ReCreating Europe

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

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Abbreviation list

AG	Advocate General
Art	article (legislation)
CDSM	Copyright in the Digital Single Market (Directive)
CH	Cultural heritage
CHI	Cultural heritage institution
CJEU	Court of Justice of the European Union
CMO	Collective management organization
DSM	Digital Single Market
EU	European Union
GM	Galleries and Museums
GLAM	Galleries, Libraries, Archives, Museums
InfoSoc	Information Society (Directive)
IP	Intellectual property
IPR	Intellectual property right
LA	Libraries and Archives
MS	Member State
para	paragraph
S./ss.	Section/sections (legislation)
SSSA	Sant'Anna School of Advanced Studies
UNITN	University of Trento

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Executive Summary

The present report is one of two deliverables drafted for the purposes of *Task 5.1 - European legal framework for GLAM industries: from closure to Openness* of the *reCreating Europe*'s Work Package (WP) 5, which aims at providing a map of EU and national copyright provisions that have an impact on digitisation practices by Galleries, Libraries, Archives, and Museums (GLAMs). This report focuses on Galleries and Museums (GM) and builds on the first deliverable *(D5.2 Report on the existing legal framework for Libraries and Archives (LA) industries in EU)* – dedicated to Libraries and Archives (LA) and delivered in Month 12.

The analysis specifically purports to complete the picture of copyright regulation from the perspective of the GLAM sector, as well as to further deepen the analysis adding EU and national insights to the recollection of relevant legal sources. For this reason, the report fundamentally embraces the same methodology followed by the preceding deliverable, namely a systematic legal analysis of EU and national legal sources. However, instead of looking at all EU Member States (MSs), it strategically focuses more in details on seven selected countries (Denmark, Estonia, Germany, Hungary, Ireland, Italy, The Netherlands) and one former MS (the United Kingdom) that was not considered in the former report. The targets were chosen as representative of the transposition of the CDSM and because of the interest raised by their comparison and resources for the analysis.

The present report confirms one of the findings of the former report, that is the growing relevance of sector-specific copyright exceptions and limitations at EU level, while it also emphasises the structural differences that still feature in the national implementations of EU laws and exacerbate the risk of creating legal uncertainty and impairing cross-border transactions. Overall, the analysis confirms the need for a continuing regulatory effort towards effective copyright reform tackling the needs of the GLAM sector, especially considering the opportunities related to the digital environment.

1. Methodology

1.1. Introductory Remarks

The present report is a follow-up to deliverable D5.2 dedicated to Libraries and Archives (LA), and it provides a tailored cross-national legal mapping of copyright provisions relevant to Galleries and Museums (GM). Both deliverables were expected under *Task 5.1 - European legal framework for GLAM industries: from closure to Openness.*

The focus on GM entails the need for methodologically sound and practically useful definitions, criteria of source selection, and related limitations of the scope of the analysis.

A necessary premise is that the terminology to target GM across the analysed legal systems significantly varies, especially when looking at copyright provisions. The EU legislator mostly refrains from providing clear-cut definitions of such entities, significantly relying on the notions of "cultural heritage institutions" (CHIs)[1] and "public institutions"[2].

[1] See, among others, Art.2.3 of the Directive EU 2019/790 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC, [2019] OJ L130 (hereinafter CDSM) defining CHI as "a publicly accessible library or museum, an archive or a film or audio heritage institution".
[2] See Recital 34 of the Directive 2001/29/EC on the harmonization of certain aspects of copyright and related rights in the information society, [2001] OJ L167 (hereinafter InfoSoc Directive) referring to "public institutions such as libraries and archives".

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At national level, the term "archive" appears to be used as an encompassing notion referring to different types of cultural establishments, including GM. An example comes from Irish law, which refers to museums as archives, and to curators as archivists[3].

As far as the distinction between galleries and museums is concerned, the term "gallery" is only rarely mentioned in the national legislations and often comprised in the notion of museum, as explicitly mentioned in the UK[4]. When a more accurate distinction between cultural entities is offered, this does not generally include art galleries, e.g., in Germany, under which "cultural institution" expressly include museums (*Museen*)[5]. However, galleries can be mentioned when addressing the resale right, as exemplified for instance by Austria[6], Denmark[7], Estonia[8], and Italy[9].

It shall be noted that, absent a distinction between cultural establishments within national copyright law, more accurate definitions and more detailed provisions may be found in the legislation on cultural heritage[10]. In this sense, the clearest example is provided by Denmark, where a specific reference to art gallery is found under the Danish Consolidated Act on Museums, by mentioning that "art galleries shall illuminate the history and current expression of visual arts and their aesthetic and cognitive dimensions"[11] and referring to the National Gallery of Denmark as the main responsible for such endeavour, providing a basis for research and for the general educational activities with its collections[12].

As a result, there is considerable uncertainty surrounding the definition of GM as cultural entities accessible to the public, including their qualification as public entities, and the legal determination of their non- or rather for-profit nature of their activities.

Considering the access to the public, a few examples show that the MS analysed address these characteristics in a diverse fashion. For instance, Estonia distinguishes public museums from libraries and archives when regulating free use of works by public archives, museums, or libraries[13]. Similarly, Italian copyright law lingers on the openly accessible nature of institutions establishing rules on reprography and orphan works[14]. Under

[3] S. 2 paras 3 and 4 Ireland Copyright and Related Rights Act 2000, hereinafter Irish Copyright Act, as amended by the Copyright and Other Intellectual Property Provisions Act 2019.
[4] Ss. 40A to 43A UK Copyright, Designs and Patents Act 1988, hereinafter UK CDPA.
[5] § 60e *Gesetz über Urheberrecht und verwandte Schutz- rechte,* Urheberrechtsgesetz 1965, hereinafter German UrhG, as amended by Gesetz zur Anpassung des Urheberrechts an die Erfordernisse des digitalen Binnenmarktes of the 31st of May of 2021, published in the German Federal Law Gazzette, Bundesgesetzblatt Teil I, n. 27, of the 4th of June 2021.
[6] § 16b *Bundesgesetz über das Urheberrecht an Werken der Literatur und der Kunst und über verwandte Schutzrechte, Urheberrechtsgesetz*, n. 111/1936, hereinafter Austrian UrhG.
[7] S. 38 Bekendtgørelse af lov om ophavsret, LBK nr 1144 af of the 23rd of October 2014, hereinafter Danish Copyright Act.
[8] § 15 Autoriõiguse seadus, Vastu võetud 11.11.1992 RT I 1992, 49, 615, hereinafter the Estonian Copyright Act.
[9] Art. 144 *Legge a protezione del diritto d'autore e di altri diritti connessi al suo esercizio* n. 633/1941, hereinafter Italian Copyright Act.
[10] Art. 10.2 *Codice dei beni culturali e del paesaggio*, d.l. n. 42/2004, hereinafter Italian Code of Cultural Heritage and Landscape, on the definition of cultural goods. Cf. Irish National Archives Act of 1986, and Irish National Cultural Institutions Act of 1997; UK Public Libraries and Museums Act of 1964, and UK Museums and Galleries Act 1992; Section 1.1 para 3 of the Dutch Heritage Act; for Hungary, 2001. évi LXIV. törvény a kulturális örökség védelméről, hereinafter the Hungarian Act on the protection of cultural heritage, and 2006. évi XXXVIII. törvény a szellemi kulturális örökség megőrzéséről szóló, Párizsban, 2003. év október hó 17. napján elfogadott UNESCO Egyezmény kihirdetéséről, hereinafter the Hungarian Act on the protection of intangible cultural heritage; for Estonia, Muinsuskaitseseadus Vastu võetud of the 20th of February 2019, hereinafter the Estonian Heritage Conservation Act.
[11] Part 3 (s. 6.1) Consolidated Act on Museums, n. 473 of the 7th of June 2001, as further amended by Executive Order n. 1505 of the 14th of December 2006.
[12] S. 7 (1-4) Danish Museum Act.
[13] Cf. § 20 Estonian Copyright Act.
[14] Art. 68.2 and Art. 69-bis.1 Italian Copyright Act.

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Austrian copyright law, instead, the term “museum” does not appear, in favour of a general reference is to institutions open to the public[15].

In this regard, the present analysis on terminology shall capture the interplay with the recently introduced definition of "cultural heritage institution" in art. 2 para 3 of the CDSM, as it highlights their public accessibility where it defines CHI as "a publicly accessible library or museum, an archive or a film or audio heritage institution". Such a definition was embraced by the Dutch legislator, defining the notion of “cultural heritage institution” as encompassing all the above-mentioned institutions and specifies that libraries and museums shall be accessible to the public[16]. Museums may fall within the notion of “institutions operating in the public interest”: indeed, this notion is specified under Dutch secondary law, which clarifies that, alongside libraries and educational institutions, the institutions operating in the public interest are the ones whose expenditures are covered either entirely or mainly by public funds[17]. Also, Hungarian Law, as recently amended, specifies that the notion of cultural heritage institution (*kulturális örökségvédelmi intézmény*) encompasses a publicly accessible library, museum or archive, including archives of pictures and sound recordings[18].

Moving to the commercial nature of GM activities, this generally remain unclear in the legislative texts. However, as visible in the following analysis, several provisions on exceptions and limitations address GM when they do not seek either direct or indirect commercial advantage. This is because the provisions often mirror related EU norms: it is the case for provisions on orphan works, under art. 6.2 of the Orphan Works Directive[19], or under art. 5.2 letter c) of the InfoSoc Directive[20].

However, the described national norms also address the commercial purposes covering other relevant use-cases for GM. For example, Danish law distinguishes museums from libraries and archives (*Arkiver, biblioteker og museer*), where it indicates them as beneficiaries of tailored derogatory provisions, specifying that museums that can benefit from such derogation are “State-run museums and museums that have been approved in accordance with the Museums Act”[21]. Considering UK, the definition of for profit in relation to a library, archive, or museum, means it is conducted for profit, forms part of, or is administered by, a body

[15] E.g., § 42.7 and § 56e.1 Austrian UrhG.

[16] Art. 25a.4 of the Dutch Copyright Act of the 23rd of September 1912 (*Auteurswet*), hereinafter Dutch Copyright Law, as amended by Wet van 16 december 2020 tot wijziging van de Auteurswet, de Wet op de naburige rechten, de Databankenwet en de Wet toezicht en geschillenbeslechting collectieve beheersorganisaties auteurs- en naburige rechten in verband met de implementatie van Richtlijn (EU) 2019/790 van het Europees parlement en de Raad van 17 april 2019 inzake auteursrechten en naburige rechten in de digitale eengemaakte markt en tot wijziging van de Richtlijnen 96/9/EG en 2001/29/EG (Implementatiewet richtlijn auteursrecht in de digitale eengemaakte markt), published in the Official Gazette of the Kingdom of the Netherlands, Staatsblad van het Koninkrijk der Nederlanden, n. 558/2020, on the 29th of December 2020.

[17] Art. 16h Dutch Copyright Act.

[18] S. 33/A of 1999, évi LXXVI. törvény a szerzői jogról 35. § (7) bekezdés, hereinafter Hungarian Copyright Act, as amended by 2021. évi XXXVII. törvény; a szerzői jogról szóló 1999. évi LXXVI. törvény és a szerzői jogok és a szerzői joghoz kapcsolódó jogok közös kezeléséről szóló 2016. évi XCIII. törvény jogharmonizációs célú módosításáról, available in the Hungarian Official Gazette n.81 of 2021, Magyar Közlöny 2021. évi 81. szám, published on the 6th of May 2021.

[19] Directive 2012/28/EU on certain permitted uses of orphan works [2012] OJ L299, hereinafter Orphan Works Directive. This Directive targets libraries, educational establishments, museums accessible to the public, and archives, institutes for the film and audio heritage and public service broadcasters as relevant bodies, who can act for the digitalization, indicization, cataloguing, preservation, or restoration, and making available to the public (at a time and place individually chosen by them), when the purpose is related to their public mission. Art. 6.2 establishes that the organisations shall use the orphan work only to achieve aims related to their public-interest missions, in particular the preservation of the restoration of, and the provision of cultural and educational access to, works and phonograms contained in their collection. In addition, the provision also targets revenues, when it states that the organisations may generate revenues during such uses, for the exclusive purpose of covering their costs of digitising orphan works and making them available to the public.

[20] Art. 5.2 letter c) of the InfoSoc Directive regards specific acts of reproduction by publicly accessible libraries, educational establishments, or museums, or by archives, which are not for direct or indirect economic or commercial advantage.

[21] S. 18 Danish Copyright Act.

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established or conducted for profit[22]. Hungarian law refers to museums as one of the beneficiaries of the provision that allows to make copies of copyright works if these do not serve, either directly or indirectly, the purpose of earning or increasing one's income and for the purposes indicated by the law, e.g., for scientific research or archiving[23]. Also, German copyright law, as recently reformed, distinguishes between museums which neither directly nor indirectly serve commercial purposes and museums which pursue commercial purposes as regards the exceptions for preservation[24]. An additional example comes for the Italian provisions on reprography, where the absence of any direct or indirect commercial gain is coupled with the openly access nature of the organizations abovementioned[25].

Finally, the national copyright provisions examined in the present analysis on GM, lie in the overlap with the national legislation on cultural heritage. This is true with regards to the definition of cultural establishments and for the definition of the cultural goods they may preserve, make available, and use[26]. While cultural heritage laws refer to intellectual property rights (IPRs) only in exceptional cases[27], otherwise dedicating specific provisions to intangible cultural property[28], they generally insist on the powers of the relevant authorities to regulate cultural goods and, in particular, their preservation, display and reproduction, including charges[29].

[22] S. 43A UK CDPA.

[23] S. 35.4 Hungarian Copyright Act.

[24] § 60f.3 German UrhG, which extends the exception for preservation to archives, film, or audio heritage institutions and museums open to the public which pursue commercial purposes.

[25] Art. 68.2 Italian Copyright Act.

[26] E.g., Artt. 10 and 11 Italian Code of Cultural Heritage and Landscape; S. 2 "Interpretation" Irish National Cultural Institutions Act of 1997 and S. 2 "Archives and Departmental record" of Irish National Archives Act of 1986, S. 2 "Articles to which this Act applies" of the Irish Documents and Pictures (Regulation of Export) Act of 1945.; S. 8 para 7 "Restriction on charges for library facilities" UK Public Libraries and Museums Act of 1964.

[27] E.g., UK National Heritage Act 1983, S. 33B dedicated to the "Powers to exploit intangible assets", as inserted in 2002. Another example is Art. 22 Dutch Public Library System Act, Act of the 19th of November 2014 establishing an updated system of public library facilities (Public Library Facilities System Act) (*Wet stelsel openbare bibliotheekvoorzieningen)*, where it establishes that the Royal Library (*Koninklijke Bibliotheek*) makes efforts to acquire ownership or a transferable right of use of the intellectual property rights involved and that at the request of the Minister, the Royal Library shall cooperate in the conclusion of agreements to transfer the relevant intellectual property rights to the State.

[28] E.g., § 5 (1) of the Estonian Heritage Conservation Act describes intangible cultural heritage as "the practices, representations, expressions, knowledge, skills transmitted from generation to generation – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognise as part of their cultural heritage and recreate constantly". Cf. Hungarian Acts on the protection of cultural heritage (2001) and of intangible cultural heritage (2006).

[29] E.g., Artt. 107 and 108 Italian Code of Cultural Heritage and Landscape; S. 11 "Functions of the Museum board" and S. 12 "Functions of Board of Library" of Ireland's National Cultural Institutions Act of 1997; S. 17 "Copyright and reproduction of archives" and S. 4 "Functions of Director of National Archives" of Ireland's National Archives Act of 1986; S. 5 "Making and user of photographic copies of articles to which this Act applies" of the Documents and Pictures (Regulation of Export) Act of 1945. S. 8 "Restriction on charges for library facilities" of UK's Public Libraries and Museums Act of 1964 and S. 2 "The general functions of the new Boards" of UK's Museums and Galleries Act of 1992. For Germany, see, among others, §§ 4 and 15 of the German Act on the Protection of Cultural Goods of the 6th of August 2016 (*Kulturgutschutzgesetz*); for Austria, the main reference is to the Monument Protection Act, Law n. 533/1923 (*Bundesgesetz betreffend den Schutz von Denkmalen wegen ihrer geschichtlichen, künstlerischen oder sonstigen kulturellen Bedeutung - Denkmalschutzgesetz - DMSG*).

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1.2. Selection of Sources and Methodological Approach

Aiming to further expand the analysis reported in the previous deliverable D5.2, this legal mapping follows a consistent methodology, combining desk research and empirical (both quantitative and qualitative) analysis. It relies both on the questionnaires sent to the recruited national experts for D5.2, and to a process of update and expansion of the collected data by way of one-to-one semi-structured interviews conducted with different representatives of CHIs for the purpose of other tasks of WP5.

The collection and analysis of data has been structured around the following macro-categories of legal provisions, which were deemed fit to describe the approach of GM towards copyright regulation and, in particular, towards copyright exceptions and limitations:

1. Preservation of cultural heritage and orphan works
2. Out-of-commerce works
3. Education, teaching and research
4. Text and data mining
5. Freedom of panorama
6. Reproduction of works in the public domain
7. Public speech and reporting of news
8. Quotation, criticism, review and parody, caricature, and pastiche
9. Other provisions

The present analysis does not specifically cover GMs' re-use of public sector information, which is regulated by recent EU legislation. The majority of MSs considered in the analysis are in the process of implementing the Directive 2019/1024/EU (to be finalized by the 17th of July 2021), but GMs already play a relevant role according to the current legislative framework, built on Directive 2003/98/EC on the re-use of public sector information, as reformed by Directive 2013/37/EU. For instance, according to the Dutch legislation a museum is defined "as a body entrusted with the public task of displaying cultural objects to the general public" and libraries and museums can charge an amount for re-use which does not exceed their costs and a reasonable return on investment. It is also specified that exclusive rights of re-use shall be granted only where necessary for the provision of a service in the public interest and when such a service is not related to the digitisation of collections held in museums or libraries. The grant of exclusive rights shall be reviewed every three years. By contrast, when the digitisation of collections is concerned, the Act establishes that exclusive rights shall not last more than ten years[30]. Another example comes from Austria, where the general principle is that documents in which libraries, including university libraries, museums and archives hold intellectual property rights may be re-used for commercial and non-commercial purposes if they are made available for re-use[31].

Such efforts can be framed next to the broader commitment of MSs towards digitalization of cultural heritage and the enhancement of digital fruition of cultural heritage, also prompted by the recent pandemic of Covid-SARS-19. Details of such initiatives (e.g., setting of goals, identification of tools, support indications) are not enshrined in the law, but rather mostly embodied in non-binding instruments - e.g., guidelines and statements, both from the related Ministers of Governments, groups of interest and associations, including cultural establishments. Although the present analysis does not attempt to cover these initiatives, they seem to fundamentally overlap with the copyright legal framework, i.e., exceptions and limitations, hence they represent one important area for future research.

[30] Cf. Art. 1 letter e) and Art. 9 of the Dutch Act on re-use of public sector information of the 24th of June 2015 (*Wet hergebruik overheidsinformatie - WHO*).
[31] Cf. § 2a Austrian Federal Law on the re-use of public sector information, Law n. 135/2005 (*Informationsweiterverwendungsgesetz*), as amended by Law n. 76/2015.

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2. Legal mapping

2.1. Preservation of cultural heritage and orphan works

The legal mapping starts with the close analysis of copyright exceptions and limitations dedicated to the preservation of cultural heritage, exploring the links between existing national norms, norms on orphan works and on out-of-commerce works, before and after the implementation of the CDSM.

At the time of writing, only a few MSs have implemented the new mandatory exception on cultural heritage preservation introduced by Art. 6 of the CDSM. The norm establishes that the MSs shall provide for an exception to the exclusive rights stemming from copyright protection as well as database, computer programs and press content sui generis protection, that would allow cultural heritage institutions to make copies of any works or other subject matter that are permanently in their collections, and in any format or medium. This shall be for purposes of preservation of such works or other subject matter and to the extent necessary for such preservation. Art. 6 CDSM specifically addresses CHIs as defined in art. 2, para 3, comprising libraries, museums, archives or film/audio heritage institutions and centring on the publicly accessibility and the works which are permanently in their collections.

In the Netherlands the existing exception to the right of reproduction dedicated to the cultural heritage institutions aiming to preserve a literary, scientific, or artistic work which is a permanent part of their collection was modified to transpose the CDSM[32]. A similar provision was introduced regarding works protected under the Dutch Neighbouring Rights Act[33] and the extractions from databases operated by cultural heritage institutions with a view to preserving the database within their permanent collections[34]. Similarly, also in Germany an existing provision was modified: under German copyright law, libraries, archives, institutions for film and audio heritage, as well as publicly accessible museums and educational establishments, can reproduce a work from their holdings or, relevantly, exhibitions, or have such a work reproduced, for the purpose of making available, indexing, cataloguing, preservation and restoration, including more than once and with technically required alterations, distribute reproductions for restoration purposes or lend restored works. While this rule used to apply to institutions which neither directly nor indirectly serve commercial purpose, the recently proposed norms allow the same institutions to reproduce works for the purpose of preserving them, even when they pursue commercial purposes[35].

The German example sheds light on the fact that, as noted in the former report focusing on LA, despite the ongoing implementation of the CDSM, several national provisions addressing the preservation of cultural heritage have preceded it. Such provisions include, for instance, those introduced to implement art. 5.2 letter c) of the InfoSoc Directive which permits specific acts of reproduction by CHIs, and namely publicly accessible libraries, educational establishments, or museums, or by archives, which are not for direct or indirect economic or commercial advantage. Nonetheless, they also address different cultural establishments, whether pursuing commercial purposes or not, regarding works or other subject matter that are permanently or even temporarily in their collections, and occasionally certain specific categories of works and different formats or media.

[32] Art. 16n Dutch Copyright Act.

[33] Art. 10f Dutch Neighbouring Rights Act, Act containing rules for the protection of performing artists, producers of phonograms or of first fixations of films and broadcasting organizations, and amending the 1912 Dutch Copyright Act, of the 18th of March 1993 (*Wet op de naburige rechten*).

[34] Art. 4a Dutch Database Act, Act relating to the adaptation of the Dutch legislation to Directive 96/9/EC of the European Parliament and the Council of the 11th of March 1996 on the legal protection of databases of the 8th of July 1999 (*Databankenwet*).

[35] § 60 e) and f) German UrhG.

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For instance, in Austria, the copyright exception for private use permits establishments which are open to the public and collect works to produce copies thereof for the inclusion in their own archives, when they do not pursue any direct or indirect commercial purpose[36]. With regards to Ireland, since 2019, a set of detailed provisions has been dedicated to libraries and archives[37], and a few of them aim at preservation. These include, inter alia, the possibility for a librarian or archivist to make a copy of a work in the permanent collection of the library or archive, to preserve or replace works of the permanent collection of a prescribed library or archive, or to replace in the permanent collection of another prescribed library or archive the work which was lost, destroyed, or damaged[38]. The copying of a work in the permanent collection of the library or archive is also allowed for different purposes, including security[39]. In addition, format shifting is expressly mentioned, when the employed means are lawful and specifically meant for preservation or archival purposes, and where those purposes are neither directly nor indirectly commercial[40]. The UK also presents a provision addressing copies by a librarian, archivist or curator of a library, archive or museum, where they are not conducted for profit, and voted to preserve or replace an item in that collection, or for the case that an item in the permanent collection of another library, archive or museum has been lost, destroyed or damaged, in order to replace the item in the collection of that other library, archive or museum, subject to certain conditions[41]. In Denmark State-run museums and museums that have been approved in accordance with the Museums Act (amongst other beneficiary institutions) may make copies for the purpose of back-up and preservation[42]. In Estonia, under the provision dedicated to the free use of a work by a public archive, museum or library, these entities, regardless of the consent of the author and with no duty of compensation, have the right to reproduce a work in their collection to, among other purposes, replace a lost, destroyed or rendered unusable work[43], make a copy to ensure the preservation of the work[44]. The mentioned entities are also allowed to digitise a collection for the purpose of preservation[45]. These free uses are subject to a few conditions, including the absence of commercial purposes[46]. In Hungary, cultural heritage institutions may also reproduce works for scientific research or archiving, amongst other purposes, when this does not serve the purpose of indirectly obtaining or increasing income, in any way or form[47].

Other national provisions on the preservation of cultural heritage relate to orphan works and stemmed from the implementation of mandatory exceptions in the Orphan Works Directive and especially Art. 6.2[48]. As noted in the former report on LA, this area represents an example of full harmonization, and no divergent trend is registered within the analysed countries. For instance, under the Dutch Copyright Act, the norm regards not only libraries and archives but also museums accessible to the public and film or audiovisual heritage institutions; these do not infringe copyright if they reproduce or make available orphan works with a view to preserving, restoring or providing access to works. Relevantly, this norm applies only to certain categories of works: books, brochures, newspapers, periodicals and other writings; musical works with or

[36] § 42.7 Austrian UrhG. Cf. § 42.8 requiring the consent of the author in some cases.
[37] Ss. 59-70 Irish Copyright Act.
[38] S. 65 Irish Copyright Act.
[39] S. 66 *ibidem*.
[40] S. 68A *ibidem*.
[41] S. 42 UK CDPA.
[42] S. 16.2 mentioning "safety and protection purposes" (*sikkerheds- og beskyttelsesøjemed*) of the Danish Copyright Act.
[43] § 20 (1)1 Estonian Copyright Act.
[44] § 20 (1) 2 *ibidem*.
[45] § 20 (1) 4 *ibidem*.
[46] § 20 (5) *ibidem*.
[47] Art. 35.4 Hungarian Copyright Act.
[48] Cf. note n. 22.

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without words; cinematographic works[49]. It seems worth adding that specific provisions are dedicated to works of folklore, where they qualify as orphan works, e.g., in Ireland and the UK[50]. In Denmark, purposes of preservation (as well as indexing, cataloguing or restoration) also justifies reproduction of orphan works[51]. In Estonia, museums falling within the category of public memory institutions are permitted to use a work or phonogram belonging to their collection which has been designated as an orphan work (*orbteos*) and transmitted to the database of orphan works, by (among other permitted acts) reproducing for digitisation, making available to the public, indexing, cataloguing, preservation, or restoration. The law also allows such institutions to, in the course of permitted free use, generate income only for the purpose of covering the digitisation and making available to the public of an orphan work[52].

To conclude, a few national provisions are aimed at the preservation of ephemeral recording, videograms and phonograms for archiving purposes, e.g., in Italy[53], the UK[54], and Ireland[55]. In Hungary, for instance, the law exceptionally allows not to destroy or erase temporary recordings made by radio or television organizations of works that, according to the conditions specified in other legislation, have extraordinary documentary value and for that may be kept in public archives of pictures and sound recordings for any length of time[56].

2.2. Out-of-commerce works

Out-of-commerce works can be considered part of the broader landscape described in the previous paragraph that aims at the preservation of cultural heritage. Out-of commerce works are addressed by Art. 8 of the CDSM. While art. 8.1 regards licensing agreements of cultural heritage institutions with collective management organizations (CMOs), art. 8.2 establishes that absent a collective management organisation that fulfils the established condition of art. 8.1, MS shall provide for an exception or limitation to allow cultural heritage institutions to make available out-of-commerce works or other subject matter when they are permanently in their collections, for non-commercial purposes. This is given that the name of the author or any other identifiable rightsholder is indicated (unless this turns out to be impossible) and that the materials are made available on non-commercial websites.

As of the time of this writing, the exception remains largely unimplemented across the MSs analysed, despite early proposals have been presented, e.g., in Italy[57] and Ireland[58].

[49] Art. 16o Dutch Copyright Act. A specific exception dedicated to orphan works is provided under the Neighbouring Rights Act; see Art. 10(l) Dutch Neighbouring Rights Act.
[50] S. 61 UK CDPA; S. 197 Irish Copyright Act.
[51] S. 75l (ii) Danish Copyright Act.
[52] § 27.6 Estonian Copyright Act.
[53] Art. 60.2 Italian Copyright Act, addressing the reproduction of phonograms, and videograms without any direct or indirect economic advantage by libraries, discotheques and film libraries of State and public entities. See also ibid Art. 55.2 on registrations of documentary character.
[54] Ss. 61 and 75 UK CDPA.
[55] S. 105 addressing the fixation of a broadcast or a cable programme Irish Copyright Act.
[56] S. 35.7 Hungarian Copyright Act.
[57] Cf. Art. 9 letter d), e) and f) of the European Delegation Law 2019-2020 (*Legge di delegazione europea 2019-2020*), now Law of the 22nd of April 2021, n. 53, hereinafter Italian European Delegation Law 2019-2020, acknowledging the need for a comprehensive reform addressing orphan and out-of-commerce works both.
[58] Cf. Department of Business, Enterprise and Innovation, Consultation on the transposition of Directive (EU) 2019/790 of the European Parliament and of the Council on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC, Articles 8 – 12, Consultation Paper n. 3, available at:

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There are a few examples of transposition: for instance, Dutch copyright law refers to cultural heritage institutions which make available literary, scientific, or artistic out-of-commerce works[59]. The most recent example on the use of non-commercial works is provided by Hungarian law, under which cultural heritage conservation institutions may reproduce and distribute non-commercial works from their collections, subject to specific conditions (e.g., upon agreement with collective management associations and unless the rightsholders make objections)[60]. Similarly, in Germany, the Collecting Societies Act[61] regulating the granting of rights on out-of-commerce works (*Vergriffene Werke*)[62] has been modified to provide for extended effects of collective licences for unavailable works (*nicht verfügbare Werke*)[63] when the CMO concludes a contract with a domestic cultural institution. This norm also applies to related rights[64]. In addition, under the revision of the German Copyright Act, cultural heritage institutions are allowed to reproduce (or cause to be reproduced) unavailable works from their holdings, or have them reproduced and made available to the public, whereas there is no CMO administering their respective rights, given that the use of such works does not serve commercial purposes; in case of their making available to the public on the internet, the site must be non-commercial[65].

The legal mapping of relevant provisions under the pre-CDSM legal framework reveals an inhomogeneous horizon. German copyright law addresses the full use of out-of-commerce works for teaching[66] and scientific research[67]. In addition, libraries, educational institutions, archives, institutions active in the field of film and audio heritage and museums may enable users to reproduce them[68] and copies of out-of-commerce works can be lawfully lent[69]. Under Austrian copyright law, out-of-print works can be reproduced, and the copies can be exhibited or lent by institutions open to the public which collect works, to be archived[70]. In Denmark a specific provision on out-of-commerce works is absent, except for the provision that allows institutions, such as State-run museums and museums that have been approved in accordance with the Museums Act, in case the institution's collection is incomplete, to make copies of the missing parts. This is unless the work can be acquired through general trade, or from the publisher[71].

https://enterprise.gov.ie/en/Consultations/Consultations-files/Consultation-on-the-transposition-of-the-Copyright-Directive-EU-2019-790-Articles-8–12.pdf.

[59] Cf. Art. 18c Dutch Copyright Act; this exception applies where there is a lack of the conditions for the application of a mechanism of extended non-exclusive licensing of out-of-commerce works to cultural heritage institutions (cf. Art. 44 Dutch Copyright Act). No specific requirements or cut-off dates are established to better define whether the exception or the extended collective licence mechanism applies. Moreover, extended collective licensing does not apply to collections of works in some specific cases, precisely where the relevant collections are mainly composed of works which have links to third party states. Similar exceptions dedicated to out-of-commerce works are provided also in Art. 4a(e) of the Database Act and in Art.10r of the Neighbouring Rights Act.

[60] S. 41 / M. §(1) of the Hungarian Copyright Act.

[61] German Collecting Societies Act of the 24th of May 2016 (*Gesetz über die Wahrnehmung von Urheberrechten und verwandten Schutzrechten durch Verwertungsgesellschaften - Verwertungsgesellschaftengesetz - VGG)*.

[62] § 51 and § 52, German Collecting Societies Act.

[63] § 52a, *ibidem*.

[64] § 52e, *ibidem*. The apparent change of terminology seems also relevant: unavailable works seem to include works not offered to the public in an integral version, by any customary means of distribution; cf. § 52b German Collecting Societies Act.

[65] § 61d German UhrG.

[66] § 60a.2 *ibidem*.

[67] § 60c.3 *ibidem*.

[68] §§ 60e and 60f *ibidem*.

[69] § 53.6 *ibidem*.

[70] §§ 42.7 and 42.8 Austrian UrhG.

[71] S. 16.3 Danish Copyright Act.

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2.3. Education, teaching and research

Legal provisions on copyright exceptions and limitations for education, teaching and research purposes are relevant for GM in a variety of cases, since the materials they preserve represent critical resources not only from a cultural heritage perspective, but also for the flourishment of society in terms of personal development and school training, education, personal study, scientific and academic research. As a result, GM can be confronted with the circumstance that their materials (e.g., digitalized collections) are subject to exceptions of copyrights in relation to education, teaching and research purposes, including when the GM themselves engage in the creation of educational content and teaching material as part of their activities.

Norms dedicated to the purpose of education and the one of teaching, including the activities taking place in an online environment, seem difficult to be distinguished, due to the fragmentation across MSs; also, in several cases, such exceptions cover research.

An overlap of education, teaching and research purposes is reflected in the EU copyright legal framework. Art. 5.3 letter a) of the InfoSoc Directive broadly refers to illustration for teaching and scientific research. More precisely, it establishes an exception to the rights of reproduction and communication to the public in case of use for the sole purpose of illustration for teaching or scientific research. This is subject to two conditions: the source, including the author's name, shall be indicated, unless this turns out to be impossible; also, the use shall be permitted to the extent justified by the non-commercial purpose to be achieved.

The exception is retraced in differently structured national provisions on the use of extracts of works or individual passages, quotation, often for purposes related to education, next to teaching and research.

Italy broadly refers to the quotation or reproduction of fragments or parts of a work and their communication to the public for the purpose of criticism or discussion; if they are made for teaching or research, the use must have the sole purpose of illustration, and non-commercial purposes[72].

The Netherlands differentiates quotation from illustration for instruction, but, similarly to Italy, covers only uses of parts of the protected works, including compilations. In a few cases where the use of the whole work is permitted, for non-commercial purposes, this is subject to further restricting conditions, including fair compensation to the right holders[73].

Germany provides for separate provisions for the use of illustration in educational establishments[74] and scientific research[75], also isolating some possibilities for the full use of the work[76], as limited for a non-commercial basis.

The UK, which differentiates quotation from illustration for instruction, establishes that fair dealing with a work for the sole purpose of illustration for instruction does not infringe copyright if the purpose is non-commercial, and pursued by a person giving or receiving instruction (or preparing for giving or receiving

[72] Art. 70.1 Italian Copyright Act.
[73] Art. 16 Dutch Copyright Act.
[74] § 60a German UrhG, where it affirms that it is possible for teachers, examiners to reproduce, distribute, make available to the public, or otherwise communicate to the public on a non-commercial basis up to 15 per cent of a published work.
[75] § 60c *ibidem*, where it affirms that different percentages of lawful reproduction, distribution and making available of a work are determined. If the use is for non-commercial purposes and the public is a specifically limited circle of persons for their personal scientific research or it is an individual third persons insofar as this serves the monitoring of the quality of scientific research, the limit is 15 per cent. If the work is reproduced for personal scientific research, it is lawful up to 75 per cent of the work instead. There are cases of full use for illustrations, isolated articles from the same professional or scientific journal, other small-scale works and out-of-commerce works. However, the provision excludes the recording of video and audio.
[76] Consider the full use is possible for illustrations, isolated articles from the same professional or scientific journal, other small-scale works and out-of-commerce works.

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instruction); furthermore, the exception cannot be overruled by contract[77]. In Ireland, illustration for education refers to the copy or communication, and covers the making (or causing to be made) of a copy or communication of a work, for the sole purpose of illustration for education, teaching or scientific research or of preparation for education, plus different acts of the educational establishment to display the work, when the purposes are non-commercial, and in the limit of 5 per cent per calendar year[78].

In Austria, the exception for quotation is structured differently, as to cover the reproduction, distribution, broadcasting, making available to the public and the use for public lectures, performances and presentations of published works, with no general reference to commercial purposes, and the identification of specific cases, including, inter alia, works of fine art publicly performed in a scientific or instructive lecture, which is the main subject matter, merely to explain the content, and the necessary copies are made[79].

In Hungary the permission to quote copyright works also applies to parts of literary or musical works, and films that have been made public or small independent works of such nature, as well as pictures of works of fine art, architectural works, works of applied art and designs, and photographic works. These can all be used for illustration for teaching in educational institutions and for the purpose of scientific research, but the use must be non-commercial, and attribution of authorship acknowledged[80].

In Estonia, the related provision is broadly dedicated to the free use of works for (among other uses) scientific and educational purposes. This allows, without payment of royalties but acknowledging attribution, to quote and reference a lawfully published work in a motivated capacity, subject to the obligation to correctly convey the meaning of the work to be referenced or quoted as a whole. The norm allows for the use of such work as illustrative material in a motivated volume and the reproduction of the work in educational and scientific institutions[81].
Finally, In Denmark the law broadly allows, for the purpose of educational activities, the making copies of published works and also copies by recording of works broadcast in radio and television provided the requirements regarding extended collective license have been met, with the exception of cinematographic works which are part of the general cinema repertoire of feature films, except where only brief excerpts of the work are shown in the telecast, and with the exception of computer programs in digital form[82].

Other national exceptions more closely target online teaching activities. These could be of interest for GM as they may often provide materials (e.g., digitalized collections) for such purpose and to be used by educational establishments, even though the extent to whether GM could be considered as acting in the capacity of educational establishments in some circumstances remains unclear. Different MSs envision the use of copyright works to be reproduced within a closed circle of participants, also in online activities.

Austria covers the making available to the public for teaching and learning when limited to a closed circle of participants but excluding works which are intended for school or teaching use: this affirms that it is possible for schools, universities, and other educational institutions to reproduce and make available to the public published works for a specifically defined circle of class participants to illustrate teaching[83].

[77] S. 32 UK CDPA.
[78] S. 57 Irish Copyright Act.
[79] § 42f Austrian UrhG. Cf. § 42f.1 para 2.
[80] S. 34 Hungarian Copyright Act.
[81] § 19 (1-3) Estonia Copyright Act.
[82] S. 13 (1-3) Danish Copyright Act.
[83] § 42g Austrian UrhG.

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On the other hand, the UK yields the copying and use of extracts of works by educational establishments, which seems to refer to the online environment as well[84].

Similarly, in 2019, the subject matter was completely reformed in Ireland, with the introduction of dedicated provisions on online teaching, distance learning, and the use of images to be found online. As already mentioned, it is not an infringement for an educational establishment to reproduce (or cause to be reproduced) a work, or to do (or cause to be done) any other necessary act in order to display it; this is only given that the purpose is non-commercial and this is made to the extent justified by the latter to be achieved, that appropriate indications of authorships are included, and the limit of 5 in any calendar year is respected[85]. In addition, it explicitly states that an educational establishment which communicates a work as part of a lesson or examination to a student of that establishment by telecommunication, as well as the student who has received such a lesson or examination and makes a copy of the work to be able to listen to or view it at a more convenient time do not infringe copyrights[86]. Finally, a separate provision covers the conduct of the educational establishment which, for its educational purposes, makes a copy or communicate a work that is available through the Internet, when the copy or communication is accompanied by sufficient acknowledgement of the right holders[87].

Estonian law provides that, without payment of royalties but mandatory indication of attribution, it is permissible to present the work to the public in educational institutions in the exchange learning process by the teaching staff and students of those institutions and provided that the audience or audience is made up of teaching staff and students or other persons (parents, guardians, guardians, etc.) who are directly involved in the educational institution, where the work is presented publicly[88].

In Denmark, the same provision which allows for the copy of works for the purpose of educational activities also allows teachers and students to make recordings of their own performances of works if this is not done for commercial purposes, excluding any other purposes[89].

Online teaching is covered also by the exception introduced by Art. 5 of the CDSM. The norm refers to the digital use of works and other subject matter for the sole purpose of illustration for teaching, to the extent justified by the non-commercial purpose to be achieved, on condition that such use takes place under the responsibility of an educational establishment, on its premises or at other venues, or through a secure electronic environment accessible only by the educational establishment's pupils or students and teaching staff; and that it is accompanied by the indication of the source, including the author's name, unless this turns out to be impossible. Relevantly, according to Art. 5.3 CDSM, such use via secure electronic environments shall be deemed to occur solely in the MS where the educational institution is established. Fair compensation may be provided, according to art. 5.4, and MSs may derogate from this exception with regards to specific uses or types of works or other subject matter, such as material that is primarily intended for the educational market or sheet music, to the extent that suitable licences are available on the market.

[84] S. 36 UK CDPA. The reference is to par. 3, which recites: "Subsection (2) only applies to a communication received outside the premises of the establishment if that communication is made by means of a secure electronic network accessible only by the establishment's pupils and staff".
[85] S. 57 Irish Copyright Act.
[86] S. 57A *ibidem*.
[87] S. 57B *ibidem*.
[88] § 22 Estonia Copyright Act.
[89] S. 13.4 Danish Copyright Act.

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At the time of writing, the new exception remains largely unimplemented, despite ongoing discussions[90] and early proposals, e.g., in Italy[91]. No specific exception for online education is provided under Danish law, although in practice this may be covered by extended collective licensing[92]. On the contrary, the Netherlands implemented the new exception by virtue of extension of the exception for quotation[93] and the German choice seems rather similar[94]. Hungary also includes explicit reference to the non-commercial use of works for the purpose of teaching in educational institutions in case of digital use, including the communication to the public by means of electronic network[95].

In line with the fragmentation that characterizes the discipline of performances, some MSs address the use of this type of works during activities of an educational establishment separately from other works, e.g., in the UK[96] and Austria, where the norm regards public display for teaching that allows schools and universities to publicly perform works of cinematic art and related works of sound art to the extent of the justified purpose, subject to adequate remuneration[97]. Interestingly, in the Netherlands an exception for illustration for teaching was also introduced within the Neighbouring Rights Act within the context of the implementation of the CDSM, with an apparent broader scope - as not limited to the use of parts of the relevant works, and only requiring the use to be non-commercial - but lacking an explicit reference to digital uses[98].

The related exceptions on illustration for teaching or scientific research described by art. 6 and 9 of the Database Directive and regarding the use for the sole purpose of illustration for teaching or scientific research, if the source is indicated and to the extent justified by the non-commercial purpose to be achieved[99] are addressed separately in Ireland[100], Italy[101], and Germany[102]. The Dutch Database Act provides for an exception covering the use entailing a substantial part of the database where it is conducted by the lawful user for illustration in teaching or for scientific research provided that the source is acknowledged and insofar as justified by the non-commercial aim[103]. As specified by the Dutch legislator, this applies without prejudice to the application of another provision, introduced as the result of the implementation of the CDSM and covering the retrieving and re-using of a database for the non-commercial purpose of explanation for education[104].

[90] Ireland has expressively dedicated consultation to the point. Cf. Department of Business, Enterprise and Innovation, Consultation on the transposition of Directive (EU) 2019/790 of the European Parliament and of the Council on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC, Articles 2-7, Consultation Paper No. 2, available at: https://enterprise.gov.ie/en/Consultations/Consultations-files/Consultation-transposition-Copyright-Directive-EU-2019-790-Articles-2-7.pdf.
[91] Cf. Art. 9 letter c) of the Italian European Delegation Law 2019-2020.
[92] Cf. S. 13 Danish Copyright Act.
[93] Art. 16 Dutch Copyright Act.
[94] § 60a German UrhG.
[95] S. 34.3 letter b) Hungarian Copyright Act.
[96] S. 34 UK CDPA.
[97] § 56c.1 Austrian UrhG.
[98] Art. 10e Dutch Neighbouring Rights Act.
[99] Directive 96/9/EC on the legal protection of databases [1996] OJ L77.
[100] S. 330, concerning databases, and S. 53 Irish Copyright Act.
[101] Art. 64-sexies 1 letter a) Italian Copyright Act, regarding the case where the database is accessed and visualized for the sole purpose of illustration for teaching or scientific research, when the source is indicated and to the extent justified by the non-commercial purposes to be achieved.
[102] § 60b German UrhG.
[103] Art. 5.1 letter b) Dutch Database Act.
[104] Art. 4a letter c) *ibidem*.

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It shall be noted that a few MSs specifically address the use of protected materials for the purpose of compiling anthologies used for teaching and make it subject to fair compensation, e.g., in Italy[105] and the UK[106]. In Austria, the related norm regards different free uses of works in the visual arts and allows to reproduce, distribute, and make available to the public, for non-commercial purposes, individual published works of fine art in a language work intended for school or educational use, for the sole purpose of explaining the content or in a schoolbook for the purpose of art education for young people, subject to appropriate remuneration[107].

Other relevant examples in the field are the Italian exception for the use of images at low resolution for the scope of teaching or scientific scope, only to the extent the use is for no profit and to be published on the Internet[108]. In Denmark, an interesting provision is dedicated to works of art only (*Gengivelse af kunstværker m.v.*) and provides that works of art and works of a descriptive nature, when they have been made public, may be used in critical or scientific presentations in connection with the text, in accordance with proper usage and to the extent required for the purpose, where commercial purposes are excluded[109]. Lastly, Netherlands seems worth special attention as it carves out copyright subject matter by specifying that, under certain conditions, the notion of public lectures, performances, and presentations does not include those acts which are performed by the government or by other non-profit legal entities for educational or research purposes. Following the implementation of the CDSM, this applies under certain conditions also to the digital use of copyright works taking place under the responsibility of an educational institution by means of a secured electronic environment[110].

As a conclusion, it must be considered that the above-mentioned exceptions for education, teaching, and research may also address private study and private copy, including reprography. Interestingly, Estonia, permits reproduction of an audio-visual work or sound recording of a work for the user's own personal needs (scientific research, teaching, etc.), provided the right holder with a fair remuneration for such use of the work or phonogram), but expressly exclude a legal person from the beneficiaries[111]. It also allows the free reproduction and translation of works for purposes of personal use, which allows to reproduce and translate a lawfully published work by a natural person for the purposes of personal use, with no obligation to remunerate the right holder, on the condition that such activities are not carried out for commercial purposes and, with the express exclusion of the following subject matter: works of architecture and landscape architecture; works of visual art of limited edition; electronic databases; computer programs; notes in reprographic form[112]. The limits imposed to the exception (only natural person, not for commercial use, and except typical artistic works) clearly further constrains the scope of the provision.

However, while these norms are essentially not covered in the present analysis as reputed of less relevance for GM practices, we focused the exception introduced by art. 5.3 letter n) InfoSoc Directive for the purpose of research or private study through dedicated terminals. The reason is that this provision specifically targets publicly accessible libraries, educational establishments or museums, or archives, which are not for direct or indirect economic or commercial advantage, and that GM fall in this category. More specifically, the

[105] Art. 70.2 Italian Copyright Act.
[106] S. 33 UK CDPA.
[107] §54 Austrian UrhG. Cf, in particular, §54.1 n. 3.
[108] Art. 70.1-bis Italian Copyright Act.
[109] S. 23.1 Danish Copyright Act. The section in question refers to S. 1 of the same Act to identify the subject matter of such provision.
[110] Art. 12.5 Dutch Copyright Act.
[111] § 26 Estonian Copyright Act.
[112] § 18 *ibidem*. The provision must be read in coordination with §§ 24 and 25 of the same Act, which allows these acts in certain conditions.

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exception allows publicly accessible libraries, educational establishments or museums, or archives, which are not for direct or indirect economic or commercial advantage, the use by communication or making available, for the purpose of research or private study, to individual members of the public by dedicated terminals. As tackled by the previous report on LA, the exception on private study has been enacted across all MSs considered in the present analysis[113]. We underline that a few MSs explicitly address the public nature of the establishments and provide for a requirement of lack of direct or indirect economic or commercial advantage, coherently with the EU provision, e.g., the Netherlands[114], Germany[115], Hungary[116], Italy[117] .

As underlined in the previous report on LA, this exception presents a potential overlap with the private use and private copy exceptions enshrined in Art.5.2 letter b) of the InfoSoc Directive, though the latter does not seem pertinent for the purposes of the present legal mapping, since it does not pertain to the context of GM but rather the one of libraries, and it was addressed in the previous report on LA accordingly.

2.4. Text and data mining

The illustrated legal framework on copyright exceptions, especially regarding education, research, and GM, is dramatically impacted by the exception for text and data mining (hereinafter TDM) introduced in Art. 3 of the CDSM[118]. The exception of Art. 3 has not yet been implemented uniformly across the MSs, despite early proposals are present, e.g., in Italy[119].

The Dutch legislator has created dedicated exceptions under the Copyright Act[120], the Neighbouring Rights Act[121] and the Database Act[122] , referring to research institutes and cultural heritage institutions. In Germany, the implementation of CDSM has also led to the revision on the existing rules on TDM; the new norm addresses research organisations and individual researchers when they do not pursue commercial purposes and cultural heritage institutions - these expressly include libraries and museums, archives and film or audio heritage institutions, provided they are open to the public[123]. Hungarian copyright law includes a new amended provision, which allows reproduction for TDM and specifies, in a provision dedicated to research sites and cultural heritage institutions, the purpose is scientific research the person has lawful access to the work concerned, and copies are stored at an appropriate level of security[124].

Although it does not explicitly mention cultural heritage institutions, it must be noted that, since 2019, Ireland provides for an exception for TDM for non-commercial research,[125] which closely mirrors the one implemented in the UK in 2014. This allows copies by persons who have lawful access to the work, to carry

[113] Art. 15h Dutch Copyright Act; Art. 71-ter Italian Copyright Act.
[114] Art. 15h Dutch Copyright Act.
[115] §§ 60e.4 and 60f German UrhG.
[116] S. 38 of the Hungarian Copyright Act.
[117] Art. 71-ter Italian Copyright Act.
[118] Art. 3 CDSM addresses research organisations and cultural heritage institutions carrying out activities for the purposes of scientific research on works or other subject matter to which they have lawful access. While art. 3 is primarily relevant for the analysis on GM, it shall be considered that the norm is complemented by art. 4 of the Directive as dedicated to TDM by the user.
[119] Cf. Art. 9 letter b) Italian European Delegation Law 2019-2020.
[120] Art. 15n and 15o Dutch Copyright Act. Coherently with the structure of the EU Directive, the Dutch Legislator implemented article 3 and 4 in two different provisions in the Copyright Act and in two separate subparagraphs of the same norm within the Neighbouring Rights Act and the Database Act.
[121] Art. 10p and q Dutch Neighbouring Rights Act.
[122] Art. 4aa and b Dutch Database Act.
[123] § 60d and § 44b German UrhG.
[124] Ss. 35/A and 84/C Hungarian Copyright Act.
[125] S. 53A Irish Copyright Act.

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out a computational analysis of anything recorded in the work, for the sole purpose of research for a non-commercial purpose, given they provide sufficient acknowledgement[126]. In Estonia, under the previously mentioned provision on the free use of works for scientific, educational, informational, and judicial purposes, it is possible to process the work for the purposes of text and data mining, provided that the use does not have a commercial objective[127].

2.5 Freedom of panorama

Freedom of panorama is the term which addresses the possibility to use of works, such as works of architecture or sculpture, made to be located permanently in public places, according to art. 5.3 letter h) InfoSoc Directive, under an exception of the rights of reproduction and communication to the public. This exception shall be considered of major importance for the analysis of GM, since it targets public spaces where cultural heritage is displayed or is present. Introduced as non-mandatory, the exception is unevenly transposed across the MSs analysed.

Some of them have not implemented the provision at all, such as Italy. Others have done so by way of provisions that address the public space referring to open or closed spaces differently. Germany, the UK, and Ireland, for instance, refer to objects situated in premises open to the public, where these may include public closed spaces. As intended by the Dutch legislator, the notion of public space includes places which are freely accessible by the public (e.g., public roads, public parks, public buildings apart from schools and opera houses), but by contrast, museums are not considered as public spaces. Under the Austrian solution, the related exception has been located between the free uses of works of fine art and some works and specific acts of reproduction excluded, e.g., with regards to architecture, sculpture and painting and graphic arts.

Under Danish copyright law, works of art may be reproduced in pictorial form and then made available to the public if they are permanently situated in a public place or road, unless the work of art is the chief motif, and its reproduction is used for commercial purposes. On the contrary, buildings may be freely reproduced in pictorial form and then made available to the public[128]. In Estonia, the law allows to reproduce works of architecture, works of visual art, works of applied art or photographic works which are permanently located in places open to the public, without the authorisation of the author and without payment of remuneration. Any means can be used except for mechanical contact copying. It is also allowed to communicate such reproductions to the public except if the work is the main subject of the reproduction and it is intended to be used for direct commercial purposes. Attribution of authorship, if existent, should also be acknowledged[129]. In addition, it is possible to reproduce and communicate to the public of reproductions of works of architecture in real estate advertisements to the extent justified by the purpose, but attribution of authorship must be acknowledged[130].

Finally, in Hungary, the law allows to make and use visual representations of fine art, architectural, and applied art works that have been permanently erected in a public place outdoors with no duty to remunerate the right holder[131].

[126] E.g., S. 29A inserted by UK Copyright and Rights in Performances (Research, Education, Libraries and Archives) Regulations 2014 (S.I. 2014/1372).
[127] § 19 (3) Estonian Copyright Act.
[128] S. 24.2 and 24.3 Danish Copyright Act.
[129] § 20.1 Estonian Copyright Act.
[130] § 20.2 *ibidem*.
[131] S. 68.1 of the Hungarian Copyright Act.

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In conclusion, it shall be underlined that minor differences are registered with regards to the objects and acts of reproduction permitted. For instance, next to the Austrian solution, the Dutch provision specifies that when a compilation work is at stake, reproduction must be limited only to few works of the same author.

2.6 Reproduction of works belonging to the public domain

Art. 14 of the CDSM introduces a new rule for reproductions of works of visual arts in the public domain, in the dedicated Chapter 4 ("Works of visual arts in the public domain"). The norm appears difficult to be framed as an exception or limitation, but it has a mandatory nature. It establishes that all MSs shall provide that, when the term of protection of a work of visual art has expired, any material resulting from an act of reproduction of that work is not subject to copyright or related rights. This is unless the material resulting from that act of reproduction is original, where the EU legislator opted to specify, confirming the notion enshrined in the CJEU case-law, that this means that it is the author's own intellectual creation.

The norm is of fundamental relevance for GMs as it addresses works of visual arts in the public domain, which often represent significant part of their collections. Its implications for GMs will prove important, to the point that the related Recital 70 CDSM specifies that "this shall not affect practices of museums, such as the selling of postcards". At the current state, however, there are only a few examples to illustrate its implementation.

The need to transpose the provision with an ad hoc act may be linked to the protection of non-original photographs across MSs, based on Art. 6 of the Term Directive[132]. The German legislator has opted for a specific provision excluding the related rights in reproductions of visual works in public domain[133]. A need to take a similar action was recognized in Italy, focusing on the potential conflicts with national cultural heritage laws[134]. In addition, art. 14 CDSM has revived the debate about freedom of panorama, leading to the adoption of non-binding acts and the inclusion of dedicated provisions in the first drafts for implementation of the CDSM[135]. An overlap with freedom of panorama is retraced in other MSs as well, e.g., Austria, dedicating a provision to free uses of works of visual arts[136]. Hungarian copyright law now provides that cultural heritage protection institutions, among other beneficiaries, may reproduce works for specific purposes, e.g., scientific research, archiving or for internal institutional purposes, but only when this does not indirectly serve the purpose of generating income[137].

Elsewhere, the national legislator has opted for not implementing the provision with the introduction of new ad hoc rules; for instance, the Dutch copyright norms were considered as being already compliant with art.

[132] Art. 6 Directive 2006/116/EC on the term of protection of copyright and certain related rights [2006] OJ L 372. Cf. Art. 87 Italian Copyright Act and § 72 German UrhG.
[133] § 68 German UrhG.
[134] Relevant constraints to acts of reproduction of cultural goods are especially to be framed in respect to Artt. 107-110 of the Italian Code of cultural heritage and landscape, dedicated to the fruition of cultural goods.
[135] Freedom of panorama was addressed by non-binding contents in the Italian European Delegation Law 2019-2020: Ordine del giorno n. G/1721/8/14, approved as Ordine del giorno G9.100. See also Resolution n. 8/00073: Atto della Camera, Risoluzione in Commissione conclusiva di dibattito 8/00073, Measures to support culture and entertainment sector to contrast the effects of Covid-19 epidemic (*Misure di sostegno della cultura e dello spettacolo a contrasto degli effetti dell'epidemia Covid-19*) of the 5th of May 2020, available at: https://aic.camera.it/aic/scheda.html?numero=8-00073&ramo=C&leg=18. Resolutions n. 7/00423, n. 7/00550, n. 7/00552, n. 7/00553, n. 7/00557 e n. 7/00558 have been jointly discussed by the VII Commission in November 2020, as reported by the official convocation of 18th of November 2020, available at: https://www.camera.it/leg18/1099?slAnnoMese=202011&slGiorno=18&shadow_organo_parlamentare=2807&primaConvUtile=ok
[136] § 54 Austrian UrhG.
[137] S. 35.4 Hungarian Copyright Act.

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14 CDSM[138]. The same could be assumed for the UK, where the Intellectual Property Office already addressed the issue in 2015, in a non-binding document[139]. This basically affirms that digitised copies of older images should be protected by copyright, defining originality in reference to the "author's own intellectual creation".

2.7 Public speech and reporting of news

The present paragraph considers exceptions regarding public speech and the reporting of current events for the importance they may have for GM, considering their practices - contents they may display, including public speeches or news material, but also events they may host, and the consequent communication material they may produce or feature in.

Exceptions for the reporting of news and current events, following art. 5.3 letter c) InfoSoc Directive are provided differently across MSs and could be often found next to the exception allowing quotation for the purposes of criticism or review[140]. In adherence to the EU exceptions, also modelled on art. 10bis of the Berne Convention[141], it is frequently mentioned that the use shall not be expressly reserved and only exceptionally MSs limit the exception to certain categories of works[142].

The reformed Irish exception on public speech and news reporting mentions the media business, as defined by national law,[143] while, according to Dutch copyright law, under specific circumstances, there is no infringement where media articles on economic, political, religious, or philosophical topics are copied by other media[144]. Next to the latter, another provision states that copyright is not infringed if a short recording, representation, or communication of protected works is inserted within a report rendering account of a current event to the extent justified by this objective and provided that the source is acknowledged[145]. Finally, different exceptions targeting newspaper articles and broadcast commentaries for the reporting on current events are made under German[146] and Austrian[147] copyright law.

Denmark has a specific provision that allows works of art made available to the public to be used in newspapers and periodicals in connection with the reporting of current events in accordance with proper usage and to the extent required for the purpose, except for works produced with a view to use in

[138] See Explanatory memorandum on the implementation of Directive (EU) 2019/790 (*Implementatiewetsvoorstel Richtlijn auteursrecht in de digitale eengemaakte markt),* the 15th of May 2020, available at: https://zoek.officielebekendmakingen.nl/kst-35454-3.html.

[139] IPO guidance document *Copyright notice: digital images, photographs and the internet*, issued in 2015 and updated the 4th of January 2021, available at: https://www.gov.uk/government/publications/copyright-notice-digital-images-photographs-and-the-internet/copyright-notice-digital-images-photographs-and-the-internet.

[140] E.g., S. 30 UK CDPA, i.e., para 2; S. 51 Irish Copyright Act.

[141] Berne Convention for the Protection of Literary and Artistic Works of the 9th of September 1886, Paris Act of the 24th of July 1971, as amended on the 28th of September 1979. Art. 10bis is entitled to "Further Possible Free Uses of Works". Art. 10bis.1 regards the reproduction by the press, the broadcasting or the communication to the public by wire of articles published in newspapers or periodicals on current economic, political or religious topics, and of broadcast works of the same character, subject to the condition this is not expressly reserved, and the source is indicated. Art. 10bis.2 regards the reproduction and making available to the public for the purpose of reporting current events by means of photography, cinematography, broadcasting or communication to the public by wire, of literary or artistic works seen or heard in the course of the event may, to the extent justified by the informatory purpose.

[142] S. 51 Irish Copyright Act.

[143] *Ibidem*.

[144] Art. 15 Dutch Copyright Act.

[145] Art. 16a *ibidem*.

[146] §§ 49 and 50 German UrhG.

[147] §§ 42c and 44 Austrian UrhG.

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newspapers or periodicals[148]. Furthermore, if a performance or exhibition of a work is part of a current event and it is used in film, radio or television, the work may be included to the extent the work forms a natural part of the reporting of the current event[149].

Estonia also allows free use of copyright works for the purpose of reporting current events, the reproduction in the press and communicating to the public of works seen or heard during an event, to the extent justified by the purpose, in the form and to the extent required by the purpose of reporting current events, referring it to the broad and previously mentioned provision on the free use of works for scientific, educational, informational and judicial purposes[150].

Exceptions for the use of public speeches and lectures for informatory purposes, based on art. 5.3 letter d) InfoSoc Directive, seems also not evenly structured across the MSs analysed. In stricter adherence to the InfoSoc Directive, Italy opts to limit the exception to speeches about matters of political and administrative interest which are held in public assembly or elsewhere in public, and extracts of conferences open to the public, and to allow the reproduction and communication to the public to the extent this is justified by the informatory purposes, but the exception is just limited to magazines or newspapers, and to broadcast or electronic format[151]. A similar solution seems chosen by Germany[152].

Other amongst the MS analysed adopted a broader approach instead. Under Austrian copyright law, public speeches from authorities or speeches which have political nature may be reproduced, distributed, publicly performed, broadcast, and made available to the public for information purposes, subject to consent of the speaker[153]. UK and Ireland made even wider choices, addressing the recording of spoken words for the purpose of reporting current events and of communicating the work to the public is registered[154].

2.8 Quotation, criticism, review and parody, caricature, and pastiche

Copyright norms on quotation are of interest for the GM under two main circumstances. As already illustrated, exceptions for quotation often point to education, teaching and research purposes. Moreover, exceptions for quotations fundamentally derive from art. 5.3 letter k) InfoSoc Directive, which provides for an exception for the use for the purpose of caricature, parody, or pastiche, and from art. 5.3 letter d) of the InfoSoc Directive, regarding purposes such as criticism or review. Materials which are in the possession of GM may frequently be re-used by such purposes (e.g., considering reproductions of works) or represent themselves examples of the use for such purposes. Finally, the exception could be of interest for GM considering the material they may produce.

According to the norm, MSs may introduce an exception or limitations to the rights of reproduction and communication to the public for quotations, for purposes such as criticism or review. Such exceptions or limitations are to be provided when they relate to a work or other subject-matter which has already been lawfully made available to the public. Another condition is that the source, including the author's name, is indicated, unless this turns out to be impossible. Finally, the use shall be in accordance with fair practice, and permitted to the extent required by the specific purpose.

[148] S. 23.2 Danish Copyright Act.
[149] S. 25 *ibidem*.
[150] § 19 Estonian Copyright Act.
[151] Art. 66 Italian Copyright Act.
[152] § 48 German UrhG.
[153] § 43 Austrian UrhG.
[154] S. 58 UK CDPA; S. 89 Irish Copyright Act.

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Where fair dealing is present, quotation and the use of extracts could be considered as separate from fair dealing for the purposes of criticism and review and for the purposes of caricature, parody, or pastiche, e.g., in Ireland[155] and, despite some differences, in the UK[156]. Other examples, on the contrary, show the adoption of a comprehensive exception for quotation. For instance, in Italy, a single exception explicitly covers the abridgment, quotation or reproduction of fragments or parts of a work and their communication for criticism and review, but it is also deemed to accommodate other purposes in line with Constitutional norms on freedom of expression and freedom of the arts[157]. Similarly, in Denmark the quotation (*citat*) exception is quite broad and allows anyone to quote from a work which has been made public in accordance with proper usage and to the extent required for the purpose[158]. In addition, as previously noted, for works of art, when addressing educational purposes, the law also allows the use in critical or scientific presentations, if those have been made public[159].
In Estonia, the right to quote, by making summaries of and quotations from a work which has already been lawfully made available to the public, is granted provided that its extent does not exceed that justified by the purpose, and that the idea of the work which is being summarised or quoted is conveyed correctly. Under the same provision, the law allows use of a lawfully published work in a caricature, parody or pastiche to the extent justified by such purpose[160].

In Austrian copyright law, the exception for quotations[161] specifies that it allows, in addition to reproduction and distribution, also the broadcasting, making available to the public, and the use for public lectures, performances, and presentations.

The Dutch Copyright Act provides for an exception covering the quotation of literary, scientific, and artistic works in an announcement, review, polemic, or scientific treatise or for a statement with a similar purpose, and it is explicitly specified that the notion of quotation also includes press review[162] and distinguishes from the case where a literary, scientific or artistic work is made available or reproduced in the context of a caricature, parody or pastiche[163]. Both exceptions, however, mention that the use of the protected work shall be reasonably acceptable in the light of social customs.

In Germany, the exception for quotations permits the reproduction, distribution, and communication to the public of a published work for the inclusion in an independent scientific work for the purpose of explaining the contents; the quotation of passages from a work quoted in an independent work of language and the one of individual passages from a released musical work quoted in an independent musical work, without any percentage in respect to the cited work[164].

Finally, in Hungary, the law allows anyone to quote parts of works, to the extent warranted by the type and purpose of the work and acknowledging attribution of authorship. It also specifies that any use of the work that exceeds quotation or citation constitutes borrowing and thus exceeds the permitted act[165].

[155] Cf. S. 51 Irish Copyright Act. Para 1 covers fair dealing purposes of criticism and review. See also S.52 paras 4 and 5, respectively covering the use of quotation and extracts according to the three-step-test and the fair dealing for purposes of caricature, parody or pastiche.
[156] Cf. S. 137 UK CDPA. While para 1 regards fair dealing for the purpose of criticism or review, para 1ZA regards the use of a quotation from the work whether for criticism or review or otherwise, under different conditions. Finally, see also S. 30A.
[157] Art. 70 Italian Copyright Act.
[158] S. 22 Danish Copyright Act.
[159] S. 23.1 *ibidem*.
[160] § 19 Estonian Copyright Act.
[161] § 42f Austrian UrhG.
[162] Art. 15a Dutch Copyright Act.
[163] Art. 18b *ibidem*.
[164] § 51 German UrhG.
[165] S. 34 of the Hungarian Copyright Act.

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Nevertheless, before the most recent reform, parody, caricature, and pastiche were not expressly implemented into copyright law, even though they could be referred to the right of adaptation[166].

Despite the complexity of Art. 17 of the CDSM, the present analysis focuses on the fact that Art. 17.7, second part, CDSM may deemed to consider mandatory exceptions for users to rely on, when uploading and making available content generated by users on online content-sharing services providers, hereinafter OCSSPs. The subject is debated in the literature. However, the norm entails the quotation, criticism, review (according to Art. 17.7 letter a) and the use for the purpose of caricature, parody, or pastiche (according to Art. 17.7 letter b). The potential mandatory exceptions recall the ones of optional nature introduced by art. 5.3 letter d) and k), but they are limited to the context of OCSSPs. Because of the nature of the online infrastructure where it applies, the exception may target both the right to reproduction and the right to communication of the public, despite this is not specified.

In the Netherlands, where the related exceptions were already in place, it was possible to avoid the introduction of a specific provision to solely address OCSSPs. In Germany, before the revision of the national copyright law, quotation and the former exception for free use were the legal basis in case of parody, caricature, and pastiche, but this has been abandoned, leading to a new exception for parody, caricature and pastiche that allows reproduction, distribution, and communication to the public[167]. A new provision has been added in Hungary[168].

2.9. Other provisions

This paragraph is dedicated to a residual category of copyright exceptions or limitations which are of interest for GMs.

Heterogeneous provisions across MSs can be linked to art. 5.2 letter c) InfoSoc Directive, which as mentioned regards specific acts of reproduction by publicly accessible libraries, educational establishments, or museums, or by archives, which are not for direct or indirect economic or commercial advantage. The implementation is particularly difficult to retrace since the related exceptions seem differently linked to education, teaching and research or to the preservation of cultural heritage (as mentioned in the dedicated paragraph) and may address, next to GM, different establishments. Other provisions worth analysing regard the exhibit or the display of work; these are consistent with the EU exception for advertising the sale of artistic works, provided by art. 5.3 letter j) InfoSoc Directive. Lastly, there are exceptions and limitations which are of specific interest for GM as they specifically target cultural establishments.

As recalled beforehand, the Dutch copyright law addresses acts which are performed by the government or by other non-profit legal entities for educational or research purposes and the digital taking place under the responsibility of educational institution[169].

Following the reform of 2019, the Irish Copyright Act provides several exceptions that cover librarians and archivists. Under the title "Fair dealing by librarians and archivists", next to the norm dedicated the communication through dedicated terminals, a second one regards the brief and limited display of a copy of a work, and both address the purposes of education, teaching, research, and private study, where such

[166] Cf. Commentary on the Hungarian Authors' Rights Act (Gyertyánfy Péter (ed.): Nagykommentár a szerzői jogról szóló 1999. évi LXXVI. Törvényhez.
[167] § 51a German UrgH.
[168] Cf. Section 34/A.1 Hungarian Copyright Act.
[169] Art. 12.5 Dutch Copyright Act.

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purposes are neither directly nor indirectly commercial[170]. In addition, research and private study are addressed together for the copying of articles in periodicals[171], and works which have not been lawfully made available to the public[172], copying by librarians or archivists[173]. Ultimately, an encompassing provision on the copying by librarians or archivists for different purposes covers the copy, or the cause of a copy to be made, of a work in the permanent collection of the library or archive for the purposes of obtaining insurance cover for the works concerned; for purposes of security; for the purposes of compiling or preparing a catalogue (including a published catalogue relating to an exhibition); for the exhibition in the library or archive, or for the purposes of informing the public of an exhibition. This is under the condition that the copying is conducted for the curatorial purposes and limited to an extent reasonably justified by the non-commercial purpose to be achieved and accompanied by a sufficient acknowledgement[174].

Considering the exception for the advertisement of sale of artistic works and public exhibition, legislative examples, when present (e.g., in the UK[175] and the Netherlands[176]) seem to fairly stick to EU provision, but it stands at the overlap with other provisions addressing the display of works, including some already mentioned in the present paragraph. Notably, in Ireland, the reform of 2019 has modified the previous text as to expand the exception[177] and now stands next to the previously recalled exception for exhibition in the library or archive or the purposes of informing the public of an exhibition[178]. Germany further elaborates on the advertising purposes to the extent necessary for the promotion of the event[179].

Finally, a few provisions may be considered despite they seem to mirror the content of art. 5.2 letter e) InfoSoc Directive, addressing reproductions of broadcasts made by social institutions pursuing non-commercial purposes, such as hospitals or prisons, which have been excluded by the present analysis as reputed irrelevant for GM. For instance, under German copyright law it is possible to communicate to the public a published work if that communication serves a non-profit-making purpose for the organiser, if participants are admitted free of charge and, in the case of a lecture or performance of a work, if none of the performers is paid special remuneration. Equitable remuneration shall be paid for the communication, but when the events are organised by social institutions[180]. It is however specified that public stage performances, making available to the public and broadcasting of a work, and public screenings of a cinematographic work shall always only be permissible with the consent of the rightsholder.

In Denmark, in the provision dedicated to works of art, in addition to what has already been noted, it is allowed to reproduce in the catalogues of the collection works of art included in a collection, or exhibited, or offered for sale, and be used in notices of exhibitions or sale, including in the form of communication to the public[181]. In Estonia, the provision on the free use of works by public archives, museums or libraries includes, among other previously mentioned permitted uses, the possibility for public museums (as well as other beneficiaries) to make available works in their collections, on the spot, through special equipment, and to

[170] S. 69A, para 1 and para 2, Irish Copyright Act.
[171] S. 61 *ibidem*.
[172] S. 67 *ibidem*.
[173] S. 62 *ibidem*.
[174] S. 66 *ibidem*.
[175] S. 63 UK CDPA.
[176] Art. 23 Dutch Copyright Act.
[177] S. 94 Irish Copyright Act.
[178] Cf. S. 66 which includes the copy of something permanently in the collection for, inter alia, the exhibition in the library or archive under letter d) or for the purposes of informing the public of an exhibition under letter e), *ibidem*.
[179] § 58 German UrhG.
[180] § 52 *ibidem*.
[181] S. 24.1 Danish Copyright Act.

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lend works in its collections for individual on-the-spot use. This is subject to a few conditions, including that the use is not for commercial purposes[182].
Lastly, the incidental inclusion of a work or other subject-matter in other material can be subject to an exception of the rights of reproduction and communication to the public, according to art. 5.3 letter i) of the InfoSoc Directive. This exception was reputed of potential interest for the present analysis on GM because although the subject matter is not covered by all the legal systems analysed (e.g., in Italy), in some MSs there is explicit reference to the incidental inclusion in artistic works, e.g., in the UK[183], the Netherlands[184], and Denmark[185]. More precisely, Danish copyright law allows to use published works of art or copies of works of art, which have been transferred to others by the author in newspapers, periodicals, films, and television when such use is of subordinate importance in the context in question. Ireland also foresees the incidental inclusion in relation to the publication of results and extracts from the work within the text and data mining exception[186].

3. Conclusions

One aspect which remains unclear in the analysis regards the definition of GM as cultural entities accessible to the public, including their qualification as public entities, and the non- or for-profit nature of their activities. Next to cases where the provisions remain silent with regards to the public or private nature of such institutions, a few references decisively point to the public and open to the public nature of GM and several provisions address GM when they do not seek either direct or indirect commercial advantage.

The backdrop of this discourse lies in the absence of detailed definitions of GM in the copyright provisions since the terminology is usually detailed in dedicated legislation on the cultural heritage. It must be therefore noted that the difference between galleries and museums is not very significant across the analysed national legislations, also because museum appears to be used as an encompassing term or other notions, such as the one of archive, are preferred.

Considering the legal framework on exceptions and limitations, the analysis, building on the former report on LA, has identified prominent overlap of the exceptions for quotations and illustration for teaching, preservation of cultural heritage, orphan works, and out-of-commerce works. In addition, a separate paragraph was dedicated to miscellanea, to collect those norms which address different uses by GM and specific acts of reproduction. This is because the national provisions appear frequently to group together or separate relevant use-cases, and to introduce further conditions or specifications as regarding the activities of GM, e.g., referring to the commercial purpose of their activities or accessibility to the public.

Overall, the national regulatory landscape shows relevant convergences for a few copyright flexibilities that address uses and practices within the GM reality, e.g., the exceptions for quotation for illustration, education and research, the preservation of cultural heritage, including the treatment of orphan works, and text and data mining. If on one hand the legal mapping of national sources of GM-relevant copyright flexibilities unveils substantial harmonization, on the other hand the adopted solutions present several minor differences with each other for details and structure. This seems mainly due to the optional nature of some

[182] § 20 (3-5) Estonian Copyright Act.
[183] S. 31 UK CDPA.
[184] Art. 18a Dutch Copyright Act and Art. 10(h) Dutch Neighbouring Rights Act.
[185] S. 23.3 Danish Copyright Act, which provides: "Published works of art or copies of works of art that have been transferred to others by the author may be used in newspapers, periodicals, films and television if the use is of subordinate importance in the context in question".
[186] S. 53A para 5 and S. 52 Irish Copyright Act.

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of the related copyright exceptions and limitations, which exacerbates the risk of creating legal uncertainty and could be confirmed as the main threat to cross-border transactions.

Focusing on the use-cases addressed by the CDSM reform, the majority of MS are, to the present day, in the process of implementation, where Netherlands, Germany and Hungary have fully transposed the new directive. The examination of the current scenario reveals that while provisions on out-of-commerce works and works in public domain have not been extensively targeted by MS, the current legal framework already presents consistent opportunities for the digital ecosystem. Indeed, relevant exceptions and limitations dedicated to the cultural heritage and its digitalization have been often anticipated in national provisions springing from MS realities and needs, primarily considering online teaching and distance learning, and text and data mining and the preservation of cultural heritage. This reflects an increased sensitivity across the MSs analysed towards the importance of the use, also digital use, of cultural heritage, and related opportunities, where GM are main protagonists. As a conclusion, the present analysis confirms the need to enhance the regulatory effort towards the harmonization and effective copyright reform tackling the needs of GM in the digital environment.

Moreover, as mentioned, GM are also targeted in the relevant initiatives of digitization under the efforts towards the re-use of public sector information, and possibly engaged in wider initiatives for the digitalization of cultural heritage and the enhancement of digital fruition of cultural heritage that MSs, under the ongoing implementation of Directive 2019/1024/EU, promote. Even though this subject matter was not explored in the present analysis, it should be considered vital for future research. We believe that further study shall especially target the overlap of the described initiatives with the analysed copyright legal framework, including its exceptions and limitations. A more comprehensive study shall not only include legislative actions but also non-binding instruments and existing best practices and social norms, to better understand the role of copyright law in the full realization of opportunities for GM.

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