



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

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Abbreviation List

AVMSD	Audiovisual Media Services Directive
CDC	UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (Convention on Cultural Diversity)
CDSM Directive	Directive on Copyright in the Digital Single Market
CFREU	Charter of Fundamental Rights of the European Union
CJEU	Court of Justice of the European Union
CRPD	United Nations Convention on the Rights of Persons with Disabilities
CRPD Committee	United Nations Committee on the Rights of Persons with Disabilities
EAA	European Accessibility Act
EENC	European Expert Network on Culture
EU	European Union
GDPR	General Data Protection Regulation
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IEC	International Electronic Commission
IP	Intellectual Property
IPR	Intellectual Property Rights
ISO	International Organisation for Standardization
Marrakesh Treaty	Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled
M18	Month 18
NUIM	Maynooth University (National University of Ireland Maynooth)
OMC	Open Method of Coordination
PwD	Persons with Disabilities
SSSA	Sant'Anna School of Advanced Studies Pisa, Italy
STEM	Science, Technology, Engineering and Mathematics
TA	Thematic Analysis



TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UK	United Kingdom
WAD	Web Accessibility Directive
WP	Work Package



Executive Summary

The End-users' perspective is often a neglected aspect of the European Union (EU) copyright regulatory framework and within copyright scholarship. In light of the objectives pursued by *reCreating Europe*, and its overarching aim to promote a modern, creative, culturally diverse, accessible Europe, Work Package (WP) 2 aims to discuss the role of End-users' rights, interests, expectations, and behaviors *vis-à-vis* copyright rules.

Within WP2, the aim of Task 2.2 is to assess the extent to which vulnerable groups experience barriers in accessing digital cultural content. It also aims to investigate whether, and to what extent, the EU regulatory framework might exacerbate or counteract those barriers. In that regard, we linked *ex ante* the idea of vulnerability to structural inequalities by identifying specific groups of End-users. However, our analysis aims to further unveil the role of those inequalities and of specific barriers linked to them in accessing digital culture.

Consistently with the aim of this Task, the methodology that was adopted combines traditional legal research with qualitative analysis, within the remit of an overall socio-legal approach. The researchers involved in this Task have undertaken an initial scoping review of literature and desk-based research on relevant legal sources, followed by the planning and preparation of qualitative research in the form of semi-structured interviews and a qualitative survey, both conducted across 12 EU Member States: Belgium, Croatia, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Malta and Spain.

Task 2.2. required a careful risk assessment at various junctures and an ongoing evaluation of the impact of the COVID-19 pandemic (and related restrictions) on vulnerable groups. The pandemic and the uncertainty linked to its duration represented a significant challenge for the research and required several adjustments to the phase of data collection. However, the research team, as of month 18 of the project (M18), has completed a significant number of qualitative interviews (with some additional interviews to be completed by the end of July 2021), has completed a qualitative survey, has consolidated the methods for analysis of this data, and has initiated the coding and data analysis phase.

This interim report provides a detailed overview of the objectives of Task 2.2, of specific research questions posed as part of this Task, as well as a comprehensive discussion of the methodology used for this research. In this regard, the report also discusses in detail the process of data collection and lays out some 'incidental' findings emerging from that process. In addition, it discusses some general preliminary findings of the research conducted to date. In particular, it highlights three main issues, which will be further analyzed in the final report. First, the degree of knowledge of copyright law and the understanding of its relevance in relation to the consumption of digital cultural content seems limited amongst vulnerable groups. Second, in all countries considered, underlying barriers, such as the 'digital divide' and structural inequalities faced by vulnerable groups, represent a substantial challenge and prevent the consumption of digital content. In this respect, this interim report confirms the results of other past and well-established research. Third, we could observe initial (and not fully defined) patterns of convergence and divergence between different vulnerable groups (e.g. persons with disabilities, migrants, linguistic minorities).



1. Background and Aim

1.1 Introductory Remarks

This interim report stems from the research conducted within the *reCreating Europe*¹ WP 2, which focuses on End-users and access to culture.

The overall purpose of the project is to gain an understanding of which regulatory framework best supports culturally diverse production, as well as inclusive access and consumption. Considering that ‘copyright law has the potential to regulate digital culture by fitting it to increasingly commercial patterns that threaten to undermine the democratic potential of a networked society’,² the project endeavours to produce ground-breaking research that considers different stakeholders’ perspectives. In this context, a significant part of the project embraces an ‘End-user perspective’ of copyright law in Europe. In particular, WP 2, by focusing on End-users and access to culture, will provide, through a combination of desk-based research and participatory research methods, a comparative cross-national mapping of regulatory measures having a positive or negative impact on digital access to culture. The project also investigates the degree of users’ knowledge and understanding of EU and national copyright laws and suggests alternative coping strategies adopted by individual users, communities and networks to overcome regulatory obstacles to access and sharing of digital cultural goods and services. For the purpose of this project, an ‘End-user’ is a ‘natural person, that is, an individual, easily distinguishable from institutional users such as broadcasters, content suppliers, libraries, archives, and so forth’, and, broadly speaking ‘a consumer of digital goods and services who benefits from consumer protection law when contracting with professional traders’.³

Among its key objectives, WP 2 aims to understand the barriers faced by vulnerable End-users, i.e. End-users from selected vulnerable groups, namely persons with disabilities (PwD) and people belonging to old and new minorities (as defined below in section 1.2 of this deliverable) in accessing digital cultural goods and services (Task 2.2). Even though there is a wealth of studies on cultural consumption as such, as well as on copyright and access to culture, which will be discussed later in this deliverable, existing literature has not yet addressed in any comprehensive way the barriers faced by vulnerable groups in accessing digital cultural goods and services in relation to their knowledge of copyright from a socio-legal perspective. Task 2.2. aims to fill this gap, and provide a cross-national qualitative study of legal, economic and technological barriers to access to digital culture for vulnerable groups. The research conducted under Task 2.2. will be situated within the broader conceptual context of the democratization of culture. Furthermore, Task 2.2 aims to ascertain whether, and to what extent, the EU regulatory framework might exacerbate or counteract those barriers.

As will be detailed in section 2 of this deliverable, Task 2.2 adopts a socio-legal perspective, boosted by the use of an interdisciplinary methodology. Desk-based research is supported by qualitative methods in the form of semi-structured interviews and a qualitative survey, both conducted across 12 EU Member States: Belgium, Croatia, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Malta and Spain.⁴ Task 2.2 required a long phase of preparation for the interviews and survey, followed by an ongoing phase of data collection and processing and analysis of data, conducted in conjunction with a systematic legal analysis. Regarding the latter, while the scope of project is that of EU law, Task 2.2 also investigates relevant international human rights law which influences EU law and to which Member States adhere.

The work plan of WP 2 encompasses a broad range of interdisciplinary research activities, which will result in nine deliverables, as well as academic outputs and recommendations on best practices and policy reform. This interim report is the second (D2.2) and follows deliverable D.2.1, which provided a comparative EU and cross-national mapping of regulatory sources, with a focus on copyright and the Digital Single Market. Other deliverables will include: a final report and public dataset on copyright flexibilities (D.2.3); a final policy brief

¹ For an overview of the project objectives and activities, please see <<https://www.recreating.eu/>> (last access 16 June 2021).

² J. Reyman, *The Rhetoric of Intellectual Property* (Routledge 2009) 37.

³ G. Mazziotti, *EU Digital Copyright Law and The End-User* (Springer, 2008) 4.

⁴ At the outset the project envisioned Task 2.2. to have a pan-EU geographical scope. However, in consideration of the multiple restrictions related to the Covid-19 pandemic, the research was scaled down to twelve countries. See further Section 2 of this deliverable.



on barriers for vulnerable groups (D.2.4), an interim and a final report on case studies (D.2.5, D.2.8), a peer-reviewed publication on the impact of copyright law and perception on the demand for cultural goods and services (D.2.6), a report on effect of digitization and regulatory changes on access to culture (D.2.7), and final policy recommendations (D.2.9).

1.2 Research Questions

1.2.1 Core Questions

The aim of Task 2.2 is to assess the extent to which vulnerable groups experience barriers in accessing digital cultural content. It also aims to investigate whether, and to what extent, the EU regulatory framework might exacerbate or counteract those barriers. The collection of data through the interviews and the survey (discussed in section 2 of this deliverable), supported by the analysis of relevant legal literature and cultural studies and sociological scholarship, has revolved around three overarching research questions:

- What barriers do people belonging to vulnerable groups face in accessing digital cultural content?
- What are the perceptions of those groups about digitization as a mean to overcome barriers to access?
- To what extent does / can the EU regulatory framework support more equal access to digital culture, including digitized and digital-born cultural goods and services?

The research under this Task focuses on access to digital culture as ‘the opportunity to benefit from cultural offer’.⁵ It refers to digitization in relation to the conversion of a cultural good/service into a digital format, and broadly to digitalization when referring to the process of digital transformation of culture.

This research is premised on the anecdotal evidence that certain groups experience several barriers in accessing culture and more so, digital culture. For example, in 2012, the ‘Report on Policies and Good Practices in the Public Arts and in Cultural Institutions to Promote Better Access to and Wider Participation in Culture’, completed within the context of the Open Method of Coordination (OMC), stated that ‘among the excluded – or self-excluded – ethnic cultural minorities represent special and often statistically significant groups, and pose distinctive challenges’ and ‘among such groups are migrant communities and the Roma population’.⁶ With regards to PwD, several studies have documented that they face barriers in accessing cultural goods and services.⁷ In relation to digital culture the problem is exacerbated by the lack of accessibility of technologies and websites. The report, released in February 2021 by Voices of Culture⁸, highlights at various junctures the need to promote access to culture for PwD and socially marginalized groups.⁹ In that regard, the research takes into account that any discussion of access to culture needs to include issues such as ‘social integration, skills and education, geographical and social isolation, minority rights’.¹⁰ This links to the well-known ‘digital divide’, i.e. ‘the indisputable fact that many people are still excluded from the use of digital tools, mostly because they are poor – and more poor people are now

⁵ European Parliamentary Research Service (M. Pasikowska-Schnass), ‘Access to Culture in the European Union’ (2017) <[https://www.europarl.europa.eu/RegData/etudes/IDAN/2017/608631/EPRS_IDA\(2017\)608631_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2017/608631/EPRS_IDA(2017)608631_EN.pdf)> (last access 16 June 2021).

⁶ The Working Group of the EU Member States’ Experts on Better Access to and Wider Participation in Culture Under the Open Method of Coordination, ‘European Agenda for Culture – Work Plan for Culture 2011-2014: A Report on Policies and Good Practices in the Public Arts and in Cultural Institutions to promote better access to and wider participation in culture’ (2012) 17 <https://ec.europa.eu/assets/eac/culture/policy/strategic-framework/documents/omc-report-access-to-culture_en.pdf> (last access 16 June 2021).

⁷ Among others see European Parliament (B.A. Zdrojewski), ‘Report on Structural and Financial Barriers in the Access to Culture’ (2018) 2017/2255(INI) <<http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&mode=XML&reference=A8-2018-0169&language=EN>> (last access 16 June 2021).

⁸ Voices of Culture is the structured dialogue between the cultural sector in the European Union and the European Commission. See at <<https://voicesofculture.eu/>> (last access 16 June 2021).

⁹ Voices of Culture, ‘Culture and the United Nations Sustainable Development Goals: Challenges and Opportunities’ (2021) <<https://voicesofculture.eu/wp-content/uploads/2021/02/VoC-Brainstorming-Report-Culture-and-SDGs.pdf>> (last access 16 June 2021).

¹⁰ Supra 5.



emerging – or feel uncomfortable with this technology’.¹¹ In a similar vein, the Voices of Culture report suggests that digital culture ‘can be inspirational [...] but cannot replace all cultural actions and interactions’ and comments that the digital economy requires equipment, and a constant check that fair access to digital technology is guaranteed as a cultural right if this technology is necessary to access culture (i.e. books, music, cinema...).¹²

A range of barriers to accessing culture, as will be discussed further in Section 1.3, have been identified in studies and reports,¹³ especially for groups that have been considered ‘under-represented’ in the cultural domain.¹⁴ General economic barriers linked to the cost of cultural goods (in particular the so called ‘highbrow culture’), physical barriers (mostly looking at the distance separating consumers from cultural infrastructures, rather than, for example, accessibility for PwD) and legal barriers have been identified. However, none of the studies so far conducted focus specifically on barriers broadly conceived of in respect of digital cultural goods, as this current study does. In this regard, Task 2.2. adopts a narrow scope to investigate what role digitalization of culture is having and whether it contributes to the creation of new barriers or to the dismantling of existing ones.

The qualitative research conducted within the remit of Task 2.2 tallies with the comparative legal mapping conducted under Task 2.1. That legal analysis complements the comparative cross-national mapping of the legal, economic and technological barriers faced by the selected vulnerable groups in accessing digital culture.

1.2.2 Conceptual Tenets

Digital Culture in the EU Regulatory Framework

In Task 2.2, consistent with the overall project, the focus is on digital culture. According to the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (Convention on Cultural Diversity - CDC), cultural content refers to the symbolic meaning, artistic dimension and cultural values that originate from or express cultural identities.¹⁵ In that regard, we refer to digital culture as ‘the various cultural and creative expressions and practices, including in the field of heritage, which have emerged or have been facilitated and strengthened since the global explosion in information technology and social media’.¹⁶ In our qualitative research, we solicited views on cultural content available through streaming platforms and apps, such as Spotify, Netflix, or virtual museum apps. In this connection, we took into account that, as noted by Thumim, ‘the term ‘digital culture’ indicates a focus on culture at the broadest level; this term implies that the affordances and the constraints resulting from digital technologies shape everyday life across its multiple facets, for everyone’.¹⁷

It has been stated that ‘[d]igital culture [is] more freely available, accessible, and inclusive’..., ‘and ... remov[es] dividing lines between creator and consumer and between traditional and more recent art forms, thereby enhancing the democratisation of culture’.¹⁸ However, the research questions addressed by Task 2.2 stem from the assumption that access to digital culture is strictly dependent on the availability, accessibility and affordability of adequately diverse digital content on the market, taking into account linguistic diversity, multifaceted cultural identities and diverse capabilities. This is in line with the policy approach adopted by EU institutions. In that regard a recent Opinion of the Committee of the Regions reiterates ‘...the importance

¹¹ CultureWatchEurope Conference (Joost Smiers), ‘Digitisation and cultural democracy, an (as yet) unfulfilled promise, in Cultural Access and Participation - from Indicators to Policies for Democracy’ (2012) 36 <<https://rm.coe.int/16806a34cd>

¹² Supra 9.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (CDC) (adopted 20 October 2005, entered into force 18 March 2007) 2440 UNTS 311.

¹⁶ Committee of Ministers, ‘Recommendation of the Committee of Ministers to Member States On Big Data For Culture, Literacy And Democracy’ (2017) CM/Rec(2017)8, Appendix II to Recommendation.

¹⁷ N. Thumim, *Self-Representation and Digital Culture* (Palgrave Macmillan 2012) 11.

¹⁸ Ibid.



of capitalising on and boosting digital opportunities to promote culture in an interactive way and promoting access to culture for all groups of society...'.¹⁹

Furthermore, in this report, the term EU regulatory framework is used to cover a broad and cross-cutting range of hard law and soft law measures, also referred to as legislation and policies.²⁰ While the legal scope of the analysis focuses on this EU regulatory framework, relevant international law instruments will also be taken into account and examined where relevant.

Accessibility

In this report we acknowledge that the 'accessibility' is used in a number of different contexts, where it may mean different things. In the broad sense, we refer to 'access to (digital) culture' and the 'accessibility of (digital) culture' as the ability of different groups to engage with culture from an economic, linguistic and practical perspective. This relates to issues such as the democratisation of culture and audience development, which are interrogated throughout the project in respect of vulnerable groups.

In a narrower sense, in relation to disability, accessibility for PwD refers to the extent to which products, systems, services, environments and facilities can be used by people with the widest range of characteristics and capabilities.²¹ The International Organization for Standardization (ISO) and the International Electronic Commission (IEC) define the term 'accessible design' as 'design focused on diverse users to maximize the number of potential users who can readily use a system in diverse contexts'.²² Accessibility is a general principle in Article 3(f) of the United Nations (UN) Convention on the Rights of Persons with Disabilities (CRPD). Broad accessibility obligations are formulated in Article 9 CRPD and in other substantive provisions of the Convention.²³ The CRPD encompasses a broad understanding of accessibility, including physical accessibility, economic accessibility (i.e. affordability) and accessibility of information, and it addresses accessibility 'in all its complexity'.²⁴ In this respect, Lawson contends that 'for CRPD purposes, accessibility covers more than technical design specifications for products, information and signage for the built environment. It also covers communication and forms of live assistance'.²⁵

Vulnerable Groups and Vulnerability

As noted above, Task 2.2 is premised on the idea that certain groups experience barriers in accessing digital culture. In this regard, this Task builds on the idea of 'vulnerability' of certain groups whose rights are at particular risk of being violated as a consequence of structural inequalities. These inequalities occur where organisations, social institutions and networks purport an embedded bias which marginalizes and produces disadvantages for some members of society.²⁶ As noted by, *inter alia*, Sabeel Rahman, legal structures constitute the background of structural inequalities.²⁷ In this project, we linked *ex ante* the idea of vulnerability to structural inequalities by identifying specific groups of End-users. However, our analysis aims to further unveil the role of those inequalities and of specific barriers linked to them in accessing digital

¹⁹ Opinion of the European Committee of the Regions, 'Restart of cultural and creative sectors' (2021) OJ C106/38, 38-4 (emphasis added), citing Opinion of the European Committee of the Regions, 'Culture in a Union that strives for more: the role of regions and cities'(2020) OJ C141/39, 39.

²⁰ European Commission, Culture and Creativity Regulatory Framework webpage <<https://ec.europa.eu/culture/policies/regulatory-framework>> (last access 16 June 2021).

²¹ European Telecommunications Standards Institute, 'Harmonised European Standard: Accessibility requirements for ICT products and services' (2018) EN 301 549 V2.1.2 13 <https://www.etsi.org/deliver/etsi_en/301500_301599/301549/02.01.02_60/en_301549v020102p.pdf> (last access 16 June 2021).

²² International Organisation for Standardization webpage, 'ISO/IEC: Guide 71:2014' <<https://www.iso.org/standard/57385.html>> (last access 16 June 2021).

²³ F. Seatzu, 'Article 9: Accessibility', in V. Della Fina, R. Cera and G. Palmisano (eds), *The United Nations Convention on the Rights of Persons with Disabilities: A Commentary* (Cham Springer, 2017) 225, 227.

²⁴ UN Committee on the Rights of Persons with Disabilities (CRPD Committee), 'General Comment No. 2 on Article 9: Accessibility' (11 April 2014) UN Doc CRPD/C/GC/2.

²⁵ A. Lawson, 'Maximising the Impact and Effectiveness of Accessibility Measures for Goods and Services: Learning from National Experience' (2012) Synthesis Report for the Academic Network of European Disability Experts, 34 <http://www.disability-europe.net/theme/accessibility> (last access 16 June 2021).

²⁶ See at United Nations Economic and Social Commission for Western Asia web page <<https://www.unescwa.org/structural-inequalities>> (last access 16 June 2021).

²⁷ K. Sabeel Rahman, *Constructing and Contesting Structural Inequality* (2018) 5 *Critical Analysis of Law* 1.



culture. In doing so, we aim to enhance equity in access to cultural goods and services and identify ways in which copyright law and, more broadly, cultural regulatory policy can address and redress those inequalities. This understanding of vulnerability as linked to structural inequalities is in line with the EU law approach²⁸ and with most recent EU soft law documents that mention ‘groups in situations of vulnerability and marginalisation’.²⁹ This is also in line with the use of the concept within the European Court of Human Rights.³⁰

We acknowledge that, as recently recalled by Waddington, ‘[v]ulnerability is an open-textured, ambiguous and elusive notion which is used in many different disciplines, and which academics and commentators sometimes consciously choose not to define’.³¹ We also recognise that the term has been deployed in different contexts.³² Bernardini *et al.* discuss an ‘extensive use of the “vulnerability” rhetoric in a wide range of disciplinary fields’.³³ Ippolito, among other scholars, has suggested that ‘[n]ormatively, international human rights jurisprudence has decisively embraced a vulnerability language, beyond the traditional field of minority protection’ and that in EU law ‘we witness a progressive “vulnerabilisation”’.³⁴ Waddington distinguishes two leading theories on vulnerability:³⁵ the first one suggests that groups or individuals with specific characteristics are regarded as “vulnerable” *per se*; a second one, put forward by Fineman, contends that vulnerability can be regarded as a universal experience.³⁶ Some authors supporting the first theory have focused on inherent conditions of the individual (such as their impairments), however other authors have supported a view that focuses on external structural factors causing that vulnerability.³⁷ The latter view is the one embraced in Task 2.2, which focuses on a dynamic, context-dependent concept of vulnerability as a process of vulnerabilisation determined by the external context and produced by the existence of structural inequalities.³⁸ On the whole, we recognise the multifaceted theoretical nuances and the complexity of the concept of vulnerability, and we understand that ‘classifying some groups a priori as “vulnerable”—and by implication other groups as not [...] risks stigmatising those who are labelled as “vulnerable”’.³⁹ However, while recognising the limitation and hurdles of the concept of vulnerability, as well as its difficult relationship with autonomy and empowerment,⁴⁰ reference to the concept of vulnerability has supported (at the proposal stage) the identification of target groups to understand what distinct and/or additional barriers they face in accessing digital culture. Within the remit of this project, this approach also responds to the need to enhance ‘inclusive equality’⁴¹ in accessing digital cultural goods.

²⁸ F. Ippolito, ‘Vulnerability as a Normative Argument for Accommodating “justice” within the AFSJ’ (2019) 25 *European Law Journal* 6, 544.

²⁹ Among others, European Commission, ‘Commission Staff Working Document Accompanying the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - The European Pillar of Social Rights Action Plan’ (2021) SWD/2021/46.

³⁰ Among others, Y. Al Tamimi, ‘The Protection of Vulnerable Groups and Individuals by the European Court of Human Rights’ (2016) *European Journal of Human Rights* 5, 561.

³¹ L. Waddington, ‘Exploring vulnerability in EU law: an analysis of “vulnerability” in EU criminal law and consumer protection law’ (2020) 45 *European Law Review* 6, 779.

³² M.G. Bernardini, B. Casalini, O. Giolo, L. Re, *Vulnerabilità: etica, politica, diritto* (IF Press Roma 2018); See also C. Gibb, ‘A Critical Analysis of Vulnerability’ (2018) 28 *International Journal of Disaster Risk Reduction* 327; D.Schroder and E.Gefenas, ‘Vulnerability Too Vague and Too Broad’ (2009) 18 *Cambridge Quarterly of Healthcare Ethics* 2,113,117.

³³ M.G. Bernardini, B. Casalini, O. Giolo, F. Lins, F. dos Santos and L. Re, ‘Vulnerability: possible uses of a philosophical, legal, political and social concept’, (2016), 5 *Genero & Direito* 3 (Special Issue), 1. See also A. Timmer, “A Quiet Revolution: Vulnerability in the European Court of Human Rights,” in M.A. Fineman and A. Grear (eds), *Vulnerability: Reflections on a New Ethical Foundation for Law and Politics* (Ashgate, 2013), 147.

³⁴ *Supra* nt. 28.

³⁵ *Supra* nt. 31.

³⁶ M. Fineman, ‘The Vulnerable Subject’ (2008–9) 20 *Yale Journal of Law and Feminism* 1, 8.

³⁷ *Supra* 28.

³⁸ On this point, D. Ferri. ‘La «vulnerabilità» come condizione giuridica dei migranti con disabilità nell’Unione europea’ in MG Bernardini (eds), *Migranti con disabilità e vulnerabilità. Rappresentazioni, politiche, diritti* (Jovene Editore 2019).

³⁹ *Supra* nt. 31.

⁴⁰ *Supra* nt. 33, *passim*. For a critical approach see A. Cole, ‘All of Us Are Vulnerable, But Some Are More Vulnerable Than Others: The Political Ambiguity of Vulnerability Studies, an Ambivalent Critique’ (2016) 17 *Critical Horizons* 2, 260.

⁴¹ This concept was referred to by Colleen Sheppard (C. Sheppard, *Inclusive Equality: The Relational Dimensions of Systemic Discrimination in Canada*, MQUP Montreal 2010), who states that ‘inclusive equality requires reinforcing individual agency, while



Given the blurred boundaries of the concept of vulnerability, there is no consensus on a common definition of vulnerable groups. References in literature and case law include, *inter alia*, migrants, people belonging to national ethnic or linguistic minorities, Indigenous Peoples, Roma/Gypsies/Sinti/Travellers, Persons with Disabilities, the Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex community, women, children and older people. In this regard, Task 2.2 deliberately focuses on two main ‘macro-groups’, recognizing that they encompass different identities: Persons with Disabilities and people belonging to old and new minorities. These ‘macro-groups’ are defined below.

Persons with Disabilities

The project adopts a broad conceptualisation of disability. In line with Article 1(2) CRPD,⁴² this project embraces the view that ‘[p]ersons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others’.⁴³

The CRPD endorses the shift from the medical model of disability – which views functional limitations as a consequence flowing from impairment – to the social-contextual model of disability.⁴⁴ The social-contextual model is considered a more refined elaboration of the ‘pure’ social model. The latter model was first articulated in the mid-1970s by the Union of Physically Impaired People Against Segregation, a British organisation advocating for the rights of people with physical disabilities.⁴⁵ Most recently, the UN Committee on Rights of Persons with Disabilities (CRPD Committee) has highlighted that the CRPD, while conceiving of disability as a social construction, affirms the human-rights model of disability.⁴⁶ The human rights model emphasises that disability, as ‘one of several layers of identity’, is part of ‘human diversity and humanity’.⁴⁷ In embracing impairments as part of human diversity, the human rights model also recognises the inherent dignity of People with Disabilities, who are to be valued because of their self-worth.⁴⁸

The conceptualisation of disability included in the CRPD has trickled down into the EU legal order, given that the CRPD has been concluded by the EU alongside its Member States.⁴⁹ The CRPD has become an ‘integral part of EU law’ and enjoys a sub-constitutional status.⁵⁰ By virtue of this status, EU legislation must be interpreted in a manner consistent with the CRPD.⁵¹ In *HK Danmark*,⁵² which was the first decision on

taking into account the systemic and structural constraints on that agency’. This concept was also explored by Sally Witcher (S. Witcher, *Inclusive Equality: A Vision for Social Justice*, Policy Press 2013). The concept was most recently developed by the CRPD Committee in its General Comment No. 6 with regard to disability (CRPD Committee, ‘General Comment No 6 on equality and non-discrimination’ (9 March 2018) UN Doc. CRPD/C/GC/6, para. 11). The CRPD Committee affirms that inclusive equality embraces four dimensions: a fair redistributive dimension, which requires that socio-economic disadvantages are addressed; a recognition dimension which necessitates the combatting of stigma, stereotyping, prejudice and violence, and the recognition of the dignity of human beings and their intersectionality; a participative dimension which aims to reaffirm the social nature of people with disabilities as members of the society; and an accommodating dimension, which entails making ‘space for difference as a matter of human dignity’.

⁴² UN Convention on the Rights of Persons with Disabilities (CRPD) (adopted 13 December 2006, entered in force 3 May 2008) UN Doc. A/RES/61/106.

⁴³ Article 1, CRPD.

⁴⁴ A. Broderick and D. Ferri, *International and European Disability Law and Policy: Text, Cases and Materials* (Cambridge University Press 2019).

⁴⁵ According to the interpretation provided by UPIAS, society disables people with impairments, and a distinction needs to be made between the ‘impairment’ itself and the social ‘situation’ of people with impairments, the latter giving rise to a ‘disability’ (C. Barnes and G. Mercer, *The Social Model of Disability: Europe and the Majority World* (Disability Press Leeds 2005).

⁴⁶ CRPD Committee, ‘General Comment No. 6 on Equality and Non-Discrimination’ (9 March 2018) UN Doc. CRPD/C/GC/6, para. 11.

⁴⁷ *Ibid.*

⁴⁸ T. Degener, ‘Disability in a Human Rights Context’ (2016) 5 *Laws* 3, 35 citing G. Quinn and T. Degener, ‘*Human Rights and Disability: The current use and future potential of United Nations human rights instruments in the context of disability*’ (2002) (Office of the United Nations High Commissioner for Human Rights Study) UN Doc. HR/PUB/02/1, 14.

⁴⁹ Council Decision 2010/48/EC of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities [2010] OJ L23/35.

⁵⁰ CJEU Joined Cases C- 335/11 and C- 337/11, *HK Danmark, acting on behalf of Jette Ring v Dansk almennyttigt Boligselskab* and *HK Danmark, acting on behalf of Lone Skouboe Werge v Dansk Arbejdsgiverforening, acting on behalf of Pro Display A/S, in liquidation (HK Danmark)* ECLI:EU:C:2013:222.

⁵¹ CJEU Case C-363/12 *Z. v A Government Department and The Board of management of a community school* ECLI:EU:C:2014:159.

⁵² *HK Danmark*, *supra* 49.



disability discrimination following the EU's accession to the CRPD, the Court of Justice of the European Union (CJEU) elaborated a definition of disability based on the social-contextual conceptualisation enshrined in Article 1(2) CRPD. Namely, the CJEU recognised that 'if a curable or incurable illness entails a limitation which results in particular from physical, mental or psychological impairments which *in interaction with various barriers* may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers, and the limitation is a long-term one, such an illness can be covered by the concept of 'disability' within the meaning of Directive 2000/78'.⁵³ This definition was reiterated in several other disability cases originating from requests from preliminary rulings, such as *Ruiz Conjero*,⁵⁴ and *DW v Nobel Plastiques Ibérica SA*.⁵⁵ Furthermore, definitions of disability that build on the CRPD can be found in the EU legal framework, in hard law and soft law. Among the former, State aid rules, and namely the General Block Exemption Regulation,⁵⁶ the Web Accessibility Directive (WAD)⁵⁷ and the European Accessibility Act (EAA)⁵⁸ include a definition of disability in line with Article 1(2) CRPD. The former European Disability Strategy 2010-2020 cited Article 1(2) CRPD,⁵⁹ while the new Strategy for the Rights of Persons with Disabilities 2021-2030,⁶⁰ which is the current EU policy framework on disability, adopts a rights-based approach to disability and embraces the human rights model of disability.⁶¹ In fact, the new Strategy places an emphasis on how disability represents an integral part of human diversity.

Within the remit of this broad definition of disability, the qualitative survey undertaken as a data collection tool allowed people to self-identify as PwD and indicate the relevant type of disability (see further section 3). The latter choice will allow us to disaggregate data and understand how different barriers may relate to persons with different types of disabilities.

People belonging to old and new minorities

The project adopts a broad conceptualisation of people belonging to minorities. The protection of minorities is well-rooted in EU law⁶² and it is included in Article 2 of the Treaty on the European Union (TEU) among the values of the EU. In a recent Resolution, the European Parliament highlighted that 'the protection of the rights of persons belonging to minorities can help build a sustainable future for Europe and contribute to guaranteeing respect for the principles of dignity, equality and non-discrimination'.⁶³ The Charter of Fundamental Rights of the European Union (CFREU) prohibits discrimination against persons belonging to

⁵³ Ibid, para 41.

⁵⁴ CJEU Case C-270/16 *Carlos Enrique Ruiz Conejero v Ferroservicios Auxiliares SA and Ministerio Fiscal* ECLI:EU:C:2018:17.

⁵⁵ CJEU Case C-397/18 *DW v Nobel Plastiques Ibérica SA* ECLI:EU:C:2019:703.

⁵⁶ Commission Regulation No 651/2014/EU of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty [2014] OJ L187/1.

⁵⁷ Directive 2016/2102/EU of the European Parliament and of the Council of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies [2016] OJ L327/1.

⁵⁸ Article 2, Directive 2019/882/EU of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services [2019] OJ L151/70.

⁵⁹ European Commission, 'Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and The Committee of Regions - European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe' (2010) COM/2010/636.

⁶⁰ European Commission 'Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and The Committee of Regions - Union of Equality: Strategy for the Rights of Persons with Disabilities 2021-2030' (2021) COM/2021/101

<<https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8376&furtherPubs=yes>> (last access 16 June 2021).

⁶¹ D. Ferri, 'The New Strategy for the Rights of Persons with Disabilities 2021-2030: A Step Forward in Realising the Human Rights Model of Disability' (2021) Op-Ed for the EU Law Live Website <<https://eulawlive.com/op-ed-the-new-strategy-for-the-rights-of-persons-with-disabilities-2021-2030-a-step-forward-in-realising-the-human-rights-model-of-disability-by-delia-ferri/>> (last access 16 June 2021).

⁶² B. De Witte, 'The European Communities and its Minorities', in C. Brolmann, R. Lefeber and M. Zieck (eds) *People and Minorities in International Law* (Kluwer, 1993). For an historical account see also G. Toggenburg, 'The EU's evolving policies vis-à-vis Minorities: A Play in Four Parts and an Open End.' (2008) EURAC Research

<http://www.eurac.edu/en/research/autonomies/minrig/Documents/Mirico/Web_del%2030EU%20and%20minority%20protectio n.pdf> (last access 16 June 2021).

⁶³ European Parliament Resolution of 13 November 2018 on minimum standards for minorities in the EU [2018] INI/2018/2036, preamble, letter D.



'national minorities'.⁶⁴ The EU Treaties do not define the term 'minorities' and, at present, there is no univocal and prescriptive definition of the term 'minorities' in EU law.⁶⁵ This lack of a definition is made more complex by the fact that Article 2 TEU follows the wording of Article 27 of the International Covenant on Civil and Political Rights (ICCPR) which refers generally to 'persons belonging to minorities'.⁶⁶ By contrast, the CFREU refers to national minorities. The Race Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin refers to 'racial' and 'ethnic' minorities.⁶⁷ The Employment Equality Directive protects 'religious minorities'.⁶⁸ An array of different terms have been used in EU soft law. Most recently, the EU Commission has adopted a very broad definition of minority as 'a non-dominant group which is usually numerically less than the majority population of a State or region regarding their ethnic, religious or linguistic characteristics and who (if only implicitly) maintain solidarity with their own culture, traditions, religion or language'.⁶⁹ Taking into account the latter broad definition, in *reCreating Europe* we aim to capture a number of 'non-dominant groups' in a Nation State that meet one or more of the following criteria: they are numerically smaller than the rest of the population; they are not in a dominant position; they have a culture, language, religion or race that is distinct from that of the majority; and their members have a will to preserve those characteristics.⁷⁰

ReCreating Europe discusses both so-called 'old' - often known as 'national' - minorities and 'new minorities'.⁷¹ This dichotomy developed early on in international law, with the international legal framework seeking to protect minorities established by the League of Nations, restricting minority rights to religious, ethnic and linguistic groups who became a 'minority' as a result of the redrawing of State boundaries and excluding minorities who became a 'minority' out of choice, such as migrants. The Council of Europe's Framework Convention for the Protection of National Minorities,⁷² adopted in 1994, follows this approach. However, this instrument 'contains no definition of national minorities, none having received the consent of all Council of Europe member States'.⁷³ According to Asbjørn Eide '[o]ld minorities are composed of persons who lived, or whose ancestors lived, in the country or a part of it before the state became independent or before the boundaries were drawn in the way they are now', while '[n]ew minorities are composed of

⁶⁴ Article 21 of the Charter of Fundamental Rights of the European Union (CFEU) [2012] OJ C364/1.

⁶⁵ G. Guliyeva, 'Defining the Indefinable: A Definition of 'Minority' in EU Law' in Malloy, T.H. and Marko, J., (eds) *Minority governance in and beyond Europe: celebrating 10 years of the European yearbook of minority issues* (Brill Nijhoff, 2014).

⁶⁶ Article 27 ICCPR states that 'In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language'. The ICCPR, adopted and opened for signature, ratification, and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49, has been ratified by all countries of the European Union.

⁶⁷ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin [2000] OJ L180/22.

⁶⁸ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation [2000] OJ L303/16.

⁶⁹ <https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/glossary_search/minority_en> (last access 16 June 2021).

⁷⁰ It should be noted that there is not universally accepted definition of 'minority' at the international level either. The most widely accepted definition was provided by Caportorti, who states that 'The preparation of a definition capable of being universally accepted has always proved a task of, such difficulty and complexity that neither the experts in this field nor the organs of the international agencies have been able to accomplish it to date.' UN Subcommission on Prevention of Discrimination and Protection of Minorities Special Rapporteur, Francesco Caportorti, 'Study on the Rights of Persons belonging to Ethnic, Religious and Linguistic Minorities' (1979) UN Doc E/CN.4/Sub.2/384/Rev.1. It should also be noted that it is accepted that not every 'minority' group should be smaller in number than the majority.

⁷¹ See J. R. Valentine, 'Toward a Definition of National Minority' (2020) 32 *Denver Journal of International Law and Policy* 3, 445.

⁷² The Framework Convention for the Protection of National Minorities (adopted by the Committee of Ministers 10 November 1994, entered into force 1 February 1998) 157 ETS. It is now in force in 39 states. See <<https://www.coe.int/en/web/minorities/at-a-glance>> (last access 16 June 2021).

⁷³ F. Caportorti, 'The First European Legislation on the Protection of National Minorities' in *The Challenges of a Greater Europe: The Council of Europe and Democratic Security* (Council of Europe Publishing 1996).



persons who have come in after the state became independent'.⁷⁴ Medda-Wichester connects new minorities to the migration phenomenon.⁷⁵

Within the remit of this broad conceptualization of 'minorities', the interviews and qualitative survey undertaken were designed to capture both old and new minority groups (see section 2). In order to be able to capture both 'old' (i.e. 'national') minorities and 'new' minorities, the survey allowed people to self-identify as: an Indigenous Person; a Person belonging to an Ethnic Minority Group; a Person belonging to a Linguistic Minority Group; a Person belonging to a Religious Minority Group; a Migrant; or a Refugee. Thus, data on 'old' minorities is captured under the ethnic, linguistic and religious minority categories, in line with the Framework Convention for the Protection of National Minorities, and data on 'new' minorities is captured under the 'Migrant' and 'Refugee' categories. The survey (and more broadly the qualitative data collection) has also sought to include those who identify as Indigenous within the countries considered. Indigenous peoples, like minorities, are protected by Article 27 ICCPR. However, they are conceived of as a distinct group under international law. As with the situation of minorities, no universally accepted definition of Indigenous peoples exists.⁷⁶ Nevertheless, the international legal framework seeking to protect Indigenous peoples, has developed significantly in recent years, in particular as a result of the adoption of the United Nations Declaration on the Rights of Indigenous Peoples.⁷⁷ The importance of Indigenous culture was recognised in a European Parliament Resolution in 2019, which calls on all States to 'revitalise and promote indigenous peoples' culture at both national and international level'.⁷⁸ While it is acknowledged that the Indigenous population of Europe is small, the distinctiveness of Indigenous peoples and the specific and unique challenges they face in respect of culture are recognised. Thus, *reCreating Europe* endeavours to analyse this cohort's access to digital culture.

1.3 State of the Art

In the past twenty years access to culture has attracted a lot of attention among legal scholars, including EU law scholars,⁷⁹ alongside cultural policy scholars, sociologists, anthropologists and, more broadly, social scientists. This research on access to culture tallies with studies on broader themes such as that of democratisation of culture, which underpins *reCreating Europe*, and audience development. Within the remit of this deliverable, it would be impossible to provide an exhaustive overview of this research across different disciplinary domains and to provide a systematic literature review (which is in fact a typical method used in Science, Technology, Engineering and Mathematics). Rather, this section provides a discursive and critical review to locate Task 2.2 within current research and to identify relevant themes and the current state of knowledge upon which Task 2.2 builds. In this respect, this section adopts a broad scope, beyond copyright and intellectual property (IP) law literature, and aims to complement the literature review provided within the remit of Task 2.1 and in other Tasks within WP2.

⁷⁴A. Eide, 'The Rights of 'Old' versus 'New' Minorities in H. Malloy & J. Marko (eds), *Minority governance in and beyond Europe: celebrating 10 years of the European yearbook of minority issues* (Brill Nijhoff, 2014).

⁷⁵ R. Medda-Wichester, *Nuove minoranze. Immigrazione tra diversità culturale e coesione sociale* (CEDAM, 2010).

⁷⁶ See Martínez Cobo Study, 'Study of the Problem of Discrimination Against Indigenous Populations: Final report submitted by the Special Rapporteur, Mr. José Martínez Cobo' (1981) Un Doc E/CN.4/Sub.2/476, (1982) Un Doc E/CN.4/Sub.2/1982/2, (1983) E/CN.4/Sub.2/1983/21. This report sets out a variety of criteria in relation to Indigeneity.

⁷⁷ UN General Assembly Resolution 61/295 'United Nations Declaration on the Rights of Indigenous Peoples' (13 September 2007).

⁷⁸ European Parliament Resolution of 3 July 2018 on violation of the rights of indigenous peoples in the world, including land grabbing [2017] INI/2017/2206, para 58.

⁷⁹ Among others see E. Psychogiopoulou, *The Integration of Cultural Considerations in EU Law and Policies* (Martinus Nijhoff Publishers 2008).



1.3.1 Access to Culture, Digitalisation and Vulnerable Groups in the EU

The evolution of EU cultural policy⁸⁰ has fostered the release of a wide range of reports⁸¹ and academic literature that address access to culture as a core theme⁸² from a variety of viewpoints and with different disciplinary approaches.⁸³ Furthermore, with the development of a vital EU digital policy⁸⁴ and enhanced attention on copyright in the digital sphere (see in this regard D 2.1), attention on the digitalisation of cultural goods has emerged and gradually increased.⁸⁵ Within the remit of the European Audiovisual Observatory, a range of studies have been produced with regard to access to audiovisual products and mapping of national studies about diversity in audiovisual representation.⁸⁶

In 2015, the European Expert Network on Culture (EENC) published a paper that discusses the digital shift in cultural institutions, its challenges and its consequences on audience engagement. In the same year, the EENC also released a report in support of the OMC Working Group ‘Mapping of practices in the EU Member States on promoting access to culture via digital means’.⁸⁷ That report, recognising that digital technologies have changed the way in which people access, produce and use cultural content, identified examples of practices to support audience development via digital means in as many EU Member States as possible, in a broad spectrum of sectors (e.g., the live performing arts, the visual arts, literature, film, multimedia, heritage) and audiences. With regard to the latter issue, the report discusses practices related to ‘young people, senior citizens, people with disabilities, minority or less-represented groups in the society’ accessing cultural goods.⁸⁸ In 2017, the final report, ‘Promoting access to culture via digital means: policies and strategies for audience development’, of the OMC working group was published.⁸⁹ This focuses on policies for audience development via digital tools, but does not examine barriers faced by vulnerable groups. It only acknowledges that ‘[p]romoting the use of digital technologies in audience development strategies, particularly innovative approaches that not only allow working with non-audiences and potential audiences, but also *excluded groups and/or groups with specific accessibility needs*’.⁹⁰ It also states that ‘the list of

⁸⁰ On the evolution of EU cultural policies see C. Barnett, Culture, policy and subsidiarity in the European Union: from symbolic identity to the governmentalisation of culture’ (2001) 20 *Political geography* 4, 405; R. Craufurd Smith, ‘Community Intervention in the Cultural Field: Continuity or Change?’ in R. Craufurd Smith (ed) *Culture and European Union Law* (Oxford University Press, 2004) 19; A. Littoz-Monnet, *The European Union and Culture: Between Economic Regulation and European Cultural Policy* (Manchester University Press 2007) 37–58; D. Ferri, ‘La costituzione culturale dell’Unione Europea’ (CEDAM, 2008); E. Psychogiopoulou *Cultural Governance and the European Union: Protecting and Promoting Cultural Diversity in Europe* (Palgrave Macmillan 2015); K. Sarikakis, ‘Media and cultural policy in the European Union’ (2007) 24 *European Studies*; M. Sassatelli, ‘The Shaping of a European Cultural Identity through EU Cultural Policy’ (2002) 5 *European Journal of Social Theory* 4, 435; E. Tretter, ‘The Value’ of Europe: The Political Economy of Culture in the European Community’ (2011) 16 *Geopolitics* 4, 926.

⁸¹ See e.g. *supra* nt. 5; see also *supra* nt. 7.

⁸² C. Romainville, ‘The Right To access Culture Under EU law’ in E. Psychogiopoulou (ed), *Cultural Governance and the European Union: Protecting and Promoting Cultural Diversity in Europe* (Palgrave Macmillan 2015) 165.

⁸³ For a literature review see The Nordic Centre for Heritage Learning and Creativity (NCK), The Institute for Development and International Relations (IRMO) and The Interarts Foundation, ‘Access to culture-literature review on the policies at European level’ (2013) (last accessed 16 June 2021).

⁸⁴ See the former European Commission, ‘Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and The Committee of Regions - A Digital Single Market Strategy for Europe’ (2015) COM/2015/192 at <<https://digital-strategy.ec.europa.eu/en/policies/digital-compass>> (last access 16 June 2021).

⁸⁵ See the Working Group of EU Member States’ Experts on Promoting Reading in the Digital Environment Under the Open Method of Coordination, ‘European Agenda for Culture – Working Agenda for Culture 2015-2018: Report on Promoting Reading in the Digital Environment (2016) <<https://op.europa.eu/en/publication-detail/-/publication/9052931a-2ece-11e6-b497-01aa75ed71a1>> (last access 15 June 2021); the Working Group of EU Member States’ Experts on Promoting Access to Culture Via Digital Means Under the Open Method of Coordination, ‘European Agenda for Culture – Working Agenda for Culture 2015-2018: Final Report on Promoting Access to Culture via Digital Means: Policies and Strategies for Audience Development’ (2017). <<https://op.europa.eu/en/publication-detail/-/publication/7839cb98-651d-11e7-b2f2-01aa75ed71a1>> (last access 15 June 2021)

⁸⁶ In this respect see European Audiovisual Observatory (EAO), ‘Reports on diversity and inclusion in the European audiovisual sector: an overview’ (2021).

⁸⁷ The European Expert Network on Culture (C. Da Milano, and N. Righolt), ‘Mapping of practices in the EU Member States on promoting access to culture via digital means’ (2015) <<http://www.interarts.net/descargas/interarts2539.pdf>> (last access 16 June 2021).

⁸⁸ *Ibid* 11.

⁸⁹ *Supra* nt. 84.

⁹⁰ *Ibid*, 46 Emphasis added.



audiences that could potentially be targeted with the use of digital tools can be long and include different categories', which could include, for instance, 'the young and the elderly, but also *ethnic minorities, migrants or socially excluded groups, people with disabilities, etc.*'⁹¹ A recent study on the United Kingdom (UK) has examined the Taking Part Survey data on digital media and cultural participation in the UK between 2005/2006 and 2015/2016, focusing on museums and galleries.⁹² This study argues that digital media provide an important means of engaging new audiences but it also shows that the engagement with museums and galleries both online and offline remains deeply unequal. In particular it found that 'the fact that inequalities in online participation are even greater than those found in offline participation add weight to arguments about the potential negative effects of digital technologies on cultural participation, at least in the current socio-economic environment: while digital media help enhance the quantity, range and accessibility of cultural products, they also create opportunities for new forms of cultural segregation and exclusion, and therefore exacerbate rather than ameliorate existing inequalities'.⁹³ The UK study confirms what a range of academic literature has argued with regard to digital inequalities. Among others, Hargittai and Hsieh stated that 'digital inequality can refer both to how existing social inequalities influence the adoption and use of digital technologies as well as how differential uses of the Internet itself may influence social stratification' and highlighted how those in already more privileged positions are more likely to use technologies in ways that enhance their human, financial, social, and cultural capital than those from less privileged backgrounds.⁹⁴ In a similar vein, Dutton and Reisdorf highlight that digital isolation affects mostly vulnerable people.⁹⁵

Several studies as well as scholarly works have focused on access to culture for specific cohorts of PwD,⁹⁶ and often with a sectorial approach (e.g. a focus on heritage or on museums or libraries), and a narrow geographic approach (local, national or, in some instances, comparative across two or three jurisdictions).⁹⁷ Much has been written about the practical solutions needed to make certain cultural goods and services (including digital cultural goods) accessible to PwD.⁹⁸ Specific attention has been devoted to accessibility for persons with visual impairments in museums: in this regard the 2013 Special Issue of Disability Studies Quarterly 'Museum experience and blindness' offer a snapshot of a disability studies approach on the issue,⁹⁹ also highlighting the potential for inclusive digital solutions. Such scholarship is generally based on empirical studies. Other scholars have focused on heritage and architectural barriers.¹⁰⁰ A strand of studies, which will be discussed in Task 2.5 (Deliverable D2.5) has focused on access to printed materials for people with visual impairments, also in connection with the Marrakesh Treaty.¹⁰¹

⁹¹ Ibid.

⁹² M. Sabina, A. Leguina, and J. Downey 'Culture is Digital: Cultural Participation, Diversity and the Digital Divide', (2019) 21 *New Media & Society* 7, 1465.

⁹³ Ibid.

⁹⁴ E. Hargittai & Y. P. Hsieh, 'Digital inequality' in Dutton, W.H., (ed) *Oxford handbook of Internet studies* (Oxford University Press 2013).

⁹⁵ W. H. Dutton & B. C. Reisdorf 'Cultural Divides and Digital Inequalities: Attitudes Shaping Internet and Social Media Divides' (2017) 22 *Information, Communication & Society* 1, 18.

⁹⁶ See e.g. on Deaf people's access to cinemas in Spain: E. Martinez Amador Los sordos no van al cine: la accesibilidad de las personas con discapacidad 18uditive en las salas de cine españolas' (2016) *Fonseca Journal of Communication*, 12, 130.

⁹⁷ Among studies (i.e. grey literature) see European Blind Union, 'EBU Access to Culture Survey 2012 - Mapping Current Levels of Accessibility to Cultural Venues and Activities in Europe' (2012) <http://www.kulttuuriakaikille.info/doc/research_and_reports/SUMMARY-REPORT-OF-THE-EBU-Access-to-Culture-Survey-2012-and-EBU-call-for-action.pdf> (ast access 15 June 2021).

⁹⁸ A. Cachia, 'Disabling' the Museum: Curator as Infrastructural Activist' (2013) 12 *Journal of Visual Art Practice* 3, 257; F. Candlin, 'Touch, and the Limits of the Rational Museum or Can Matter Think?' (2008) 3 *Senses and Society* 3, 277.

⁹⁹ 'Museum experience and blindness' (2013) 3 *Disability Studies Quarterly* 33 (Special Issue).

¹⁰⁰ A. Arengi, L. Garofolo & O. Sormoen. 'Accessibility as a key enabling knowledge for enhancement of cultural Heritage' (2016) 17 *Franco Angeli* 194.

¹⁰¹ A. Brown & C. Waelde 'IP, Disability, culture and exceptionalism: does copyright law deal with difference?' in G. B. Dinwoodie (eds), *Intellectual Property and General Legal Principles: Is IP a Lex Specialis?* (Edward Elgar 2015). P. Harpur, *Discrimination, Copyright and Equality: Opening the e-Book for the Print-Disabled* (Cambridge University Press 2017); Helfer et al., *The World Blind Union Guide to the Marrakesh Treaty. Facilitating Access to Books for Print-Disabled Individuals* (Oxford University Press and Oxford Scholarship Online 2017); Sganga, C., 'Disability, Right to Culture and Copyright: Which Regulatory Option?' (2015) 29



There is also wealth of scholarship and policy analysis on migrants and the role of culture in social inclusion, as well as on multiculturalism in Europe.¹⁰² In 2017, the Working group of EU Member States on Intercultural Dialogue released a report on how arts and culture can promote the participation of migrants in society.¹⁰³ It places a strong emphasis on arts as an empowerment tool, but does not address in any detail the barriers faced by migrants and does not focus on digital culture. Similarly, there are a wide number of studies on cultural rights of minorities, but with little focus on digital access.¹⁰⁴ However, the Report on Language Equality in the Digital Age¹⁰⁵ emphasised how digital content in minority languages should be facilitated through the development of language technologies, but there have yet to be any practical initiatives to arise from this.

Notably, in conjunction with analysis of access to culture there have been multiple attempts to measure cultural participation.¹⁰⁶ In 2012 UNESCO published standard definitions, building on the 2009 framework for cultural statistics, in order to allow comparison across countries¹⁰⁷ and with the aim of facilitating a deeper understanding of cultural participation around the world.¹⁰⁸ However, several authors highlight the difficulties and the limits of measuring cultural participation and the use of cultural statistics to support cultural policies, especially in relation to cultural participation of vulnerable groups.¹⁰⁹ Large surveys on cultural participation have been conducted in the past decades, and Eurostat has also produced data.¹¹⁰ However, multifaceted criticism has emerged in respect of those surveys. Most recently, Stevenson *et al*,¹¹¹ by looking at Scotland and Denmark, suggests that ‘non-participants’ in culture ‘are constructed as individuals from certain demographics that do not interact with specific types of publicly subsidised cultural activities and organisations and show the limits of this approach. They suggest that current measuring of participation does not take into account the extent to which digitisation has diversified the ways in which people might now be ‘participating’ in ‘culture’. In this regard, while Task 2.2 does not engage with measurement of cultural participation of vulnerable groups, it aims to provide an interpretative bedrock of barriers that hamper access to cultural goods and services, and more broadly cultural participation, with a view to tackling some of the issues highlighted with measurement.

International Review of Law, Computers & Technology 2-3, 8.

¹⁰² European Centre for Minority Issues, ‘The Aspect of Culture in the Social Inclusion of Ethnic Minorities’ (2006) <http://www.ecmi.de/uploads/media/Report_60_OMC_Evaluation.pdf> (last access 15 June 2021).

¹⁰³ The Working Group of EU Member States’ Experts on Intercultural Dialogue in the Context of the Migratory and Refugee Crisis Under the Open Method of Coordination, ‘European Agenda for Culture – Work Plan for Culture 2015-2018: Report with case studies - How culture and the arts can promote intercultural dialogue in the context of the migratory and refugee crisis’ (2017) <<https://op.europa.eu/it/publication-detail/-/publication/4943e7fc-316e-11e7-9412-01aa75ed71a1/language-it>> (last access 16 June 2021).

¹⁰⁴ Among many others B. De Witte, ‘European Minority Rights’ in Foblets, M.C., Gaudreault-Desbiens, J. F. & Dundes-Renteln, A. (eds), *Cultural Diversity and the Law – State Responses from Around the World* (Bruylant, 2010); T. Ahmed, ‘A Critical Appraisal of EU Governance for the Protection of Minority Rights’ (2010) 17 *International Journal on Minority and Group Rights* 2, 265; T. Ahmed,

The Impact of EU Law on Minority Rights (1st edn, Hart Publishing 2011); T. Ahmed, ‘The Treaty of Lisbon and Beyond: The Evolution of European Union Minority Protection?’ (2013) 38 *European Law Review* 1, 30; T. Ahmed, ‘The EU’s Relationship with Minority Rights’ in Psychogiopoulou, E. (ed), *Cultural Governance and the European Union Protecting and Promoting Cultural Diversity in Europe* (Palgrave Macmillan 2015).

¹⁰⁵ This was endorsed by the EU Parliament: European Parliament Resolution on Language equality in the digital age [2018] INI/2018/202.

¹⁰⁶ See various contributions in *supra* nt. 11.

¹⁰⁷ UNESCO, ‘The 2009 UNESCO Framework for Cultural Statistics (FCS)’ (2009) <<https://unesdoc.unesco.org/ark:/48223/pf0000191061>> (last access 16 June 2021).

¹⁰⁸ UNESCO Institute for Statistics, ‘Measuring cultural participation’ (2012) <<https://unesdoc.unesco.org/ark:/48223/pf0000219213>> (last access 16 June 2021).

¹⁰⁹ A. Yue and R. Khan, ‘New Approaches to Cultural Measurement: On Cultural Value, Cultural Participation and Cultural Diversity’ in MacDowall, L., Badham, M., Blomkamp, E. and Dunphy, K. (eds) *Making Culture Count. New Directions in Cultural Policy Research* (Palgrave Macmillan, 2015).

¹¹⁰ On those European surveys see J. O’Hagan, ‘European Statistics on Cultural Participation and their International Comparability’ (2016) 22 *International Journal of Cultural Policy* 2, 291.

¹¹¹ D. Stevenson, G. Balling & N. Kann-Rasmussen, ‘Cultural participation in Europe: shared problem or shared problematisation?’ 23 *International Journal of Cultural Policy* 1, 89.



1.3.2 COVID-19, Digitalisation and Vulnerability

The cultural sector has been one of the most affected one during the COVID-19 pandemic. An array of studies has discussed how the pandemic has disrupted cultural activities¹¹² and impacted on culture more generally.¹¹³ Those studies also highlight the role of the unprecedented and quick digitalization of the cultural sector. The Covid-19 Pandemic has obviously triggered a move to online cultural activities, both traditional ‘high culture’ activities such as theatre performances and virtual museum tours,¹¹⁴ as well as ‘low culture’ (‘popular’ and / or ‘folk’) cultural activities¹¹⁵ such as storytelling.¹¹⁶

Previous studies had already indicated the benefits and risks of digitalisation. In fact, in 2015, Da Milano and Righolt underlined that ‘new digital environments and technologies, in particular, represent an opportunity for cultural organisations to reinforce their capacity to develop meaningful and interactive relationships with different audiences, but at the same time they challenge cultural actors in terms of strategic vision, new skills, organisational reshaping, and capacity to find consistent and sustainable financial models.’¹¹⁷ In a similar vein, the report released by the UNESCO in December 2020, notes that the pandemic sped up the digitalisation phenomena and boosted an unparalleled innovation in the whole cultural sector, but highlights that:

the staggering increase in the digitization and online consumption of cultural content, which has only been accelerated by lockdown measures, is generating unprecedented *challenges for the protection and promotion of the diversity* of both content and creators.¹¹⁸

The lack of diversity in content has clearly had an effect on consumption, especially with regard to consumption by minority groups. In a similar vein, a European Parliament report highlights how the creative sector has been impacted by the digital shift provoked by the pandemic.¹¹⁹ It also notes that:

Despite the well-documented positive effects on personal and collective well-being of consuming culture and arts (both physically and digitally), the increased sharing of digital cultural content since the lockdown does pose questions related to inclusivity, as digital content does not always target different audiences and *is not always accessible to all*. There is the risk to *cut off people living in rural areas, people with less opportunities, the non-digital natives and all other categories that have difficulty in accessing digital content*. The risk of growing elitism is therefore reflected also in the demand side. The possible trend of monetisation of digital cultural content, could lead to increased inequalities among audiences. Only wealthier people might be able to access digital cultural and creative content if this is not (partly) subsidised. The above-mentioned factors could be the reason of an increasing elitism on the demand side, that could therefore lead to an increased social polarisation on the long run (emphasis added).¹²⁰

Looking at the consumption side, the UK Parliament’s report on the impact of COVID-19 in the digital, culture, media, and sports areas¹²¹ highlights that digital exclusion has left individuals and communities isolated

¹¹² Among many others see M.S. Jeannotte, ‘When the gigs are gone: Valuing arts, culture and media in the COVID-19 pandemic.’ (2021) 3 *Social Sciences & Humanities Open* 1 (and literature cited therein).

¹¹³ M. Banks ‘The work of culture and C-19’ (2020) 23 *European Journal of Cultural Studies* 4, 648.

¹¹⁴ For a list of online ‘high culture’ activities organised as a result of the Pandemic, see <<https://www.culturalpolicies.net/covid-19/online-initiatives/>> (last access 16 June 2021).

¹¹⁵ See R. Hoggart, ‘High arts and general culture’ (2004) 42 *Society* 1, 79.

¹¹⁶ See, for example, Breda Graham, ‘Cork storytelling club adapts to pandemic keeping people connected through online sessions’ *Cork Echo Live* (23 April 2021) <<https://www.echolive.ie/corknews/arid-40128608.html>> (last access 16 June 2021).

¹¹⁷ Supra 86.

¹¹⁸ UNESCO, ‘Culture in crisis: policy guide for a resilient creative sector’ (2020). <<https://unesdoc.unesco.org/ark:/48223/pf0000374631>> (last access 16 June 2021).

¹¹⁹ European Parliament Committee on Culture and Education, ‘Cultural and Creative Sectors in Post COVID-19 Europe: Crisis Effects and Policy Recommendations’ (2021) PE/652/242 <[https://www.europarl.europa.eu/RegData/etudes/STUD/2021/652242/IPOL_STU\(2021\)652242_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/652242/IPOL_STU(2021)652242_EN.pdf)> (last access 16 June 2021).

¹²⁰ Ibid 40.

¹²¹ House of Commons Digital, Culture, Media and Sport Committee, ‘Impact Of COVID-19 On DCMS Sectors: First Report’ (2021) <<https://publications.parliament.uk/pa/cm5801/cmselect/cmcmds/291/29102.htm>> (last access 16 June 2021).



during this crisis. The report suggests the necessity to tackle digital exclusion within UK society and argues for the need to address technological and economic barriers in particular.

While these reports and recent scholarly work provide anecdotal evidence of the challenges that the sudden digitization provoked by the pandemic has triggered, they do not provide an analysis of barriers experienced by vulnerable groups during this period. In this regard, Task 2.2 aims to fill a gap and advance the state of knowledge by investigating the extent to which vulnerable groups were able to access digital culture during the pandemic.

1.3.3 Democratisation of Culture and Audience Development

One of the themes of this project is that of the democratisation of culture or cultural democracy, a term which is described by Arts Council England as ‘an approach to arts and culture that actively engages everyone in deciding what counts as culture, where it happens, who makes it, and who experiences it.’¹²² Thus, cultural democracy ‘underpins a culture that is debated, designed, made...by, with and for, everyone.’¹²³ The issue of cultural democracy is therefore most pertinent in respect of Task 2.2, whose focus is on engaging vulnerable groups in the cultural sphere. An analysis of how vulnerable groups, such as PwD, migrants and other minorities, access digital cultural goods and services raises numerous questions about the meaning of culture and societal cultural values. As noted by Hadley and Belfiore, ‘[t]here can be no true exploration of cultural democracy without the acknowledgement that hierarchies of cultural value have always been, and always will be, imbricated in questions of power and authority.’¹²⁴

According to Mangset, ‘[d]emocratising culture has been the most important objective of, and rationale for, a modern cultural policy in many countries since WWII’.¹²⁵ As will be seen below, the democratisation of culture / cultural democracy has been linked with the concept of audience development. Hadley describes the relationship between the two, stating that ‘[t]he practice of Audience Development should properly be considered as an ideological project situated within the wider cultural policy discourse of democratisation’.¹²⁶ Audience development can be seen to be a strategy, or a set of strategies, employed to ensure cultural democracy.

According to Cuenca-Amigo and Makua, ‘[a]udience development is today one of the hottest topics among professionals in the cultural sector.’¹²⁷ However, the practical implementation of audience development policies varies significantly from jurisdiction to jurisdiction, with some States, notably the UK and the United States, having well established audience development policies and with other States just beginning to focus on the issue.¹²⁸ While a variety of definitions of audience development have been proffered, none have been universally accepted. However, many of the definitions offered include overlapping ideas. According to Australia Council, “[a]udience development is a strategic, dynamic and interactive process of making the arts accessible. It aims to engage individuals and communities in experiencing, enjoying, participating in and valuing the arts through various means including arts marketing.”¹²⁹ In quite a similar vein, Arts Council England defines audience development as an ‘activity which is undertaken specifically to meet the needs of existing and potential audiences and to help arts organisations to develop ongoing relationships with

¹²² Arts Council England, ‘Audience development and marketing – Grants for the Arts’ (2011) <<https://www.artscouncil.org.uk/sites/default/files/download-file/CulturalDemocracyInPractice.pdf>> (last access 26 April 2021) 2.

¹²³ Ibid.

¹²⁴ S. Hadley & E. Belfiore ‘Cultural democracy and cultural policy’ (2018) 27 *Cultural Trends* 3, 218, 222.

¹²⁵ P. Mangset, ‘The end of cultural policy?’ (2020) 26 *International Journal of Cultural Policy* 3, 398, 398.

¹²⁶ S. Hadley, ‘European Commission final report: study on audience development – how to place audiences at the centre of cultural organisations’ (2017) 26 *Cultural Trends* 3, 275, 277.

¹²⁷ M. Cuenca-Amigo and A. Makua, Audience development: a cross-national comparison’ (2017) 30 *ARLA* 2, 156, 157.

¹²⁸ See, for example the case of Germany: B. R. Mandel, ‘Can Audience Development Promote Social Diversity in German Public Arts Institutions?’ (2019) 49 *The Journal of Arts Management, Law, and Society* 2, 12.

¹²⁹ Australia Council, ‘Support for the Arts Handbook’ (2005).



audiences. It can include aspects of marketing, commissioning, programming, education, customer care and distribution.¹³⁰ This definition is widely used in the literature.¹³¹

The European Commission offered a definition in 2012, which identifies the aim of audience development as accessibility, stating, that '[a]udience development is a strategic, dynamic and interactive process of making the arts widely accessible. It aims at engaging individuals and communities in experiencing, enjoying, participating in and valuing the arts through various means available today for cultural operators, from digital tools to volunteering, from co-creation to partnerships.'¹³²

The link between audience development and access to culture has been discussed in the literature. For example, Kawashima comments that 'although the term "audience development" may not always have been used, its associated concept of access has at least been on the public policy agenda and addressed accordingly in practice'.¹³³ Kawashima underlines that an assumption exists 'that culture should and can be made accessible to all people, and the other is that if only we remove barriers to culture – be they physical, geographical, economic or psychological – culture will become accessible and currently under-represented segments of the public will have proportionate representation in the audience.'¹³⁴ In this regard, a European Commission report on audience development posits that '[a]ccessibility involves taking into consideration all citizens in their diversity, the creation and carrying out of cultural policies, the creation and management of cultural venues...'¹³⁵ Thus, audience development in this context requires the development of policies which can ensure accessibility, including accessibility for PwD and minority groups.

However, given the lack of a universally accepted definition, the concept of audience development is still a rather nebulous one and straddles a variety of fields of study.¹³⁶ According to the European Commission, audience development 'is indeed a multifaced issue that has to do with different knowledge fields as democratisation, access, participation, co-creation, organisational innovation, leadership, policies.'¹³⁷ Thus, the study of audience development feeds into the design and development of cultural offerings, the accessibility of these offerings, in addition to marketing and communications strategies for such offerings. The European Commission recognises the overlapping of concepts of audience development with access to culture and other terms, stating that:

...[t]he appropriateness of the term "audience development" was discussed in order to frame the subsequent discussions in the conference. It was generally considered to be a more holistic term than, for example, concepts such as "cultural education", "arts marketing" or "cultural inclusion". "Access to culture" is a more rights-based concept, while cultural education implies the implication of schools and linkage with educational curricula. Arts marketing and cultural inclusion are both more mono-dimensional focusing on either economic or social aspects. In contrast, audience development integrates cultural, economic and social dimensions and refers to a space in which cultural organisations can act directly.¹³⁸

Traversing, as it does, such a variety of fields of study, it is understandable that the term 'audience development' can mean different things to different people depending on their role. Hadley comments that '[t]he functional ambiguity of the term means that interpretation varies considerably across territories and

¹³⁰ Supra 121.

¹³¹ See Supra 126, 158.

¹³² European Commission Directorate-General for Education, Youth, Sport and Culture, 'European Audiences: 2020 and Beyond' (Conference Conclusions) (2012).

¹³³ N. Kawashima, 'Audience Development and Social Inclusion in Britain' (2006) 12 *International Journal of Cultural Policy* 1, 55, 63.

¹³⁴ Ibid.

¹³⁵ European Commission Directorate-General for Education, Youth, Sport and Culture, 'Final Report - Study on Audience Development - How to place audiences at the centre of cultural organisations' (2017) 53.

¹³⁶ See I. Ayala, M. Cuenca-Amigo & J. Cuenca, 'Examining the state of the art of audience development in museums and heritage organisations: a Systematic Literature review' (2020) 35 *Museum Management and Curatorship* 3, 306.

¹³⁷ Supra 134, 7.

¹³⁸ Supra 131, 3.



institutions, with a concomitant variation in levels of maturity and awareness of practice in both the political and practitioner arenas.¹³⁹

In a 2004 paper, Matarasso chronologically categorised post-war cultural policies focusing on issues of access to, and participation in, cultural activities. He starts with the category of ‘audience development’, which was rooted in the idea of the concept of the democratisation of culture and became popular from the 1950s onwards. He then proceeds to socio-economic development, which was based on the use of arts and culture to meet non-artistic goals, which began in the 1990s, and finally the idea of social inclusion, which focuses on extending access not only to consumption, but also to the means of cultural production and distribution, which became popular more recently.¹⁴⁰

In the past two decades, cultural policies have been influenced by migration and cultural organisations have made some attempts to address the needs and wants of migrant communities. In this context, the concept of ‘intercultural audience development’ was recognised, ‘considering that the challenge is not only to attract audiences or visitors of migrant origin, but also to allow the institution to become permeable to such audiences and to undergo a process of change in order to become a true meeting point for different social groups’.¹⁴¹

1.3.4 Audience Development, Access to Culture and Barriers

A European Commission report finds that ‘[d]ata shows that cultural access is still strongly influenced by socio-demographic, gender and educational issues’.¹⁴² Therefore, additional audience development strategies must be developed to help to ensure social inclusion¹⁴³ by facilitating the accessibility of culture for all, regardless of education level or socio-economic background. In this context, Bjørnsen’s 2014 work, ‘The Limitations of Audience Development’,¹⁴⁴ posits that indicators seem to illustrate that social inclusion levels are increased not only by removing physical, geographical, economic and cultural barriers, but also primarily by changing or ‘adapting’ the offering to suit the audience.¹⁴⁵

In addition to fostering social inclusion, according to the European Commission, audience development:

brings cultural, social and economic benefits. Cultural benefits in that it helps cultural works and artists to reach larger audiences, which has an intrinsic value in itself, and exposes more people to the educational benefits of the arts. It brings economic benefits as new and increased audiences can mean new revenue streams. Finally, audience development brings social benefits as artworks convey meanings and values, they give insights into other peoples’ lives and realities thereby broadening our horizons, fostering empathy, mutual understanding and intercultural dialogue. So by helping to reach the excluded, it contributes to social inclusion and people’s engagement in society.¹⁴⁶

Mandel also concludes that as well as triggering an increase in visitor numbers, ‘audience development strategies can establish and foster the positive image of a cultural institution within a community, linking the organization to the cultural vitality of the community.’¹⁴⁷ This is an important issue, given that changing demographics and digitalisation have resulted in a fall in attendance at ‘high culture’ public institutions in

¹³⁹ Supra 125, 273.

¹⁴⁰ F. Matarasso, (2004), ‘L’état, c’est nous: arte, sussidi e stato nei regimi democratici’ (2004) *Economia della Cultura* 4, 491.

¹⁴¹ Supra 126, 161.

¹⁴² Supra 134, 73.

¹⁴³ Donnelly and Coakley define social inclusion as ‘the social process through which the skills, talents, and capacities of individuals are developed and enhanced so that all are given the opportunity to realize their full potential, and to fully participate in the social and economic mainstream’ – P. Donnelly and J.J. Coakley, ‘The Role of Recreation in Promoting Social Inclusion’ (2002) (Laidlaw Foundation Toronto, ON) 2.

¹⁴⁴ Nordic Performing Arts Days website (E. Bjørnsen), ‘The Limitations of Audience Development’ (2014)

<<http://www.nordicperformingartsdays.dk/wpcontent/uploads/2014/06/Publikumsutviklingens-begrensninger-engelsk-versjon.pdf>> (last access 16 June 2021).

¹⁴⁵ Supra 134, 75.

¹⁴⁶ Supra nt. 131, 4.

¹⁴⁷ Supra nt. 127, 122.



recent years (which may be linked to an increase in immigration),¹⁴⁸ which has resulted in the questioning of funding for such institutions in some jurisdictions.¹⁴⁹ It must be noted that in some jurisdictions, publicly-funded institutions value artistic freedom over all other factors when deciding on the content of cultural exhibits, displays, performances etc, including a requirement for cultural diversity, and so democratisation and audience development policies may have a different focus than those in jurisdictions which demand that publicly funded organisations prioritise cultural diversity and accessibility.¹⁵⁰ In this regard, the European Commission notes that while cultural participation is an important foundation for ‘personal development, creativity and well being... the cultural provision offered by institutions receiving public funding often benefits only a reduced segment of the population. This may require the identification of strategies to increase participation, in order to guarantee equity and efficiency in the use of resources.’¹⁵¹ Notably, the 2017 European Commission report on audience development highlights a number of key strategies in this sphere, including ‘digital strategies’.¹⁵²

1.3.5 Original Contribution and Expected Outcomes

Following on from the succinct literature review outlined above, the research undertaken in Task 2.2 represents an original contribution to the state of knowledge in that it addresses in a comparative fashion access to digital culture in selected EU Member States, paying attention to a range of groups. Its added and original value is enshrined in three of its main features. First, the *cross-cutting and qualitative* nature of the dataset produced. Second, the *wide conceptual and geographical scope* of the data-set, which spans different vulnerable groups broadly defined and across 12 countries. Third, the *focus on both legal and non-legal barriers experienced by vulnerable groups*, with particular attention on the role and perception of copyright law amongst vulnerable groups. In line with Task 2.1, Task 2.2 analysis will support the design of the agent-based model to evaluate the effects of digitalisation and changes in Intellectual Property Rights (IPR) and copyright legislation on access, accessibility, affordability and consumption of cultural/creative goods and services. It will also support the creation of a complete and informed assessment of legal and policy measures adopted by the EU on digital culture, and the formulation of effective audience development strategies. In this regard, Task 2.2 will align with the Council Conclusions on the Work Plan for Culture 2019-2022, which state that a stronger orientation towards the interests and needs of specific groups (i.e. vulnerable groups) is necessary to enhance access to culture.¹⁵³

2. Methodology

2.1 Desk based Research

Initial desk-based research on relevant literature, as detailed above, constituted the bedrock for the qualitative research. Alongside the review of relevant EU and UN publications, scholarly works, and the legal systems and cultural policies of the case studies were investigated to refine the interview guide and to locate the analysis of qualitative data (which will be conducted in the final deliverable). In particular, EUR-Lex¹⁵⁴ and the Compendium of Cultural Policies & Trends¹⁵⁵ were used as the main online databases.

Desk-based research is also ongoing to accompany, support and ultimately inform the analysis of data stemming from the qualitative research, and will be further detailed in the final deliverable.

¹⁴⁸ Ibid, 124.

¹⁴⁹ Ibid., 121-122.

¹⁵⁰ Ibid, 125.

¹⁵¹ Supra 134, 71.

¹⁵² Ibid.

¹⁵³ ‘Council Conclusions on the Work Plan for Culture 2019-2022’ (2018) OJ C460/10.

¹⁵⁴ <<https://eur-lex.europa.eu/homepage.html>> (last access 16 June 2021).

¹⁵⁵ <<https://www.culturalpolicies.net/>> (last access 16 June 2021).



2.2 Qualitative Research: Research Design and Data Collection

Qualitative research ‘provides a thorough and deep overview of a phenomenon through data collection and presents a rich description using a flexible method of research’, with qualitative information ‘gathered in the form of non-numerical data’.¹⁵⁶ Qualitative research places emphasis on social life as a process,¹⁵⁷ and this facilitates an evaluation of different events across a span of time. Furthermore, a qualitative approach allows for deeper examination of the impact of the context in which people live¹⁵⁸ by assessing individuals’ subjective experiences and their meaning-making process. Despite its ‘eclectic collection of approaches and methods’,¹⁵⁹ qualitative approaches facilitate the building of a robust understanding of a topic and the unpacking of the meanings people ascribe to their lives – including their activities and circumstances.¹⁶⁰

Qualitative research in Task 2.2 relies on interviews with selected key informants, who are, for the most part, representatives of organisations of people belonging to the selected vulnerable groups, but also activists, and members of civil society organisations. These interviews allow us to gather data on barriers to accessing digital culture, but also to evaluate the impact of those barriers across time, with particular regard to the COVID-19 pandemic. The overall goal of the interviews is to capture the different dimensions of access to digital cultural content in the everyday life of the group they represent. The interviews also allow us to gather data on the perception of the role of copyright law in accessing digital cultural content. Relying on ‘key informants’ is vital to obtain a range of qualitative data in a relatively short period of time. Appropriate ethical approval was obtained before study commencement. Interviews were supplemented by a qualitative survey, to capture experiences of barriers within the vulnerable groups under study. The survey has been designed as a data collection tool complementary to the interviews. In fact, where the survey might support identification of barriers to accessing digital cultural content, the interviews help to explain why these barriers exist.

Both the interviews and the survey were conducted in 12 jurisdictions: Belgium, Croatia, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Malta and Spain. The initial plan was to have a pan-EU approach. However, the pandemic has severely restricted the ability of organisations to participate in the study as well as the possibility of conducting face-to-face interviews. In September 2020, an initial scaling down to 13 countries was agreed.¹⁶¹ As a contingency adjustment, due to the continuation of the pandemic emergency, in March 2021, further to the impossibility of recruiting interview participants in Romania, the latter country was excluded from the scope of the research. The jurisdictions selected still maintain an important balance between larger and smaller EU Member States, and between Nordic, Continental and Mediterranean countries. The geographical scope was accurately designed to include States in which there are distinct national minorities and linguistic communities (such as Spain and Italy) and States in which there are lesser used languages or *de facto* minority languages.¹⁶² The research design also ensured a balance between ‘old’ Member States and newer Member States (such as Croatia).

The selection is also supported by the legal mapping conducted under Task 2.1. In fact, the systematic study of the national copyright systems unveils substantial divergences. Some of the selected jurisdictions show a permissive approach towards copyright exceptions and limitations, providing room in their legislation not only for “traditional” exceptions for *de minimis* uses, private copy, and quotation, but also for specific free uses for text and data mining (e.g., Estonia, France, Hungary, Ireland), educational media collections and broadcasts (e.g., Germany), testing and repairing purposes (e.g. Croatia, Germany) and uses by childcare and

¹⁵⁶ G. Fereshteh, M. Naderifar, and H. Goli. 'Snowball Sampling: A Purposeful Method of Sampling in Qualitative Research' (2017) 14 *Strides in Development of Medical Education* 3.

¹⁵⁷ A. Bryman, *Social Research Methods* (Oxford University Press 2015) 398.

¹⁵⁸ V. Braun & V. Clarke, *Successful Qualitative Research* (Sage Publications 2013).

¹⁵⁹ J. Saldaña, *Fundamentals of Qualitative Research* (Oxford University Press 2011) 3.

¹⁶⁰ P. Leavy, *Research Design* (Guilford Press 2017) 124.

¹⁶¹ Amendment to the Grant Agreement - Reference No AMD-870626-3.

¹⁶² It is acknowledged that the term ‘minority language’ is problematic in some States, where a *de facto* minority language from a purely numerical perspective is also the official language of the State, e.g. Article 8 of the Constitution of Ireland describes Irish as ‘the first official language’ (Article 8 *Bunreacht na hÉireann* 1937). In such instances, the term ‘lesser-used language’ is often more appropriate and, indeed, more acceptable to the language speakers.



other selected social institutions (e.g. Belgium, Denmark, Malta). Other countries rely on fewer exceptions, refraining from implementing provisions for, *inter alia*, freedom of panorama (e.g., Italy), parody (e.g., Finland, Hungary, Italy) and artworks exhibition and sale (e.g., Spain). In light of the current reform process prompted by the implementation of the Directive on Copyright in the Digital Single Market (CDSM Directive),¹⁶³ the selection includes jurisdictions that are, to date, at an advanced stage of legal drafting (e.g., Croatia, Estonia, France, Hungary, Germany), as well as countries that are lagging behind with parliamentary debates and proposals (e.g., Finland, Ireland, Italy, Malta, Spain).

2.2.1 Interviews: Sampling, Data Collection and Data Analysis

The overall objective of Task 2.2 is to identify and assess the legal, economic, and technological barriers to accessing digital cultural content for vulnerable groups, as the targeted population. Interviews are a key data collection tool to achieve this objective.

Sampling and Contingency Planning

Purposeful sampling¹⁶⁴ was used to identify participants in order to find and select ‘information rich-cases’ that best address the research purpose and questions.¹⁶⁵ In line with the project ethos, we identified a sampling frame of national organisations representative of PwD and old and new minorities – specifically Indigenous people, ethnic minority groups, linguistic minority groups, migrants and refugees. The identification of those organisations was based on a review of policy documents, grey and peer-reviewed literature, and on the basis of specific criteria. First, we identified organisations there were active at the national level (rather than merely local organisations). Secondly, we selected organisations that had shown previous engagement with cultural rights. We selected organisations of different minority groups, as defined above in section 1.2. With regard to PwD, we focused on umbrella organisations¹⁶⁶ representing PwD, in line with CRPD General Comment No. 7.¹⁶⁷ Given a number of considerations, such as the breadth, depth, and nature of the research topic, the heterogeneity of the population of interest described above and the access to interviewees in a variety of different countries, the initial research design provided an interview of one representative organisation per group, per country (4 interviewees per each country). We also reached out to National Human Rights Institutions, where established, with a view to gathering views and data on barriers faced by all of the groups considered. In some countries (e.g. Ireland), mindful of the policy context and of fragmentation amongst groups, we identified more organisations as potential interviewees.

In light of the constraints due to the COVID-19 pandemic, as a contingency plan and complementary sampling, we identified additional potential key informants in each jurisdiction through snowball sampling.¹⁶⁸ This was facilitated by the fact that organisations which declined to participate in several cases also suggested alternative interviewees. Snowball sampling, or chain-referral sampling, is a distinct method of convenience sampling which has been considered useful in conducting research within marginalised groups.¹⁶⁹ With regard to the interviews conducted under Task 2.2, snowball sampling allowed us to use ties and communication with prior interviewees and other key informants in order to gain access to and cooperation from potential new interviewees. We sought advice from members of European and international organisations, scholars and project partners in order to reach out to potential participants. While the

¹⁶³ Directive 2019/790/EU 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] OJ L130/92 (Text with EEA relevance).

¹⁶⁴ L. Palinkas, S. M. Horwitz, et al., ‘Purposeful Sampling for Qualitative Data Collection and Analysis in Mixed Method Implementation Research’, (2015) 42 *Administration and Policy in Mental Health and Mental Health Services Research* 5, 533

¹⁶⁵ M. Q. Patton, *Qualitative Research & Evaluation Methods* (SAGE 2015).

¹⁶⁶ According to the CRPD Committee, an umbrella organisation of persons with disabilities refers to a coalition of representative organisations of persons with disabilities. See CRPD, ‘General Comment No. 7 on Article 4.3 and 33.3: Participation with persons with disabilities in the implementation and monitoring of the Convention (21 September 2018) UN Doc CRPD/C/GC/2, para 12 (a).

¹⁶⁷ *Ibid*, para 2.

¹⁶⁸ C. Noy, ‘Sampling Knowledge: The Hermeneutics of Snowball Sampling in Qualitative Research’ (2008) 11 *International journal of social research methodology* 4, 327.

¹⁶⁹ N. Cohen & T. Arieli, ‘Field research in conflict environments: Methodological challenges and snowball sampling’ (2011) 48 *Journal of Peace Research* 4, 423.



limitations of snowball sampling are well-known,¹⁷⁰ in the context of Task 2.2, this sampling method helped us to reduce the likelihood of unwillingness to cooperate in research efforts in exceptional circumstances, such as those of a pandemic.

For the drafting of the interview guide, we were guided by the literature on qualitative research which recommends a ‘funnel’ approach to interviewing that begins with broader, more general questions and leads to more specific questions.¹⁷¹ This format allows participants time, while building rapport and getting more comfortable, and allows our research team to learn some things that may impact later in more specific questions. Participants were asked questions on issues including, but not limited to, copyright law; their perceptions of their representation in cultural content available online; how restrictions imposed as a result of the COVID-19 pandemic impacted on the access to digital cultural content; if specific barriers were experienced during the period when restrictions were imposed; if they produced new material during this time and, if they, as representative organisations, supplied accessible materials.

While a detailed guide was prepared on foot of the desk-based research conducted, a semi-structured interview format was chosen, in order to allow for flexibility and to make sure that participants had the opportunity to raise issues of importance to the groups they represent.

Data Collection and ‘Incidental Findings’

After having obtained ethics clearance from the Maynooth University Ethics Committee, which will be discussed in sub-section 2.2.5, we conducted semi-structured interviews over Microsoft Teams¹⁷² in English and/or in another language selected by the participant, using a detailed interview guide (Annex 1).

As of the date of the delivery of this report, we have invited a total of 126 organisations to interview. 43 have accepted to participate in an interview, 63 did not answer and 19 declined to participate (for more details see Table 1). The overall acceptance rate is, to date, 34%, while the rejection rate is 15%. We experienced the highest acceptance rate among organisations representing the Ethnic/Roma group, while the highest rejection rate was among representative organisations of migrants (Chart 1).

Organisations	Invited	Accepted	No answer	Rejected	Acceptance rate (%)	Rejection rate (%)
Disability	31	13	12	6	42	19
Linguistic	30	9	18	3	32	12
Migrant	34	8	18	8	25	25
Ethnic/Roma	31	13	15	2	50	12,5
Total	126	43	63	19	34	15

Table 1. Survey data collection

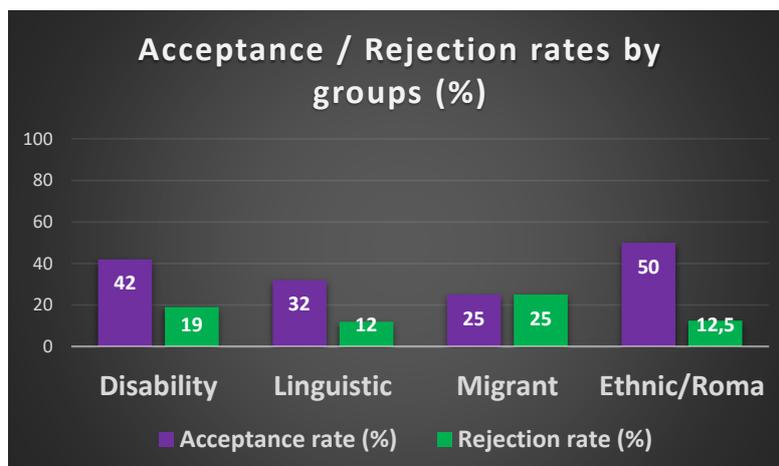


Chart 1. Interviews. Acceptance and rejection rates by group

¹⁷⁰ Supra, 165.

¹⁷¹ M. R. Roller and P. J. Lavrakas *Applied Qualitative Research Design* (The Guilford Press 2015)140.

¹⁷² The platform was selected on the basis of NUIM Policies, in line with the GDPR.



Most organisations that declined to participate in the interview indicated that access to digital culture is not among the priorities of the organisation. Some of them also noted their lack of familiarity with the issue or highlighted that they did not have data. For example, an organisation representing migrants did not want to participate as they indicated that they did not have relevant expertise on cultural rights of migrants. Similarly, another organisation representing a minority group indicated that access to digital culture was not in their remit and that they did not have an official position on the matter. A similar answer was given by another organisation which, while highlighting the importance of the project, indicated that access to digital culture was a field in which they have not yet undertaken any work. Notably, even organisations that did agree to be interviewed, suggested that access to digital culture is a somewhat marginal topic. For example, the representative of an Estonian Roma organisation suggested that access to culture is dealt with by the organisation only when *‘there are specific issues with the Roma, but it’s not like the NGO would have any capacity to work more on that’*.¹⁷³

Another important reason for declining was lack of resources and/or organisational capacity or availability. For instance, an organisation representing a minority group explicitly declined our invitation, stating that *‘due to the lack of resources’* they could not participate in the project.

Chart 2 below summarises the reasons for rejection across the organisations contacted.

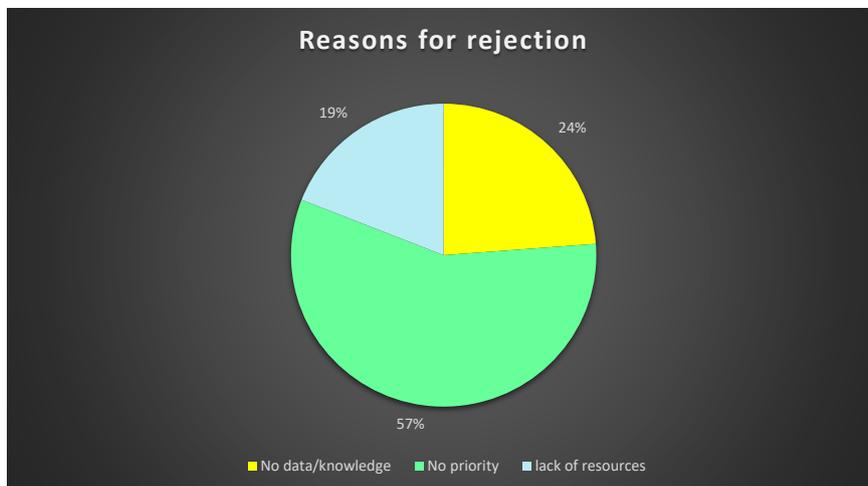


Chart 2. Interviews. Reasons for rejection

Chart 3 below gives an overview of the reasons for rejection across the different organisations sought for interview.

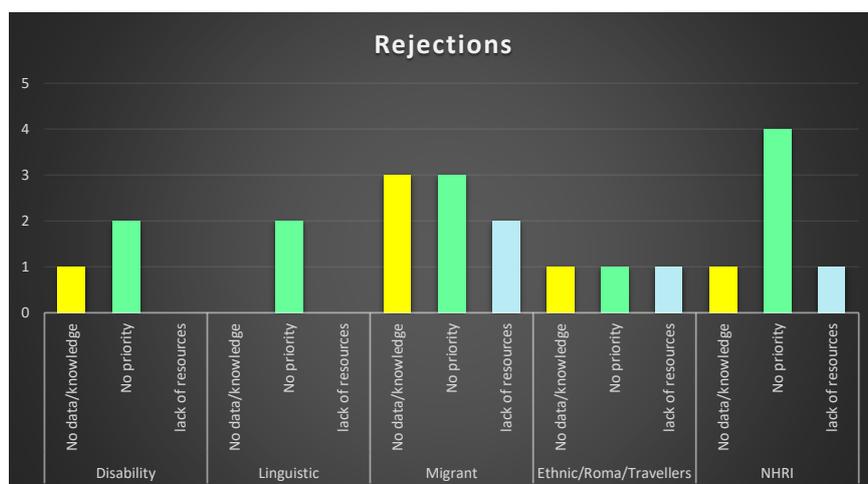


Chart 3. Interviews. Reasons for rejection per group

¹⁷³ EE_ROM.



As noted above, *reCreating Europe* adopts a wide conceptualisation of disability, in line with the CRPD, and consequently sought to interview umbrella organisations of PwD. However, several of those organisations that declined to participate re-directed us to organisations representative of people with visual impairments. This, on the one hand, can be an indicator of the awareness that copyright exceptions apply primarily (albeit not exclusively) to visually impaired people and that the Marrakesh Treaty has a limited scope *ratione personae*. However, on the other hand, it also signals a relatively narrow view of digital accessibility as being linked to specific accommodations for people with sensory impairments.

With regards to those organisations that agreed to participate in this project, the initial acceptance email was followed up by an exchange of emails aimed at building trust and at understanding how to best approach the interview. In some instances, preliminary sessions (not recorded) were scheduled. As suggested by the Maynooth University Ethics Committee, we shared the interview guide with the interviewees in advance of the interview, to allow for a careful reflection on the topics of the interview. This practice significantly facilitated the interview as organisations could gather data in advance of the interview process. The duration of interview sessions was between 45 and 75 minutes, as planned, to avoid fatigue of the interviewee. Reasonable accommodations were adopted when requested by the interviewee. For example, participants who were not comfortable with a videoconference for different reasons – language/time/lack of digital skills – were invited to answer our questions in written form and in the language of their choice. We also conducted interviews in different languages where needed, particularly in Spanish and Italian.

The audio-recordings (in the form of mp3 files) were transcribed with minor editing to facilitate reading. Although we were generally using the NVivo automated transcription software, this was complemented by extensive manual work. In fact, transcribing from recording into text involved a series of technical and interpretational issues. In this regard, it was decided to opt for written style, instead of *verbatim*, transcription.¹⁷⁴ While still seeking a ‘full and faithful transcription’, we focused on accuracy and prioritised the substance of the interview, that is, ‘the meanings and perceptions created and shared during a conversation’.¹⁷⁵ Given that the scope of the Task and its core aims are not concerned as such with personal experiences, small adjustments were made to enhance readability and understanding. Particularly, minor adjustments to grammar and syntax were made where errors would have led to more inaccuracies and introduced ‘a greater potential for misinterpreting the data at the analysis stage’¹⁷⁶ (e.g. adding an ‘s’ to a verb used in the third person singular or rectify small grammar mistakes). We also removed from the transcription informal or broken speech or ‘idiosyncratic elements of speech’¹⁷⁷ (e.g. stutters, pauses, nonverbals, involuntary vocalizations). On the whole, the transcription work was aimed at maintaining a balance between readability and accuracy of the transcript, and also making sure to be faithful to the meaning that the interviewee wanted to convey. As indicated above, some interviews were conducted in a language other than English. The transcription in that language was then translated into English by a professional translation company.

We stored a file with relevant metadata and the anonymised transcripts files were named using a conventional code indicating the country and the vulnerable group that the participant represented (e.g. IT_DIS). Where we interviewed more than one representative organisation, we indicated a number (e.g. IE_DIS1). With regards to disability, we inserted an additional conventional code when the organisation was representative of people with specific impairments.

¹⁷⁴ See D. G. Oliver, J. M. Serovich and T. L. Mason, ‘Constraints and Opportunities with Interview Transcription: Towards Reflection In Qualitative Research’ (2005) 84 *Social Forces*.

¹⁷⁵ *Ibid*, 4

¹⁷⁶ L. M. MacLean, M. Meyer and A. Estable, ‘Improving Accuracy of Transcripts in Qualitative Research’ (2004) 14 *Qualitative Health Research* 1, 113, 122.

¹⁷⁷ *Supra* nt. 171.



Belgium	•BE
Croatia	•HRV
Denmark	•DK
Estonia	•EE
Finland	•FI
France	•FR
Germany	•DE
Hungary	•HUN
Ireland	•IE
Italy	•IT
Malta	•MT
Spain	•ES

Figure 1. Interviews. Conventional code indicating the country



Figure 2. Interviews. Conventional code indicating the group

Data Analysis

We have commenced the analysis of the transcripts, following Braun and Clarke’s method of Thematic Analysis (TA), to identify themes and patterns within the data.¹⁷⁸ TA is a popular, although recently recognised,¹⁷⁹ qualitative analytic method. It provides significant flexibility in that it can be applied to different epistemological positions, or independently of theory or epistemology. Braun and Clarke also highlight the flexibility of TA in terms of research question, sample size and constitution, data collection method and approaches to meaning generation.¹⁸⁰ They propose that virtually any data type can be analysed, from interviews to qualitative surveys. They also indicate that TA allows for inductive (data-driven) and deductive (theory-driven) orientations to coding, capturing semantic meanings (explicit or overt) and latent meanings (implicit, underlying; not necessarily unconscious).¹⁸¹

In Task 2.2, after becoming familiar with the data through the transcription of the interviews, initial codes were generated across the data set, then collated into potential themes.¹⁸² At the time of writing of this interim report, we are in the process of coding, using NVivo as a qualitative data analysis software tool to support organising and analysing the data set. After the coding process, building on the literature review, we will identify key themes. At present, as discussed in section 4, we have identified preliminary themes.

2.2.2 Survey: Research Design, Data Collection and Analysis

In order to complement data gathered through the interviews, we designed a qualitative survey to be administered to people belonging to the vulnerable groups identified in this research.

Research Design

The survey questions – discussed and agreed with the consortium partner and WP leader SSSA - included forced-choice questions, which led respondents to choose from a range of response options. These forced-choice questions had multiple-choice, dichotomous questions and Likert scales (see Annex 2). The survey also included the option of open answers, to allow individuals to identify specific identities, issues or concerns. However, the survey did not include open-ended questions for two main reasons.¹⁸³ First, research has shown

¹⁷⁸ V. Braun, & V. Clarke, ‘Using thematic analysis in psychology’ (2006) 3 *Qualitative Research in Psychology* 2, 77.

¹⁷⁹ TA was firstly developed by Gerald Holton in the 70s but has only been recognised as a distinctive method for the social sciences in 2006 with the publications of the above cited authors Braun and Clarke. V. Braun and V. Clarke, *Successful Qualitative Research* (SAGE 2013), 205.

¹⁸⁰ Supra 178.

¹⁸¹ Ibid.

¹⁸² R. P. Weber, *Basic Content Analysis* (Sage Publications 1990).

¹⁸³ W. P. Vogt and others, *Selecting the Right Analyses for your Data* (The Guilford Press 2014).



that respondents tend to skip such questions, raising a problem of response bias and missing data. Second, open-ended questions would require additional time to code and analyse, and this was considered incompatible with the timeframe of the Task within the overall project.

The survey was designed in line with the research questions indicated in section 1.2. In line with these research questions, this survey aimed to ascertain individuals’ attitudes and opinions when accessing digital cultural content, perceptions of digitalisation and copyright laws and experiences or behaviours in accessing digital content (i.e. subjective data). We also collected objective data, such as demographic information (age, gender, and country where they are based), connectivity and consumption channels, that will allow for a cross-cutting comparative analysis.

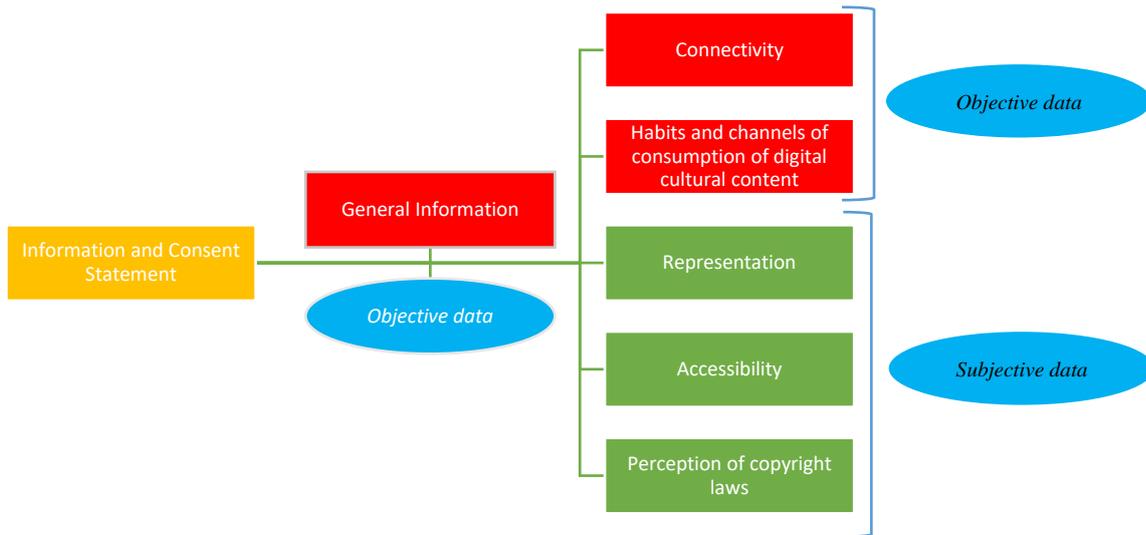


Figure 3. Design, format, and layout of the survey

The survey was made available in the official languages of the 12 selected countries¹⁸⁴ and administered online through Jisc Online Survey, as the study-hosting service.

In line with well-established methodologies,¹⁸⁵ organisations representative of vulnerable groups (that were already identified as potential participants for the interviews) were considered as ‘gatekeepers’ and asked to distribute the survey widely. Personal contacts, emails sent from the Department of Law and ALL Institute at Maynooth University and social media (through the project website and Twitter account) were also used as recruitment channels. Repeated invitations through individual emails yielded a higher response rate than the mass email invitations.

Data Collection, Analysis and Initial Findings

The survey remained open from the 30 of March 2021 until the 28 of May 2021. It was viewed by 2759 people, of which 2504 (90.75%) declined to participate after reading the information and consent statement. 255 people undertook the survey. However, of those, 26 were screened out because of ineligibility, 75 declined to continue participation at different junctures of the survey, and 154 people completed it. Thus, the analysis of results will concern the responses collected from 154 completed surveys (Chart 4).

¹⁸⁴ These are Croatian, Danish, Dutch, English, Estonian, Finnish, French, German, Hungarian, Irish, Italian, Maltese, and Spanish.

¹⁸⁵ M. R. Maniaci and R. D. Rogge, *Conducting Research on The Internet: Handbook of Research Methods in Social and Personality Psychology* (Cambridge University Press 2014) 1023.



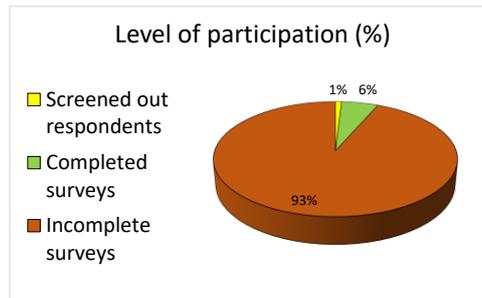


Chart 4. Survey: level of participation

Data analysis is currently ongoing and will be presented in the upcoming final report. Alongside a quantitative analysis, we will undertake a TA, to identify patterns within the data and to verify the extent to which key themes identified in the interviews are visible in the survey.

Within this report, we offer some preliminary descriptive data on response rates. The majority of respondents were based in Spain, while no one based in Denmark responded. The majority of respondents were PwD, while no people self-identifying themselves as refugees participated (see table 2).

Country	Completed	Disability	Indigenous	Ethnic	Linguistic	Religious	Migrant	Refugee
Belgium	1	0	0	1	1	0	0	0
Croatia	37	37	2	1	0	0	0	0
Denmark	0	0	0	0	0	0	0	0
Estonia	20	19	6	2	3	2	0	0
Finland	4	2	0	0	0	1	1	0
France	2	2	1	0	0	0	0	0
Germany	4	1	0	1	1	0	1	0
Hungary	8	8	0	0	0	0	0	0
Ireland	11	3	2	3	2	0	2	0
Italy	10	9	0	0	1	0	0	0
Malta	11	6	2	0	2	0	1	0
Spain	46	19	0	8	1	0	18	0
Total	154	106	13	16	11	3	23	0

Table 2. Descriptive data on the survey. Response rates

Table 3 describes the number of respondents categorised by age range and gender for each targeted group.

Disability														
Between 18 and 24			Between 25 and 34			Between 35 and 44			Between 45 and 54			More than 54		
M	F	N-B	M	F	N-B	M	F	N-B	M	F	N-B	M	F	N-B
3	5	0	9	11	2	5	13	0	9	15	1	19	14	0
Indigenous														
Between 18 and 24			Between 25 and 34			Between 35 and 44			Between 45 and 54			More than 54		
M	F	N-B	M	F	N-B	M	F	N-B	M	F	N-B	M	F	N-B
0	0	0	1	0	0	2	1	0	1	3	1	3	1	0
Ethnic														
M	F	N-B	M	F	N-B	M	F	N-B	M	F	N-B	M	F	N-B
0	0	0	2	2	0	2	4	0	1	3	1	1	0	0
Linguistic														
Between 18 and 24			Between 25 and 34			Between 35 and 44			Between 45 and 54			More than 54		
M	F	N-B	M	F	N-B	M	F	N-B	M	F	N-B	M	F	N-B
1	0	0	0	1	0	0	3	0	0	2	1	2	1	0
Religious														
Between 18 and 24			Between 25 and 34			Between 35 and 44			Between 45 and 54			More than 54		
M	F	N-B	M	F	N-B	M	F	N-B	M	F	N-B	M	F	N-B
0	0	0	0	0	0	0	0	0	0	2	1	0	0	0
Migrant														
M	F	N-B	M	F	N-B	M	F	N-B	M	F	N-B	M	F	N-B
1	1	0	5	3	0	4	6	0	0	1	0	0	2	0

Table 3. Description data on the survey. Responses categorised by age range and gender



2.2.3 Ethics Review Process

As part of the qualitative research, we engaged in a thorough ethics review process. Ethical approval to conduct interviews and survey research was granted by the Social Research Ethics Subcommittee at Maynooth University. It is worth noting that our work is informed by four general principles of research ethics: autonomy (i.e. respecting the rights of the individuals), beneficence; non-maleficence; and distributive justice or equity, and was in line with Maynooth University's Research Integrity Policy and Research Ethics Policies.¹⁸⁶

For the interviews, all participants were provided with a written information sheet – translated into the country's official language, explaining the purpose of the study and the possibility of withdrawing from the process at any time. In addition, participants were asked to sign a consent form or record their consent in the audio recording of the interview when a written signature was not possible.

For the survey research, the study-hosting service, Jisc Online Survey, allowed us to introduce the first page with an electronic consent statement to a general introductory page which included the information about the purpose of the study and a data protection statement. This page had the option of plain language in each of the 13 survey languages (English, Irish, Italian, Spanish, Danish, Dutch, French, German, Croatian, Maltese, Hungarian, Estonian, Finnish).

2.2.4 Risks, Limitations and Contingencies

The main limitations related to data collection are linked to the specific timeframe and period in which the research was conducted. As noted above, the COVID-19 pandemic has had an unparalleled effect on vulnerable groups which is widely documented.¹⁸⁷ Due to the ongoing nature of the COVID-19 pandemic, some participants indicated that access to digital content was not an immediate priority for the organisation they represented, given more pressing needs in relation to access to healthcare or in relation to the right to work and gain a living (see above section 2.2.1).

Language also acted as a barrier. While the team was able to accommodate the use of different languages alongside English (i.e. Spanish, Italian and Irish), the impossibility to conduct interviews in other languages was a limitation. The latter was addressed and mitigated by offering the possibility for participants to respond to a written questionnaire (instead of an interview) in the language of their choice.

With regard to the survey, to avoid linguistic barriers, we made the survey available in the official languages of the 12 selected countries. While this was a significant mitigation of the risk of non-participation, still we note that migrants with limited knowledge of the country's official language could not participate. Moreover, although the online study-hosting service, Jisc Online Survey, allowed us to upload the survey in the 13 selected languages, the navigation settings were available only in a limited number of languages alongside English.

Creating an accessible and inclusive digital environment is one of the core principles of this research project. Therefore, collecting data in an accessible way was one of our high priorities. Before launching the online survey, we made sure to comply with most recent web accessibility standards and best practices on accessibility for PwD, in line with the Web Accessibility Directive (WAD). However, following some complaints from respondents with visual impairments in one of the 12 countries, in relation to the accessibility of the navigation controls system of the platform, we undertook an additional extensive investigation, and asked for opinions from various users with visual impairments across Europe and also engaged with the survey platform. This entailed consultations with different Accessibility experts and with the Maynooth University Access Office. This led to the creation of a set of additional versions of the survey, including a Word-format

¹⁸⁶ These policies are available at <<https://www.maynoothuniversity.ie/university-policies/research-policies>> (last access 16 June 2021).

¹⁸⁷ See European Parliament Committee on Culture and Education, 'Cultural and Creative Sectors in Post COVID-19 Europe: Crisis Effects and Policy Recommendations' (2021) PE/652/242; UNESCO, 'Culture in crisis: policy guide for a resilient creative sector' (2020); House of Commons Digital, Culture, Media and Sport Committee, 'Impact Of COVID-19 On DCMS Sectors: First Report' (2021).



version (elaborated in collaboration with accessibility experts from ONCE Foundation, Spain), to make sure that everyone could participate on an equal basis with others. While we did not obtain any definite answer on what caused the issues experienced by the participants that raised the complaints, and no other complaints were raised, we made sure to address the issue efficiently and promptly.

With regard to data analysis, it is widely recognised that in-depth semi-structured interview data constitute the backbone of most qualitative research in the social sciences. However, there is a wealth of research on the limitation of this method in relation to its reliability¹⁸⁸ and on difficulties in coding.¹⁸⁹ With regard to the latter, it is well known that coding sensitivity differs between researchers. However, discrepancies in coding have been limited by engaging in constant discussion. Limitations and mitigation of risk in this respect will be further detailed in the final report.

3. International and EU Legal Context

While copyright law is well explained and discussed in other deliverables, including deliverable D 2.1, which provides a thorough legal mapping, this section aims to lay out in a succinct fashion the overarching legal context surrounding access to culture for vulnerable groups, and which has informed the data collection and the ongoing data analysis. It first refers to the right to culture as a normative paradigm that informs this task, and then gives a succinct account of the relevant EU legal framework.

3.1. The Right to Culture under International Law

Cultural rights have been described as the ‘neglected category of human rights’¹⁹⁰ and the ‘Cinderella’ of human rights.¹⁹¹ While these rights are protected in a variety of international legal instruments, they have not, to date, garnered significant attention in international courts¹⁹² or quasi-judicial bodies.¹⁹³ However, the UN Special Rapporteur in the field of cultural rights has highlighted the importance of cultural rights, commenting that they ‘are transformative and empowering, providing important opportunities for the realization of other human rights’.¹⁹⁴

Article 27 of the Universal Declaration of Human Rights (UDHR) is the central point of protection for cultural rights under international law. This states: ‘Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits’.¹⁹⁵ A reference to cultural rights is also found in Article 27 of the ICCPR.¹⁹⁶ However, in this instrument, cultural rights are

¹⁸⁸ K. Krippendorff, *Content Analysis: An Introduction to Its Methodology* (Sage Publications 2004).

¹⁸⁹ J.L. Campbell, C. Quincy, J. Osseman & O.K. Pedersen, Coding In-depth Semistructured Interviews: Problems of Unitization and Intercoder Reliability and Agreement’ (2013) 42 *Sociological methods & research* 3, 294.

¹⁹⁰ J. Symonides, ‘Cultural Rights: A Neglected Category of Human Rights’ (1998) 50 *International Social Science Journal* 158, 595.

¹⁹¹ Oxford Bibliographies Web page (A. Xanthaki), ‘Cultural Rights’ (2015)

<<http://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0123.xml>> (last access 16 June 2021).

¹⁹² See, however, Polymenopolou, E., ‘Cultural Rights in the Case Law of the International Court of Justice’ (2014) 27 *Leiden Journal of International Law* 2, 447; European Court of Human Rights Research Division, ‘Cultural Rights in the Case-law of the European Court of Human Rights’, (2011, updated 2017) <https://www.echr.coe.int/Documents/Research_report_cultural_rights_ENG.pdf> (last access 16 June 2021).

¹⁹³ See S. Strykowski, ‘Cultural Rights and Cultural Identity in the Case-Law of the Human Rights Committee’ (2017) 7 *Adam Mickiewicz University Law Review*, 119.

¹⁹⁴ Report of the Special Rapporteur in the field of cultural rights to the Human Rights Council (2016) UN Doc A/HRC/31/59, para. 5.

¹⁹⁵ Universal Declaration of Human Rights (UDHR) (adopted by General Assembly Resolution 217 A (III) of 10 December 1948).

¹⁹⁶ International Covenant on Civil and Political Rights (ICCPR) (adopted by General Assembly resolution 2200A (XXI) of 16 December 1966, entered into force 23 March 1976) 999 UNTS 171. This provision states: ‘In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language’.



identified in respect of people belonging to minorities only, rather than being applicable to all people.¹⁹⁷ The Human Rights Committee has stated that this right applies to all individuals within a territory, including those who do not have permanent residency status and those who are temporarily in the State.¹⁹⁸ In particular, in its General Comment No. 23 on Article 27, it has highlighted that:

Article 27 confers rights on persons belonging to minorities which “exist” in a State party. Given the nature and scope of the rights envisaged under that article, it is not relevant to determine the degree of permanence that the term “exist” connotes. Those rights simply are that individuals belonging to those minorities should not be denied the right, in community with members of their group, to enjoy their own culture, to practise their religion and speak their language. Just as they need not be nationals or citizens, they need not be permanent residents. Thus, migrant workers or even visitors in a State party constituting such minorities are entitled not to be denied the exercise of those rights. As any other individual in the territory of the State party, they would, also for this purpose, have the general rights, for example, to freedom of association, of assembly, and of expression.¹⁹⁹

Cultural rights are further protected in the International Covenant on Economic, Social and Cultural Rights (ICESCR), in particular in Article 15(1)(a), which provides that ‘the States Parties to the present Covenant recognize the right of everyone to take part in cultural life’.²⁰⁰ Cultural rights are also protected in various provisions of other core UN human rights treaties including Articles 30 and 31 of the Convention on the Rights of the Child²⁰¹ and Article 30 of the Convention on the Rights of People with Disabilities.²⁰² Article 5(e) (vi) of the Convention on the Elimination of All Forms of Racial Discrimination also requires that States parties ‘undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law’, including with regard to ‘the right to equal participation in cultural activities.’²⁰³ In addition, the International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families also contains provisions relating to cultural rights, including article 43, paragraph 1 (g), and article 45, paragraph 1 (d), on access to, and participation in, cultural life. Article 31 relates to the respect for the cultural identity of migrant workers.²⁰⁴

¹⁹⁷ Vrdoljak comments: ‘Although Article 27 is riddled with provisos, since its inclusion in the Covenant, it has played a crucial role in defining the cultural rights held by minorities and indigenous peoples in international law’. A. Vrdoljak, ‘Self-Determination and Cultural Rights’, in Francioni and Scheinin (eds), *Cultural Human Rights*, (Leiden, 2008) 41, 60.

¹⁹⁸ UN Human Rights Committee, ‘CCPR General Comment No. 23 on Article 27: Rights of Minorities’ (1994) UN Doc CCPR/C/21/Rev.1/Add.5, para. 5.2.

¹⁹⁹ *Ibid*, para. 5.2. (emphasis added).

²⁰⁰ International Covenant on Economic, Social and Cultural Rights (ICESCR) (adopted by General Assembly resolution 2200 A (XXI), 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.

²⁰¹ Article 30 of the Convention on the Rights of the Child states: “In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.” Article 31: “(1) States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts. (2) States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.” (Convention on the Rights of the Child (UNCRC) (adopted by General Assembly Resolution 44/25 of 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.

²⁰² The CRPD, recognises: “[...] the right of persons with disabilities to take part on an equal basis with others in cultural life, and [States parties] shall take all appropriate measures to ensure that persons with disabilities: (a) Enjoy access to cultural materials in accessible formats; (b) Enjoy access to television programmes, films, theatre and other cultural activities, in accessible formats; (c) Enjoy access to places for cultural performances or services, such as theatres, museums, cinemas, libraries and tourism services, and, as far as possible, enjoy access to monuments and sites of national cultural importance [...]”.

²⁰³ Article 5 (vi) International Convention on the Elimination of All Forms of Racial Discrimination (adopted by General Assembly resolution 2106 (XX) of 21 December 1964, entered into force 4 January 1969) 660 UNTS 195.

²⁰⁴ This Article reads as follows: “(1) States Parties shall ensure respect for the cultural identity of migrant workers and members of their families and shall not prevent them from maintaining their cultural links with their State of origin. (2) States Parties may take appropriate measures to assist and encourage efforts in this respect”. (International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Adopted by General Assembly resolution 45/158 of 18 December 1990).



Furthermore, UNESCO has adopted numerous instruments on in the field of cultural rights, including the Recommendation on the Safeguarding of Traditional Culture and Folklore (1989)²⁰⁵ and the Universal Declaration on Cultural Diversity (2001).²⁰⁶ In 2005, it also adopted the Convention for the Protection and Promotion of the Diversity of Cultural Expressions.²⁰⁷ In a similar vein to the Declaration, but through binding obligations, this instrument places a strong emphasis on the diversity of cultural expressions, including traditional cultural expressions as ‘an important factor that allows individuals and peoples to express and to share with others their ideas and values’.²⁰⁸

3.2. The Right to Culture under the EU Framework

The EU constitutional framework protects the right to culture through a range of provisions, while it does not articulate this right explicitly. Furthermore, as noted above, the EU legal framework protects the rights of minorities (see section 1.2). Notably, the CFREU protects freedom of expression and freedom of the arts, and provides for the EU to respect cultural, religious and linguistic diversity (Art. 22 CFREU). The preamble to the Charter also speaks of ‘respecting the diversity of the cultures and traditions of the peoples of Europe’. Article 25 CFREU provides for an explicit right to participate in cultural life for the elderly. Furthermore, as discussed in section 1.2, given that the CRPD has been ratified by the EU alongside all its Member States, Article 30 CRPD has become integral part of the EU legal framework. Notably, the World Intellectual Property Organisation’s Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled²⁰⁹ was also ratified by the EU and implemented by means of a directive and a regulation,²¹⁰ to fulfil CRPD goals.

The EU Treaties, however, confine the EU institutions to playing a supportive role to Member States in realising the right to culture.²¹¹ However, although Member States retain the competence to determine their own cultural policies, the EU has played an important role in enhancing access to culture. Article 167 of the Treaty on the Functioning of the European Union (TFEU) has provided the legal basis to adopt cultural programmes, such as ‘Creative Europe’. Furthermore, Article 167(4) TFEU, which requires the Union to ‘take cultural aspects into account’ in its action under other provisions of the Treaties, has given the EU the possibility to adopt several cultural measures incidentally. The lack of harmonisation powers, which formally limits the possibility for the EU legislature to develop European cultural legislation, is compensated for by the use of internal market legislation, reliance on free movement provisions and State aid control. Alongside copyright legislation, which acts as a cornerstone of the digital single market, the Audiovisual Media Services Directive (AVMSD) in fact governs EU-wide coordination of national legislation on all audiovisual media, spanning traditional TV broadcasts to on-demand services.²¹² Interestingly, the AVMSD recognises that ‘the right of persons with a disability... to participate and be integrated in the social and cultural life of the Union

²⁰⁵ This instrument defines folklore as “[...] the totality of tradition-based creations of a cultural community, expressed by a group or individuals and recognized as reflecting the expectations of a community in so far as they reflect its cultural and social identity; its standards and values are transmitted orally, by imitation or by other means. Its forms are, among others, language, literature, music, dance, games, mythology, rituals, customs, handicrafts, architecture and other arts”. Section A UNESCO, ‘Recommendation on the Safeguarding of Traditional Culture and Folklore’ (adopted by the General Conference of UNESCO at its 25th session, Paris, 15 November 1989).

²⁰⁶ UNESCO Universal Declaration on Cultural Diversity (adopted 2 November 2001).

²⁰⁷ Supra 15.

²⁰⁸ Ibid, Preamble.

²⁰⁹ Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled (‘Marrakesh Treaty’) (published 27 June 2013, entry into force 30 September 2016) WIPO TRT/MARRAKESH/001.

²¹⁰ Parliament and Council Directive 2017/1564/EU on certain permitted uses of works and other subject-matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print disabled and amending Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society [2017] OJ L242/6.

²¹¹ Art. 167 TFEU

²¹² Directive 2018/1808 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services in view of changing market realities (‘Audiovisual Media Services Directive’) [2018] OJ L303/69.



is inextricably linked to the provision of accessible audiovisual media services.²¹³ Furthermore, it purports to indirectly reference minority language protection, encouraging the adoption of 'suitable measures to encourage the activity and development of European audiovisual production and distribution, particularly in countries with... a restricted language area.'²¹⁴

4. Interim Results

While the data analysis is only at the beginning, in this interim report we aim to highlight three main issues, which are discussed in turn in the subsections below.

4.1 Limited Awareness of Copyright Law

On the whole, albeit to varying degrees, interviews showed that the degree of awareness, and knowledge, of copyright law, as well as the understanding of its relevance in relation to the consumption of digital cultural content for vulnerable groups, is limited. For example, an interviewee from Finland stated:

'I'm not an expert, I don't know how copyright affects digital cultural goods. Of course, the copyright is there to protect those who produce the cultural goods so that it's not violated or shared in a wrong way. But if looking from a migrant point of view, if it helps or hinders. It's really a difficult question'.²¹⁵

An interviewee from Croatia who was asked about copyright law stated that *'quite frankly, I ignore them [i.e. copyright legislation], but if they do exist, I ignore them pretty much'.²¹⁶* In a similar vein, an Italian organisation representing linguistic minorities indicated they *'never dealt with this issue [i.e. copyright] in [their] organisation'.²¹⁷*

Among the interview participants, representatives of organisations of persons with visual impairments showed more awareness of copyright law.²¹⁸ Some interviewees also showed willingness to engage more with copyright law. For example, an organisation from Estonia suggested that in the future they plan *'to work with the Human Rights Centre to get more information lessons'.²¹⁹*

4.2 Digital Divide and Structural Inequalities

Second, in all countries considered, underlying barriers, such as the *'digital divide'*, represent a substantial challenge and prevent the consumption of digital content.²²⁰ In this respect, the report confirms the results of other past and well-established research.

Some interviewees focused on poor connectivity and poor broadband access. For example, an interviewee representative of an Estonian Roma organisation signalled that while members of the Roma community have smartphones and watch Youtube and use social networks like Facebook, the *'use of broadband is limited'.²²¹* In a similar vein an interviewee from a Roma organisation in Hungary stated:

²¹³ *ibid*, recital 46.

²¹⁴ Opinion of the European Committee of the Regions, 'Review of the 'Audiovisual Media Services' Directive (2015/C 423/06)' [2015] OJ C423/30; See also *ibid*, 158.

²¹⁵ FI_MIG.

²¹⁶ HRV_MIG.

²¹⁷ IT_LANG.

²¹⁸ See e.g. DK_DIS.

²¹⁹ EE_ROM.

²²⁰ A organization working with asylum seekers, while declining to participate in the interview, highlighted that *'ensuring our residents have access to wifi is already very challenging, because of technical, budget and infrastructure restraints. During the lockdown we try/tried our best to help kids who can no longer go to school to keep up with their classes online, but this was already a challenge because of lack of wifi-access and too little laptops'.*

²²¹ EE_ROM.



'...there are certain - underdeveloped areas where the access to the Internet is very low and those areas are the areas where Romani people mostly live, so most of the Roma people in Hungary don't have access to the Internet or once they have, I'm not sure I can say that they have access to digital cultural content and that can be because of the barriers that they face during their education or it's just something that is not of interest for them because there are so many other things to have to deal with'.²²²

Other interviewees highlighted the lack of appropriate digital devices. A participant representative of a Finnish organisation for migrants stated that *'having the technology or the devices that you need'* is indeed a barrier because *'[n]ot everyone has the devices or applications needed'*.²²³ This is coupled with the lack of digital literacy. In this regard an interviewee from Hungary stated very clearly:

'I think lacking digital literacy is also something that might be a barrier that people cannot really use devices even if they have or they use it for basic purpose'.²²⁴

The lack of digital literacy represents a significant barrier with regard to PwD (namely people with visual impairments) that would have to rely on specific technologies (such as screen readers) to access certain digital content.²²⁵

4.3 Preliminary Patterns of Convergence and Divergence

We observed initial (and not fully defined) patterns of convergence and divergence between different vulnerable groups (e.g. PwD, migrants, linguistic minorities), which will be analysed and further discussed in the final report.

A pattern of convergence can be seen in the lack of representation or stereotypical representation of these groups in cultural digital content.²²⁶ One interviewee of an Italian organisation representative of migrants suggested that the constant negative portrayal in the mainstream media extends to digital media, and this is generating discrimination and/or engendering marginalisation.²²⁷ One interviewee of a linguistic community in Spain stated:

'... for sure, we are not represented. We have been advocating a lot in the audio-visual field and digital audio-visual. We are now doing a campaign in this regard. Regarding books, we have not done any study on digital books, but what we [support people when they are] discriminated [against] We have received some complaints about books [N.d.R in Catalan] on Amazon, for example, that are more expensive than the Spanish translations'.

Some timid progress has been noted, albeit only in some countries, in relation to the representation and portrayal of disability in the media, which is more frequent and more positive.²²⁸

Linguistic barriers have also been identified as a hurdle for both migrants²²⁹ and linguistic minorities. With regard to migrants, for example, an interviewee from a Croatian organisation identified language as key barrier to access digital cultural content:

'Language, of course. Not realising what the culture is, not realising what the rules with the cultural norms are and how to deal with them. That's another one. Obviously, the amount of money for [Internet] data charges is a big barrier. I would say that it's an attitude, it's a lack of orientation to the cultural aspect, it's a lack of realisation, it's a kind of a focus where you're focused on getting there

²²² HUN_ROM.

²²³ FI_MIG.

²²⁴ HUN_ROM.

²²⁵ IE_DIS2.

²²⁶ See e.g. EE_ROM, IT_MIG.

²²⁷ IT_MIG.

²²⁸ IT_DIS.

²²⁹ See also FI_MIG.



and you're focused on surviving because you're being tortured, you're being misused. You're concentrating on survival'.²³⁰

With regard to linguistic minorities, language barriers are considered as a symbol of the lack of recognition of linguistic rights. In that regard, one interviewee of a linguistic community in Spain stated:

'...if you go to Netflix or Disney, or other online film platforms and access those films translated with public money, they do not have these language options in those films into the platforms. So, we made research last December on Netflix. More than 2100 movies, of which 334 films have a Catalan version, all paid with public money, and Netflix just offered four films of those. We contacted Netflix, and they said, "we have no problem to introduce the language in the linguistic menu, but we have to receive this version; for us, it's just a little bit of time to put another version". The main responsible here for this problem is the government because they paid for these versions and these versions must circulate after [and they aren't] because otherwise, it's wasted public money, and also the film distributors that have received this public money to translate and to release the films in the cinemas should give these versions'.²³¹

Overall, the preliminary analysis showed an array of themes that indeed confirm trends and patterns identified in the literature.

5. Conclusions

The aim of Task 2.2 is to assess the extent to which vulnerable groups experience barriers in accessing digital cultural content. Consistently with the aim of this Task, the methodology that was adopted combines traditional desk-based research with qualitative analysis. The latter has been planned very carefully and has required an ongoing evaluation of the risks and limitations involved and the adoption of various contingency measures.

The very preliminary data analysis shows that the degree of knowledge of copyright law and the understanding of its relevance in relation to the consumption of digital cultural content is limited among vulnerable groups. In all countries considered, underlying barriers, such as the 'digital divide', and structural inequalities faced by vulnerable groups, represent a substantial challenge and prevent the consumption of digital content. In this respect, this interim report confirms the results of other past and well-established research. We could also observe some initial (and not fully defined) patterns of convergence with regard to the emergence of certain barriers, such as lack of representation and linguistic barriers.

²³⁰ HRV_MIG.

²³¹ ES_LANG.



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7. Annexes

7.1 Annex 1. Interview guide

The interview guide was shared with the interviewees in advance of the interview, to support reflection on the questions.



Interview guide reCreating Europe

Interviewer:	
Group:	
Country:	
Organisation's name:	
Type of organisation:	
Date of the interview:	

Introduction

I introduce myself and explain that the general purpose of the interview is to discuss access to digital cultural content and the barriers that hamper that access.

Remind the participant: as stated in the information sheet, I will be gathering information on the actual impact on minority groups and persons with disabilities as end-users, of intellectual property rights law, in particular copyright law, when accessing digital platforms promoting cultural contents.

In particular, through this interview, I will attempt to identify what are the main barriers to accessing digital cultural content for [*group*] as end-users.

I will encourage the participant to speak openly about the issues, and I will emphasise that there are no “right” or “correct” answers to my questions. I will ask the interviewee’s permission to take notes and audio record the discussion to assist in data analysis and report writing. The interviewee will have the opportunity to ask for further clarifications on the purpose of the interview, on the project and any other relevant aspect of the research.

I am aware that the interviewee will only answer on behalf of his/her organisation. I will remind him/her that the answers she/he will provide will be kept confidential.

The interview will revolve around the set of questions indicated below, but, adopting a semi-structured form, I will be able to ask probe/ask additional follow up questions that might arise at any point of the interview.





1. Let me know more about your organisation:
 - a. What are the main goals of your organisation?
 - b. What is your role in the organisation?
 - c. Is access to digital culture an issue you have been dealing with/advocating for within your work?
 - i. If yes: why and how?
 - ii. If no: what are the reasons?
2. Do you feel that [group] are represented or underrepresented in the cultural content generally available online? (Streaming and on-demand video platforms, such as Netflix; Podcasts; Music; Books; Visual arts, etc.)
 - a. Specifically, in [country], do you feel represented in digital cultural content provided by national broadcasters / famous authors, etc.?
3. Has your organisation ever been called on by a cultural institution to collaborate in relation to the creation/distribution of digital cultural content (e.g. a library distributing eBooks, virtual museum and art gallery tours) that the institution provides, to ensure access to, and appropriate representation of, the group you represent?
4. Are you aware of any judicial cases in [country] addressing issues of access to digital cultural content by [group]?
5. Has your organisation make a complaint to official bodies (e.g., Ombudsperson) or engaged in strategic litigation, about the inaccessibility of online cultural content or because the [group] was not being represented in it? What was the outcome?
6. Do you think that [group] participate, as end-users, in culture (in a digital realm) on an equal basis with others?
 - a. Do you think that they can enjoy a broad range of cultural goods, services and online activities, including their own, on an equal basis with others?
 - i. If not, what do you think are the main barriers?
7. Do you think that online cultural content is easily accessible for people represented by your organisation?
 - a. If not, what are the barriers to access? (Excessive costs, legal barriers, lack of digital skills, lack of digital devices, inaccessible content/not interesting content)
 - b. In your opinion, what are the main reasons for those existing barriers?
 - i. Could you give an example?
 - ii. Can they be overcome?
 1. Why do you think [yes/no]?
8. How do you think that dealing with barriers to accessing digital cultural content influences and affects [group] perception of culture?
9. Are you familiar with, or aware of, copyright laws at EU and national level?
 - a. Has your organisation ever received specific training on copyright and Intellectual Property rights in general?
 - b. What do you consider a support/barrier within copyright legislation and practices for the access to digital cultural content by [group]? Can you give some examples?
 - c. Has your organisation ever lobbied concerning copyright law?
 - i. If so, what activities have you conducted?





- d. Does your organisation supply accessible copies of works for the use of [group]?
Let me know more about this process.
- i. Do you find it difficult to provide accessible copies? [yes/no]
 - ii. Why?
 - iii. What are the main barriers to doing this?
 1. Did this change during as a result of the restrictions imposed because of the COVID-19 pandemic?
 2. Does your organisation receive [has it received] (before/after mobility restrictions to prevent the spread of COVID-19) help (material/nonmaterial) from the government to do this?
10. How did your organisation experience online cultural content during the restrictions imposed because of the COVID-19 pandemic?
- a. Did your organisation produce/share cultural material (webinars/podcasts) during these COVID-19 period of restrictions?
 - i. Did you experience specific barriers?
 - ii. Did you receive any help to overcome these barriers (material/nonmaterial) from the government? (Legal resources; web platforms, etc.)
 - b. What lessons do you think society and policymakers could learn from the restrictions imposed during COVID-19 pandemic to make digital cultural content accessible to [group]?
 - i. Have you raised awareness in this regard?
 - c. Specifically, during the period when COVID-19 restrictions were imposed there has been [and still are] plenty of webinars, podcasts, online forums, etc., how did your organisation find this content regarding [group]? Did you find this content:
 - i. Accessible (in terms of language, plain [language], captions, sign language interpreter, etc.)?
 - ii. Representative?
 - iii. Inclusive?
 - iv. Easy to share? (law/policy restrictions)

Is there anything else you would like us to know?



7.2 Annex 2. Survey

The survey was available in the official languages of the 12 selected countries and administered online through Jisc Online Survey as the study-hosting service.

reCreating Europe Survey (English)

Page 1: Information and Consent Statement

You are being invited to participate in a survey that is part of a research study entitled “Rethinking digital copyright law for a culturally diverse, accessible, creative Europe” (*reCreating Europe*). This part of the study is being undertaken by Prof Delia Ferri, Dr Noelle Higgins as the Principal Investigators, and Dr Laura Serra as the Postdoctoral Researcher, based at the Department of Law at Maynooth University (Ireland). This research team is part of a consortium of 10 participating institutions from across Europe.

If you are a person with Disabilities, an Indigenous person, a Migrant, a Refugee, a person belonging to an Ethnic, Linguistic and/or a Religious Minority Group, we would like to encourage you to participate in this online survey to provide valuable feedback.

Through this survey, we will ask about your experiences and practices concerning digital cultural content, including your perceptions of barriers to access to such to content.

According to the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, cultural content refers to the symbolic meaning, artistic dimension and cultural values that originate from, or express, cultural identities. Digital cultural content refers to new ways of accessing cultural content and art expressions, such as using streaming platforms and apps like Spotify, Netflix, or virtual museum apps, among others.

The survey will be used for ascertaining your attitudes, beliefs, opinions, or to report your experiences and/or behaviours in accessing digital cultural content.

ReCreating Europe will deliver ground-breaking contributions towards a clear understanding of what makes a suitable regulatory framework that promotes culturally diverse production and optimises inclusive access and consumption of digital cultural content.

Our research team in Maynooth University aims to gain a better understanding of what is needed in the regulatory framework to make the access to digital cultural content more suitable to all persons, including persons with disabilities and minority groups.

It should take approximately 15 minutes to complete the survey, which will be displayed



in an accessible format. You may select/change font sizes and alter background colours for contrast.

Your participation is entirely voluntary, and you can withdraw from the survey at any time. The survey is anonymous, and the data collected will be treated in anonymised and aggregated form and utilised for scientific purposes only. The data provided will be stored until the survey is closed and remain anonymous until the completion of the research project (December 31, 2022) when it will be destroyed.

Please take into account that there are no material benefits from answering this survey.

Please note that you must be 18 or older to participate in this study.

If you have any questions, please email us at laura.serra@mu.ie.

We would like to place an anonymised version of the data on the Irish Qualitative Data Archive (IQDA) as well as on the *reCreating Europe* Zenodo H2020 repository so that other researchers and interested people may benefit from access to it if you agree.

Do you agree to the above terms and consent to your data being processed as described above?

- Yes
- No



Page 2: General Information

In which country are you based?

- Belgium
- Croatia
- Denmark
- Estonia
- Finland
- France
- Germany
- Hungary
- Ireland
- Italy
- Malta
- Spain

Which category best describes your age?

- Between 18 and 24
- Between 25 and 34
- Between 35 and 44
- Between 45 and 54
- More than 54
- Rather not say

Gender

- Male

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- Female
- Non-binary
- Rather not say

Do you consider yourself to be a *(Tick all relevant options)*

- A person with Disabilities
- An Indigenous person*
- A person belonging to an Ethnic Minority Group*
- A person belonging to a Linguistic Minority Group*
- A person belonging to a Religious Minority Group*
- A Migrant
- A Refugee
- None of the above

Please, specify

- A person with an intellectual disability
- A person with a physical disability
- A person with a psychosocial disability
- A deaf person
- A person who is blind or partially sighted
- A person with deafblindness
- Rather not say
- Other

If you selected Other, please specify:



**Please be aware that we are asking you to self-identify rather than declare if you belong to the group according to the national law.*

Please specify the Indigenous Group to which you belong

Please specify the Ethnic Group to which you belong

Please specify the Linguistic Minority Group to which you belong

Please specify the Religious Minority Group to which you belong

If you do not identify with any of the above options, you are unfortunately ineligible to take this Survey. I am:

- Eligible
- Ineligible



Page 3: Connectivity

Do you have access to your own computer/tablet/smartphone/another device?

- Yes
- No

Do you share a device?

- Yes, I share a device with another person/people
- Yes, I access a public computer/tablet in a public facility
- No, I do not share a device
- Other

If you selected Other, please specify:

Do you have access to the Internet regularly?

- Yes
- No

Do you have Internet access:

- For free (public wi-fi hotspot/library/coffee shop/public space, etc.)
- Through a paid subscription to an Internet Service Provider

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I do not know



Page 4: Habits and channels of consumption of digital cultural content

Digital cultural content refers to music, films, documentaries books and other artistic expressions that can be enjoyed online on platforms like Spotify or Netflix, virtual museum apps or other websites.

How often do you access digital cultural content online?

- Every day
- Every week
- Occasionally

How many hours per day do you spend consuming cultural content online?

- Less than 1 hour a day
- 1-2 hours
- 2-3 hours
- More than 3 hours a day

Please, specify

- Once a week
- Twice a week
- Other

If you selected Other, please specify:

Please, specify

- Once a month
- Twice a month
- Other

If you selected Other, please specify:

Which kind of products do you access the most? *(Tick all relevant options)*

- Music/Podcasts
- Books
- Journals/Newspapers
- Films/TV Shows
- Art galleries/Museums
- Videogames
- Other

If you selected Other, please specify:

Do you or your household have a subscription to any platform that offers any digital

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cultural content?

- Yes
- No
- I do not know

On a scale from 0 to 3, how much have the restrictions imposed because of the COVID-19 pandemic impacted on your access to digital cultural content?

	Not at all impacted (0)	Slightly impacted (1)	Moderately impacted (2)	Heavily impacted (3)
Impact	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



Page 5: Representation

How would you rate your representation within the cultural content available online? (Streaming and on-demand video platforms, such as Netflix; Podcasts; Music; Books; Visual arts, etc.). *Please, fill in only the options that apply to you.*

	Unrepresented	Slightly represented	Moderately represented	Well represented
As a person with Disabilities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
As an Indigenous person	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
As a person belonging to an Ethnic Minority Group	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
As a person belonging to a Linguistic Minority Group	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
As a person belonging to a Religious Minority Group	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
As a Migrant	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
As a Refugee	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Specifically, in the country you are based, how would you rate your representation within in the digital cultural content provided by national broadcasters/famous authors, etc.? *Please, fill in only the options that apply to you.*

	Unrepresented	Slightly represented	Moderately represented	Well represented
As a person with Disabilities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
As an Indigenous person	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
As a person belonging to an Ethnic Minority Group	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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As a person belonging to a Linguistic Minority Group	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
As a person belonging to a Religious Minority Group	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
As a Migrant	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
As a Refugee	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



Page 6: Accessibility

Accessibility is the quality of a device, service or product that makes it possible to approach, enter, or use it.

Generally speaking, when you access a digital cultural content platform/app/website, do you find the content:

- Fully accessible
- Partially accessible
- Mostly inaccessible
- Inaccessible

Could you specify what the main barriers to access are: *(Tick all relevant options)*

- LANGUAGE, for example, content in my first language is not available
- VISUAL, for example, at the CAPTCHA there are no alternatives to the text to identify and describe the purpose of the non-text provided; Fonts (unable to maximise size); There is no description of the images; Colour (unable to change it); Not enough contrast between text and its background; use of colour as the only means of conveying information
- HEARING, for example, there is no audio description; No captions/subtitles available; sign-language interpreter unavailable
- COSTS, for example, to access you must pay
- OTHER

If you selected Other, please specify:

When accessing digital cultural content and facing these barriers, how often do you use the following tools to deal with them?

	Never	Rarely	Sometimes	Often	Always
Translation software (such as Google Translate)	<input type="checkbox"/>				
Help from a friend/family member/colleague	<input type="checkbox"/>				
Website/app complaint mechanisms regarding the accessibility	<input type="checkbox"/>				
Software (with a paid subscription) that makes the platform accessible for me	<input type="checkbox"/>				
*Other	<input type="checkbox"/>				

*If you selected Other, please specify:

If you consider yourself as:

- A person with Disabilities

An Indigenous person

A person belonging to an Ethnic Minority Group

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- A person belonging to a Linguistic Minority Group
- A person belonging to a Religious Minority Group
- A Migrant
- A Refugee

As a person with Disabilities, do you feel that you are disadvantaged compared to persons without disabilities when accessing digital cultural content online?

- Yes
- No
- I do not know

Please, specify

- Always
- Sometimes
- Rarely

As an Indigenous person, do you feel that you are disadvantaged compared to persons that are not Indigenous when accessing digital cultural content online?

- Yes
- No
- I do not know

Please, specify

- Always
- Sometimes
- Rarely



As a person belonging to an Ethnic Minority Group, do you feel that you are disadvantaged compared to persons that not belong to a Minority Ethnic Group when accessing digital cultural content online?

- Yes
- No
- I do not know

Please, specify

- Always
- Sometimes
- Rarely

As a person belonging to a Linguistic Minority Group, do you feel that you are disadvantaged compared to persons who belong to the linguistic majority when accessing digital cultural content online?

- Yes
- No
- I do not know

Please, specify

- Always
- Sometimes
- Rarely

As a person belonging to a Religious Minority Group, do you feel that you are disadvantaged compared to persons that do not belong to a Religious Minority Group when accessing digital cultural content online?

- Yes

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- No
- I do not know

Please, specify

- Always
- Sometimes
- Rarely

As a Migrant, do you feel that you are disadvantaged compared to persons that are non-Migrants when accessing digital cultural content online?

- Yes
- No
- I do not know

Please, specify

- Always
- Sometimes
- Rarely

As a Refugee, do you feel that you are disadvantaged compared to persons that are not Refugees when accessing digital cultural content online?

- Yes
- No
- I do not know

Please, specify

- Always

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- Sometimes
- Rarely



Page 7: Perception of copyright laws

How familiar are you with copyright law/creators' rights?

- Unfamiliar
- Moderately familiar
- Very familiar

Where do you mostly get information about copyright/creators' rights from?

- Internet
- Newspapers/media
- Textbooks/specific training
- Other

If you selected Other, please specify:

Would you like to know more about copyright/creators' rights?

- Yes
- No

Which medium do you use to get a copy of a book/magazine/ebook/film or any other literary or artistic work? *(Tick all relevant options)*

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- Download from a catalogue/electronic library
- Buy (monthly or annually subscription/individual purchase)
- Digitise*
- My organisation provide me with accessible copies
- Streaming platform
- I do not access to literary or artistic works
- Other

If you selected Other, please specify:

**To digitise something means to convert (pictures, text or sound) into a digital form that can be processed by a computer or an electronic device. For example, scanning a photograph and having a digital copy on a computer.*

When you digitise a literary or artistic work, do you experience barriers?

- Yes
- No
- I do not digitise

According to your own experience, what are the main barriers to digitise? *(Tick all relevant options)*

- Lack of knowledge about intellectual property/copyright/creators' rights
- Lack of awareness about open policies (including Open Access*)
- Lack of technologies to make the digitisation accessible to me
- Budget constraints

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Other

If you selected Other, please specify:

**Open access (OA) refers to free, unrestricted online access to research outputs such as journal articles and books. OA content is open to all, with no access fees.*

Do you have concerns about the legality of making copies, reused and/or share an artistic or literary work?

- Yes
- No
- I do not know

How familiar are you on policies that promote Open Access for cultural resources?

- Unfamiliar
- Moderately familiar
- Very familiar



Page 8: Thank you for your participation. We appreciate your time

Please share any feedback you wish to make about the accessibility or the content of this survey with us at laura.serra@mu.ie

If during your participation in this study you feel the information and guidelines that you were given have been neglected or disregarded in any way, or if you are unhappy about the process, please contact the Secretary of the Maynooth University Ethics Committee at research.ethics@mu.ie or +353 (0)1 708 6019. Please be assured that your concerns will be dealt with in a sensitive manner.

For your information, the Data Controller for this research project is Maynooth University, Maynooth, Co. Kildare. Maynooth University Data Protection officer is Ann McKeon in Humanity house, room 17, who can be contacted at ann.mckeeon@mu.ie. Maynooth University Data Privacy policies can be found at <https://www.maynoothuniversity.ie/data-protection>.

