceptions or limitations to the author's rights/copyright?

Yes, the exceptions allow to correctly balance the author's right on the work he created with the community's right of access to culture and art. In fact, there are cases in which the law considers that the second interest must prevail over the first. In practice, in these cases it is possible to use content protected by copyright/author's right law without the authorization of the rights holder.

Directive 2001/29/EC identified a series of not-mandatory exceptions leaving the national legislator the choice on their implementation and identifying in article 5, paragraph 1, only one mandatory exception in relation to temporary acts of reproduction, which are transient or incidental and an integral and essential part of a technological process and whose sole purpose is to enable a transmission in a network between third parties by an intermediary, or a lawful use of a work or other subject-matter to be made, and which have no independent economic significance.

On the contrary, the recent Directive 2019/790/EU overturns the previous approach by providing for a series of mandatory exceptions and, therefore, ensuring the effective reception of them by Member States.

Ref. Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society and Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC

What is meant for public domain?

From the literal point of view, public domain indicates something that "belongs to everyone". Although there is no legislative definition of public domain, it can be defined as the condition under which the work can be freely used by anyone, for any purpose (without prejudice to moral rights, at least for most civil law legal systems) without asking permission and without paying anything. The public domain, in this sense, represents the opposite situation to copyright/author's right, which normally grants the authors of the work exclusive rights over it. The legislator, in fact, has considered that in the balance between the author's interest in the economic exploitation of the work and the community's interest in access to culture, in some cases the latter should prevail. Works in public domain are: 1) works that the legislator defines in the public domain since their first publication (e.g. laws, judgements, etc.); 2) works regarding with the terms of economic rights have expired (in this case the Creative Commons Public Domain Mark is the correct tool to certify this status); 3) works that have been freely "donated to the community" by the authors (where the appropriate tool is CC0).

Can Cultural Heritage Institutions track a work in public domain?

Cultural Heritage Institutions may provide information about the ownership and/or custody of the physical work reproduced, as well as indicate the source of the digitization activity through the metadata and/or computer readable standards, in communicating the public domain status through the Public Domain Mark. Currently, there is no public database containing the works in public domain. A tool for identifying the status of the works under Creative Commons licenses or tools is CC Search.

Ref. Reproductions of Public Domain Works Should Remain in the Public Domain, https://search.creativecommons.org/

Can I freely publish works on the web or are there any rules to respect?

The web is not exempt from the obligation to respect the law. If you publish work protected by copyright/author's right law it is necessary to comply with the rules governing the proper use of them. The publication, therefore, will be free if (1) the work is in the public domain, (2) it falls within an exception or limitation provided by law, or (3) you have the permission of the rights holder (e.g. the work is released under Creative Commons license). In general, it's not possible to publish work without the permission of the rights holder. Publishing work with a mention of the author or the web site from which they are taken is not sufficient to avoid copyright/author's right infringement. For the sake of completeness, please note that the publication on a web site also requires you to respect all the rules involved in relation to the type of content (e.g. privacy policy).

What is an out-of-commerce work?

Out-of-commerce works are works that have never been in circulation, works no longer in circulation or not available through ordinary commercial channels. Out-of-commerce works are still protected by European Copyright law if 70 years have not passed since the author's death. A peculiar case is the one regarding literary works that are no longer available in the case where the author has transferred the printing right exclusively (because all the copies have been sold or worse have gone to the shredder for reasons of stock management). In this case the work is still under the protection of the contract even if the author would authorize some uses. Directive 2019/790/EU offers a number of mechanisms to allow cultural institutions holding out-of-commerce works to use them. Specifically, Member States shall provide that, under certain conditions, a collective management organisation, in accordance with its mandates from rights holders, may conclude a non-exclusive licence for non-commercial purposes with a cultural heritage institution for the reproduction, distribution, communication to the public or making available to the public of out-of-commerce works or other subject matter that are permanently in the collection of the institution, irrespective of whether all rights holders covered by the licence have mandated the collective management organisation.

Alternatively, Member States shall provide for an exception or limitation to the rights, in order to allow cultural heritage institutions to make available, for non-commercial purposes, out-of-commerce works or other subject matter that are permanently in their collections, on condition that the name of the author or any other identifiable rightholder is indicated, unless this turns out to be impossible; and such works or other subject matter are made available on non-commercial websites.

Ref. Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC

What is an orphan work?

Orphan works are works protected by copyright/author's right law where the rights holders are unknown or very difficult or even impossible to trace. There are millions of orphan works in European libraries, museums, archives and public institutions. The British library, which holds over 150 million volumes, estimates that orphan works are about 40% of its volumes. The information needed to identify the rights holders may be incomplete for a number of reasons, for example the work was published anonymously or under a pseudonym or is extremely dated and therefore the information has been lost. The orphan works European Directive, which came into force at the end of 2012, has provided for a number of cases in which the orphan work may be used by cultural heritage institutions. For the purposes of establishing whether a work or phonogram is an orphan work, the legislation requires a diligent search in the Member State of first publication. The declaration of "orphan work" allows Member States to limit the exclusive right to reproduce and make available to the public in favour of cultural heritage institutions.

Ref: Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works

Is the author's right/copyright waivable?

In most of the European States, moral rights don't expire (and therefore they are imprescriptible) and are not waivable and/or transferable by the rights holder (e.g. excepted for the United Kingdom). Economic rights, instead, are subject to term and the rights holder can freely decide to renounce, transfer or license them to a third party in exchange for a possible economic compensation.

Some legal systems (for example, the USA, Australia, the Netherlands, Poland and South Africa) provide the author with the possibility of automatically reverting of the rights when certain conditions are fulfilled.

Ref.: https://labs.creativecommons.org/reversionary-rights/

II TYPES OF CONTENTS

PHOTOGRAPHS

How many kinds of photographs exist?

Photography law finds its main source in the Berne Convention of 9,9,.1886 which provides the so called minimal protection of literary and artistic works and states that photographic works and other similar works must be considered artistic works. The Convention does not make a distinction between photographs as intellectual creations and photographs as mere representations of reality without requirements of originality and creativity. The choice whether to distinguish between different kinds of images has been left to the internal laws of each member state. The possibility to provide for the protection to other kinds of images – in addition to the photographic ones - has also been left to the internal regulations of each member state by Directive 2006/116 (Protection of copyright and certain related rights), which specified that all photographs that are original, ie. the result of the author's intellectual creation, enjoy protection, without considering other criteria besides "originality".

Certain jurisdictions define various kinds of photographs: 1. Photographic works," which have a creative "element" and enjoy the strongest protection under Copyright Law; 2. "Simple photographs," which are generally protected for a twenty year term (from the date of the reproduction) and are images of "people or aspects, elements or facts of natural and social life, obtained by photographic or equivalent process", and 3. "Photographic reproductions" (i.e., "documental" photos) which are mainly reproductions of documents, material items, technical drawings; they are protected under general principles of law rather than the Copyright Law.

Rif. Convenzione di Berna*;* Direttiva 2006/116/CE del Parlamento europeo e del Consiglio, del 12 dicembre 2006, concernente la durata di protezione del diritto d'autore e di alcuni diritti connessi, *Artt. 2 e 87,* *Legge sul diritto d'autore (L. 633/1941)*

Which photographs are protected by copyright?

In general. photographic works enjoy full protection as artworks, the law grants to the author both moral and economic rights. In some jurisdictions, simple photographs (photographs without the so called creative contribution, the personal sign of the author, and which are sort of mere reproductions) are protected as regards the so called related rights or rights related to copyright; the law recognizes author exclusive rights of economic use, such as the right of reproduction, dissemination, sale, rights that allow the author to market, publish, and to display in exhibitions.

With regards to reproductions, please note that according to Directive 2019/790 (art. 14), Member States must change their legislation in order to clarify that faithful reproductions of works of visual art in public domain cannot be protected by copyright law or related rights, unless the material resulting from the act of reproduction is original, in the sense that it is the author's own intellectual creation.

Rif. artt. 2, 12, 20, 87, 88, Legge sul diritto d'autore (L. 633/1941); Direttiva 2019/790/UE sul diritto d'autore e sui diritti connessi nel mercato unico digitale e che modifica le direttive 96/9/CE e 2001/29/CE

Does the law fix a minimum level of creativity in order to grant protection?

At the European level, in order for an artwork to be considered pursuant to Directive 2001/29 EC of 22.5.2001 (Infosoc Directive), it must be original, ie it shall be an intellectual creation of the author and shall be the expression of such creation. The Court of Justice has specified that copyright can only be applied with reference to original works. Emphasis is placed on the need to identify the personal touch of the photographer in the creation of the photograph and regardless of the artistic merit. In some jurisdictions, intellectual works of creative nature are protected, and there is no minimum level of creativity required. The works shall be the result of a creative activity and the photographer shall not have limited himself to reproduce reality, it is important that the author gives his own interpretation. Creativity is the author's personal and individual expression. Therefore, the existence of a creative act, albeit minimal, is sufficient and the photographic work must be the result of a qualified activity of intellectual creation. The characteristics of creativity must be evaluated from time to time, the interpreter must consider both the choice and preparation of the photographer and the subjective element that is expressed in his representation of reality.

Rif: Dir. 2001/29/CEE sul diritto d'autore e i diritti connessi nella società dell'Informazione; *Corte Giust. 16.7.2009, c, 5/08, Infopaq Internationa, http://curia.europa.eu/juris/document/document.jsf?docid=72482&doclang=IT, ; Corte Giust. 1.12.2010, c. 145/10, Painer case, http://curia.europa.eu/juris/liste.jsf?&num=C-145/10; art. 1, Legge sul diritto d'autore (L. 633/1941)*

Which are the rights of use connected to photographic works and to simple photos? How can they be transferred?

The rights of use generally referred to photographic works are: a) right to publish the work and to use it economically; b) the right of reproductions or multiplication in copies, and such right can be presumed to have been transferred – unless otherwise agreed – if the negative, the photocolor, the digital file or any other mean of reproduction is delivered; c) the right of communication to the public which consists in the use of one of the means of remote dissemination (ie, publication of a photograph in the press); d) the right of distribution (ie marketing or in general of making available to the public by any means, whether for payment of a consideration or for free); e) the right to hire (assignment of use to any third parties) and to loan (assignment by institutions open to the public). The abovementioned rights can be transferred by the author to third parties and are transferred inter vivos with a contract which

has to be in writing “ad probationem”: in other words, in the absence of a written document, it will be impossible to give evidence of the transfer of the rights.

In principle, simple photos are granted related rights, such as the exclusive right of reproduction, dissemination and sale. Such rights can be transferred to third parties with a written contract or through the transfer of the negative or similar mean of reproduction of the photograph (and for digital photograph, we refer to the “file”). The transfer of the negative gives raise to the presumption that a transfer of economic rights occurred, unless there is an agreement to the contrary.

To be noted that the transfer of the reproduction rights does not cause the transfer of the right of the photographer to be recognized as the author (right to paternity), which is a personal right and is not waivable, it can’t be transferred).

Rif. artt.12-19, 88-89, 107, 110 Legge sul diritto d'autore (L. 633/1941

Is one allowed to do a collage of photographs?

A collage implies the use/elaboration of someone else’s works or part of them. Therefore, for a collage which is a work which puts together reproductions of photographic images or part of them, it will be necessary to ask for the authorization of the author (or right holders) and to use the works within the limits of the rights of use which had been granted and to comply with the moral rights granted to the authors of the works included in the collage.

As a matter of fact, one will have to consider that: a) the author has the exclusive right to use, from an economical point of view, the work by any means and in its original form , or derivate work. A derivative work (the collage could be considered as such) shall not cause prejudice to the rights in the original work; b) if elements of the images have to be integrated, the consent of the author of the original work is necessary, as law provides that such integration shall not cause prejudice to the original work; c) also the author has rights on his personality, such as the moral right of integrity of the work. Therefore, the author has the right to oppose to any deformation, cut or other modification and any act which damages the work, which can prejudice his honour and his reputation. In other words, the right to integrity requires a true copy of the work. The author may consent to a reproduction of his work, also partially, in derogation of his moral rights.

Rif. Art. 4, 12, 20 Legge sul diritto d'autore (L. 633/1941

Which is the difference between legal and illegal modification?

The author has the exclusive right to modify, integrate (including disassembling the image’s elements) and transform the work. The integration is different from the modification, as the first is based on a manipulative creative intervention which gives raise to a new derivative artwork protected by law. On the contrary, the modification does not imply a creative contribution but

only a transformation of the original work. The consent of the author of the original work is necessary to carry on a legal modification and/or integration of his/her work.

Rif: Art 4, 7 e 18 Legge sul diritto d'autore (L. 633/1941)

Is the owner/custodian of an artwork also the holder of the author's rights on the work, ie. for photographic reproductions?

No, the custodian of the work can be the owner and/or custodian, depending on the facts, of the work but he may not be the right holder, and in particular the holder of the rights of use. Therefore, it will be necessary to specify in the agreement signed with the rights holder which rights have been transferred to the purchaser and/or custodian (the sole right of custody, the right of custody and of exhibition, the right of reproduction, etc.)

Rif. Art. 109 Legge sul diritto d'autore (L. 633/1941)

Are there any cases of free use?

In some situations it is possible to reproduce a work without the consent of the author, whenever there is a general superior interest, social one, cultural and information one, and they prevail on the author's right. Same principle applies to photographic works. We refer to the cases of right of information and news, the use of works for public safety reasons, of reproductions for personal use. There are also some legal possibilities of use without consent also for simple photos, for example, for the reproductions in books for school purposes, in scientific and educational works, or of public interest. The author has the right to a fair compensation. Please note that the publication, for cultural purposes, of the catalogue of an exhibition, is not a free use and therefore the economic rights of the author have to be complied with.

Rif. Art. 65-71, 91 Legge sul diritto d'autore (L. 633/1941); Dir. 2001/29/CEE sul diritto d'autore e i diritti connessi nella società dell'Informazione

Can one freely display the photographs?

At the European level, the need to be able to exhibit and promote artworks, for example part of a museum collection, is widely recognized among the exceptions and limitations provided by the author's right laws of he European countries, also in line with the provisions of Directive 2001/29/EC, art. 5 (3) (j) which allows member States to provide for exceptions and limitations in order to advertise a public exhibition or sale of works, to promote the event, excluding any other commercial uses. The right to display – in favour of the owner/custodian – is not regulated in an harmonized manner in the various countries, as it is a right considered differently in the various legal systems: a sort of right of mixed nature, a right to disclosure similar to the moral

right, a simple right of economical value, subject to payment of a consideration, or limited in time. It should be noted that in the absence of a specific provision in such sense, cultural entities have become aware of the importance of negotiating the transfer of such right, where possible, when the purchase/receive such artwork.

Rif: art. 12- 13 - 16 - 97 - 110 Legge sul diritto d'autore (L. 633/1941), Romano, L'opera e l'esemplare nel diritto della proprietà intellettuale, 2001, Padova, 47;. Rositani, La fotografia, 116; Direttiva. 2001/29/CEE sul diritto d'autore e i diritti connessi nella società dell'Informazione;

Who is the rights holder for the photographs commissioned and for those done by an employee of the museum?

Usually, for simple photos obtained during the performance of job tasks pursuant to a labour agreement, within the limits of the agreement itself, the exclusive right is held by the employer. The same principle applies when, in the event of commissioned photos (for example for photos done by a free lance photographer), and unless agreed to the contrary, the photographed things are owned/ or in custody by the commissioning party: if they are used commercially, a fair consideration is due to the photographer.

Rif.: art. 88 Legge sul diritto d'autore (L. 633/1941)

Which technological measures can be used to protect digital photos?

Digital images travel, are shared at a great speed; often they are copied, downloaded, modified, even without the consent of the right holder. To overcome these risks, one can adopt protection techniques both to identify the right holder connected to the image and to prevent access. The standard system is encryption which makes a text indecipherable unless the secret encrypted code, necessary to reveal the content, is known. The best system is watermarking, the so called digital trademark, which consists in the insertion, within the artwork, of a set of bits that modify the watermark of the digital code of the artwork. The digital logo may be visible to the eye or may not appear if not through a digital reading of the code of the work. There are also new software systems which, by providing a data registration service for the right holder, provide an online control service through specific programs aimed at finding the images used without the consent of the rightolders.

Can photographs be considered also cultural goods?

Yes, according to certain jurisdictions, such as the Italian one, photographs that meet the requirements of rarity and value can fall into the category of cultural heritage and as such are subject to the provision of the Code of Cultural Heritage. Both photographic works and simple photos can be protected by the cultural heritage provisions; the latter must be rare or have a

valuable historical importance. Furthermore, to be considered as cultural goods they must have a certain historical significance, this means that they must be works by dead authors or whose creations date back over fifty years. For more recent photographs or photographs by living artists, no cultural heritage limits can apply. There are special categories of cultural heritage goods: a) photographs with related negatives and matrices, the production of which dates back over 25 years; b) collections of photographs, if they are of exceptional interest upon declaration of cultural interest; c) archives, if of particularly relevant historical interest and subject too declaration of cultural interest.

Rif. artt. 10, 11, 4 (IV c) del Decreto Legislativo 22 gennaio 2004, n. 42 Codice dei beni culturali e del paesaggio, ai sensi dell'articolo 10 Legge 6 luglio 2002,

Are photographs considered to be cultural goods under specific controls and protections?

Cultural heritage photographs are subject to the obligation of conservation which must be carried out through a coherent, coordinated and planned activity of study, prevention, maintenance and restoration. Prevention entails all those activities suitable for limiting the risk of conservation, maintenance entails activities aimed to control and maintain the integrity of the photographs, restoration instead involves an intervention necessary to maintain the material integrity of the works. Restoration should comply with the author's moral right. The photographs cannot be moved from the place of conservation without the authorization of the relevant ministry, they cannot be used in contrast with their historical or artistic character or in such a way that their conservation or integrity could be prejudiced. They can be subject to compulsory custody in order to guarantee their safety and prevent their deterioration. A right of inspection is granted to verify the state of conservation and custody.

Rif. artt. 12, 29, 21, del Codice dei beni culturali e del paesaggio, Decreto Legislativo 22 gennaio 2004, n. 42 Codice dei beni culturali e del paesaggio, ai sensi dell'articolo 10 Legge 6 luglio 2002,

Can they be freely transferred and can they be freely circulated?

No, as they are assets which may fall within the cultural property of the state; therefore, they may circulate within the limits and in compliance with specific provisions. In certain jurisdictions, if they are part of collections of museums, art galleries, galleries and libraries or archives, they cannot be transferred. Same principle may apply to images of living artists or which date more than fifty years if the works belong to state collections. The cultural heritage photographs that do not belong to the state or entities indicated can be transferred and the transfer document must be reported to the ministry. Authority can exercise a purchase pre-emption right. Loans for exhibitions and exhibitions must be authorised by the ministry even in the case of international circulation, for which the temporary circulation certificate is required. In any case, integrity and

safety must be guaranteed and there are limits to the kinds of images authorised to leave the country (ie. image which constitute the main fund of the museum).

Rif: art. 822 codice civile; artt. 53, 54, 59, 60 65, 66 *del* *Decreto Legislativo 22 gennaio 2004, n. 42 Codice dei beni culturali e del paesaggio, ai sensi dell'articolo 10 Legge 6 luglio 2002*,

2D-3D REPRODUCTIONS

What is meant for reproduction?

The reproduction of a work consists in the creation of copies, direct or indirect, temporary or permanent, of the work, made in any form or manner.

Ref. Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society, art. 2.

What is meant for material deriving from an act of reproduction?

The material resulting from reproduction is everything that is the result of the act of reproduction itself and of the activity of making direct or indirect, temporary or permanent copies of the work, made in any form or way. The definition includes, for example, digital or analogical photographs of a work.

Is a 2D or 3D reproduction of a work of art subject to the author's right/copyright?

Yes, 2D and 3D reproductions of a work protected by copyright/author's right law fall within the broader exclusive right of reproduction, and are subject to the rules referred to.

See below the question concerning the 2D reproduction of cultural heritage in the public domain.

To which rights are reproduction materials subject?

The rights to the material resulting from the reproduction depend on the nature and characteristics of that material.

If the material resulting from the reproduction is original and an author's intellectual creation, it is also protected by copyright/author's right law.

If, however, the material is not an original work, it is protected as a simple photograph (related rights) (see also answer 4 - Photographs).

Is it possible to freely reproduce and re-use the material deriving from the reproduction of a work of visual or other kind of art?

The possibility to freely use the material resulting from the reproduction of a work depends primarily on the type of protection of the work itself. Directive 790/2019 provides that, when the term of protection of a work of visual art has expired (i.e. when the work entered in the public domain), any material resulting from an act of reproduction of that work is not subject to copyright or related rights, unless the material resulting from that act of reproduction is original in the sense that it is the author's own intellectual creation.

Ref. Direttiva 2019/790/UE sul diritto d'autore e sui diritti connessi nel mercato unico digitale e che modifica le direttive 96/9/CE e 2001/29/CE,

Can photographic reproductions of figurative artworks be commissioned?

Yes, it is possible to commission photographic reproductions of works protected by copyright law, always respecting the copyright/author's rights on the reproduced work (if any).

When a cultural institution commissions a digitisation project, is it the right holder on the final result of the digitisation only (images, rendering, graphic material) or also of the raw data (reliefs and points cloud)? Does it have to be provided for in the contract or agreement, or there is a legal presumption of it?

There is no explicit rule of law in this sense, therefore, the ownership of the raw data can only be established through the interpretation of the will of the parties as resulting from the contract.

TEXTS - books and periodicals - exhibitions and catalogs

Is it possible to photocopy or to digitally reproduce magazines or monographic works?

Directive 2001/29/CE (Infosoc) had allowed Member States to consider the digital copy as a photocopy.

Rif. Art. 68 lda; FAQS have been prepared by AIB and can be found at the AIB document Pubblico Dominio. Istruzioni per l'uso – Frequently Asked Questions

Is the format of an exhibition protectable? Who is the right holder?

An exhibition can be considered creative and therefore an intellectual creation, to be protected and with moral and economic rights, whenever originality can be found in its relevant elements. However, the creator of the exhibition, the curator, must have made creative contributions to the projects, giving to it a different personal character rather to have it as a simple exhibition of objects. The idea of the exhibition is not the protected element but its form of expression (it is advisable to obtain protection or by affixing a date and sending the document in a sealed envelope or by filing the format at the relevant registration entity). On a general level, the curator-co author is the righstholder of the relative rights, it being understood that it is advisable to rule specifically the issue of the rights in the agreement between the exhibiting entity and the curator, for example defining the role of the commissioning party with respect to the rights related the intellectual work, the intellectual property rights on contents and format.

Rif. Codice della Proprietà Industriale.: art. 4, Jobs Act:, Legge sul diritto d'autore (L. 633/1941)

Who is the rightsholder of content done by employees, freelance, and consultants?

As a general principle, the ownership of content created depends on the kind of agreement between commissioning party and employee/consultant/freelance (see, previous question).

Is the descriptive content of the tour of an exhibition protectable by law?

The descriptive content of the tour of an exhibition may be protected by law if creative, original and new (see, question 13 on creativity).

Protection of the content of an exhibition catalogue: is copyright granted to the editing company or the author?

An exhibition catalogue is a collective work, which requires the intervention of several people who provide different contributions (photos, written texts, critical essays, etc). Therefore, different subjects are identified, holders of different rights, such as the authors of each contribution, the person who organizes the work, the publisher who is entitled to the rights of economic use of the collective work, unless parties have agreed in a different way. The moral rights referred to the single contributions remain with respective authors, the right of economic use of the work generally belongs to the publisher, unless otherwise agreed.

Rif. Art. 3-7-38 Legge sul diritto d'autore (L. 633/1941)

When and is it possible to digitize the catalogue of an exhibition?

Among the activities delegated to the cultural heritage institutions, we find also communication to the public, the educational purpose, protection and conservation. The exceptions and limitations to copyright allow uses of the material protected by copyright law which are intended in favour of the superior interest in information, knowledge, research, dissemination and conservation. Many of those exceptions are in favour of cultural heritage institutions, the cultural ones, archives, museums, etc, precisely in order to allow them to perform their tasks. The digitization of works, for example, is part of these and has caused certain problems with copyright law. In particular, with respect to digital copies of content which is in collections and the digitization and dissemination of such content.

At the European level, many states have established specific rules, also with regards to the change of size (for preservation purposes) or in order to prevent deterioration, but for some commentators such activity can be referred to only to entities which are not for profit (as provided by art. 5 (2) c Directive 2001/29 EC Infosoc, which refers to the reproduction made by not for profit libraries, museums, archives).

Art. 6 of Directive 2019/EU provides the exception that allows cultural heritage institutions to make copies of any works or other subject matters that are permanently in their collections, in any format or medium for purposes of preservation of such works or other subject matters and to the extent necessary for such preservation. The European ruling aims to allow cultural heritage institutions to preserve and enhance the assets of their collection also through the use of digitization processes.

Rif. art. 5, Dir. 2001/29/CEE sul diritto d'autore e i diritti connessi nella società dell'Informazione*; art. 6,* Direttiva 2019/790/UE sul diritto d'autore e sui diritti connessi nel mercato unico digitale e che modifica le direttive 96/9/CE e 2001/29

For the reproduction of artworks in a catalogue and for its digitization, is it necessary to obtain the authorisation of the right holder?

At the international level, the need to be able to exhibit and promote artworks, for example as part of their collection, is widely recognized among the exceptions and limitations provided f by the copyright laws of the European countries, also in line with the provisions of Directive 2001/29/EC, art. 5 (3)(j) which allows Member States to provide exceptions and limitations in order to advertise a public exhibition or sale of artistic works, to the extent necessary to promote the event, excluding any other commercial use. And therefore to include works in

catalogues. As for the digitization, we refer to the previous explanation of the exception for the conservation of the cultural heritage provided by art. 6 of Directive 2019/790 EU.

Rif. art. 5, Dir. 2001/29/CEE sul diritto d'autore e i diritti connessi nella società dell'Informazione*;, art. 6,* Direttiva 2019/790/UE sul diritto d'autore e sui diritti connessi nel mercato unico digitale e che modifica le direttive 96/9/CE e 2001/29*, art. 13 Legge sul diritto d'autore (L. 633/1941)*

Other detailed FAQS have been prepared by AIB and can be found at the AIB document *Pubblico Dominio. Istruzioni per l'uso – Frequently Asked Questions*

DATABASES

What is a database?

The term database means a set of data organized according to a logical model predefined by the author in such a way as to allow the management of the data (insertion, search, cancellation and updating).

When is a database protected by copyright and when by a general right?

The databases are protected by copyright law both as intellectual works of a creative nature resulting from the intellectual work of man, and as an asset (despite the character of creativity) created thanks to significant investments in financial terms, of time or work.

In the first case, creativity, an indispensable requirement for all intellectual works protected by copyright, must characterize the criteria for choosing and arranging the material included in the collection, investing in the form of compilation. The author of a database, who has creatively chosen and organized the material within the collection, is the exclusive rights holder of economic and moral rights granted to all authors of intellectual works, and therefore the creative database can be protected up to 70 years after the author's death. In this case, the use of a database is free, access and consultation - not, on the other hand, reproduction - carried out for educational or scientific research purposes, or use for public security purposes or in the context of an administrative or judicial procedure.

Conversely, in the event of a database which is not considered an intellectual work, but an asset to be protected due to the large financial, time or work investments on the database, a general right is granted, valid up to 15 years from the date of creation of the database, renewable in the event of substantial changes or additions made to the collection. This is a specific form of protection for databases established within the Community through Directive

96/9 / EC. In particular, the author of a data base can "prohibit extraction operations or reuse of all or a substantial part of it". The user can still carry out the extraction or reuse of non-substantial parts of the content for any purposes. Finally, it is important to note that these two forms of protection are not alternatives to each other, but can coexist and therefore be granted to the same database.

Rif. Art. 64 quinquies lda; Art 64 sexies lda; Art. 102 bis lda (diritto sui generis); art. 102 ter lda (diritto sui generis)

Is there a copyright on databases created by a cultural institute?

Yes, the databases created by a cultural institution, both public and private, can be protected both from the point of view of copyright and sui generis right (see previous question). In particular, the Italian law on copyright expressly recognizes that public administrations have the copyright on works created and published by them in their name and at their expenses. The same right also applies to private non-profit organizations (unless otherwise agreed with the authors of the works) as well as to academies and other public cultural bodies on their publications. On the other hand, no authorial protection is envisaged for the texts of official acts of the State and public administrations, both Italian and foreign.

OPEN DATA

What open data is?

Open data is data accessible to everyone, it can be freely used, reused and redistributed by anyone. Under the license under which they are distributed, they are subject to citation of the source and different ways of sharing.

Rif: https://opendatahandbook.org/guide/it/what-is-open-data/; https://opendefinition.org/od/2.1/en/

Which is the difference between data and metadata?

Data are single pieces of information that describe a specific object (eg “Édouard Manet,The Spring, 1881”).

Metadata is a series of information about the data that is intended to describe its content, structure and context (for example "author", "title", "year" ...). There are several metadata systems, or sets of information such as the **Dublin Core Metadata Initiative**, which represents a standard for exchanging information. Different metadata features lead to different types:

Management administrative (used for the management and administration of information resources) eg. MAG or METS;
Descriptives (from MARC to Dublin Core);
Structural;
Conservation (including migration);

Technicians (behavior of metadata and functioning of systems);
Use (related to the level and type of use of the user).

Where do I publish my open data?

There are several web portals (regional, national, international) where you can publish the open data of your institution, both managed by public institutions (CulturaItalia, Europeana, dati.gov), and managed by non-profit foundations (Wikidata). Open data can also be published on the institute's website in an open format.

In what formats do I publish my open data?

Open data must be published in an open format, in a non-proprietary format that guarantees reading by any program and does not present any legal restrictions on its use. The most common open formats for publishing data are: XML used to define data on the web; the CSV used for information with a tabular structure; the JSON; the Shapefile, the geoJSON, the KML and the GML for geographic data; ODT for text documents, the ODS for spreadsheets and the ODP for presentation documents.

What license do I apply to open data?

A license is a legal instrument that conveys a right, accompanied by a promise, by the grantor, not to sue the beneficiary, should this right be exercised; it is a kind of authorization to do something or use an asset that otherwise, without a license, would not be permitted by law. In the context of property rights rules, a license is a unilateral permission to use someone else's property. The same is true for intangible assets. It is not enough to apply a license in order to make a resource "open", but the resource must be "open" in terms of real and effective interoperability, avoiding the use of licenses only as something fashionable. There are closed licenses and open licenses. Licenses must be applied by the rights holder and are applicable to protected material. Broadly speaking, the types of open licenses are divided into: - Creative Commons (CC) - Open Government License (OGL) - Open Data Commons (ODC) - Public Domain (PD).

With regard to the licenses of the CC Creative Commons family, six licenses are identified, generated by as many possible combinations of four clauses, starting from the most open to the most restrictive, where the more the license is restrictive, the more reusability is reduced:

1. Attribution - Attribution only (CC BY)
2. Attribution - Share alike (CC BY-SA)
3. Attribution - No derivative works (CC BY-ND)
4. Attribution - Non-commercial (CC BY-NC)

5. Attribution - Non-commercial - Share alike (CC BY-NC-SA)

6. Attribution - Non-commercial - No derivative works (CC BY-NC-ND).

The CC0 1.0 license no copyright, is a tool with which the owner of the rights declares that it is not necessary to attribute the work to its author as the author has waived the rights and allows the user to modify, share the work also for commercial purposes.

Can raw raw data also be subject to copyright?

The single data as such does not have sufficient "creativity" to guarantee the emergence of a copyright on it. In fact, the general principle of non-protectability of the data itself is in force pursuant to the law on copyright.However, according to existing European regulations, there may be a copyright on the whole of the data produced, in cases in which such data complex is published for the first time ever or innovations are introduced, in the content or in the form of correlation of data, such as to justify protection of the unpublished work performed.

What are FAIR data?

"FAIR data" means open data produced in the context of university and / or scientific research and made available to the public, according to the so-called "FAIR principles", namely:

Findability: the data must be easily traceable in their entirety;

Accessibility: the data must be freely accessible by all in their entirety;

Interoperability: data must be published in formats and with exchange protocols that allow the widest possible reuse, possibly open source;

Reusability: data must be published under a license that allows for the widest possible reuse.

AUDIO CONTENT

Which economic rights are involved when synchronizing images and music?

The synchronization, that is the combination of music and images, is a form of elaboration of the work, through which the musical work is associated with other forms of expression, giving life to a new work. If this work has the characteristics requested by the law to receive protection, it can be identified as a derivative work. The elaboration/modification is one of the exclusive economic rights that the author can decide to transfer or grant in use, but it is also relevant in relation to the moral right of integrity, which allows the author to oppose any modification of the work that could damage his honor and reputation. The process of synchronization itself also presupposes the reproduction of the work.

To which rights holders shall authorisations be requested to?

Concerning the audio content, authorizations must be requested to the holder of copyright/author's rights and related rights. In the first case, the authorization has to be requested to the authors of the work, or the publishers, if they are present. In relation to the latter, instead, the authorization has to be requested to the phonographic producer who has normally acquired the performing artists' rights by previous agreement.

Can I use music works under CC licenses? Which ones?

The musical works released under Creative Commons licenses are works that the author intended to share openly with the public. The terms and conditions of use are strictly related to the type of Creative Commons license under which the work has been released (for example, if the license contains the NC clause, the work may only be used for non-commercial purposes, or in case of ND clause the work may not be used for the creation of derivative works). Therefore, works released under Creative Commons license and/or tool can be used, but always according to the conditions and modalities provided in the license/tool itself. Please note that in the case of NC clause, it's always possible to conclude an additional agreement with the rights holder for commercial exploitation (CCplus).

Which rights are involved in an audio file?

First of all, an audio file is protected by copyright/author's right law if it can be considered an original work as defined by the copyright/author's right law itself. In this case, the author has moral and economic rights related to this file. Therefore, the economic rights involved depend on the type of use, and the way of use is strictly related to the rightsholder will.

Is it necessary to ask for author's consent when using all or part of a song, theme song, jingle or other audio or video content?

Yes, the partial or complete use of any video or musical work is subject to the request for authorization to the author or publisher, if any, and to obtaining their consent. If, moreover, the work is fixed on an audio and/or video support (physical and/or digital) it's necessary to ask the phonogram and/or videogram producer for authorization.

III WEB TOOLS

PODCAST AND WEBINAR

What is a podcast?

It is a recorded audio, which can be archived, listened to or distributed via Internet. A sort of web radio broadcast.

What is a webinar?

It is a recorded and / or broadcasted seminar, even live, via Internet.

What is a live or streaming podcast or webinar?

The podcast or webinar can be recorded and broadcasted live on the Internet.

Can I freely create a podcast or webinar for the cultural institution for which I collaborate or work or do I have to agree with the management methods, contents and topic, the editorial line?

The podcast or webinar involves a series of preliminary activities to protect copyright. For example, gathering of a written waiver on the originality of the content disseminated by the speakers or interviewees, the specification of whether the speaker or interviewee speaks in a personal capacity or on behalf of the cultural institution. Therefore, careful verification of these aspects is required. It is then required by the legislation that regulates the activities of the cultural institution, or in any case it is appropriate and useful, to verify the prior consent of the director to the registration and broadcast of a podcast or webinar.

If I record a podcast or live or streamed webinar with other attendees, do I need to get their consent to broadcast?

The recording and archiving of audio or video content, in addition to raising questions regarding the treatment of personal data, requires the prior written consent of the participants. Written consent must be sought for any possibility of downloading the video by the participants in the event in future. The use of a video, for webinar or video lesson, in a streaming platform

must be different from the use of video downloaded by anyone from the same platform. This relates to the permissions that the individual user has on the platform, but first of all from the permissions that participants grant authorizing the streaming but not the download of the video file.

In what form (written or oral) shall the consent obtained?

A written form is always recommended.

SHARING

Can I freely upload on the web site of the cultural institution for which I work the digital resources (like photographs, videos, images, sounds, drawings, memes, gifs, writings, symbols, logos) found on Internet or through social media or through other digital channels?

The domestic and European Union legislation for the protection of copyright requires the mention of the author and / or source of the digital resource, which is intended to be shared on Internet. In the case the content is without source or mention of the author, it is necessary to research the source and / or author as far as possible, using the best efforts.

How should I mention the source?

The source is usually mentioned according to the request of the author or the site or the media from which it was taken. Otherwise, it is advisable to identify the subject or source, place and date of issue, and the related digital resource, for example by reporting the link to Internet site with the date of consultation of the site.

If the author is not identifiable or does not respond to the request for consent?

If, despite all best efforts, no response is given to the request of consent or the author is not identifiable, it is better not to share or to mention that searches were carried out (through request of consent) with no results.

WEB SITE

What is a website?

It is a set of pages written in computer language that host texts, images, videos, data or other means of interaction (e.g. chat, forum), disseminated through standard protocols and identified by a domain (see below).

What is a blog or video blog?

Personal page operated on the Internet, hosted by a domain. It is a specific type of website characterized by the chronological "diary" form: it might be commented by readers, host videos, images, etc. If the content of the blog is mostly video, it is also called video-blog.

Who rules Internet? And what applicable law rules Internet?

At a global level, on the technical-IT level, there is a set of technical rules developed and applied by the Internet Corporation for Assigned Names and Numbers (ICANN), a non-profit organization, under US law, responsible for the management and coordination of the domain name system (so-called DNS, Domain Name System), to ensure that each address is unique and that users are able to find valid (IP, Internet Protocol) addresses. ICANN is organized according to the plural participatory model (so called multi-stakeholder), to which the public and private sectors contribute. At domestic or European Union level, there are different laws governing access, use and disputes on the subject matter.

Does copyright apply also to Internet?

Yes. Internet is not a free zone. The digital world is regulated by international (e.g. multilateral treaties, agreements between States), European and State legislation on the subject matter.

What basic rules do I have to follow to publish on my site?

The rule of due diligence requires those who intend to disseminate content via Internet, and therefore also through a site, to verify the domestic, European and international legislation applicable, for example, to the cultural sector. For example, carrying out the copyright, the expiry of such rights, if there is any license and the type of license. To this generic rule, the cultural institution, owner of the site, may foresee further provisions for the visitors and users of the site. These specific rules can be provided in the so-called terms and conditions of the site or, if the site offers products or services for sale in the so-called general conditions of contract. If the user-buyer of products or services is an individual (consumer), the more rigorous consumer protection legislation (so-called B2C) will be applied; if the user-buyer of products or services is a business, the general rules on contract will be applied (so-called - B2B).

DOMAIN NAME

What is an Internet Protocol (IP) address? What is a domain name? What is a Domain Name System (DNS)?

The IP address uniquely identifies devices connected to Internet according to Internet Protocol standard.

The domain name is a sequence of letters and/or numbers combined by the registrant according to his/her fantasy but in a human-readable way for Internet users. It is unique, meaning that it is assigned to one entity only based on the 'first come first served' principle.

The Domain Name System (DNS) is used for the conversion of domain names (icom.museum) into Internet Protocol (IP) (81.201.190.51) and vice versa.

Is the registry or domain registrant data public?

The registry is freely accessible but the registrant's data are protected and hidden in compliance with European legislation on data protection. To access, a reasoned request shall be sent to the registry (not to the reseller of the domains, called registrars), which grants the use and assigns the ownership of the domain.

Who can register a domain?

There are some restrictions (e.g., subjective, geographical) applied by each Registry to free registration. If the word chosen as domain name is a dictionary name, not corresponding to a registered intellectual property right (e.g., trademark, domain name, trade name, display) or other prior rights, it can be registered by anyone.

Before the registration of a domain name do I have to or may I check if the domain name I intend to register is identical or confusingly similar with a third party's prior rights?

There is no legal obligation but it is advisable to search in public and/or private databases to verify the existence of third party's prior intellectual property rights.

May I request a third party to register the domain name used by me?

Yes, I can but it is advisable that the third party provides a written declaration with which he or she recognizes you as the owner of the registered domain.

Which is the applicable law to my domain?

The law of the country of residence or domicile of the registrant and the assignment rules of the domains of each registries (eg .org, .museum, .art).

Which is the best domain name for my cultural activity?

You are free to register the domain you deem most suitable. A national geographic domain (e.g. .it, .fr, .es.) or a generic domain that expresses the cultural or non-profit nature and scope (e.g. .museum, .art, .org) of the entity using the domain.

APP

What is an App?

It is a software application dedicated to mobile devices (eg. Smartphone, tablet) providing functionalities\, images, sounds and interaction functionalities.

Which is the applicable law to an App?

The general terms and conditions of the App itself apply, which provide the applicable law. Usually, it is the domestic law of the company that owns the App and therefore it could be a different law from that of the user. If the user is a consumer, according to European legislation, European law applies to the latter and the more favorable one, if any, of the Member State of citizenship or residence or domicile of the consumer.

How to protect the name and content of an App?

The name can be protected by registering it as a trademark or company name. The content is protected by European Union and domestic copyright law.

SOCIAL NETWORK

What is a social media or social network?

It is a website providing IT services or technologies and other tools widespread on the Internet, which allows users to set up a virtual social network in which to share and exchange texts, images, video and audio, interacting with each other.

What is the difference between a Page, Profile and Group?

Pages are electronic places where individuals or organizations can publish and interact with users or visitors. To have an institutional page it is necessary to have a personal profile as a user of social media, which is a digital space in which the owner can share texts, images, videos, indicating the nature of the owner of the page itself (e.g. cultural institution, public figure) and other information. Also to create a Group it is necessary to have a personal Profile to which different roles can be associated, e.g. as an administrator or moderator: the Group allows you to dedicate the sharing of texts, images, videos, to specific topics of common interest to the members or invited.

What rules should I respect for posting or for a live streaming in my social networks?

Each social media or social network has specific and different rules, to which are added the general rules provided for by domestic and European Union law. It is always advisable to check the rules of the social media or network, before posting or going live streaming.

Who is the author of the uploaded or shared content?

The author is and remains the person who creates or the licensee of the contents. Those who publish are presumed to have received the author's consent to publish or share. Sometimes this consent is implicit if the author of the Page, Profile or Group has authorized the sharing of the contents, accepting such tool in the section of the social media or network dedicated to privacy management.

What precautions should be taken before publication?

Check that the 'share' tool exists and, as a precaution, consent to sharing via private message or in the 'comments' tool may be requested.

May I freely share or exchange, download, upload or re-use, copy, modify, publish contents (photographs, videos, images, sounds, drawings, meme, writings, symbols, logos) disseminated on social media or should I verify if they are protected by copyright?

It is allowed only if the author and/or the platform allows it. It is always advisable to ask the author or obtain prior written consent, even if by informal way (e.g. via e-mail or message).

INSTANT MESSAGING

What is instant messaging (chat)? What is an instant messaging channel?

It is an interactive interpersonal electronic communication service via mobile phone, tablet or personal computer, connected to Internet, with which it is possible to exchange in real time with other connected users texts (e.g. news, surveys), images, audio, video, money, also usable in the form of groups or in the form of newsletters.

Ref .: Recital 17, EU Directive 2018/1972, European Electronic Communications Code

What rules apply to instant messaging?

The rules are those provided both by domestic (of the user's country of residence or domicile) and European Union legislation on electronic communications, and by the contractual ones different for each provider written in the general terms and conditions of the service.

Ref .: Directive 2018/197, European Electronic Communications Code

May I freely open an instant messaging channel for the cultural institution I work for or do I have to agree with it on methods, contents and topics?

Before opening an instant messaging channel, you need to check if your employment or consulting contract allows it. If so, but as often happens a contract is generic, it is advisable to agree with the cultural institution (employer or client) methods, contents and topics.

May I freely share, forward, download, edit content (photographs, images, sounds, voice message, music, videos, drawings, photomontages, memes, writings, symbols, logos) received or do I have to ask the author or sender for their consent?

Before sharing content of any kind, it is advisable to first check if there is a copyright and who is the author, then if the author has consented to free sharing and therefore circulation or if he/she agrees, under what terms and conditions (e.g. mention of photo copyright, so-called credit).

In what form (written or oral) must this consent be obtained?

It is advisable to receive the consent of the copyright holder in writing without any particular formalities (e.g. also via email). The oral form does not allow those who use the contents to prove that they have received their consent, in the event of a dispute, and can always be revoked orally and therefore always without being able to prove that they have received the revocation itself.

May I freely upload content found on the Internet or from third parties without first asking for consent?

It is allowed if consent has been obtained from the copyright owner or on the basis of standard licenses such as those of Creative Commons. It is not allowed to upload or download works, however, without the consent of the rights holders, as very often happens on "file sharing" platforms and peer-to-peer sharing. For reproductions of this type it is not allowed to invoke the application of the exception of the "private copy" (e.g. the copy made for personal non-profit purposes), since this exception is reserved for those who have acquired the original or have had access the work legitimately, or with the authorization or license of the rights holders. The type of technology used or the fact that only parts of the work are reproduced is irrelevant, as these parts themselves are also protected by copyright. In this regard, the principles of the GDPR (General Data Protection Regulation) must also be kept in mind, which however is beyond the scope of the work carried out here.

What if the author is not identifiable or does not respond to the request for consent?

In both cases, it does not mean that the protected work or content is free to use, nor that the deadline required by law for the author or his/her heirs to claim copyright or economically exploit such work or content or the work has expired, or the content is not creative. Before using, sharing or publishing this work and/or content, it is therefore advisable to consult free public databases to identify legal creative content or the ownership of third party rights on the Internet: for example, the European portal Agorateka, divided into six sections constantly updated (e-books, films, video games, specialized publishing, TV and music) or websites of the Italian Patent and Trademark Office (UIBM) and the European Intellectual Property Office (EUIPO). If, despite all efforts, the authors are not identifiable or the author does not respond to the request for consent, it is advisable to mention the author and the source. If, despite the mention of the author and source, you receive a request to take down the content, it is advisable to make a copy of the page containing the mention of the author and source, and take down, as requested by the author or the heirs or the licensees, such work or content.

ONLINE SHOP

Who is the author of the items for sale that reproduce cultural heritage?

The author is the person who declares to be such in the general conditions of online offer to the selling public, which can be the owner of the cultural property (for example museum, collector) or the licensee of the copyright (for example, company in charge of commercial exploitation of cultural property). In both cases, it is advisable that the owner of the online shop obtains from those who intend to offer these objects to the public for sale a written declaration, even if informal, confirming the possible ownership of this copyright. This declaration is, by contractual practice, included in the general conditions of sale of objects that reproduce cultural goods, and attached to the public offer contract between the seller (online shop) and the owner of the copyright on the objects for sale that reproduce cultural assets, public or private (for example, the museum or the museum merchandising company).

Ref: arts. 8 and 19 paragraph 3, Industrial Property Code, art. 107 Italian Code of Cultural Heritage, art. 2 Italian Consumer Code

May I sell the residual material from an exhibition or is it compulsory to request consent?

It is compulsory to verify who is the owner of the property right and copyright. Having verified both of these rights, it is compulsory to request and acquire the prior written consent of the owner and/or owner of the copyright. It will also be necessary to verify that the institution hosting and/or organizing the exhibition does not have rights to such set-up materials and, if so, also acquire this prior written consent. In all cases, it is advisable that, in addition to the transfer of the right to sell such residual staging material, the transfer of copyright on such material is also provided by a written agreement.

IV. LICENSES and REUSE

DATA AND LICENCES

What is a user license?

The license for use is a contract which grants the right to use a work or other protected materials. In fact, in the license agreement, the rights of use are not transferred, but the licensee remains the owner, as opposed to what happens in a transfer agreement. There are several models of open licensing that confer spaces of use freely granted to all users interested in exploiting the licensed content. Examples of open licenses are: - Creative Commons (CC) - Open Government License (OGL) - Open Data Commons (ODC) - Italian Open Data License (IODL). The different types of information (code, content, data) require different types of licenses. For example, there are licenses designed for content that can be protected by copyright / copyright law, such as Creative Commons licenses, or specific licenses for the code, typical of Free Software environments. It is not enough to apply for a license in order to make a resource "open", but the latter must be "open" in terms of real and effective interoperability.

What are Creative Commons licenses?

Creative Commons (CC) licenses are the most popular open copyright licenses (there are also others such as ODCs, ODbLs, etc.). There are six types of CC licenses that can be chosen based on the way you want to share your works. They range from the most open licenses such as CC BY 4.0, CC BY-SA 4.0 (which both provide for the reuse, including commercial reuse of the works and the right to create derivative works; the second, however, with the limitation of the obligation to release the derivative work with the same type of license with which the original work was published) to the more restrictive ones such as: the CC BY-ND 4.0 license (which does not allow the creation of derivative works); CC BY-NC 4.0 (which does not allow commercial uses); CC BY-NC-ND 4.0 (which does not allow commercial uses or derivative works); CC BY-NC-SA 4.0, (which does not allow commercial use and obliges the release of the derivative work with the same license with which the original work was published). It should be noted that the BY clause, which requires the indication of paternity information and the type of CC license used, is mandatory for all six CC licenses. The so-called CC + (CC Plus) is, on the other hand, the combination of a Creative Commons license (which must not undergo any kind of modification with respect to the standard model) with another separate and independent agreement that grants more permissions than the standard license (for example it is the typical case of commercial uses combined with a NC license). The work, therefore, can be used according to the permissions granted by the standard license to which the additional ones provided by the additional agreement must be added

What are the open Creative Commons licenses compatible with open access?

Creative Commons licenses compatible with open access are:
CC BY 4.0, which allows you to share, reproduce and modify a work, even for commercial purposes, with the constraint of attribution of authorship and the indication of the type of license with which the work was shared; CC BY-SA 4.0 which allows the work to be shared, reproduced and modified even for commercial purposes, with the restriction of attribution and provides for the obligation to release the derivative work with the same license with which the original work was published. CC0, on the other hand, is a tool that allows you to release in the public domain around the world a work of which you own the rights. The release into the public domain (by the will of the copyright holder before the expiry of the legal term of protection or of the entitled persons, i.e. the heirs at the time of the expiry of this term) allows to share, reproduce and modify the work, also for commercial purposes, without any restrictions.

IMAGES OF CULTURAL GOODS IN PUBLIC DOMAIN

Which are the main legal limits to the reuse and dissemination of images of cultural goods?

The reuse and the dissemination of images of cultural goods is bound to the compliance with privacy principles concerning personal data (for example, recent documents which are kept in archives), and wirth reference to such reuse and dissemination we recall the European ruling (UE 2016/679) and the copyright provisions aimed to protect creativity. For this reason, at an international level, the cultural institutions rule the online use of digital images and maintain their rights on the mere reproductions of original works, included those in public domain. However, such faculty shall be - at an European level - partially modified by the laws of the single state members in light of the recent directive on copyright, which excludes the creativity character of simple reproductions of artworks in public domain, and therefore excludes the request for payment of rights of use according to copyright provisions.

Rif: Dlgs 296/2003 (codice della privacy); regolamento (UE) 2016/679 Dlgs 42/2004 (codice dei beni culturali), artt. 107-108; Direttiva 2019/790/UE sul diritto d'autore e sui diritti connessi nel mercato unico digitale e che modifica le direttive 96/9/CE e 2001/29/CE, *art. 14*

Which are the tools used by cultural institutions in order to protect images of artworks in public domain?

The cultural institutes aim to limit and discourage the reuse of the digital reproductions published online use watermarks which are placed on the images, release low resolution reproductions or allow to see images at high resolution but impeding to the viewer to download it. These are tools fit to the protection of copyright online but note that such tools run the risk to act as an obstacle to the viewing online of the image (for heavy watermarks or images in low resolution) but also the free reuse for cultural purposes of images of public cultural goods as provided by code for cultural heritage (see Photographs).

I have digitized the image of a good which was in the page of a book: can I reuse it in a new volume simply by making reference to the original publication?

If it is a publication done for commercial purposes (see above) is it necessary to ask again for the consent to the entity/owner of the good and eventually to pay the fees for the related rights of publication.

Rif. Decreto Ministeriale MiBACT 8 aprile 1994.

Contemporary art exhibitions in cultural institutions: how to rule the reproduction from visitors?

While organizing an exhibition, it is advisable to check, in agreement with the lending entity, if the artworks to be displayed, are free from rights, for example by identifying the right holder. This is useful not only for ruling the reproduction from visitors but also to avoid the risks to infringe author's rights whenever such reproductions in a catalogue. In the event of limits to reproductions of certain works it will be advisable to indicate, with specific graphic symbols under the protected work, the prohibition to do photo/video shootings from visitors.

Rif. Dlgs 42/2004 (codice dei beni culturali), art. 108, c. 3 bis.

Where and how can I find high resolution images of cultural heritage goods to reuse in an illustrated volume?

It is possible to download images of artworks on the websites of museums, archives and libraries releasing images with open licenses. In these cases the reproductions are published

and made downloadable at high resolution precisely in order to promote the free reuse of the images for any purpose, including commercial ones.

Is it advisable to apply Creative Commons licenses to works in public domain?

Creative Commons License cannot be applied to works in public domain, as they imply the existence of author's rights or copyright on the works. However, cultural institutions can claim related rights on the reproductions of works in public domain. This explains the reason why various cultural institutions around the world release digital copies of works in public domain which bear Creative Commons licenses. The EU directive on copyright (art. 14) excludes however related rights and therefore the possibility to impose rights on the simple digitization of works in public domain.

How can reproductions of works in the public domain be managed?

When the European directive will be implemented, only the Public Domain Mark (PDM) will be associated with reproductions of works in the public domain.

The Public Domain Mark (PDM) - unlike CC0 and the Creative Commons licenses - is not a legal device, therefore can be used only to show the public domain status, and in no way this may imply changes to the legal status of the work to which it is associated.

Rif. *Public Domain Mark* (PDM)

OPEN ACCESS AND LICENSES: MUSEUM CASES

Which museums have adopted open licenses or public domain for reproductions of their collections?

Museums, libraries and archives all over the world adopt open access policies. Some of these institutions are the most famous and visited in the world: Metropolitan, Smithsonian, Paris Musée, Victoria and Albert Museum, Rijksmuseum. In Italy, the BEIC Foundation of Milan, the Royal Museums of Turin, the Egyptian Museum of Turin. Open access is rapidly evolving both in terms of the number of institutions that adopt it, and for the number of reproductions that are progressively published. The GLAM survey open access research work provides an extensive and constantly updated list of Institutions adopting open licenses or public domain.

Ref. Survey of GLAM open access policy and practice (Douglas McCarthy and Dr. Andrea Wallace)

Which user licenses are adopted in Open Access policies?

Online collections provide information on single photographic reproductions of artworks that are released under Creative Commons licenses, in the public domain or with copyright restrictions. The use of specific wording on the single page allows you to differentiate the approach and to provide precise information to the published photographic reproductions. Cultural institutions that are activating open access policies in their catalogs or online collections for the release of works that fall into the public domain, due to temporal or contractual characteristics, use diversified approaches: Rijksmuseum and Paris Musées use CC0, Metropolitan Museum of Art alternates two options CC0 and Public domain mark; the open license CC BY is adopted by Egyptian Museum of Turin; while we find the CC BY SA license when the reproductions have been published in the Wikimedia platforms such as eg. Wikipedia, Commons or Wikidata. Some museums such as the British Museum release under a more restrictive license which does not allow commercial use: CC BY NC SA. In the online collection of the Cleveland Museum the reproductions are released with CC0 or under copyright. Similarly, Lacma (Los Angeles Museum of Art) allows the unrestricted use of reproductions limited to some works (identified as "Public Domain High Resolution Image Available"), excluding others. The Art Institute of Chicago uses the CC0 license, highlighting - also in the Terms of use - that the user is responsible for requesting and obtaining authorization from third parties, if necessary for the use of the images. The Indianapolis Museum of Art allows the use of only some images of assets in the public domain,and their use without restrictions and conditions, specifying the interesting request to receive a free copy of the publication made with the images used. Therefore the museum online platforms do not have a single formulation, but a specification is affixed to each photographic reproduction.

How did they motivate the open access policy?

Many museums publish Open Access policies on their sites, and state the reasons: “Open access is a milestone for the Smithsonian in our efforts to **reach, educate and inspire audiences**,” said Lonnie G. Smithsonian Secretary. Europeana, the largest European platform for publishing photographic reproductions with “Millions of cultural heritage items from around 4,000 institutions across Europe” gives many reasons both in the mission and in the new strategic document 20-25: “We make it easier for people to use cultural heritage for education, research, creation and recreation. Our work contributes to an open, knowledgeable and creative society”; “Europeana will enable cultural heritage institutions to transcend cultural and national borders and place their collections in the European context - to **be part of the story of Europe**.” The Cleveland Museum video presentation “unleashes major digital change: 'Open Access' explains the tools and possibilities for reuse they have made available, and ends with the inspirational phrase “for the benefit of all the people, forever”. The National Gallery of Art in Washington refers to its mission of being at the service of the United States through an activity

aimed at preserving, collecting, exhibiting and increasing the understanding of works of art according to the best museum and educational standards. The open access policy “is a natural extension of this mission. (...) The Gallery believes that increased access to high quality images of its works of art fuels knowledge, scholarship, and innovation, inspiring users that continually transform the way we see and understand the world of art”. The National Gallery of Denmark SMK focuses on active involvement: “A cultural user not satisfied with being a passive spectator to culture. This cultural user wants to be an active participant and to use culture in his or her own life. And the conclusion is clear: Far more – including those who don’t use the physical museum – use the collections when they can actively select, re-use, remix, and share artworks.

Rif: Smithsonian Open Access; Europeana mission, Europeana Strategy 2020-25; SMK Open access; Cleveland Museum of Art unleashes major digital change: 'Open Access) Downtown Chicago's #1 Museum | The Art Institute of Chicago; Newfields: A Place for Nature & the Arts; LACMA | Los Angeles County Museum of Art; https://www.nga.gov/

MONITOR REUSE

May I track how content is reused?

There are several monitoring tools that can be used to monitor how much of a given content is viewed and downloaded through Web Analytics tools and APIs.

What tools are used for monitoring?

The Cleveland Museum shares access and download data (Measuring Impact) in real time both from its website and from platforms such as Wikipedia Dashboard: “It's exciting to **see the exponential effects that Open Access has had on the reach of the museum's collection!**” using similar tools such as Live Virtual Dashboards it is possible to monitor trends and accesses to single artworks. Another example: Cassandra Tool created by Wikimedia Switzerland analyzes how GLAM contents concerning the monuments of the Canton of Zurich are used: which monument interests most, and how many user accesses it has.

Rif. Cleveland Live Virtual Dashboards; Cassandra tools;Smithsonian remix

What are the advantages of adopting open licenses or releasing into the public domain? What are the results of Open Access policies?

The advantages are given by the visibility of the collections, which are disseminated online and also the digital preservation, because the more a content is shared, the more its conservation capacity increases. According to a study conducted on the Rijskmuseum collections, the use of open licenses has increased the sale of images.

V. PROBLEMS AND SOLUTIONS

INFRINGEMENTS

What is a copyright infringement?

A copyright infringement is the use of protected work without having obtained the permission from the copyright holder, except in the case in which such use does not fall within the cases of exception or limitation to copyright provided for by law.

What penalties are provided for in case of author's right infringement?

The penalties applicable in case of copyright/author's right infringement vary depending on the type and gravity of the offence and may be civil, criminal and, in some cases, administrative (as in Italy).

How is the damage related to the author's rights violation estimate?

The rights holder, in case of use of his work without authorization, can act against the user to obtain compensation for damages (loss of profit and emerging damage). In order to quantify the damage, it's possible to refer to the compensation that the author uses to claim for the same type of use in a similar context. However, this rule can only be considered as a guideline and should be adapted to the specific situation. In scientific publications, for example academic journal articles, where there is no remuneration in terms of royalties but only in terms of recognition for career purposes, the damage is difficult to quantify.

If a Cultural Institution Director decides to share images under open licenses, does he run the risk of causing financial losses?

Il danno erariale si verifica quando l'amministrazione subisce un danneggiamento, la perdita di beni o denaro, o il mancato conseguimento di incrementi patrimoniali a causa della condotta di un soggetto inserito nell'apparato amministrativo (come dipendente, funzionario ecc). In linea puramente teorica, nel caso in cui il direttore di un ente pubblico decidesse di rilasciare immagini con licenze aperte, e dunque di autorizzare l'utilizzo di tali riproduzioni senza il pagamento di alcun canone, potrebbe incorrere nell'ipotesi di danno all'erario per mancato conseguimento di incrementi patrimoniali. E' evidente, però, che il danno, per essere risarcibile, deve essere provato in concreto e nel caso di specie esistono già numerose evidenze del fatto che l'introito derivante dal canone richiesto per l'utilizzo di immagini di opere è di gran lunga inferiore ai costi sostenuti dall'amministrazione per la concessione delle autorizzazioni e che, al contrario, la diffusione della riproduzione può generare vantaggi maggiori anche in termini economici. Translation in progress

Is it possible to settle a dispute by using the Code of Conduct to which my museum complies?

The Code of Ethics is a self-regulatory code that identifies standards of conduct, guiding the professional performance of the museum and its staff. Using the Code for the solution of a dispute can be possible only if that dispute concerns the above-mentioned standards. When the dispute is about the violation of copyright/author's right laws the Code of Ethics cannot be used as referent text, since in this case neither the rights holder nor the user subscribed the Code and therefore they are not required to comply with its rules.

CONTRACTS AND CONSENTS

Should cultural institutions operate with contractual models? Why?

Cultural institutions should operate using contractual models in order to specifically govern the different aspects of their relationships with authors, artists, photographers, curators, licensee, donors, collectors, sponsors, publishers, etc. The multiple role of counterparts of cultural institutions and the complexity of the issues that the institutions have to define in order to have a profitable and peaceful relationship with third parties, require the availability of a formal contractual model that replaces the dated practice of the "oral agreement" on trust, in order to reach a specific regulation to protect the rights of the contractual parties, also avoiding fragmentation of different contracts for the same kind of services. It is also important to make

use of models to be able to identify, among other things, which rights are assigned, such as the obligations arising on the parties, to give transparency and clarity to the relationship established between the parties, and also to comply with certain obligations required in any case, by legislation (when written form is required by law). Lastly, it is advisable to operate with contractual models in which various aspects of copyright issues examined in this work are addressed, such as the transfer of rights of economic use, often not covered by the parties in the informal agreements.

It is important to remember that at the European level, art. 7 of Directive 2019/790 governs the relationship between exceptions to copyright and contracts, and provides that some of the new exceptions and limitations to copyright (such as, for example, pursuant to Article 6, the possibility of making copies of works of others for conservation purposes, in any format) cannot be excluded from a contract. Any contractual clause contrary to the European provision which provides exceptions would be considered as unenforceable. Member states must therefore ensure that the right of the cultural heritage institutions to preserve works is not affected by contractual clauses.

Rif: art. 7 Direttiva 2019/790/UE sul diritto d'autore e sui diritti connessi nel mercato unico digitale e che modifica le direttive 96/9/CE e 2001/29/CE

Are models of purchase agreements available?

There are some models of agreements, which are not standard however, in the sense that some entities, cultural institutions carry on their activity with their drafts or following some guidelines provided by, for example, by associations/entities both at a national and international level.

Rif. The UK Museum Documentation Standard, *Sample Agreements for Museum Exhibitions, Contracts and Procurement; https://uk.icom.museum/wp-content/uploads/2017/04/; Template_International_Touring_Agreement_WEB.pdf*

What consents are necessary to organise a contemporary art exhibition?

In general, in order to organise an exhibition of contemporary art, it is necessary to obtain a prior consent to: a) insert the images of the displayed artworks in the catalogue; b) use the images for banners, totem and advertisement material, as well as for communication one; c) use the music, videos, images along the exhibition or elsewhere, for example on the social platforms; d) use the images on the website of the cultural entity; e) use the images for goods sold in the bookstore; f) use the possible photos and video shootings of the public of specific events; g) use the possible material created by public during a visit to the exhibition (for ex, drawings). In some cases it will be necessary to ask for the prior authorisation from the

rightholders at the entity which manages the rights. Some of this issues can be ruled, as for some topics such as consent, directly in the agreement/ruling drafted for the organisation of the exhibition (for example, for the loan of artworks and the inclusion of the images in the brochure).

How does one draft a consent/grant of use rights?

The consent should specify in detail the uses of the artwork/image for which the consent is requested, the timing, the place or digital location for such use, the privacy issue, the withdrawal clause. The authorization granted is effective only within the limits for which it has been granted (ie. consent to use the image on a specific kind of publication does not allow the publication on a different tool).

Which consent is necessary to grant the compliance with author's rights in the event of donations and deposit in archives and libraries, of documents protected by author's right (such as drawing, projects, photographs, poems, etc)?

In the event of donations, deposits in archives and libraries, of documents protected by author's rights it is advisable to ask to the donor/depositor a representation whereby he declares to have all rights related to the donated/deposited goods, in particular the right to use and the authorisation to make reproductions, and to specify that such rights and grants are transferred to the receiving party (donor/depositor shall have the right to transfer such rights).

LEGAL NOTICES

Have you put legal notices on the web site?

The web site of the cultural entity should have, on the first screen, at the footer, the legal notices which entail the privacy policy (and this because, for example, the website gathers data on the users), the indications related to content's copyright and to the website in general (and possible limit to its use, for example, the applicable licenses), the so called Terms of Use of the website and of its content.

Are you explaining to the viewers what they can do with the content?

The content of the legal notices is intended to govern, for the part that is relevant in this work, some of the aspects related to the use of the content on line. In particular, it is advisable to use

Terms of Use which specify the ownership of the trademarks, logos, content on line, images in general, video used for virtual tours, possible licenses governing contents, the indication of possible rights reserved to the entity, rights on possible content uploaded by users (for example, images uploaded by visitors of the cultural entity website).

Which are the recommendations for the creation of a website of the cultural entity (Terms of use)?

It is advisable to include Terms of Use which are simple and clear, in two languages, and which allow the viewer of the website and the user of its content to understand whether it is possible to use the content and within which limits. If there is also the possibility to purchase online, you'll need to have conditions of purchase; a disclaimer of liability, limitations to warranties related to content, consent, applicable law, jurisdiction clauses.

EXCEPTIONS

Do exceptions to copyright exist for Cultural Institutions right now?

Yes. Directive 2019/790 EU provides a series of mandatory exceptions, overturning the previous rulings which had been adopted through Directive 2001/29/CEE which identified a series of exceptions which were general and not mandatory.

Rif. Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC e Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society

Are the exceptions applied to digital copies of works protected by law?

Yes. Directive 2019/790/EU provides a number of mandatory exceptions, overturning the previous system introduced by Directive 2001/29/EC which identified a number of general exceptions that Member States may provide for (except for the temporary acts of reproduction, which are transient or incidental and an integral and essential part of a technological process and whose sole purpose is to enable: a) a transmission in a network between third parties by an intermediary, or b) a lawful use of a work or other subject-matter to be made, and which have no independent economic significance. In fact in these cases, those acts that have to be exempted from the reproduction right provided for in Article 2).

Ref. Directive 2019/790/EU on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC and Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society, Art. 5 (1)

What are the exceptions provided by the new European Copyright Directive?

Directive 2019/790/EU provides a number of exceptions: 1) for reproductions and extractions of lawfully accessible works and other subject matter for the purposes of text and data mining (art.4); 2) in order to allow the digital use of works and other subject matter for the sole purpose of illustration for teaching, to the extent justified by the non-commercial purpose to be achieved (art. 5); 3) in order to allow cultural heritage institutions to make copies of any works or other subject matter that are permanently in their collections, in any format or medium, for purposes of preservation of such works or other subject matter and to the extent necessary for such preservation (art.6); 4) in order to allow collective management organisation, in accordance with its mandates from rights holders, may conclude a non-exclusive licence for non-commercial purposes with a cultural heritage institution for the reproduction, distribution, communication to the public or making available to the public of out-of-commerce works or other subject matter that are permanently in the collection of the institution, irrespective of whether all rights holders covered by the licence have mandated the collective management organisation (art.8).

Ref. Directive 2019/790/EU on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC

What is meant for freedom of panorama?

The freedom of panorama is an exception to copyright/author's right that allows anyone to make photographic reproductions of everything that is visible from the public street. In some countries, freedom of panorama allows reproductions of only goods in the public domain, while in other cases it allows the reproduction of all goods visible from the public street regardless of whether or not they are under copyright/author's right protection. In this sense, Article 5, section 3, letter h, of Directive 2001/29/EC provides the possibility of Member States having exceptions or limitations when using works, such as works of architecture or sculpture, created to be placed permanently in public places, but does not require such a rule.

Ref. Dir. 2001/29/CE sul diritto d'autore e i diritti connessi nella società dell'Informazione

Which countries allow freedom of panorama?

The implementation of the freedom of panorama is quite diversified because, according to the different legal systems, the incidence and limits change. There are, in fact, countries where the freedom of panorama is allowed only for non-commercial purposes (for example, Romania),

countries where it concerns only buildings and not works of art (for example, Finland) and countries where it is provided in a strong and complete form (for example, Germany).

Ref. https://it.wikipedia.org/wiki/Libert%C3%A0_di_panorama

VI THE ITALIAN SITUATION

A section of FAQS will focus on some Italian specific topics.

IN PROGRESS

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Bibliography

IN PROGRESS

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