

# FAQS

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

*By Digital Cultural Heritage Research Group  
ICOM ITALY - 2021*

# FAQs

# AUTHOR'S RIGHTS, COPYRIGHT AND OPEN LICENSES FOR CULTURE ON THE WEB

**100 questions and answers for museums, archives and libraries**

*The FAQs makes reference to the European copyright law.\**

**By Digital Cultural Heritage Research Group - ICOM ITALY**

Sarah Dominique Orlandi, Deborah De Angelis, Pierfrancesco C. Fasano, Cristina Manasse, Anna Maria Marras, Mirco Modolo

Licensed [CC BY SA 4.0](https://creativecommons.org/licenses/by-sa/4.0/)



Published February 17, 2021, updated March 16, 2021 - ISBN 9788894491012

## INTRODUCTION TO THE FAQs

These FAQs are practical guidance for museums, archives and libraries which aim to clarify the opportunities and legal limits related to the reuse and dissemination of digital reproductions of cultural resources on the Web.

There is a lack of knowledge among cultural heritage professionals on issues concerning the daily practice 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 violations 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 institutions that have taken this path and by an increasingly international bibliography that analyses the impact of open access on cultural institutions and 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:** The 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. In this English translation the expression copyright will be used to refer to both authors' right and copyright, unless otherwise noted. 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.*

*We could not consider all the critical issues expressed by the reviewers. Some issues require further study and writing. We will therefore prepare the first draft, which represents our positions on the matters examined in the FAQs. The work will be released in **CC BY-SA** on the **Wikibook** platform and we therefore invite colleagues to continue the work of review and improvement. We cannot deepen the national specificity of the different countries indicated by some colleagues and therefore, we invite you to implement the shared version with the specific national situations, if you wish to do so, as we are doing for Italy. It will also be possible to create concise versions*

for each such jurisdiction, as some colleagues are already doing, also with a translation into the appropriate language.

**Acknowledgment.** A special thanks to *Thomas Margoni, Professor of Intellectual Property Law, CiTIP, Faculty of Law, KU Leuven* for his continuous cooperation in the review. We thank colleagues who have helped us with important observations and suggestions during the selection and revision of these FAQs, for their valuable contribution: *Alberto Garlandini, President of ICOM International; Adele Maresca, President of ICOM Italy; Alastair Dunning, Delft University of Technology; Josu Aramberri, University of the Basque Country; Marta Arosio, Wikimedia Italy; Yaniv Benhamou, University of Geneva; Aura Bertoni, ASK Centre Bocconi University; Nicola Barbuti, University of Bari Aldo Moro; Niccolò Caranti, Wikimedia Italy; Roberto Caso, University of Trento; Antonella De Robbio, Open Access and Public Domain study group (GOAPD) AIB Italian Libraries Association; Giulia Dore, University of Trento; Sara Di Giorgio; Pierluigi Feliciati, University of Macerata; Vincenza Ferrara, Sapienza University of Rome; Luca Martinelli, Wikimedia Italy; Guido Noto La Diega, University of Stirling; Iolanda Pensa, Wikimedia Italy; Merete Sanderhoff, SMK – the national gallery of Denmark, Copenhagen; Erica da Silva Souza Lopes, Fundação Oswaldo Cruz; Chiara Storti, BNCF; Melissa Smith Levine, Director, Copyright Office, University of Michigan Library; Brigitte Vézina; Catrin Vimercati, InFormAzionI cultural association; Benedetta Ubertazzi, University of Milan Bicocca.*

## DYNAMIC INDEX

<b>I DEFINITIONS</b>	<b>9</b>
1. What does authors' rights/copyright mean?	9
2. Which works are protected by Copyright Law?	10
3. Do all works have an author?	10
4. What do joint works and collective works mean?	10
5. What are moral rights and economic rights' characteristics?	11
6. What is the term of protection granted by copyright?	11
7. To whom does the copyright belong when the work is created by an employee or in case of commissioned work?	12
8. What do related rights mean?	12
9. Which materials are protected by related rights?	12
10. Are there any exceptions or limitations to the copyright?	13
11. What does "public domain" mean?	13
12. Can I freely publish works on the web or are there any rules to respect?	13
13. What is an out-of-commerce work?	14
14. What is an orphan work?	14
15. Is the copyright waivable?	15
<b>II TYPES OF CONTENTS</b>	<b>16</b>
<b>PHOTOGRAPHS</b>	<b>16</b>
16. How many kinds of photographs exist?	16
17. Which photographs are protected by copyright?	16
18. Does the law fix a minimum level of creativity in order to grant protection?	17
19. Which are the rights of use connected to photographic works and to simple photos? How can they be transferred?	17
20. Is one allowed to do a collage of photographs?	18
21. Is one allowed to modify an image without author's consent?	18
22. Is the owner/custodian of an artwork also the holder of the author's rights on the work, i.e. for photographic reproductions?	18
23. Are there any cases of free use?	18
24. Can one freely display the photographs?	19
25. Who is the rights holder for the photographs commissioned and for those created by an employee of the museum?	19
26. Which technological measures can be used to protect digital photos?	19
27. Can photographs be considered cultural goods?	20
28. Are photographs considered to be cultural goods under specific controls and protections?	20
29. Can they be freely transferred and can they be freely circulated?	20
<b>2D-3D REPRODUCTIONS</b>	<b>21</b>
30. What does reproduction mean?	21
31. What does material deriving from an act of reproduction mean?	21
32. Is a 2D or 3D reproduction of a work of art subject to the copyright?	21
33. 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 in public domain?	21
34. Can photographic reproductions of visual art works be commissioned?	22
35. When a cultural institution commissions a digitisation project, is it the right holder on the final result of the digitisation only or also of the raw data? Does it have to be provided for	22

in the contract or agreement, or there is a legal presumption of it?	22
<b>TEXTS</b>	22
36. Is the format of an exhibition protectable? Who is the rights holder?	22
37. Who is the rights holder of content done by employees, freelance, and consultants?	22
38. Is the descriptive content of the visiting tour of an exhibition protectable by law?	22
39. Protection of the content of an exhibition catalogue: is the author's right granted to the editing company or the author?	23
40. When and is it possible to digitize the catalogue of an exhibition?	23
41. For the reproduction of artworks in a catalogue and for its digitization, is it necessary to obtain the authorisation of the rights holder?	23
<b>DATABASES</b>	24
42. What is a database?	24
43. When is a database protected by copyright?	24
44. What is the Sui Generis Database right?	24
45. Is there a copyright on databases produced by a cultural institution?	25
<b>OPEN DATA</b>	25
46. What is open data?	25
47. Which is the difference between data and metadata?	26
48. Where do I publish my open data?	26
49. In what formats do I publish my open data?	26
50. What license does apply to open data?	27
51. Can raw data be subject to copyright?	27
52. What are FAIR data?	27
<b>AUDIO CONTENT</b>	28
53. Which economic rights are involved when synchronizing images and music?	28
54. To which rights holders shall authorisations be requested to?	28
55. Can I use music works under CC licenses? Which ones?	28
56. Which rights are involved in an audio file?	28
57. 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?	29
<b>III WEB TOOLS</b>	30
<b>PODCAST AND WEBINAR</b>	30
58. What is a podcast?	30
59. What is a webinar?	30
60. What is a live or streaming podcast or webinar?	30
61. 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?	30
62. If I record a podcast or live or streamed webinar with other attendees, do I need to get their consent to broadcast?	30
63. In what form (written or oral) shall the consent obtained?	31
<b>SHARING</b>	31
64. Can I freely upload on the web site of the cultural institution for which I work the digital sources found on the Internet or through social media or through other digital channels?	31

65. How should I mention the source?	31
66. If the author is not identifiable or does not respond to the request for consent?	31
67. When is it possible to apply the law on orphan works?	31
68. When is it possible to apply the discipline of out-of-commerce works?	32
<b>WEB SITE</b>	<b>32</b>
69. What is a website?	32
70. What is a blog or video blog?	33
71. Who rules the Internet and Domain Name System (DNS)?	33
72. Does copyright also apply to the Internet?	33
73. What basic rules do I have to follow to publish on my site?	33
74. What is an Internet Protocol (IP) address? What is a domain name? What is a Domain Name System (DNS)?	34
75. Is the registry or domain registrant data public?	34
76. Who can register a domain?	34
77. 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?	34
78. May I request a third party to register the domain name used by me?	34
79. Which is the applicable law to my domain?	34
80. Which is the best domain name for my cultural activity?	35
<b>APP</b>	<b>35</b>
81. What is an App?	35
82. Which is the applicable law to an App?	35
83. How to protect the name and content of an App?	35
<b>SOCIAL NETWORK</b>	<b>35</b>
84. What is social media or a social network?	35
85. What is the difference between a Page, Profile and Group?	35
86. What rules should I respect for posting or for a live streaming in my social networks?	36
87. Who is the author of the uploaded or shared content?	36
88. What precautions should be taken before publication?	36
89. May I freely share or exchange, download, upload or re-use, copy, modify, publish contents disseminated on social media or should I verify if they are protected by copyright?	36
90. What is instant messaging (chat)? What is an instant messaging channel?	36
91. What rules apply to instant messaging?	36
92. 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?	37
93. May I freely share, forward, download, edit content received or do I have to ask the author or sender for their consent?	37
94. In what form (written or oral) must this consent be obtained?	37
95. May I freely upload content found on the Internet or from third parties without first asking for consent?	37
96. What if the author is not identifiable or does not respond to the request for consent?	38
<b>IV. LICENSES and REUSE</b>	<b>38</b>
<b>DATA AND LICENCES</b>	<b>38</b>
97. What is a copyright license?	38
98. Which are Creative Commons licenses?	39

99. Which Creative Commons licenses and tools are compatible with open access?	39
<b>IMAGES OF CULTURAL GOODS IN PUBLIC DOMAIN</b>	<b>40</b>
100. Which are the main legal limits to the reuse and dissemination of images of cultural goods?	40
101. Can cultural institutions protect images of visual artworks in the public domain?	40
102. Where and how can I find high resolution images of cultural heritage goods to reuse in an illustrated volume?	40
103. Is it advisable to apply Creative Commons licenses to works in the public domain?	41
104. How can reproductions of works in the public domain be labelled?	41
<b>OPEN ACCESS AND LICENSE: INTERNATIONAL MUSEUM CASES</b>	<b>41</b>
105. Which museums have adopted open licenses or public domain for reproductions of their collections?	41
106. Which copyright licenses are adopted in Open Access policies?	42
107. What motivates institutions's Open Access policy?	42
108. May we track how content is downloaded and reused?	43
109. What are the advantages of adopting Open Access?	44
<b>V. PROBLEMS AND SOLUTIONS</b>	<b>45</b>
<b>INFRINGEMENTS</b>	<b>45</b>
110. What is a copyright infringement?	45
111. What sanctions are provided for in case of copyright infringement?	45
112. How is the damage related to the copyright infringement estimated?	45
113. If a Cultural Institution Director decides to share images under open licenses, does he/she run the risk of causing financial losses?	45
114. Is it possible to settle a dispute by using the Code of Conduct to which my museum complies?	46
<b>CONTRACTS AND CONSENTS</b>	<b>46</b>
115. Should cultural institutions operate with contractual models? Why?	46
116. Are models of purchase agreements available?	46
117. What consents are necessary to organise a contemporary art exhibition?	47
118. How does one draft a consent/grant of use rights?	47
119. Which consent is necessary to grant the compliance of the copyright's owner in the event of donations and deposit in archives and libraries of documents protected by author's rights (such as drawing, projects, photographs, poems, etc)?	47
<b>LEGAL NOTICES</b>	<b>47</b>
120. Have you put legal notices on the web site?	47
121. Are you explaining to the viewers what they can do with the content?	47
122. Which are the recommendations for the creation of a website of the cultural entity (Terms of use)?	48
<b>EXCEPTIONS</b>	<b>48</b>
123. Are there exceptions to copyright for Cultural Institutions in the Directive 2019/790 EU?	48
124. Are the exceptions applied to digital copies of works protected by law?	48
125. What are the exceptions provided by the Directive 2019/790 EU?	48
126. What is meant by freedom of panorama?	49
127. Which countries allow freedom of panorama?	49



## FAQ. QUESTIONS AND ANSWERS

### I DEFINITIONS

#### 1. What does authors' rights/copyright mean?

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

Author's rights/copyright provides for a series of rules that regulate the relationship between the author, the work and the public. It is part of intellectual property's regulation 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 Berne Convention (an international agreement that established for the first time the mutual recognition of copyright/author's right among the signatory parties) 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 Berne Convention, is typical of common law countries and, for example, has not been adopted by the Italian legislation on the matter. It should nevertheless be noted that, while different from fixation, recent CJEU case law requires an element of "objectivity" or "stability" for a work to qualify for protection (Levola case). 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 these different approaches have some differences between each other (such as, for example, the different regulation of moral rights), they have evolved to play a very similar function and increasingly tend to converge over time in relation to the evolution of forms of online exploitation of works and, in the EU, to the process of harmonisation of copyright law.

*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](#)

## 2. Which works are protected by Copyright Law?

Copyright rules are territorial and can potentially vary significantly from country to country. However, mainly due to international conventions such as the Berne Convention, the World Intellectual Property Organization (WIPO) Copyright Treaty (WCT) and the TRIPs Agreement there is a body of rules that finds if not common, at least coordinated application, internationally. Within the European Union, the process of copyright harmonization has greatly reduced the differences between the Member States' legislation through at least 12 different directives starting since the early 1990s. In particular, aspects such as: main economic exploitation rights, exceptions and limitations, technological measures of protection, originality, concept of work and the duration of economic rights have been almost fully harmonized and we can certainly say that, right now, works receive very similar protection at the European level. However, copyright remains a national prerogative and therefore there is the Italian, French, German, etc. Copyright Act which will be similar in the many aspects subject to harmonization indicated above, but will maintain their own peculiarities. Original works within the literary, scientific and artistic field, 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 in the sense of the author's own intellectual creation. Originality is manifested through free and creative choices that allow the author to imprint their own personality onto the work. Databases are protected by copyright only if the selection 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 other 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](#).

## 3. Do all works have an author?

Yes, the work must be the result of the author's own intellectual creation.

The author can choose how to reveal his authorship if under his own name, or under a pseudonym, or to remain anonymous. There are also some works, called orphan works, which are presumed to be still under Copyright 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](#)

## 4. What do joint works and collective works mean?

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).

## 5. What are moral rights and economic rights' characteristics?

All European States grant the author a series of exclusive rights that fall into two categories: moral and economic rights. Moral rights are born with the intent to protect the artistic personality of the author. The Berne Convention requires the adhering States to recognize two forms of moral rights: the right of attribution 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 the honor or reputation of the author. The specific regulation is left to the legislation of the individual States. Moral rights, which have not been subject to specific harmonization, are non transferable 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 any term, i.e. they are perpetual. 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 exploit the work in any manner and in any way, e.g.: 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](#), [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](#)

## 6. What is the term of protection granted by copyright?

According to Berne Convention, the national legislation can determine the conditions for the exercise of economic rights, which have an effect territorially limited to the Country which established them. The duration of the economic rights includes the author's life and a period of 50 years after his death, but the States have the right to establish a longer duration. In the Countries of the European Union, economic rights expire 70 years after the death of the last of the authors (when the work enters the public domain). Specific provisions are indicated for certain categories of works (collective work, joint work, anonymous or pseudonymous work, unpublished work).

As indicated above, under the Berne Convention, the moral rights' term cannot be shorter than the economic rights one and Member States may establish a longer term or make it imprescriptible.

Moreover, the 1947 Peace Treaty, which gave only the winning countries the possibility to extend the term of protection of the rights of their authors, adding also the years of war, extends the duration established by law by a further 7 years and 8 months. Subsequently, with the stipulation of the TRIPS Agreement of 1994 by most of the countries of the world, any discrimination between States at war was eliminated, therefore even countries that lost the war

(e.g. Italy) can apply, in their own territory and in Europe, the same duration of the rights (76 years and eight months).

Ref: [Bern Convention for the Protection of Literary and Artistic Works of September 9, 1886](#); [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](#); [Treaty of Peace between Italy and the Allied and Associated Powers, done in Paris on february 10, 1947 at the end of the second world war \(Annex XV\)](#); [Trips Agreement of 1994](#).

## 7. To whom does the copyright belong when the work is created by an employee or in case of commissioned work?

In general in Europe, 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. For example, for works created on commission or by an employee, economic rights do not belong to the author but to the commissioning party or the employer, always within the limits indicated by the law (e.g. software, database) or the contract.

Ref: [Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009, on the legal protection of computer](#); [Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases](#)

## 8. What do related rights mean?

Related Rights (or "neighbouring rights") intend to recognize and encourage the artistic 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](#)

## 9. Which materials are protected by related rights?

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;
- for press publishers, their press publications made available online to the public by information society service providers.

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](#); [Directive \(EU\) 2019/790 of the European](#)

## 10. Are there any exceptions or limitations to the copyright?

Yes, the system of exceptions and limitations allow to correctly balance between the copyright with the public's right of access to culture and free expression. In practice, in these cases it is possible to use content protected by copyright law without the authorization of the rights holder. The exceptions (e.g. illustrative purposes for educational use or scientific research, quotation, criticism...) exclude the applicability of Copyright, making free the use of the work; the limitations make the work usable without the need to seek the prior permission of the rightsholder, but provide for the payment of an equitable compensation (e.g. reprography, personal use).

Directive 2001/29/EC identified a closed list (meaning that Member States cannot introduce unlisted exceptions) of non-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 certain temporary acts of reproduction. Other specific exceptions may be found in specific areas (e.g. Software, Databases, etc).

On the contrary, the recent Directive 2019/790/EU overturns the previous approach by providing for three mandatory exceptions and, therefore, ensuring the effective reception of them by Member States (text and data mining for the purposes of scientific research, digital and cross-border teaching activities, preservation of cultural heritage).

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](#)

## 11. What does “public domain” mean?

From a literal point of view, the 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, 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 public's interest in access to culture, in some cases the latter should prevail. Works in the public domain are: 1) works that the legislator defines in the public domain since their first publication (e.g. laws, judgements, etc.); 2) works whose terms of economic rights have expired; 3) works that have been freely "dedicated to the public" by the authors.

## 12. 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 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). By default, it's not possible to publish a 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 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).

## 13. 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 unless copyright has expired. Directive 2019/790/EU offers two 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 (e.g. the societies or associations that manage collectively copyright performing and mechanical rights), 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, if no sufficiently representative collective management organisation exists, 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](#)  
[2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC](#)

## 14. What is an orphan work?

Orphan works are works protected by Copyright 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 make up about 40% of its collection. 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 in 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 for the benefit 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](#); Recitals 13 and subsequents, and art. 3 specify the definition of "diligent search".

## **15. Is the copyright waivable?**

Economic rights are subject to a limited term of protection and the rights holder can freely decide to renounce, transfer or license them to a third party in exchange for economic compensation or not. In some legislation, specific remuneration rights are not waivable.

Moral rights don't expire (and therefore they are imprescriptible) in many EU Member States, and are not waivable and/or transferable by the rights holder (e.g. excepted for the United Kingdom).

## II TYPES OF CONTENTS

### PHOTOGRAPHS

#### 16. How many kinds of photographs exist?

Photography law finds its main source in the Berne Convention (which was modified, to include photographs, in 1948) which provides the “*minimal*” protection (in the sense of essential) 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. In EU law, 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 copyrights and certain related rights), which specified that all photographs that are original, i.e. the result of the author’s intellectual creation, enjoy protection, without considering any 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 production) 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., “documentary” photos) which are mainly reproductions of documents, material items, technical drawings; they are protected under general principles of law (such as those of private law, in Civil law jurisdictions) rather than the Copyright Law.

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](#); [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](#).

#### 17. 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 imprint of the author, and which are mere reproductions) are protected under a related rights regime ; 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, according to Directive 2019/790 (art. 14), Member States shall provide that, when the term of protection of a work of visual art has expired, any material resulting from the act of reproduction of that work is not subject to copyright 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. In other words, "faithful" (non-creative) photographic reproductions works of visual art that are in the public domain through expiration of the term are not protectable by copyright.

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](#)

## **18. Does the law fix a minimum level of creativity in order to grant protection?**

In order for a work to be protected at the European level, pursuant to Directive 2001/29 EC of 22.5.2001 (Infosoc Directive), it must be original, i.e. 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.

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](#); CJEU, 1.12.2010, c. 145/10, *Painer case*, <http://curia.europa.eu/juris/liste.jsf?&num=C-145/10>;

## **19. 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 it and to use it economically; b) the right of reproduction or multiplication in copies; c) the right of communication to the public; 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 rent (assignment of use to any third parties) and to lend (assignment by institutions open to the public). The abovementioned rights are transferable; in some jurisdictions the transfer requires a written contract and in its absence, it will be impossible to give evidence of the transfer..

In some jurisdictions, “simple” (non-original) photos are granted related rights, such as the exclusive right of reproduction, dissemination and sale. Such rights are transferable with a written contract or through the transfer of the negative or similar means of reproduction of the photograph (and for digital photographs, the “file”). The transfer of the negative may give rise 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 moral right of the photographer to be recognized as the author (right of attribution or paternity), which is a personal right and is generally not waivable.

## **20. 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, it will be necessary to ask for the authorization of the author (or rights holder) and to use the works within the limits of the rights of use which had been granted and to comply with the moral rights of the authors of the works included in the collage.

The consent of the author of the original works are necessary, as each one of them has exclusive right to use his work, or any derivative work (a collage could be derivative). The collage shall not cause prejudice to the original work. The author may oppose any deformation, cut or other modification and any act which damages the work, if it causes a prejudice to his honour and his reputation. The author may consent to a reproduction of his work, also partially, in derogation of his moral rights.

## **21. Is one allowed to modify an image without author’s consent?**

The author has the exclusive right to modify the image, to combine it with another work, including disassembling the image’s elements and to transform it. The consent of the author is necessary if a third party wishes to modify it, save for some circumstances such as satire and parody. To qualify a work as parody, the image must evoke an existing work, while being noticeably different from it and constitute an expression of humour and mockery.

Ref: Art. 5(3)(K) [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](#); CJEU Case C-201/13, <http://curia.europa.eu/juris/document/document.jsf?docid=157281&doclang=en>

## **22. Is the owner/custodian of an artwork also the holder of the author’s rights on the work, i.e. for photographic reproductions?**

No, generally the custodian of the work is the owner and/or custodian, depending on the facts, of the work but he is not the rights holder, unless otherwise determined by contract.. Therefore, it is necessary to specify in the agreement signed with the rights holder which rights are transferred to the purchaser and/or custodian (the sole right of custody, the right of custody and of exhibition, the right of reproduction, etc.)

### **23. 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 over the author's right. The same principle applies to photographic works (right of information and news, the use of works for public safety reasons, or reproductions for personal use) and to simple photos (for education purposes, reproduction in scientific and educational works, or of public interest). The author has the right to a fair compensation. The catalogue of an exhibition is not a free use.

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](#)

### **24. 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 rights 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 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 a harmonized manner in the various countries, as it is a right considered differently in the various legal systems: in the absence of a specific provision in such sense, cultural entities have become aware of the importance of negotiating the transfer of such rights, where possible, when they acquire such artworks.

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](#)

### **25. Who is the rights holder for the photographs commissioned and for those created 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 freelance photographer), and unless otherwise agreed, the photographed objects are owned/ or in custody by the commissioning party: if they are used commercially, a fair consideration is due to the photographer, but rights remain with the commissioning party owner of the objects.

### **26. 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 rights holder. To overcome these risks, there are technological

measures, both to identify the right holder connected to the image and to prevent access or reproduction. The standard system is encryption which makes a text indecipherable unless the secret encrypted code, necessary to reveal the content, is known. One of the most common systems is the so-called digital watermark, 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 rightholders.

The DSM directive provides at article 7 (2) that Member States have to ensure that users can access and use TPM-protected content according to some of the new mandatory exceptions. This also applies to content acquired by contract and made available across internet. The users have the right to require the rightholder to provide the technical means necessary to benefit from the exceptions and not to remove the TPMs by themselves. The exceptions considered are the one related to text and data mining for research purposes (art. 3), text and data mining in general (art. 4), educational one (art. 5), preservation (art. 6)

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](#)

## **27. Can photographs be considered 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 interest and 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.

## **28. 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. The photographs cannot be moved from the place of conservation without the authorization of the relevant ministry, they cannot be used in contradiction to 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.

## **29. 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. The 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, as the State may 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 a temporary circulation certificate is required.

## **2D-3D REPRODUCTIONS**

### **30. What does reproduction mean?**

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.

### **31. What does material deriving from an act of reproduction mean?**

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.

### **32. Is a 2D or 3D reproduction of a work of art subject to the 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.

### **33. 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 in public domain?**

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

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: [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](#)

#### **34. Can photographic reproductions of visual art works be commissioned?**

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

#### **35. 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**

#### **36. Is the format of an exhibition protectable? Who is the rights 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 than have it as a simple exhibition of objects. The idea of the exhibition is not the protected element: the way in which such idea is expressed could be protected. On a general level, the curator-co author is the rights holder 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.

#### **37. Who is the rights holder of content done by employees, freelance, and consultants?**

As a general principle, the ownership of content created depends on the kind of agreement between the commissioning party and employee/consultant/freelance (see, question n.7 of the Definitions).

### **38. Is the descriptive content of the visiting 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.

### **39. Protection of the content of an exhibition catalogue: is the author's right 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.

### **40. 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 author's rights allow uses of the material protected by author's right 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, i.e., archives, museums, etc, precisely in order to allow them to perform their tasks. The digitization of works, for example, is part of these but in some cases it resulted in conflict with the author's right 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 member states have established specific rules, also with regard to the change of size (for preservation purposes) or in order to prevent deterioration, but for some commentators such activity can be referred 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 and to the extent necessary for such preservation. The European rule aims to allow cultural heritage institutions to preserve and enhance the assets of their collection also through the use of digitization processes.

*Ref: Art. 5 [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](#); art. 6, [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](#).*

#### **41. For the reproduction of artworks in a catalogue and for its digitization, is it necessary to obtain the authorisation of the rights 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 for 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 to digitization, we refer to the previous explanation of the exception for the preservation of the cultural heritage provided by art. 6 of Directive 2019/790 EU.

*Ref:* art. 5, [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](#), art. 6, [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](#);

## **DATABASES**

#### **42. What is a database?**

Database means a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means. An archival inventory, the catalog of a library or of a museum collection are instances of database.

*Ref:* Art. 1, [Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases](#)

#### **43. When is a database protected by copyright?**

Databases which, by reason of the selection or arrangement of their contents, are original (i.e. constitute the author's own intellectual creation) are protected by copyright. It is important to note that this protection relates to the selection and arrangement, i.e. to the structure of the database, and does not extend to its content which may be unprotected (e.g. a database of public domain works) or protected (a database of recent in-copyright photographs).

#### **44. What is the Sui Generis Database right?**

Independently from the above, when the making of a database that complies with the above definition, shows that there has been a substantial investment in either the obtaining, verification or presentation of the contents, the maker of the database (usually defined as the person who bears the financial risk) enjoys a right to prevent extraction and/or re-utilization of



the whole or of a substantial part of the contents of that database. It is important to note that investments in the creation of data do not qualify for SGDR (*Sui Generis* Database right) protection. This could sound counterintuitive at first sight, but try to think that this is a Database directive which tries to encourage the creation of new databases from existing data, not a directive that wants to encourage the creation of new data. Mere facts and data are excluded from the ambit of protection of copyright and, their creation, from SGDR as this could have anticompetitive and anti freedom of expression effects. These two forms of protection (copyright and *sui generis*, or SGDR) are independent, meaning that there can be databases only protected by copyright, only protected by SGDR, protected by both or neither depending on the situation. The SGDR lasts for 15 years and can be renewed if the makers show that there has been an additional substantial investment (e.g. in updating the database).

Ref: Artt. 7-11, [Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases](#)

#### **45. Is there a copyright on databases produced by a cultural institution?**

Yes, the databases produced by a cultural institution, both public and private, can be protected both from the point of view of copyright and *sui generis* right if the aforementioned conditions are met. However, Art. 1(6) of the new PSI Open Data Directive (2019/1024) clarifies that public sector bodies should not use the *Sui Generis* Database right in a way that would interfere with the principle of reuse as defined in that directive. The directive must be transposed into Italian Law by June 2021.

Ref: Art. 1.6, [Directive \(EU\) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information](#)

## **OPEN DATA**

#### **46. What is open data?**

Open Data (OD) is data accessible to everyone, can be freely used, reused and redistributed by anyone, subject to the conditions set out in the license under which they are distributed, including attribution and different sharing restrictions.

According to the Open Knowledge Foundation definition “A piece of content or data is open if anyone is free to use, reuse, and redistribute it — subject only, at most, to the requirement to attribute and share-alike.”

The key features of openness are:

- Availability and access
- Reuse and redistribution
- Universal participation

“Linked Open Data (LOD) is Linked Data which is released under an open license, which does not impede its reuse for free” (Tim Berners-Lee)

Ref: <https://opendatahandbook.org/guide/en/what-is-open-data/>; <https://opendefinition.org/od/2.1/en/>;  
<http://open.gov.it/amministrazione-aperta/definizione-open-data/>; <https://5stardata.info/en/>;

## 47. 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);
- Technical (behavior of metadata and functioning of systems);
- Use (related to the level and type of use of the user).

Ref: <https://dublincore.org/>; <https://openarchives.org/>; <https://www.loc.gov/marc/ndmso.html>;  
<https://www.loc.gov/librarians/standards>

## 48. Where do I publish my open data?

There are several web portals (regional, national, international) where it is possible to publish Open Data. Some are managed by public institutions (e.g. Europeana) and others by non-profit foundations (e.g. Wikimedia Foundation). There are also Open Data repositories (Internet Archive, Github, Zenodo) and Open Access data journal. Open Data can also be published on the institute's website in an open format.

Ref: <https://www.dati.gov.it/>; <https://wikimediafoundation.org/>; <https://www.europeana.eu/it>; <https://archive.org/>;  
<https://zenodo.org/>; <https://doaj.org/>;

## 49. 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
- CSV
- JSON
- GeoJSON

- KML
- GML
- ODT
- ODS
- ODP
- RDF
- PNG
- SVG

## **50. What license does 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).

The CC0 1.0 dedication to public domain, 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 all their rights (also moral rights, where the legislation permits it) and allows the user to modify, share the work also for commercial purposes. Using CC0 has the effect of placing a work into the public domain worldwide.

## **51. Can raw data 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.(see also databases section).

## 52. 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.

Ref: <https://www.go-fair.org/fair-principles/>

## AUDIO CONTENT

### 53. 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.

### 54. To which rights holders shall authorisations be requested to?

Concerning the audio content, authorizations must be requested to the holder of copyright 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.

### 55. 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 and distribution of derivative works). Therefore, works released under a Creative Commons license and/or tool can be used, but always according to the conditions and modalities provided in the license/tool itself. In the

case of NC clause, it's always possible to conclude an additional agreement with the rights holder for commercial exploitation (CCplus).

## **56. Which rights are involved in an audio file?**

First of all, an audio file qualified as a musical work is protected by Copyright law if it can be considered an original work as defined by Copyright 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 wil. At the same time, the audio file, intended as a sound recording, is protected by related rights and the artists and producers are entitled to those rights.

## **57. 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 authorization of the author and/or publisher. 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

#### 58. What is a podcast?

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

#### 59. What is a webinar?

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

#### 60. What is a live or streaming podcast or webinar?

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

#### 61. 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.

#### 62. 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.

### **63. In what form (written or oral) shall the consent obtained?**

A written form is always recommended.

## **SHARING**

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

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

### **65. 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 source, for example by reporting the link to the Internet site with the date of consultation of the site.

### **66. 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 to share or to mention that searches were carried out (through request of consent) with no results.

### **67. When is it possible to apply the law on orphan works?**

The European Directive on orphan works, which entered into force in 2012, provides for a number of cases in which the orphan work can be used by cultural heritage institutions. The legislation provides that a 'diligent search' (a thorough search to identify and / or locate the author of the copyrighted material or other rights holders) is required to establish orphan work status within the former Member State publication, for this purpose by consulting a public online database (<https://euipo.europa.eu/ohimportal/it/web/observatory/orphan-works-db>), which contains information on orphan works, including: the results of searches for rights holders; the use of orphan works by organizations; changes in the status of the orphan work used. In this way, research organizations and rights holders will be able to easily find information on the identification and use of orphan works. Organizations affected by the EU Directive may use an orphan work only for the achievement of objectives related to their mission of public interest:

making the orphan work available to the public; acts of reproduction, for the purposes of digitization, making available, indexing, cataloging, conservation or restoration. Organizations may generate revenues in the course of such uses, for the sole purpose of covering the costs related to digitizing orphan works and making them available to the public. The declaration of "orphan work" then allows individual Member States to place a limitation on the right of reproduction and making it available to the public in favor of institutions for the protection of cultural heritage. Works considered as orphans in one EU country have the same status in all other EU countries. In the event that the holder of the rights of what is considered an orphan work claims these rights, the Directive provides for the possibility of ending the status of orphan work and to pay fair compensation. If it is a non-EU publication, search must be done on their sources. After carrying out diligent search on the online public database, you need to wait for 90 days before you can digitize and publish the work online. But the author could always be entitled to appear and request for the withdrawal of all or part of the work or exercise their rights.

Ref: [EU Directive 2012/28 on certain permitted uses of orphan works](#).

## **68. When is it possible to apply the discipline of out-of-commerce works?**

A recent European Directive (Directive 2019/790/EU) provides mechanisms for the collective management of rights of use or, failing that, a real exception to exclusive rights to allow that, under certain conditions, the works out-of-commerce can be reused by public institutions for the protection of the cultural heritage that hold them, from libraries to archives and museums. Such Directive introduces a new licensing mechanism for out-of-commerce works. This will make it much easier for cultural heritage institutions, such as archives and museums, to obtain the necessary licenses to disclose the cultural heritage in their collections to the public online and across borders. This system makes it much easier for cultural heritage institutions to obtain licenses by negotiating with collective management organizations representing the relevant right holders. The new rules also provide for a new mandatory exception to copyright for cases where there is no collective management organization representing the right holders in a certain sector, for which cultural heritage institutions have no counterpart to negotiate with to obtain licenses. This so-called "fallback" exception allows cultural heritage institutions to make out-of-commerce works available on non-commercial websites.

## **WEB SITE**

### **69. 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).



## **70. 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.

## **71. Who rules the Internet and Domain Name System (DNS)?**

At a global level, no one natural person, company, organization or government runs and rules the Internet. Each State or inter-States treaty is setting and enforcing its own policies, rules and regulations.

On the pure 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.

## **72. Does copyright also apply to the Internet?**

Yes. The 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.

## **73. 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

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

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

The domain name is a sequence of letters and/or numbers combined by the registrant 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.

### **75. 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 this information, a reasoned request shall be sent to the registry (not to the reseller of the domains, called maintainers or registrars), which grants the use and assigns the ownership of the domain.

### **76. 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.

### **77. 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.

### **78. 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.

### **79. 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).

## **80. 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**

### **81. What is an App?**

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

### **82. 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.

### **83. How to protect the name and content of an App?**

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

## **SOCIAL NETWORK**

### **84. What is social media or a 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.

### **85. What is the difference between a Page, Profile and Group?**

Overall, 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.

## **86. 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 terms and conditions of the social media or network, before posting or going live streaming.

## **87. 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.

## **88. 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' function may be requested.

## **89. 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**

### **90. 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 the 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

### **91. 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

**92. 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.

**93. 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).

**94. 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.

**95. 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.

## 96. 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.

## IV. LICENSES and REUSE

### DATA AND LICENCES

## 97. What is a copyright license?

A copyright license is a contract which grants certain rights to use a work or other protected materials. In fact, in the license agreement, the rights of use are not transferred, but the licensor remains the owner, as opposed to what happens in an assignment agreement. There are several models of open licensing that confer use permissions 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 law, such as Creative Commons licenses, or specific licenses for the software (GNU licenses). 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. In addition, Cultural Heritage Institution can use RightsStatements.org as "labels" that provide a set of 12 standardized rights statements that can be used to communicate the copyright and reuse status of digital objects to the public (see above section).

Ref: <https://opendefinition.org/>; [rightsstatements.org](https://rightsstatements.org/); [Copyright Good Practice in a Cultural Heritage Institution](#);

## 98. Which are Creative Commons licenses?

Creative Commons (CC) licenses are the most popular open copyright licenses that allow rights holders to grant a set of permissions to the public for sharing and reusing works.

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 BY clause, which requires attribution and the type of CC license used, is mandatory for all six CC licenses.

## 99. Which Creative Commons licenses and tools are compatible with open access?

The definition of “open” is provided by the [Open Knowledge Foundation](#) (OKFN): “A piece of data or content is open if anyone is free to use, reuse, and redistribute it – subject only, at most, to the requirement to attribute and/or share-alike”. For cultural heritage, when we refer to open access, we mean content and material released under tools and licenses compatible with the Open Definition provided by OKFN.

Creative Commons licenses compatible with open access are:

- CC BY, which allows you to share, reproduce and modify a work, even for commercial purposes, with the constraint of attribution of authorship and the license with the work was shared;
- CC BY-SA 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 dedication to Public Domain, on the other hand, 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.
- The CC Public Domain Mark (PDM), which is a tool that indicates that a work is not or no longer under copyright protection.

## IMAGES OF CULTURAL GOODS IN PUBLIC DOMAIN

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

The reuse and 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 with 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, including those in public domain. However, such possibility will be partially modified by recent DSM directive, which excludes copyright protection for faithful reproductions of visual art works in public domain.

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](#), art. 14.

### 101. Can cultural institutions protect images of visual artworks in the public domain?

It is highly recommended to cultural institutions to not apply any kind of protection to limit the access and reuse of digital reproductions of visual artworks in the public domain. What is in the public domain should stay in the public domain. Even though, some cultural institutes still limit the reuse of the digital reproductions published online using watermarks or low-resolution quality or, if high resolution is allowed, the download is not, this practice is discouraged even by the European Commission: “The use of intrusive watermarks or other visual protection measures on copies of public domain material as a sign of ownership or provenance should be avoided”.

Ref: [Commission Recommendation of 27 October 2011 on the digitisation and online accessibility of cultural material and digital preservation\(2011/711/EU\)](#)

### 102. 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 released with open licenses or in public domain on museums, archives and libraries' websites. In these cases, the reproductions are published and made downloadable at high resolution precisely in order to promote the free reuse of them for any purpose, including commercial ones. Wikimedia, Flickr and Europeana share images free to use according to the Commons tool/license used.

Ref: [Survey of GLAM open access policy and practice \(Douglas McCarthy and Dr. Andrea Wallace\)](#);



### **103. Is it advisable to apply Creative Commons licenses to works in the public domain?**

No. Creative Commons licenses cannot be applied to works in the public domain, as they require the existence of author's rights/copyright in the works. Some cultural institutions have been claiming related rights on the reproductions of works in the public domain (where the legislation permits it) and wrongly released digital copies of works in the public domain using Creative Commons licenses. The EU directive on copyright in the DSM (art. 14) excludes, however, the possibility to rely on copyright neither on related rights to non-original photography of visual artwork in the public domain.

### **104. How can reproductions of works in the public domain be labelled?**

After the implementation of art. 14 of Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market, we encourage Cultural Institutions to adopt the tool of Public Domain Mark (PDM) for the faithful reproductions of visual art works in public domain worldwide, or CC0 dedication to when there are concerns that the reproductions are subject to copyright in some territory and the Cultural Institution was the rights holder. In case of original reproduction of visual art works in the public domain, we ask Cultural Institutions to adopt CC0. At last, in the case where Cultural Institutions are not the right holders of the original reproduction of visual art works in public domain, we strongly recommend them to promote the adoption of CC0.

RightsStatements.org provides a set of standardized rights statements that can be used to communicate the copyright and re-use status of digital objects to the public. Those statements are supported by major aggregation platforms such as the Digital Public Library of America and Europeana. The rights statements have been designed with both human users and machine users (such as search engines) in mind and make use of semantic web technology and they are compatible with open licenses and public domain tools provided by Creative Commons.

*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;

[Public Domain Mark \(PDM\)](https://creativecommons.org/publicdomain/zero/1.0/deed.it), <https://creativecommons.org/publicdomain/zero/1.0/deed.it>; [The common appeal to Member States and European Cultural Institutions \(museums, libraries, archives, galleries and archaeological sites\) for the protection of the Public Domain: https://rightsstatements.org/en/](https://rightsstatements.org/en/).

## **OPEN ACCESS AND LICENSE: INTERNATIONAL MUSEUM CASES**

### **105. 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. The [Open GLAM survey](#) open access research work (D. McCarthy and A. Wallace) provides an extensive and

constantly updated list of Institutions adopting open licenses or public domain: more than 900 cultural institutions have adopted open policies so far. Some of these institutions are the most famous and visited in the world as the Metropolitan Museum of Art, Smithsonian, Paris Musées, Rijksmuseum. In Italy, the BEIC Foundation of Milan, the Egyptian Museum of Turin. In Spain the Spanish National Library (BNE) [opened the digital](#) collections (30 million images) in public domain in November 2020. In addition to the examples indicated above, open licenses are an important opportunity also for smaller institutions. 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.

Ref: [Survey of GLAM open access policy and practice \(Douglas McCarthy and Dr. Andrea Wallace\)](#); <http://www.bne.es/es/AreaPrensa/noticias2020/1027-bne-libera-mas-de-30-millones-de-imagenes-para-todo-uso.html>

## 106. Which copyright licenses are adopted in Open Access policies?

Online collections provide information on single photographic reproductions of artworks that are released under Creative Commons licenses and tools, 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 use various 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 (or compatible licenses CC BY and CC0) when the reproductions have been published in the Wikimedia platforms such as eg. Wikipedia, Wiki Commons or Wikidata. Some museums such as the British Museum release under a more restrictive license CC BY NC SA which does not allow commercial use licenses and is not compatible with open access. 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.

## 107. What motivates institutions's 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 [strategic document 2020-25](#): “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. The Spanish National Library (BNE) intention is “to promote the reuse of images and to put the digital collections at the service of a confined society, and a cultural and publishing industry with its very limited resources, and to **promote the expansion of knowledge**”.

*Ref:* [Smithsonian Open Access](#); [Europeana mission](#), [Europeana Strategy 2020-25](#); [SMK Open access](#); [Cleveland Museum of Art unleashes major digital change: 'Open Access'](#); National Gallery of art mission <https://images.nga.gov/en/page/openaccess.html>; [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/>; <http://www.bne.es/es/AreaPrensa/noticias2020/1027-bne-libera-mas-de-30-millones-de-imagenes-para-todo-uso.html>

## 108. May we track how content is downloaded and reused?

There are several monitoring tools that can be used to monitor how much of a given content is viewed or downloaded, such as Web Analytics tools and APIs. However, there is still not a good toolset to track content reuse. 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 access 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. The Smithsonian has a dedicated page [Open Access Remix](#) with a list of remix projects to “thanks to our Launch Collaborators, including artists, innovators, educators, technologists, and students, who developed these inspiring examples of what is possible with Smithsonian Open Access”.

*Ref:* [Cleveland Live Virtual Dashboards](#); [Cassandra tools](#); [Smithsonian remix](#)

## 109. What are the advantages of adopting Open Access?

Two publications provide relevant information on the benefits and challenges. Effie Kapsalis in "[The Impact of Open Access on Galleries, Libraries, Museums, & Archives](#)" highlights that: "With over a decade of GLAM open access, several trends and insights have emerged for these organizations: While open access may cause a loss in rights and reproduction revenue in limited cases, it can also lead to significant new opportunities in fundraising and brand licensing; Open access results in cost savings associated with rights and reproduction management overhead; Open access allows organizations to realign staff with more mission-critical activities, resulting in more efficient and less costly image management and digitization functions; By furthering research, educational and creative activities, open access also advances the missions of these institutions; Open access significantly increases use and awareness of an institution's collections; Open access creates a strengthened and more relevant brand."

Other benefits and challenges are highlighted in the presentation of the [Declaration on Open Access to Cultural Heritage, Europeana 2020](#) (Claudio Ruiz, Andrea Wallace, Evelin Heidel). Benefits: Goodwill and recognition; Enhanced mission and relevance to 21st century audiences; Increased staff efficiency and better mission alignment; Integration into external interfaces, like Wikimedia Commons; Increased research and new knowledge around collections; Inclusion in Open Educational Resources (OER); Fostering reuse and remix culture.

Challenges: Funding, losing revenues and changes in business models: Liability and risk aversion; Bad resolution copies and selling copies of public domain works; Misuse of public domain works; Wrong, messy or inaccurate metadata or information."

There are many studies in progress and even individual museums are analyzing the results: for example, according to a [study on the Rijksmuseum collections](#), the use of open licenses has increased the sale of images.

Ref: Effie Kapsalis "[The Impact of Open Access on Galleries, Libraries, Museums, & Archives](#)"; [Declaration on Open Access to Cultural Heritage](#), Europeana 2020, Claudio Ruiz, Andrea Wallace, Evelin Heidel; [https://pro.europeana.eu/files/Europeana\\_Professional/Publications/Democratising%20the%20Rijksmuseum.pdf](https://pro.europeana.eu/files/Europeana_Professional/Publications/Democratising%20the%20Rijksmuseum.pdf)

## V. PROBLEMS AND SOLUTIONS

### INFRINGEMENTS

#### 110. What is a copyright infringement?

A copyright infringement occurs when a work protected by Copyright law is used without the authorization of the rights holder and the activity does not fall within an exception or limitation to copyright provided for by law. When the infringement involves not only the economic rights but also the moral right of authorship..

#### 111. What sanctions are provided for in case of copyright infringement?

The sanctions applicable in case of copyright infringement vary depending on the type and gravity of the violation and may be civil, criminal and, in some cases, administrative (as in Italy).

#### 112. How is the damage related to the copyright infringement estimated?

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.

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

Financial losses occur when the public administration e.g. public cultural institutions suffer damage, such as loss of assets, money or not achieving economic increases, due to the conduct of a person who is a member of the administrative apparatus (as an employee, officer, etc.). In theory, if the director of a public Institution decides to release images of public cultural heritage with open licenses, and therefore to authorize the use of such reproductions without the payment of any fee, he may incur the hypothesis of financial losses for failure to achieve economic increases. It is clear, however, that the damage, in order to be refundable, must be proven in practice and in this case there is already a lot of evidence of the fact that the income from the fee required for the use of cultural heritage images is much lower than the costs for the

granting of authorizations and, on the contrary, that the spread of the reproduction can generate advantages also in economic terms.

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

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 resolution of a dispute can be possible only if that dispute concerns the above-mentioned standards. When the dispute is about the violation of Copyright 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. Copyright law must be referred to.

### **CONTRACTS AND CONSENTS**

#### **115. 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 roles of counterparts of cultural institutions and the complexity of the issues that the institutions have to define in order to have a profitable relationship with third parties, require the availability of a formal contractual model in order to reach a specific regulation to protect the rights of the contractual parties. It is also important to make use of models to be able to identify, among other things, which rights are assigned, to give transparency 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.

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 by contract. Any contractual clause contrary to the European provision providing exceptions would be considered unenforceable. Member states must therefore provide the legal framework to ensure that the right of the cultural heritage institutions to preserve works is not affected by contractual clauses.

*Ref: art. 7 [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.](#)*

#### **116. 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.

Ref: [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](#)

### **117. 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) use the images of the displayed artworks in any kind of material for communication/advertisement/commercial purposes; b) use the music, videos, images along the exhibition or elsewhere, for example on the social platforms; c) use the images on the website of the cultural entity; d) use the possible photos, video shootings of the public of specific events. In some cases it will be necessary to ask for the prior authorisation from the rightsholder at the entity which manages the rights.

### **118. 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).

### **119. Which consent is necessary to grant the compliance of the copyright's owner in the event of donations and deposit in archives and libraries of documents protected by author's rights (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**

### **120. 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 include 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.

### **121. 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 online, 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).

### **122. 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**

### **123. Are there exceptions to copyright for Cultural Institutions in the Directive 2019/790 EU?**

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.

*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](#) and [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](#)

### **124. 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)

## 125. What are the exceptions provided by the Directive 2019/790 EU?

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](#)

## 126. What is meant by freedom of panorama?

The freedom of panorama is an exception to copyright 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 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: [Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society](#)

## 127. Which countries allow freedom of panorama?

The implementation of the freedom of panorama varies a lot as , 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](https://it.wikipedia.org/wiki/Libert%C3%A0_di_panorama)

***Bibliography and references are indicated as notes in each answer.***