



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

**Grant Agreement No. 870626**

<b>Milestone title</b>	<b>MS3 Four deliberative exercises to identify acceptable normative practices within a progressive interpretation of the legal framework</b>
Milestone Lead:	UGLA
Partner(s) involved:	UvA
Related Work Package:	WP4 – Creative Industries
Related Task/Subtask:	T4.3 Developing best practice codes for creative audiovisual re-use
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Dissemination Level:	Public (this report); confidential (the recordings of the workshops)
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<b>Version history table</b>			
<b>Version</b>	<b>Date</b>	<b>Modification reason</b>	<b>Modifier(s)</b>
v.01	17.05.2021	Last of the four workshops organised and completed	Stef van Gompel, Bartolomeo Meletti, Luna Schumacher



## 1. Role and description of the Milestone

Task 4.3 aims to produce four deliberative exercises to identify acceptable normative practices within a progressive interpretation of the legal framework in the Netherlands and the United Kingdom (UK). These were preceded by four workshops – described in this milestone report MS3 – to map issues encountered by two stakeholder groups.

Task 4.3 *Developing best practice codes for creative audiovisual re-use* adopts a bottom-up, participatory research method in order to provide contextualised evidence and guidance on how copyright exceptions are being perceived and used in practice by specific AV sectors of certain countries. An established methodology for developing best practice codes<sup>1</sup> is adapted to the European context in three steps. (1) Mapping of issues that specific communities encounter; (2) formal deliberative exercises; (3) drafting of codes. Each step involves co-production with creative and cultural practitioners in the relevant AV communities.

As part of step 1 of the project, four online deliberative workshops were undertaken, one for each community of documentary filmmakers and of curators and creators of immersive experiences in the two jurisdictions under consideration. During these workshops, participants deliberated on the most pressing copyright issues they face when making documentary films or creating immersive experiences, respectively. The online workshops provided direct input for the four issue reports produced for MS5 and ultimately for D4.10 – Issue reports on how copyright exceptions and other permitted uses that are relevant for documentary filmmakers and immersive digital heritage practitioners are understood in the Netherlands and the UK. These four online workshops are a milestone towards D4.11 – two codes of best practices in relation to copyright in the AV selected sectors. Based on the issues identified through MS3, the next steps of Task 4.3 will be to engage in formal deliberation exercises using social science standards to identify shared principles and acceptable norms within the communities under consideration; and to draft sector-specific codes of best practices that reflect such principles and norms.

### 1.1 Deviations to Annex 1

No changes needed project is on track

Reorganisation of the project

Changes:

## 2. Means of verification

The four workshops were initially intended to be real-live events, to be held in the Netherlands and the UK respectively, but due to the COVID-19 pandemic, we had to organize them as online workshops.

The online workshops were held at the following dates:

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<sup>1</sup> The task *Developing best practice codes for creative audiovisual re-use* builds upon the work of Professors Patricia Aufderheide, Peter Jaszi and others on the Codes of Best Practices in Fair Use in the United States, which can be accessed at <<https://cmsimpact.org/report-list/codes/>>. See also Aufderheide, P. & Jaszi, P. (2018). *Reclaiming Fair Use: How to Put Balance Back in Copyright*, Second Edition. The University of Chicago Press.



- UK workshop documentary filmmakers: Monday 22 March 2021
- NL workshop documentary filmmakers: Monday 29 March 2021
- UK workshop immersive cultural heritage: Monday 10 May 2021
- NL workshop immersive cultural heritage: Monday 17 May 2021

Video recordings have been made of the four workshops, which are on file with the authors. To get maximum input for the issue reports and increase openness of discussion, it was agreed with the participants upfront that the workshops were held under the Chatham House Rule, according to which all participants are free to use information from the discussion, but not to reveal who made any comment. It was also agreed with the participants that the video recordings of the workshops would not be disseminated.

### 3. Highlights and conclusions

The discussions at all four online workshops were rich and provided valuable and indispensable input for the four issue reports that were subsequently produced for MS5 and D4.10. Online deliberative workshops proved to be a useful method to identify the copyright-related issues and concerns faced by documentary filmmakers and curators and creators of immersive experiences. Potential participants were identified through desk research, the researchers' networks of contacts, and existing community networks. The communities under consideration were defined through self-identification. At the beginning of each workshop, participants were asked to introduce themselves, describe their creative or curatorial practice, and share one copyright issue they found particularly worrying. Following the round of introductions, the group had to deliberate on the three most pressing concerns faced by the sector. As described in the MS5 report and in more detail in D4.10, these exercises produced a very interesting picture of the issues and concerns relating to copyright faced by these communities in the UK and the Netherlands.

A full description of the issues that were identified during these deliberative exercises can be found in the report for D4.10. During the first four deliberative workshops, participants already identified and discussed two of the main challenges that the project will face in its next steps. First, researchers need to consider that by standardising and encouraging certain practices, the codes may signal that other practices are questionable or unlawful. Second, as both creative practice and copyright law change over time, it will be challenging to draft future-proof codes of best practices (step 3). The deliberation exercises to be conducted as part of step 2 will be designed to respond to these as well as other theoretical challenges identified by scholars, with a view to drafting codes of best practices that are sufficiently "certain, representative and aspirational".<sup>2</sup>

### 4. Annexes

None.

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<sup>2</sup> Rothman, J. E., (2007). 'The Questionable Use of Custom in Intellectual Property'. *Virginia Law Review* 93:1899.

