



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

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Abbreviation List

AVMSD	Audiovisual Media Services Directive
CDSM Directive	Directive on Copyright in the Digital Single Market
CDMSI	Steering Committee for Media and Information Society
CFREU	Charter of Fundamental Rights of the European Union
CRPD	United Nations Convention on the Rights of Persons with Disabilities
CRPD Committee	United Nations Committee on the Rights of Persons with Disabilities
CSR	Corporate Social Responsibility
D2.2	Deliverable 2.2
EAA	European Accessibility Act
EU	European Union
FCNM	Framework Convention for the Protection of National Minorities
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
InfoSoc Directive	Directive on the harmonisation of certain aspects of copyright and related rights in the information society
IPR	Intellectual Property Rights
Marrakesh Treaty	Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled
M	Month



MU	Maynooth University
OMC	Open Method of Coordination
RTD	EU Commission Directorate General for Research and Innovation
SSSA	Sant'Anna School of Advanced Studies Pisa, Italy
STEM	Science, Technology, Engineering and Mathematics
TA	Thematic Analysis
TFEU	Treaty on the Functioning of the European Union
TPMs	Technical Protection Measures
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNESCWA	UN Economic and Social Commission for Western Asia
UK	United Kingdom
WAD	Web Accessibility Directive
WIPO	World Intellectual Property Organization
WP	Work Package
WTO	World Trade Organization



Executive Summary

The End-users' perspective is an often-neglected aspect of the European Union (EU) copyright regulatory framework and of copyright scholarship. In light of the objectives pursued by *reCreating Europe*, and its overarching aim to promote a modern, creative, culturally diverse, accessible Europe, Work Package (WP) 2 aims to discuss the role of End-users' rights, interests, expectations, and behaviors *vis-à-vis* copyright rules. Within WP2, the aim of Task 2.2 is to assess the extent to which vulnerable groups experience barriers in accessing digital cultural content. It also aims to investigate whether, and to what extent, the EU regulatory framework might exacerbate or counteract those barriers. In that regard, we linked *ex ante* the idea of vulnerability to structural inequalities by identifying specific groups of End-users. However, our analysis aims to further unveil the role of those inequalities, and of specific barriers linked to them, in accessing digital culture.

Consistent with the aim of this Task, the methodology that was adopted combines traditional legal research with empirical research, within the context of an overall socio-legal approach. The researchers involved in this Task undertook an initial scoping review of literature and desk-based research on relevant legal sources, which was presented in the Interim Report (D2.2), delivered in M18 of the project. M1-18 also involved the planning, preparation and partial deployment of qualitative research in the form of semi-structured interviews. Further, as part of the empirical research, a survey, both conducted across 12 EU Member States: Belgium, Croatia, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Malta and Spain. In particular, the interviews were conducted between M11 and M20 (November 2002-August 2021), while the survey remained open from M16-17 of the project (April-May 2021). Some very preliminary results of the interviews were presented in the Interim Report (D2.2). The final results are presented in this deliverable, which is accompanied by policy recommendations.

As already indicated in the Interim Report (D2.2), Task 2.2 required a careful risk assessment at various junctures and an ongoing evaluation of the impact of the COVID-19 pandemic (and related restrictions) on vulnerable groups. The pandemic and the uncertainty linked to its duration represented a significant challenge for the research and required several adjustments to the phase of data collection, which also impacted on the data analysis.

This final report, building on the previous Interim Report (D2.2), briefly recalls the objectives of Task 2.2, and the specific research questions posed as part of this Task. After recalling the methodology used for this research, it focuses on the findings of the research. First, it highlights that the degree of knowledge of copyright law and the understanding of its relevance in relation to the consumption of digital cultural content is limited amongst vulnerable groups. This confirms the preliminary finding already included in D2.2. In that connection, it also highlights that representatives of organizations of persons with disabilities and civil society organizations working on disability issues have a better awareness that copyright may entail a barrier to accessing cultural content than organizations representing other vulnerable groups. Some organizations exhibited awareness and appreciation for the 'Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled' (Marrakesh Treaty) as a facilitator of cultural participation. However, interviews made evident a rather patchy knowledge of the content of the Marrakesh Treaty itself, and a very limited knowledge of the overall role of the EU in implementing this Treaty. In all States considered, and across all groups, interviews suggest the persistence of underlying barriers, such as the 'digital divide' and structural inequalities faced by vulnerable groups, which represent a substantial challenge to, and prevent the consumption of, digital cultural content. This finding already



emerged in the Interim Report (D2.2) and confirms the results of well-established research. We also observed specific challenges in respect of particular groups, e.g. linguistic barriers in respect of minority groups and lack of accessibility in the case of persons with disabilities.



1. Background and Aim

1.1 Introductory Remarks

This report stems from the research conducted within the *reCreating Europe*¹ WP2, which focuses on End-users and access to culture. The overall purpose of the project is to gain an understanding of which regulatory framework best supports culturally diverse production, as well as inclusive access and consumption. WP2, by focusing on End-users and access to culture, through a combination of desk-based research and participatory research methods, and a comparative cross-national mapping of regulatory measures having a positive or negative impact on access to digital culture, investigates the degree of users' knowledge and understanding of copyright law, and suggests strategies to enhance access to digital cultural goods and services. For the purpose of this project, an 'End-user' is a 'natural person, that is, an individual, easily distinguishable from institutional users such as broadcasters, content suppliers, libraries, archives, and so forth', and, broadly speaking 'a consumer of digital goods and services who benefits from consumer protection law when contracting with professional traders'.²

Among its key objectives, WP2 aims to understand the barriers faced by vulnerable End-users, i.e. End-users from selected vulnerable groups, namely persons with disabilities and people belonging to old and new minorities, in accessing digital cultural goods and services (Task 2.2). Task 2.2 provides a cross-national study of legal, economic, and technological barriers to access to digital culture for vulnerable groups. It adopts a socio-legal perspective, complemented by the use of an interdisciplinary methodology. Desk-based research is supported by empirical methods in the form of semi-structured interviews and a survey, both conducted across 12 EU Member States: Belgium, Croatia, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Malta and Spain.³ As thoroughly discussed in the 'Interim report on barriers experienced by vulnerable groups' (hereafter D2.2),⁴ Task 2.2 has required a long phase of preparation for the interviews and survey, followed by a lengthy phase of data collection and processing and analysis of data, conducted in conjunction with a systematic legal analysis.

This final report follows on from the previous interim report (D2.2). Other deliverables of this WP, which will be released in conjunction with this final deliverable, include: a final report and public dataset on copyright flexibilities (D.2.3); a final report on case studies (D.2.8), a report on effect of digitization and regulatory changes on access to culture (D.2.7), and final policy recommendations (D.2.9).

1.2 Research Questions

The aim of Task 2.2 is to assess the extent to which vulnerable groups experience barriers in accessing digital cultural content. It also aims to investigate whether, and to what extent, the EU regulatory framework might exacerbate or counteract those barriers. Task 2.2. is premised on the idea that certain groups experience

¹ For an overview of the project objectives and activities, please see <<https://www.recreating.eu/>> (last access 9 June 2022).

² G. Mazziotti, *EU Digital Copyright Law and The End-User* (Springer, 2008) 4.

³ At the outset the project envisioned Task 2.2 to have a pan-EU geographical scope. However, in consideration of the multiple restrictions related to the Covid-19 pandemic, the research was scaled down to twelve countries. See further Section 2 of this deliverable.

⁴ D. Ferri, N. Higgins, L. Serra and K. Donnellan, 'Deliverable 2.2 Interim Report on Barriers Experienced by Vulnerable Groups' (D2.2) (2021), <<https://zenodo.org/record/5067718#.YoumsZPMKtC>> (last access 23 May 2022).



barriers in accessing digital culture. In this regard, this Task builds on the idea of ‘vulnerability’ of certain groups whose rights are at particular risk of being violated as a consequence of structural inequalities. Those inequalities occur where organizations, social institutions and networks purport an embedded bias which marginalizes and produces disadvantages for some members of society.⁵ In this project, we linked *ex ante* the idea of vulnerability to structural inequalities, by identifying specific groups of End-users. However, our analysis aims to further unveil the role of those inequalities and of specific barriers linked to them in accessing digital culture. In doing so, we aim to enhance equity in access to cultural goods and services and identify ways in which copyright law and, more broadly, cultural regulatory policy can address and redress those inequalities. This understanding of vulnerability as linked to structural inequalities seems in line with the EU law approach,⁶ and with most recent EU soft law documents that mention ‘groups in situations of vulnerability and marginalisation’.⁷ This also seems in line with the use of the concept within the European Court on Human Rights.⁸

The collection of data through the interviews and the survey, supported by the analysis of relevant legal literature and cultural studies and sociological scholarship, has revolved around three overarching research questions:

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

The research under this Task focuses on access to digital culture as ‘the opportunity to benefit from cultural offer’.⁹ It refers to digitization in relation to the conversion of a cultural good/service into a digital format, and broadly to digitalization when referring to the process of digital transformation of culture.

As discussed in D2.2, this research was rooted in anecdotal evidence that certain groups experience several barriers in accessing culture and more so, digital culture.¹⁰

⁵ See UN Economic and Social Commission for Western Asia (UNESCWA), ‘Structural inequalities’ (n.d.) <<https://www.unescwa.org/structural-inequalities>> (last access 27 June 2022).

⁶ F. Ippolito, ‘Vulnerability as a Normative Argument for Accommodating “justice” within the AFSJ’ (2019), 25 *European Law Journal* 6, 544-560.

⁷ Among others, COMMISSION STAFF WORKING DOCUMENT Accompanying the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - The European Pillar of Social Rights Action Plan, SWD/2021/46 final, 4.03.2021.

⁸ Among others Y. Al Tamimi, ‘The Protection of Vulnerable Groups and Individuals by the European Court of Human Rights’ (2016) 5 *European Journal of Human Rights* 561

⁹ European Parliamentary Research Service (M. Pasikowska-Schnass), ‘Access to Culture in the European Union’ (2017) <[https://www.europarl.europa.eu/RegData/etudes/IDAN/2017/608631/EPRS_IDA\(2017\)608631_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2017/608631/EPRS_IDA(2017)608631_EN.pdf)> (last access 23 May 2022).

¹⁰ *Supra* nt. 4, 9-10.



1.3 Overview of Key Concepts and Relevant Legal Framework

The key legal concepts and relevant legal sources were extensively discussed in the interim report, D2.2. Hence, this section only recalls the key issues and briefly traces the contours of the relevant legal framework.

1.3.1 Key Concepts

Digital Culture

In Task 2.2, consistently with the overall project, the focus is on digital culture as ‘the various cultural and creative expressions and practices, including in the field of heritage, which have emerged or have been facilitated and strengthened since the global explosion in information technology and social media’.¹¹ In our semi-structured interviews, we solicited views on cultural content available through streaming platforms and apps, such as Spotify, Netflix, or virtual museum apps. However, sometimes interviewees also referred to mainstream media and national broadcasting services, or to cultural goods and services more generally.

Accessibility

Task 2.2 revolves around a broad conception of ‘accessibility’. In the broad sense, we refer to ‘access to (digital) culture’ and the ‘accessibility of (digital) culture’ as the ability of different groups to engage with culture from an economic, linguistic, and practical perspective. This relates to issues such as the democratization of culture and audience development, which are interrogated throughout the project in respect of vulnerable groups. In a narrower sense, in relation to disability, accessibility for persons with disabilities refers to the ‘extent to which products, systems, services, environments and facilities can be used by people with the widest range of characteristics and capabilities’.¹² However, we also refer to accessibility as conceived of by the United Nations (UN) Convention on the Rights of Persons with Disabilities (CRPD). Broad accessibility obligations are formulated in Article 9 CRPD and in other substantive provisions of the Convention.¹³ The CRPD encompasses a broad understanding of accessibility, including physical accessibility, economic accessibility (i.e., affordability) and accessibility of information, and it addresses accessibility ‘in all its complexity’.¹⁴

Vulnerable Groups and Vulnerability

We acknowledge that, as recalled recently by Waddington, ‘[v]ulnerability is an open-textured, ambiguous and elusive notion which is used in many different disciplines, and which academics and commentators sometimes consciously choose not to define’.¹⁵ We also accept that the term has been deployed in different

¹¹ Committee of Ministers, ‘Recommendation of the Committee of Ministers to Member States On Big Data For Culture, Literacy And Democracy’ (2017) CM/Rec(2017)8, Appendix II to Recommendation.

¹² European Telecommunications Standards Institute, ‘Harmonised European Standard: Accessibility requirements for ICT products and services’ (2018) EN 301 549 V2.1.2, 13
<https://www.etsi.org/deliver/etsi_en/301500_301599/301549/02.01.02_60/en_301549v020102p.pdf> (last access 23 May 2022).

¹³ F. Seatzu, ‘Article 9: Accessibility’, in V. Della Fina, R. Cera and G. Palmisano (eds), *The United Nations Convention on the Rights of Persons with Disabilities: A Commentary* (Cham Springer, 2017) 225, 227.

¹⁴ UN Committee on the Rights of Persons with Disabilities (CRPD Committee), ‘General Comment No. 2 on Article 9: Accessibility’ (11 April 2014) UN Doc CRPD/C/GC/2, 4.

¹⁵ L. Waddington, ‘Exploring vulnerability in EU law: an analysis of “vulnerability” in EU criminal law and consumer protection law’ (2020) 45 *European Law Review* 6, 779-801.



contexts.¹⁶ Bernardini *et al.* discuss an ‘extensive use of the "vulnerability" rhetoric in a wide range of disciplinary fields’.¹⁷ Ippolito, among other scholars, has suggested that '[n]ormatively, international human rights jurisprudence has decisively embraced a vulnerability language, beyond the traditional field of minority protection’ and that in EU law ‘we witness a progressive “vulnerabilisation”’.¹⁸ Waddington distinguishes two leading theories on vulnerability:¹⁹ the first one suggests that groups or individuals with specific characteristics are regarded as "vulnerable" *per se*; a second one, put forward by Fineman, contends that vulnerability can be regarded as a universal experience.²⁰ Some authors supporting the first theory have focused on inherent conditions of the individual (such as their impairments), however other authors have supported a view that focuses on external structural factors causing that vulnerability.²¹ The latter view is the one embraced in Task 2.2., which focuses on a dynamic context-dependent concept of vulnerability, as a process of vulnerabilization determined by the external context and produced by the existence of structural inequalities.²² On the whole, we recognise the multifaceted theoretical nuances and the complexity of the concept of vulnerability, and we understand that ‘classifying some groups *a priori* as "vulnerable"—and by implication other groups as not [...] risks stigmatising those who are labelled as "vulnerable”’.²³

While recognizing the limitation and hurdles of the concept of vulnerability, as well as its difficult relationship with autonomy and empowerment,²⁴ reference to the concept of vulnerability has supported (at the proposal stage) the identification of target groups to understand what distinct and/or additional barriers they face in accessing digital culture. Within the remit of this project, this approach also responds to the need to enhance ‘inclusive equality’²⁵ in accessing digital cultural goods. Given the blurred boundaries of the concept of

¹⁶ M.G. Bernardini, B. Casalini, O. Giolo, L. Re, *Vulnerabilità: etica, politica, diritto*, IF Press, Roma 2018. See also C. Gibb, ‘A Critical Analysis of Vulnerability’ (2018) 28 *International Journal of Disaster Risk Reduction* 327; D. Schroder and E. Gefenas, ‘Vulnerability Too Vague and Too Broad’ (2009) 19 *Cambridge Quarterly of Healthcare Ethics*, 113, 117.
¹⁷ M.G. Bernardini, B. Casalini, O. Giolo, F. Lins dos Santos, L. Re, ‘Vulnerability: possible uses of a philosophical, legal, political and social concept’ (2016) 5 *Genero & Direito (Special Issue)* 3, 1. See also A. Timmer, ‘A Quiet Revolution: Vulnerability in the European Court of Human Rights’, in M.A. Fineman and A. Gear (eds.), *Vulnerability: Reflections on a New Ethical Foundation for Law and Politics* (Ashgate, 2013), 147–170.

¹⁸ *Supra* nt. 6.

¹⁹ *Supra* nt. 15.

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

²¹ *Supra* nt. 6.

²² On this point, D. Ferri. ‘La «vulnerabilità» come condizione giuridica dei migranti con disabilità nell’Unione europea’ in M.G. Bernardini (ed.) *Migranti con disabilità e vulnerabilità. Rappresentazioni, politiche, diritti* (Jovene Editore 2019).

²³ *Supra* nt. 15.

²⁴ Bernardini *et al.*, *supra* nt. 17. For a critical approach see A. Cole, ‘All of Us Are Vulnerable, But Some Are More Vulnerable Than Others: The Political Ambiguity of Vulnerability Studies, an Ambivalent Critique’ (2016) 17 *Critical Horizons* 260.

²⁵ This concept was referred to by Colleen Sheppard (C. Sheppard, *Inclusive Equality: The Relational Dimensions of Systemic Discrimination in Canada*, MQUP, Montreal, 2010), who states that ‘inclusive equality requires reinforcing individual agency, while taking into account the systemic and structural constraints on that agency’. This concept was also explored by Sally Witcher (S. Witcher, *Inclusive Equality: A Vision for Social Justice*, Policy Press, 2013). The concept was most recently developed by the Committee on the Rights of Persons with Disabilities (CRPD Committee) in its General Comment No. 6 with regard to disability (UN Committee on the Rights of Persons with Disabilities, ‘General Comment No. 6 on equality and non-discrimination’ (9 March 2018) UN Doc. CRPD/C/GC/6, para. 11). The CRPD Committee affirms that inclusive equality embraces four dimensions: a fair redistributive dimension, which requires that socio-economic disadvantages are addressed; a recognition dimension which necessitates the combatting of stigma, stereotyping, prejudice and violence, and the recognition of the dignity of human beings and their intersectionality; a participative dimension which aims to reaffirm the social nature of people with disabilities as



vulnerability, there is no consensus on a common definition of vulnerable groups. References in literature and case law include, *inter alia*, migrants, people belonging to national ethnic or linguistic minorities, Indigenous peoples, Roma/Gypsies/Sinti/Travellers, persons with disabilities, LGBTI, women, children, older people. In that regard, Task 2.2. deliberately focuses on two main ‘macro-groups’, recognizing that they encompass different identities: persons with disabilities, and people belonging to old and new minorities. Those ‘macro-groups’ are defined below.

Persons with Disabilities

The project adopts a broad conceptualization of disability. In line with Article 1(2) CRPD,²⁶ this project embraces the view that ‘[p]ersons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others’.²⁷

People belonging to old and new minorities

The project adopts a broad conceptualization of minority groups as ‘non-dominant’ groups in a nation State that meet one or more of the following criteria: they are numerically smaller than the rest of the population; they are not in a dominant position; they have a culture, language, religion or race that is distinct from that of the majority, and their members have a will to preserve those characteristics. Task 2.2 encompasses both so-called ‘old’, often known as ‘national’, minorities and ‘new minorities’, namely migrants and refugees, and also includes, to a lesser degree, Indigenous peoples.²⁸

1.3.2 Relevant Legal Framework

A Human Rights Approach

The research conducted under Task 2.2 is premised on the need to investigate the intersection between intellectual property law and human rights law. To that end it is informed by a human rights approach to cultural participation. In that connection, Task 2.2 refers to the relevant international human rights framework, with particular reference to Article 27 of the Universal Declaration of Human Rights (UDHR) and Article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

While the research questions of Task 2.2 emanate from the core concepts of cultural rights and cultural diversity, as promoted by Article 27 of the International Covenant on Civil and Political Rights (ICCPR), Article 15 of ICESCR, as well as relevant international law instruments such as the Framework Convention on National Minorities, Article 11 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and Article 30 of the Convention on the Rights of Persons with Disabilities (CRPD), questions dealing specifically with international human rights law frameworks were not posed to interviewees. Some discussion of the international legal framework was made either explicitly (e.g. HUNG_LANG, who mentions

members of the society; and an accommodating dimension, which entails making ‘space for difference as a matter of human dignity’.

²⁶ UN Convention on the Rights of Persons with Disabilities (CRPD) (adopted 13 December 2006, entered in force 3 May 2008) UN Doc. A/RES/61/106.

²⁷ Article 1, CRPD.

²⁸ See J. R. Valentine, ‘Toward a Definition of National Minority’ (2020) 32 Denver Journal of International Law and Policy 3, 445.



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the Framework Convention on National Minorities) or implicitly (e.g. HRV_ROM, who refers to ‘Roma rights’ and ‘Civil rights’). However, the precise engagement of the interviewees with international human rights law was not interrogated in the interviews.

D2.2 succinctly outlined the overarching international and European context on access to culture for vulnerable groups, using the right to culture as a normative paradigm which informed the data collection and analysis.²⁹ In that connection, it outlined how, despite the codification of the right to culture under these various international legal instruments,³⁰ the right to culture is nonetheless perceived to be largely neglected within the international human rights law framework,³¹ and has received little attention from international courts³² or quasi-judicial bodies.³³ In contrast to the international legal framework, the European Union framework does not explicitly articulate the right to culture, however cultural rights are protected to varying degrees under various instruments,³⁴ as well as by provisions relating to the protection of the rights of minorities.³⁵ D2.2. also outlined the role of the EU in enhancing the right to culture in Member States, with both primary³⁶ and secondary³⁷ EU legislation operating to support the realisation of citizens’ right to culture, notwithstanding the limitations posed by the lack of harmonization across EU Member States on the issue of culture.

With regard to persons with disabilities, the most obvious framework is the CRPD. Article 30 CRPD lays out the right of persons with disabilities to participate in cultural life, alongside the right to participate in sport,

²⁹ See D2.2, *supra* nt. 4, 34-37.

³⁰ See also Report of the Special Rapporteur in the field of cultural rights to the Human Rights Council (2016) UN Doc A/HRC/31/59, para. 5.

³¹ See for example J. Symonides, ‘Cultural Rights: A Neglected Category of Human Rights’ (1998) 50 *International Social Science Journal* 158, 59; Oxford Bibliographies Web page (A. Xanthaki), ‘Cultural Rights’ (2015) <<http://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0123.xml>> (last access 23 May 2022). See also D2.2, *supra* nt. 4, 34-36.

³² See however E. Polymenopolou, ‘Cultural Rights in the Case Law of the International Court of Justice’ (2014) 27 *Leiden Journal of International Law* 2, 447; European Court of Human Rights Research Division, ‘Cultural Rights in the Case-law of the European Court of Human Rights’, (2011, updated 2017) <https://www.echr.coe.int/Documents/Research_report_cultural_rights_ENG.pdf> (last access 31 May 2022).

³³ See S. Strykowski, ‘Cultural Rights and Cultural Identity in the Case-Law of the Human Rights Committee’ (2017) 7 *Adam Mickiewicz University Law Review*, 119.

³⁴ See D2.2, *supra* nt. 4, 36. The Charter of Fundamental Rights of the European Union protects related human rights such as Freedom of Expression (Art. 11), Freedom of Arts (Art. 13), respect for cultural, religious and linguistic diversity (Art. 22), right to participate in cultural life for the elderly (Art. 25). The preamble to the Charter speaks of ‘respecting the diversity of the cultures and traditions of the peoples of Europe’.

³⁵ On the protection of minorities in the EU see among others, B. De Witte, ‘The European Communities and its Minorities’, in C. Brolmann, R. Lefeber and M. Zieck (eds) *People and Minorities in International Law* (Kluwer, 1993). For an historical account see also G. Toggenburg, ‘The EU’s evolving policies vis-à-vis Minorities: A Play in Four Parts and an Open End.’ (2008) EURAC Research <http://www.eurac.edu/en/research/autonomies/minrig/Documents/Mirico/Web_del%2030EU%20and%20minortiy%20protectio n.pdf> (last access 31 May 2022). See also European Parliament Resolution of 13 November 2018 on minimum standards for minorities in the EU [2018] INI/2018/2036, preamble, letter D.

³⁶ Article 2 of the Treaty on the European Union enshrines the protection of minorities as a value of the EU. Article 167 Treaty on the Functioning of the European Union (TFEU) has provided the legal basis to adopt cultural programmes, such as such as ‘Creative Europe’ Furthermore, Art. 167(4) TFEU, which requires the Union to ‘take cultural aspects into account’ in its action under other provisions of the Treaties, has given the EU the possibility to adopt several cultural measures incidentally.’ See D2.2 *supra* nt. 4, 14 and 36 respectively.

³⁷ See for example, Directive 2018/1808 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services in view of changing market realities (‘Audiovisual Media Services Directive’) [2018] OJ L303/69.



leisure, and recreation, while listing a number of obligations to be complied with by State Parties to the Convention.³⁸ This provision must be interpreted and applied in light of and in compliance with Article 3 CRPD, listing the general principles upon which the Convention is based. Those include dignity and autonomy, equality and non-discrimination, accessibility, and participation. Article 9 CRPD is also relevant in that, as noted above, it further articulates the principle of accessibility.

While the disability framework enshrines accessibility as a core underlying value in the achievement of human rights for persons with disabilities specifically, this focus on accessibility is noticeably absent from the broader human rights framework, notably in respect of persons belonging to minorities. It is in this human rights context that we situate our research outputs and through this cultural rights lens that we analysed our data.

The Overarching EU Legal Framework

As discussed more thoroughly in D2.2, the research conducted under this task connects to the role of EU law in supporting cultural participation. While the EU has only supporting competences when it comes to culture,³⁹ the importance of EU funding is certainly key in enhancing cultural production and participation. Further, the reach of internal market law legislation into the cultural domain is significant. The Audiovisual Media Services Directive (AVMSD), based on Article 114 TFEU, governs EU-wide coordination of national legislation on all audiovisual media, spanning traditional TV broadcasts and on-demand services.⁴⁰ Current EU copyright law is also based mostly on Article 114 TFEU. The copyright landscape is complex and quite fragmented, and has been delved into in other WPs. For the purposes of this deliverable, we limit ourselves to mentioning that the 2001 InfoSoc Directive⁴¹ still remains at the heart of copyright protection. It was adopted over twenty years ago as a means of compliance with the EU's international obligations under the World Intellectual Property Organization (WIPO) and World Trade Organization (WTO) treaties, with a view to modernizing and harmonizing Member States' responses to the 'digital revolution'⁴² by strengthening the protection of rightholders' interests. This Directive has been amended in the last few years by means of the Marrakesh Directive⁴³ and of the recent Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market (DSM Directive).⁴⁴

Article 114 TFEU has also been the gateway for a series of legislative acts related to accessibility for persons with disabilities. Apart from the AVMSD, which requires Member States to ensure that audiovisual media

³⁸ L. Manca, 'Article 30 Participation in Cultural Life, Recreation, Leisure and Sport' in V. Della Fina, R. Cera, and G. Palmisano (eds.), *The United Nations Convention on the Rights of Persons with Disabilities: A Commentary* (Cham: Springer, 2017), 541-555.

³⁹ Article 6 TFEU.

⁴⁰ Audiovisual Media Services Directive *supra* nt. 37.

⁴¹ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (InfoSoc Directive) OJ L 167, 22.6.2001, 10–19.

⁴² C. Sganga, 'Disability, Right to Culture and Copyright: Which Regulatory Option?' (2015) 29 *International Review of Law, Computers & Technology* 2-3, 91.

⁴³ Parliament and Council Directive 2017/1564/EU on certain permitted uses of works and other subject-matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print disabled and amending Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society (Marrakesh Directive) [2017] OJ L242/6.

⁴⁴ Directive 2019/790/EU of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (CDSM Directive) [2019] OJ L130/92 (Text with EEA relevance).



services are made accessible for persons with disabilities, new legislation does not specifically address cultural participation, but does apply to some extent to digital cultural goods. The Web Accessibility Directive (WAD),⁴⁵ adopted in 2016, aims to harmonize Member States' legislation on accessibility of websites and mobile applications of public sector bodies.⁴⁶ The European Accessibility Act (EAA),⁴⁷ adopted in 2019, requires that a range of products and services, such as computers, smartphones, tablets, TV sets, banking ATMs and services, payment terminals, e-books and e-readers, e-commerce websites, mobile applications and ticketing machines, and check-in machines are made accessible to users with disabilities. It places a range of accessibility obligations on manufacturers, authorized representatives, importers, distributors and service providers,⁴⁸ and applies equally to economic operators from the public and private sectors.⁴⁹

Copyright Flexibilities

Task 2.2 builds on, and refers to, the research work conducted in Task 2.1. on copyright flexibilities. While noting that those flexibilities, which encompass exceptions and limitations to copyright, do not specifically address the rights of minorities, Task 2.2 acknowledges that there is a disability copyright exception provided for in EU law.

The EU legislator has approached copyright flexibilities by including a list of exceptions and limitations, some of which are optional. In substance, those exceptions and limitations constrain the reach of authors' exclusive rights, allowing a range of unauthorised uses that would fall within the *prima facie* scope of such exclusive rights. The underpinning rationale is that of balancing interests of rightholders with broader public interests, and protect end users' fundamental rights of access to literary and artistic works.

The original text of the InfoSoc Directive included those exceptions in Article 5. Title II of the Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market sets forth a number of exceptions and limitations that Member States must provide, which are discussed in other tasks of the *ReCreating* project. Article 5(3)(b) of the InfoSoc Directive originally included an optional copyright exception for persons with disabilities.⁵⁰ That provision failed to redress the rightholder/End-user rights imbalance and represented a missed opportunity to equally harmonize Member States' approaches to copyright exceptions.⁵¹ In fact, it fostered a fragmented legislative response by Member States as 'the content of the disability exception across the EU became everything but consistent and streamlined.'⁵²

⁴⁵ Directive (EU) 2016/2102 of the European Parliament and of the Council of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies (Web Accessibility Directive), OJ L327/1, 2 Dec. 2016, 1-16.

⁴⁶ Article 1(1) Web Accessibility Directive.

⁴⁷ Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services (European Accessibility Act), OJ L 151/70, 7 June 2019, 70-115.

⁴⁸ *Ibid*, Article 7 *et seq.*

⁴⁹ *Ibid*, preamble para. 57.

⁵⁰ Article 5 on Exceptions and limitations states in para. (3)'Member States may provide for exceptions or limitations to the rights provided for in Articles 2 and 3 in the following cases... (b) uses, for the benefit of people with a disability, which are directly related to the disability and of a non-commercial nature, to the extent required by the specific disability.'

⁵¹ Sganga, *supra* nt. 42, 204. She describes how the Directive merely offered a list of copyright exceptions to be implemented at the discretion of Member States, 'thus declining to harmonise across the Union, in clear opposition to the pervasive harmonisation of exclusive rights.'

⁵² *Ibid*.



After the ratification⁵³ of the Marrakesh Treaty,⁵⁴ Article 5(3)(b) was amended to introduce a direct reference to the Marrakesh Directive implementing that Treaty.⁵⁵ The amended Article 5(3)(b) still affirms that Member States ‘*may provide*’ for exceptions or limitations to the rights of reproduction and communication to the public for the ‘uses, for the benefit of people with a disability, which are directly related to the disability and of a non-commercial nature, to the extent required by the specific disability’, it also makes clear that this is without prejudice to the obligations of Member States under the Marrakesh Directive, which instead introduced a mandatory exception. This means that Member States still *may* (but are not required to) provide for an exception or limitation for the benefit of persons with disabilities in cases which do not fall under the scope of the Marrakesh Directive, ‘in particular as regards works and other subject matter and disabilities other than those covered by’ the Marrakesh Directive.

The Marrakesh Directive provides for a mandatory disability exception ‘to all of the exclusive rights harmonized by EU directives in the field of copyright’.⁵⁶ Its personal scope encompasses as beneficiaries people who are blind, people who have ‘a visual impairment or a perceptual or reading disability which cannot be improved to give visual function substantially equivalent to that of a person who has no such impairment’, and people who are ‘unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading’⁵⁷. The material scope of the Marrakesh Directive, in line with the Marrakesh Treaty, encompasses a broad category of works protected by copyright. Article 2(a) makes reference to ‘literary and artistic works’, regardless of the media in which they appear. According to the Directive, a list of authorized entities, i.e., entities that are authorized or recognized by a Member State to provide education, instructional training, adaptive reading, information access and services to beneficiary persons and can provide and distribute accessible copies, has been published on the Commission website.⁵⁸ Furthermore, it does not allow Member States to impose additional requirements for the application of the exception, such as the prior verification of the commercial availability of works in accessible formats. Significantly, the provision of the InfoSoc Directive concerning the non-obstruction of the enjoyment of copyright exceptions by Technical Protection Measures (TPMs) applies *mutatis mutandis* in the context of the Marrakesh Directive.⁵⁹ This means that rightholders cannot invoke TPMs to prevent beneficiary persons from enjoying their rights provided for in the Directive.⁶⁰ However, authorized copies must respect the integrity of the original work as far as possible.⁶¹

⁵³ Council Decision (EU) 2018/254 of 15 February 2018 on the conclusion on behalf of the European Union of the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or otherwise Print Disabled OJ L 48, 21.2.2018, 1–2.

⁵⁴ Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled (Marrakesh Treaty) (published 27 June 2013, entry into force 30 September 2016) WIPO TRT/MARRAKESH/001.

⁵⁵ The Marrakesh Treaty was implemented by means of Directive 2017/1564/EU (Marrakesh Directive), *supra* nt. 43, and Regulation 2017/1563/EU (Marrakesh Regulation).

⁵⁶ Sganga, *supra* nt. 42, 214.

⁵⁷ Article 2 Marrakesh Directive, *supra* nt. 43.

⁵⁸ European Commission: Shaping Europe’s Digital Future, ‘Implementation of the Marrakesh Treaty in EU Law’ (2021) <<https://digital-strategy.ec.europa.eu/en/policies/marrakesh-treaty>> (last access 24 May 2022).

⁵⁹ Article 3(4) Marrakesh Directive, *supra* nt. 43, with reference to the first, third and fifth sub-paragraphs of Article 6(4) InfoSoc Directive, *supra* nt. 51.

⁶⁰ C. Oppenheim, “The Marrakesh Copyright Treaty for those with visual disabilities and its implications in the European Union and in the United Kingdom” (2017) 27(1) *Alexandria: The Journal of National and International Library and Information Issues* 4, 6.

⁶¹ Article 3(2) Marrakesh Directive, *supra* nt. 43.



2. Overview of Research Design

As discussed in D 2.2, the research undertaken in Task 2.2 represents an original contribution to the state of knowledge in that it addresses in an interdisciplinary fashion access to digital culture in selected EU MS paying attention to a range of vulnerable groups.

Desk-based research on relevant literature constituted the bedrock for the empirical research for Task 2.2 and has supported all dissemination activities and outputs. As discussed in D2.2, initial scoping research helped to refine the interview guide and to locate the analysis of qualitative data. In the subsequent phase of the project (M18-30) desk-based research supported the data analysis and informed the discussion of those data. Following a review of the literature, Thematic Analysis (TA) was considered as the most appropriate methodological approach for our analysis of the qualitative interview data. We conducted further desk-based research to accompany, support, and ultimately inform, the analysis of data stemming from the qualitative research, by means of the chosen data analysis method, TA.

The combination of desk-based and empirical research has allowed us to produce a dataset with wide conceptual and geographical scope. The focus on both legal and non-legal barriers experienced by vulnerable groups, with particular attention on the role and perception of copyright law among vulnerable groups, has allowed us to highlight trends and divergences. The TA aims to fulfil and align with the objective of stronger orientation towards the interests and needs of specific groups (i.e., vulnerable groups) laid out in Council Conclusions on the Work Plan for Culture 2019-2022.⁶²

3. Empirical Research

3.1 Overview of Empirical Research and Data Collection

The empirical research was characterized by a mixed method approach consisting of semistructured interviews and a survey. Interviews were undertaken with selected key informants, who were, for the most part, representatives of organizations of people belonging to the selected vulnerable groups, but also activists, and members of civil society organizations. These interviews allowed us to gather data on barriers to accessing digital culture, but also to evaluate the impact of those barriers across time, with particular regard to the COVID-19 pandemic. The overall goal of the interviews was that of capturing the different dimensions of access to digital cultural content in the everyday life of the group represented by the interviewees.

Interviews were supplemented by a survey, to capture experiences of barriers within the vulnerable groups under study. The survey has been designed as a data collection tool complementary to the interviews. In fact, where the interviews helped to identify and explain the existence of main barriers, the survey enriched the analysis and supported the identification of barriers to accessing digital cultural content.

As discussed in D2.2, both the interviews and the survey were conducted in 12 jurisdictions: Belgium, Croatia, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Malta and Spain. The initial plan was to have a pan-EU approach. However, the pandemic severely restricted the ability of organizations to participate in the study as well as the possibility of conducting face-to-face interviews. In September 2020,

⁶² Council Conclusions on the Work Plan for Culture 2019-2022 (2018/C 460/10), [2018] OJ C 460/12.



an initial scaling down to 13 countries was agreed.⁶³ As a contingency adjustment, due to the continuation of the pandemic emergency, in March 2021, further to the impossibility of recruiting interview participants in Romania, the latter country was excluded from the scope of the research. The jurisdictions selected still maintain an important balance between larger and smaller EU Member States, and between Nordic, Continental and Mediterranean countries. The geographical scope was designed to include States in which there are distinct national minorities and linguistic communities (such as Spain and Italy) and States in which there are lesser used languages or *de facto* minority languages.⁶⁴ The research design also ensured a balance between ‘old’ Member States and ‘newer’ Member States (such as Croatia).

Appropriate ethical approval from the Maynooth University Ethics Committee was obtained before commencement of the study.

3.2 Semi-structured Interviews

3.2.1 Sampling and Data Collection

Purposeful sampling⁶⁵ was used to identify participants in order to find and select ‘information rich-cases’ that best address the research purpose and questions.⁶⁶ In line with the project ethos, we identified a sampling frame of national organizations representative of persons with disabilities and old and new minorities – specifically Indigenous peoples, ethnic minority groups, linguistic minority groups, migrants and refugees. The identification of those organizations was based on a review of policy documents, grey and peer-reviewed literature, and on the basis of specific criteria. First, we identified organizations there were active at the national level (rather than merely local organizations). Secondly, we selected organizations that had shown previous engagement with cultural rights. We selected organizations representing different minority groups, as defined above in section 1.2. With regard to persons with disabilities, we focused on umbrella organizations,⁶⁷ representing persons with disabilities, in line with CRPD General Comment No. 7.⁶⁸ Given a number of considerations, such as the breadth, depth, and nature of the research topic, the heterogeneity of the population of interest described above and the access to interviewees in a variety of different States, the initial research design provided for an interview with one representative organization per group, per country (4 interviewees per each country). We also reached out to National Human Rights Institutions, where established, with a view to gathering views and data on barriers faced by all of the groups

⁶³ Amendment to the Grant Agreement – Reference No AMD-870626-3.

⁶⁴ It is acknowledged that the term ‘minority language’ is problematic in some States, where a *de facto* minority language from a purely numerical perspective is also the official language of the State, e.g. Article 8 of the Constitution of Ireland describes Irish as ‘the first official language’ (Article 8 *Bunreacht na hÉireann* 1937). In such instances, the term ‘lesser-used language’ is often more appropriate and, indeed, more acceptable to the language speakers.

⁶⁵ L. Palinkas, S. M. Horwitz et al., ‘Purposeful Sampling for Qualitative Data Collection and Analysis in Mixed Method Implementation Research’, (2015) 42 *Administration and Policy in Mental Health and Mental Health Services Research* 5, 533.

⁶⁶ M. Q. Patton, *Qualitative Research & Evaluation Methods* (SAGE 2015).

⁶⁷ According to the CRPD Committee, an umbrella organization of Persons with Disabilities refers to a coalition of representative organizations of Persons with Disabilities. See CRPD Committee, ‘General Comment No. 7 on Article 4.3 and 33.3: Participation with persons with disabilities in the implementation and monitoring of the Convention (21 September 2018) UN Doc CRPD/C/GC/2, para 12 (a).

⁶⁸ *Ibid*, para 2.



considered. In some countries (e.g. Ireland), mindful of the policy context and of fragmentation amongst groups, we identified more organizations as potential interviewees.

In light of the constraints due to the COVID-19 pandemic, we identified additional potential key informants in each jurisdiction through snowball sampling, as a complementary sampling strategy.⁶⁹

As discussed in D2.2, several organizations initially declined to participate in the interviews. In several cases organizations indicated that access to digital culture was not among the priorities of the organization or noted their lack of familiarity with the issue or highlighted that they did not have relevant data.

Organizations	Invited	Completed	No Answer	Rejected
Disability	36	12	16	6
Linguistic	33	11	19	3
Migrant	61	13	34	14
Ethnic/ Roma	48	15	27	7
Umbrella Human Rights Organization	11	0	4	7
Total	177	45⁷⁰	94	37

Table 1: Interview participation and rejection rates by type of organization

⁶⁹ C. Noy, 'Sampling Knowledge: The Hermeneutics of Snowball Sampling in Qualitative Research' (2008) 11 *International journal of social research methodology* 4, 327.

⁷⁰ There is overlap in representation between some organizations who participated, representing more than one minority group: BE_MIG_ETH; DE_MIG_ETH_REL; DK_ETH_LANG; DK_ETH_LANG2; EE_ETH_LANG; FI_ETH_LANG.



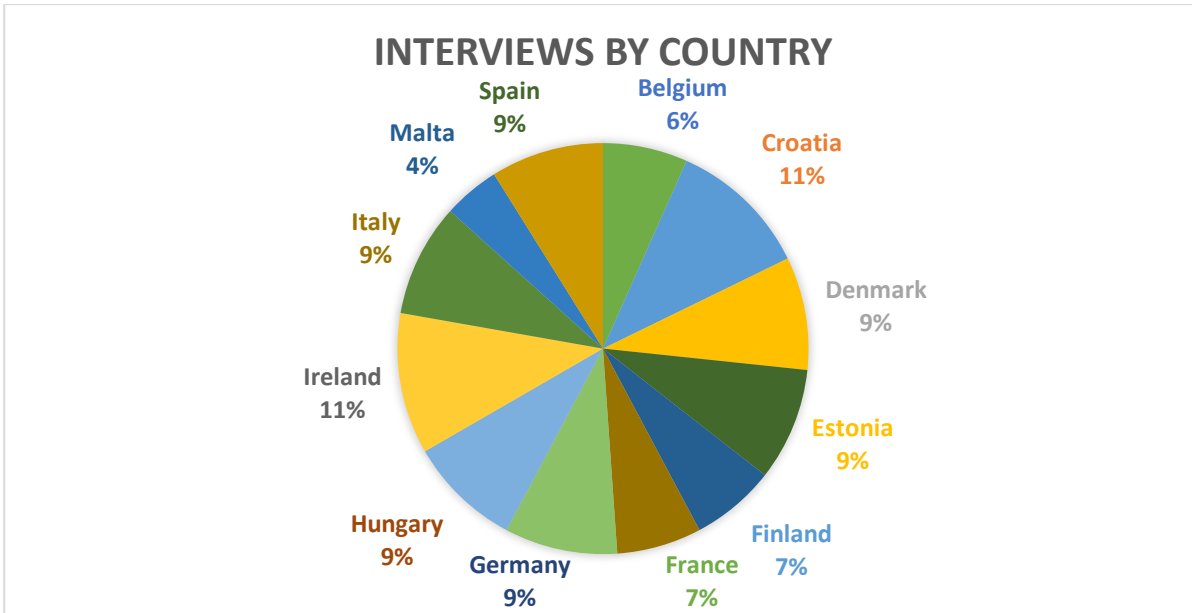


Chart 1: Participation by country

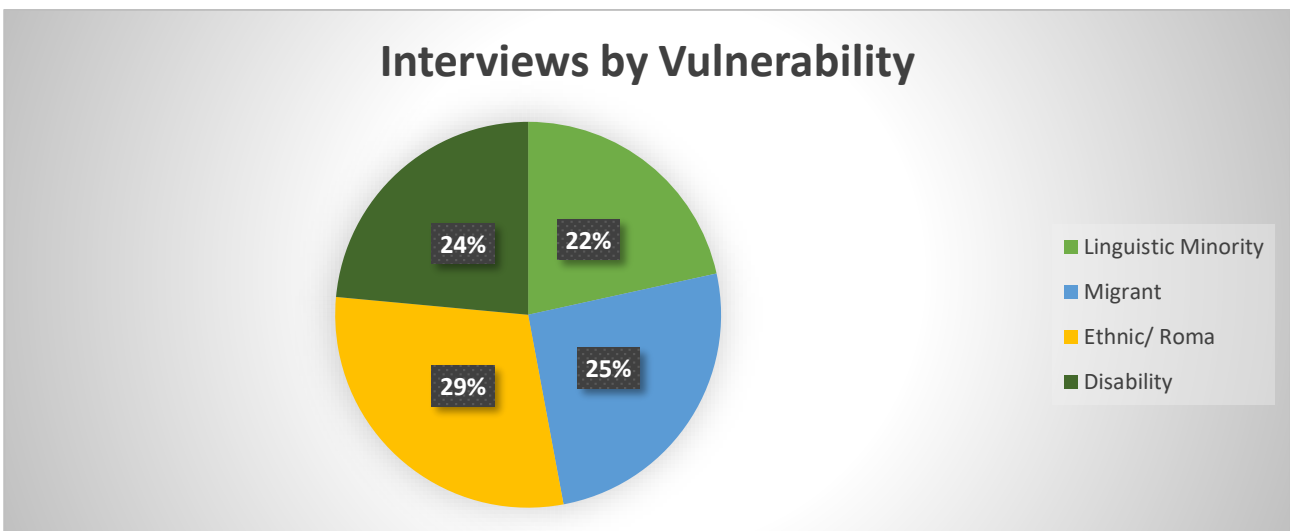


Chart 2: Interview participation by vulnerability group

Interviews were conducted primarily by Dr. Maria Laura Serra, post-doctoral researcher on the project in the first phase of the project. The duration of interview sessions was between 45 and 75 minutes, as planned, to avoid fatigue of the interviewee. Reasonable accommodations were adopted when requested by the interviewee. For example, participants who were not comfortable with a videoconference for different reasons – language/time/lack of digital skills - were invited to answer our questions in written form and in the language of their choice. Although only a very limited number of participants chose to participate via questionnaire, this was an important reasonable accommodation offered to participants in order to support inclusivity and accessibility of the study. We also conducted interviews in different languages, where needed, particularly in Spanish and Italian.



The audio-recordings (in the form of mp3 files) were transcribed with minor editing to facilitate reading. Although we generally used the NVivo automated transcription software, this was complemented by extensive manual work. In fact, transcribing from recording into text involved a series of technical and interpretational issues. In that regard, it was decided to opt for written style, instead of verbatim, transcription.⁷¹ Such a written style of transcription has been preferred since we were not interested in the conversational dynamics that can be captured through a verbatim transcription.⁷²

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

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

Figure 1. Interviews. Conventional code indicating the country

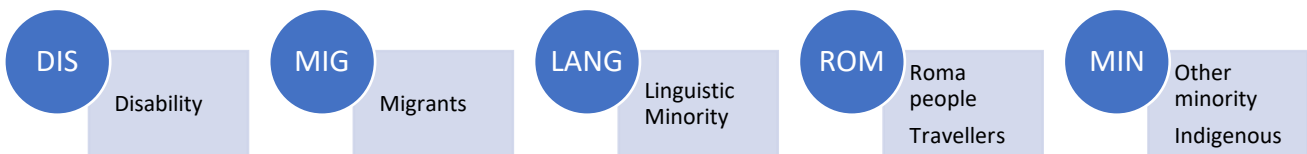


Figure 2. Interviews. Conventional code indicating the group

3.2.2 Data Analysis

As noted above we used TA, on foot of Braun and Clarke’s scholarship.⁷³ Those authors are the most authoritative voices on this method and thus constituted our primary source of guidance, namely their

⁷¹ See D. Oliver, J. Serovich and T. Mason, 'Constraints and Opportunities with Interview Transcription: Towards Reflection In Qualitative Research' (2005) 84 *Social Forces*.

⁷² *Ibid*, 4.

⁷³ V. Braun and V. Clarke, *Thematic Analysis* (SAGE Publications 2021); V. Braun, V. Clarke and N. Hayfield, 'A starting point for your journey, not a map' (2019) 19 *Qualitative Research in Psychology* 2; V. Braun & V. Clarke, *Successful Qualitative Research* (SAGE Publications 2013); V. Braun and V. Clarke, 'Using thematic analysis in psychology' (2006) 3 *Qualitative Research in Psychology* 2; Thematic Analysis: in Conversation with Virginia Braun and Victoria Clarke (Webinar, SAGE Publishing 2021) <https://www.youtube.com/watch?v=hns-tlUx1_Q> (last access 24 May 2022). See also M. Maguire and B. Delahunt, 'Doing a thematic analysis: A practical, step-by-step guide for learning and teaching scholars' (2017) 9 *All Ireland Journal of Higher Education* 3.



articles entitled ‘Thematic Analysis’⁷⁴ and ‘Using Thematic Analysis in Psychology’,⁷⁵ as well as a virtual seminar hosted by the authors to celebrate the launch of their book, entitled ‘Thematic Analysis’.⁷⁶ In particular, Braun and Clarke’s step-by-step guide to TA provided useful guidance for approaching our analysis, outlined as follows:

1. Familiarizing ourselves with the data
2. Generating initial codes
3. Searching for themes
4. Reviewing the themes
5. Defining and naming the themes
6. Producing the report

3.3 Survey

3.3.1 Data Collection

In order to complement data gathered through the interviews, we designed a survey to be administered to people belonging to the vulnerable groups identified in this research. The survey questions – discussed and agreed with the consortium partner and WP leader, SSSA - included forced-choice questions, which led respondents to choose from a range of response options. These forced-choice questions had multiple-choice, dichotomous questions and Likert scales (see Annex 2). The survey also included the option of open answers, to allow individuals to identify specific identities, issues, or concerns. However, the survey did not include open-ended questions for two main reasons.⁷⁷ First, research has shown that respondents tend to skip such questions, raising a problem of response bias and missing data. Secondly, open-ended questions would require additional time to code and analyze, and this was considered incompatible with the timeframe of the Task within the overall project.

The survey aimed to ascertain individuals’ attitudes and opinions when accessing digital cultural content, perceptions of digitization and copyright laws, and experiences or behaviours in accessing digital content (i.e. subjective data). We also collected objective data, such as demographic information (age, gender, and country where they are based), connectivity, and consumption channels that allowed for a cross-cutting comparative analysis. The survey aimed to support and complement data on barriers identified through semi-structured interviews.

⁷⁴ V. Braun and V. Clarke, ‘Thematic Analysis’ (2016) 12 *The Journal of Positive Psychology* 3.

⁷⁵ Braun and Clarke (2006), *supra* nt. 60.

⁷⁶ Braun and Clarke (2021), *supra* nt. 60.

⁷⁷ W. Vogt et al, *Selecting the Right Analyses for your Data* (The Guilford Press 2014).



The survey was made available in the official languages of the 12 selected countries⁷⁸ and administered online through Jisc Online Survey as the study-hosting service. In line with well-established methodologies,⁷⁹ organizations representative of vulnerable groups (that were already identified as potential participants for the interviews) were considered as ‘gatekeepers’ and asked to distribute the survey widely. Personal contacts, emails sent from the Department of Law and ALL Institute at Maynooth University and social media (through the project website and Twitter account) were also used as recruitment channels. Repeated invitations through individual emails yielded a higher response rate than the mass email invitations.

The survey remained open from the 30 of March 2021 until the 28 of May 2021.

3.3.2 Data Analysis

As noted in D2.2, 27 versions of the survey were released, in 13 languages representing all 12 subject Member States. 16 of the 27 versions were completed, in 11 of the 13 languages, amounting to 154 completed surveys.⁸⁰ Due to the low response rate, any inferential and associational statistical analysis has been avoided, presenting only descriptive statistics. Moreover, data could also be conceived of as a pilot study given the small sample and the sampling design adopted, and further research might be undertaken in the future.

Interview data analysis supported the analysis of survey data, relating to representation in cultural content, barriers and supports to the accessibility of digital works, awareness of intellectual property law and creators’ rights, and the impact of Covid-19 on digitalization.

4. Results

In D2.2., we highlighted some interim results of interview data analysis,⁸¹ preliminarily identifying that the degree of knowledge of copyright law and the understanding of its relevance in relation to the consumption of digital cultural content is limited among vulnerable groups. We also found that, in all countries considered, underlying barriers, such as the ‘digital divide’, and structural inequalities faced by vulnerable groups, represented a substantial challenge and prevented the consumption of digital content.

As we have now completed our TA of the interviews, we build upon the preliminary findings outlined in D2.2., and identify four main themes:

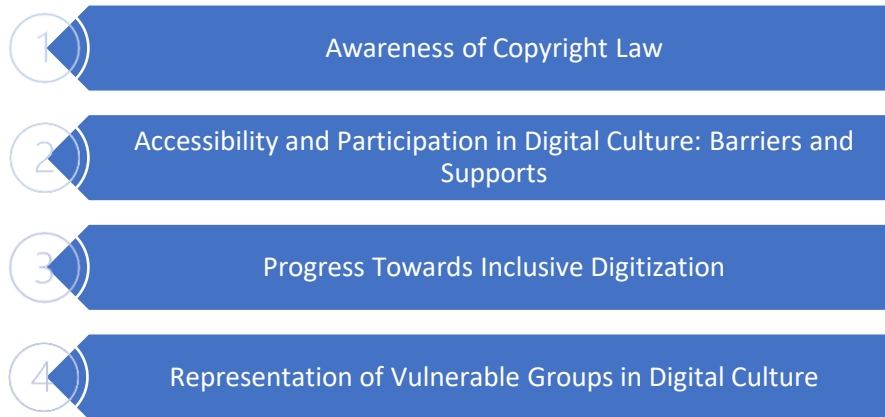
⁷⁸ These are Croatian, Danish, Dutch, English, Estonian, Finnish, French, German, Hungarian, Irish, Italian, Maltese, and Spanish.

⁷⁹ M. Maniaci and R. Rogge, *Conducting Research on The Internet: Handbook of Research Methods in Social and Personality Psychology* (Cambridge University Press 2014) 1023.

⁸⁰ The following versions were answered: Survey (English); Anketa (Hrvatski); Encuesta (Español_lenguaje sencillo); Survey (Plain English); Encuesta (Español); Istħarriġa (Maltese Lingwa Semplici); Istħarriġa (Maltese); Sondaggio (Italiano semplice); Sondaggio (Italiano); Felmérés (Hungarian); Tutkimus (Finnish); Küsitlus (Estonian lihtsas keeles); Küsitlus (Estonian); Umfrage (Deutsche); Enquête (Français clair); Suirbhé (Gaeilge).

⁸¹ D2.2, *supra* nt. 4, 40-42.





In the subsections below, we present a discussion of these results and highlight patterns of convergence and divergence, across different vulnerable groups.

4.1 Awareness of Copyright Law

Interviewees generally exhibited a limited awareness of Copyright Law, but some representatives displayed concerns around the protection of intellectual property rights (IPR) related to their own cultural products and expressions.

4.1.1 Limited Awareness Copyright Law for Vulnerable End-users

A limited awareness - albeit to varying degrees - and knowledge of copyright law, as well as an understanding of its relevance for the consumption of digital cultural content for vulnerable groups was identified in the analysis.⁸² Interviewees representing sixteen organizations indicated a good awareness,⁸³ seventeen indicated a limited awareness,⁸⁴ and eight indicated no awareness.⁸⁵ Two organizations indicated an awareness of copyright law, however stated that it is nonetheless ignored by the organizations,⁸⁶ signifying perhaps a lack of comprehension of its relevance to digital cultural consumption.

Those who displayed an awareness of copyright law generally saw it as a barrier to accessing digital cultural content. For example, the excessive cost of acquiring translation rights in order to comply with copyright rules was identified by one linguistic minority interviewee as a barrier to publishing in their minority language:

'we purchase images for cover illustrations. We also translate recent authors for whom the translation rights can be acquired. They are in the order of €300 to €600 for maximum 300 ex (this is excessive and a barrier to publishing in our language). As part of our activity, we need photographs to illustrate

⁸² Ibid, 37.

⁸³ BE_LANG; BE_MIG_ETH; DK_ETH_LANG; EE_DIS; ES_LANG; ES_MIG; ES_ROM; FI_DIS; FI_ETH_LANG; FI_MIG; HRV_ROM; HUNG_LANG; IE_DIS; IE_DIS2; IE_TR_ROM; IT_ROM.

⁸⁴ DE_MIG_ETH_REL; DE_ROM; DK_DIS; EE_ETH_LANG; EE_MIG; ES_DIS; FI_MIG; FR_MIG; HRV_DIS; HRV_MIG; HUNG_DIS; HUNG_LANG; HUNG_MIG; HUNG_ROM; IE_DIS2; IE_LANG; MT_MIG.

⁸⁵ BE_ROM; DK_MIG; EE_ETH_LANG; IE_MIG; IE_TR_ROM; IT_LANG; IT_MIG_Eng; MT_DIS.

⁸⁶ HRV_MIG; IE_DIS2.



*our articles in magazines. We buy these photographs online for our communication tools. The cost is high and we do it to avoid any copyright issues.*⁸⁷

Two disability organizations identified the limitations of copyright law, with one stating: ‘*so if a child with visual impairment can't get this book because of the copyright; the department of education can't get the book because the publisher will not give permission due to copyright.*’⁸⁸ Some of those organizations also suggested a certain rightholder hesitancy to provide content in accessible formats and/or their failure to give permission to copy the work into accessible formats, arising from an ill-founded fear that the permission will be abused to reproduce the work outside of the parameters of what the rightholder has permitted.⁸⁹ A representative of one organization suggested that such mistrust was apparent in the negotiations for the Marrakesh Treaty⁹⁰:

*‘There were hard negotiations for the WIPO because publishers thought, “oh, if you get digital books or digital material, then not only the disabled will take them but also the sighted people and nobody will buy books anymore.” It's quite absurd because no sighted people will read the whole book, especially the university books, and many sighted people can buy talking books. So, the negotiations were hard because of fear. There is always a fear that we give the books or dispatch the books where we shouldn't. Each time we receive a look made by such organizations as mine, there is a declaration saying that the book cannot be dispatched or distributed or given, except to the people who have a reading difficulty.’*⁹¹

4.1.2 Protection of Minority Groups’ Intellectual Property Rights

It is worth noting that some interviewees responded to questions related to copyright from the point of view of their own cultural creations, such as their rich Roma culture or traditional Indigenous knowledge. Thus, they highlighted a perceived lack of protection of their rights by current copyright law. They also highlighted the role of copyright in protecting them as creators, thus facilitating the promotion of minority groups’ cultural rights. For example, one Indigenous representative organization from Finland spoke of work they were doing to strengthen the copyright of Sámi people over their own cultural material, in the form of education and training to raise an awareness amongst Sámi people of their IPR and how to protect them:

*‘...we would have like a maybe three-day training coming at the end of this year. We order special expertise by consultants, partly from others school who are experts of intellectual property rights and Sami indigenous rights... Sami people are more aware of their cultural identity and they have more tools to defend their own copyrights also and all rights as an indigenous person, and this is about value, they have connections for court cases. I mean, they will know what to do if they feel like somebody's stealing their property.’*⁹²

However, more interviewees view copyright law as a barrier to access, because not only does it impede their access as End-users, but it also fails to protect their rights over cultural content produced by them.

⁸⁷ FR_LANG.

⁸⁸ IE_DIS2.

⁸⁹ FR_DIS; IE_DIS2.

⁹⁰ Marrakesh Treaty *supra* nt. 54.

⁹¹ FR_DIS.

⁹² FI_ETH_LANG.



Interviewees expressed the sentiment that the law was not there to protect them, or that laws were not understandable by them in respect of their rights as creators or possessors of cultural content.⁹³ This sentiment of not being protected by regulations intended to provide protection to people online, for example through content moderation, is related to a facet of the research being conducted under WP6 of this project on intermediaries.⁹⁴ Content moderation is defined as ‘[t]he process whereby a company hosting online content assesses the [il]legality or compatibility with terms of service of third-party content, in order to decide whether certain content posted, or attempted to be posted, online should be demoted (i.e. left online but rendered less accessible), tagged as being potentially inappropriate or incorrect, demonetised, not sanctioned or removed, for some or all audiences, by the service on which it was posted.’⁹⁵ However, studies show that this tool of intended protection can operate concurrently to exclude marginalized End-users from digital social media platforms, while failing to protect them from harmful content disseminated by other users.⁹⁶

4.2 Accessibility To, and Participation In, Digital Culture: Barriers and Supports

In line with the primary research objective of this study, interviewees identified a number of barriers to, and supports for, access to and participation in digital culture. They also identified some factors that, to varying degrees, may impinge on their access to culture.

⁹³ FI_ETH; HRV_ROM.

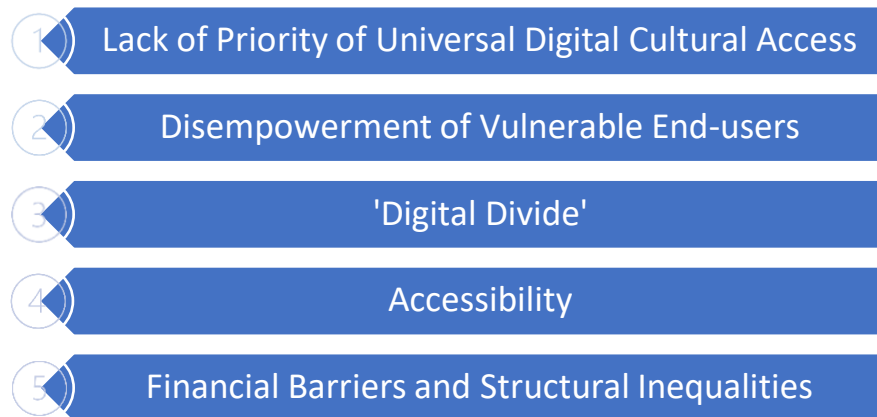
⁹⁴ See *reCreating Europe*, ‘Intermediaries’ <<https://www.recreating.eu/stakeholders/wp6-intermediaries/>> (last access 24 May 2022).

⁹⁵ Council of Europe, ‘Content Moderation: Best practices towards effective legal and procedural frameworks for self-regulatory and co-regulatory mechanisms of content moderation’ (Guidance Note adopted by the Steering Committee for Media and Information Society (CDMSI) at its 19th plenary meeting, 19-21 May 2021) <<https://rm.coe.int/content-moderation-en/1680a2cc18>> (last access 24 May 2022) 11.

⁹⁶ See for example, Á. Díaz and L. Hecht-Felella, ‘Double Standards in Social Media Content Moderation’ (Brennan Centre for Justice, 2021) <<https://www.brennancenter.org/our-work/research-reports/double-standards-social-media-content-moderation>> (last access 24 May 2022). Harmful content against minority groups is also the subject of an ongoing study by the European Union Agency for Fundamental Rights, ‘Online content moderation – harassment, hate speech and (incitement to) violence against specific groups’ (2021) <<https://fra.europa.eu/en/project/2021/online-content-moderation-harassment-hate-speech-and-incitement-violence-against>> (last access 24 May 2022).



4.2.1 Barriers



Lack of Priority of Universal Digital Cultural Access

Securing universal access to digital culture was indicated as a low priority for State authorities, but also by representative organizations and vulnerable End-users themselves. In particular, with regard to the latter, migrants, ethnic minorities, and, to a small extent, linguistic minorities, indicated that as they struggle to secure their basic needs and rights, access to digital cultural goods and services remains low on their list of priorities. Lack of End-user priority arises from their poor socio-economic status, identified by twelve interviewees, representing migrants or ethnic minorities across nine of the participating States.⁹⁷ It stems from their pre-occupation with securing basic subsistence needs, such as accommodation, employment,⁹⁸ or fighting for their basic human rights, such as for education or reproductive rights, or against forced evictions.⁹⁹ For example, a representative of a migrant organization stated that:

'For many people within these groups, seeking out digital cultural content is by no means a priority because day to day survival occupies much of their time and energy'.¹⁰⁰ Similarly, another interviewee stated: 'These families are so much focused on their fight for survival that cultural content is completely pushed to the background.'¹⁰¹

Another stated: *'with the poverty levels in which the Roma live, and the economy is an insurmountable barrier. When people don't know what their children are going to eat today, telling them to subscribe to Netflix or HBO is not a priority.'*¹⁰² An Italian Roma interviewee raised two interesting points. Firstly, the lack of time for leisure:

'in their mentality, as it is for the mentality of those that are marginalized and that live in poor conditions [the interviewee explains that usually, between peers, they do the same, and the culture is not in using those platforms]. If you do something, is for a purpose. You do not have the culture of "hav[ing] fun". You do not have the culture of the youth to use the tools if it is not to something

⁹⁷ The only States in which it was not raised as an issue by interviewees are: France, Germany, Malta.

⁹⁸ BE_MIG_ETH; DE_ROM; EE_ETH_LANG; EE_ROM; ES_ROM; FI_ETH_LANG; HRV_LANG; HRV_MIG; HRV_ROM; IE_TR_ROM; IT_ROM.

⁹⁹ HUNG_ROM.

¹⁰⁰ BE_MIG_ETH.

¹⁰¹ DE_ROM.

¹⁰² ES_ROM.



concrete... And when you talk with them, it's to talk to solve concrete [problems]. If you need something you will need that tool to [overcome] the issue, the problem. They do not need a digital identity.'

The second point was the fact that, marrying young somewhat limits the opportunity for participation in culture: *'they marry at 15, 16, 18 and they have family immediately. [They do not experience the process of] adulthood, boyhood [...] There is no time for other kinds of issues.'*

This lack of priority for addressing cultural rights extends to public authorities and civil society organizations who provide services and assistance to minority groups. It is identified primarily by ethnic minority (Roma) and migrant organizations across seven States,¹⁰³ and by a linguistic minority organization in Croatia. One interviewee stated: *'we are dealing with the basic necessities, access to clean water, electricity, access to health services, making sure that Roma are not left behind with their vaccination during covid-19, etcetera.'*¹⁰⁴ Furthermore, prioritising the challenges of Covid-19 was raised by several organizations.¹⁰⁵

Disempowerment of Vulnerable End-users

Lack of effective bottom-up approaches to policymaking, as a result of **poor representation of vulnerable End-users in decision-making bodies**. Decision-making in the context of digital cultural accessibility is not inclusive of vulnerable End-user input, and as a result government actions aimed at facilitating universal access are not filtering down to vulnerable End-users in practice.¹⁰⁶ An illustrative example is provided by a German Roma organization:

*'For example, a family with seven children is living in a guesthouse without online service. At least three digital devices would be necessary to participate in digital classes. An online service should be installed. Due to Covid-19, it was also not possible to use resources of the family unit, e.g., going to the residence of an aunt to possibly use the online service over there. What's more, if an employment agency approves a digital device, the families must advance the money which often is already an enormous obstacle for small families, but even more so for families with more than five children... I do think that barriers can be overcome... However, only collectively. In part, we were able to find a remedy through assets of the foundation. Structural barriers in the authorities would have to change.'*¹⁰⁷

A Roma organization in Hungary raised a similar issue:

'Even approaches made by the government, for example, families don't have to pay for the Internet if they have children who attend school, is not very helpful for the families who don't have an Internet [provider] at all because the government doesn't really provide the Internet, just if you already [pay for] having access, it's a kind of reimbursement for the families who already have. Or giving iPads or smart tablets to the children, without having access to the Internet is again something which is not very helpful, or if they give these prepaid, because sometimes they give these cards already inserted in these tablets or smartphones, which are prepaid so that they could use the Internet, but many

¹⁰³ Belgium, Germany, Estonia, Spain, Croatia, Ireland, Italy.

¹⁰⁴ BE_ROM.

¹⁰⁵ VE_ROM; DE_ROM; EE_MIG.

¹⁰⁶ IE_MIG.

¹⁰⁷ DE_ROM.



*children once they have that device, they use it all the time, so these prepaid cards for the Internet are very quickly run out of data. So, again, they end up without having access.'*¹⁰⁸

An organization representing migrants in Italy similarly stated: *'[Some schools] intended to provide students with a tablet ... but [in reality] this was not possible and [Italians] did not receive it and therefore nothing was given to migrants.'*¹⁰⁹ This issue is exacerbated by the fact that vulnerable end-users, as numerically minority groups, make up a small proportion of the general population, which further silences their voice.¹¹⁰ An Italian minority language organization stated that it *'is very difficult to think that the small communities of a few thousand people could be organized in such an issue'*¹¹¹ whilst a Hungarian migrant organization simply states: *'as there are not many migrants, so there are not brokers in the system.'*¹¹² Similarly, another interviewee states: *'Roma people in Estonia unofficially are around 1000 to 1500 people, and the state doesn't really have much support for the Roma minority.'*¹¹³

Digital cultural content service providers also fail to see vulnerable End-users as valuable consumers of their services. In some instances, they display a lack of awareness of the value of making their offering accessible:

*...we must not only look at sensory disability here, but we must also look at other disabilities such as intellectual disability when it comes to putting subtitles in easy-to-read format, and other types of mechanisms, and I think that they see it more as a business opportunity in the original version than as a question of looking at disability as cultural consumers ... it is often due to the publisher's own will to do so.'*¹¹⁴

This appears to be based on ignorance, or *'forgetfulness'*,¹¹⁵ a lack of empathy for the reality of the situation faced by vulnerable End-users,¹¹⁶ or the unfounded belief that providing accessible content will decrease their profit margins.¹¹⁷ This was identified to a varying degree by all vulnerable groups across ten of the twelve countries. A Spanish disability organization indicated that Corporate Social Responsibility (CSR) could be a means of tackling this issue:

'I believe that they have not yet taken into account that thinking in terms of universal design also implies a monetary evaluation. And they have not yet taken that step. In other words, they see the issue of accessibility as more linked to CSR (Corporate Social Responsibility) issues, more linked to social action issues than to business.'

A Maltese organization stated that private providers seem to be coming around to this: *'idea that if they provide an accessible Web site, that they will be able to do more business. That's certainly one of the*

¹⁰⁸ HUNG_ROM.

¹⁰⁹ IT_MIG.

¹¹⁰ IT_LANG.

¹¹¹ Ibid.

¹¹² HUNG_MIG.

¹¹³ ES_ROM.

¹¹⁴ ES_DIS.

¹¹⁵ FR_DIS; IE_DIS; IE_DIS2; IT_DIS.

¹¹⁶ ES_MIG: *'Empathy, above all. Empathy not only on the part of the banks when it comes to opening accounts, for instance, but also from the platforms themselves, as they are thought for an audience with resources. Those platforms have not been empathetic with the circumstances of those who are currently excluded from society. They probably do not want to address them or, if they do, they are not being empathic or are not aware of their reality.'*

¹¹⁷ FR_DIS.



approaches that we are taking at the moment in order to encourage people to provide more inclusive digital content.’¹¹⁸ A Croat Roma organization refers to historically embedded perceptions of Roma people:

‘And when we talk about these external productions, from outside, in terms of its cultural products, it's difficult to change the narrative. It's difficult to change something that was deeply embedded for decades, centuries. And many people who work in this commercial aspect of culture and cultural products, they're going after popularity and popularity for sure goes with the prejudice.’¹¹⁹

‘Digital Divide’

This barrier was identified during preliminary analysis, and relates to a variety of digital and non-digital socio-economic barriers to cultural access. Digital barriers include poor digital connectivity, a lack of appropriate digital devices, and poor digital literacy, especially amongst persons with disabilities who face additional disability accessibility barriers. In that regard a Danish organization of persons with disabilities stated:

‘our member base consists of usually quite old people who may not have the prerequisite for digital participation in the first place, or if they have some skills that they have learned, it may not have been updated over time and therefore they may be hesitant or incapable of participating in digital events because they simply don't have the skills to go out and do it.’¹²⁰

The digital divide was broadly identified, by twenty-five interviewees across all vulnerability groups, referencing vulnerable End-users not having access to digital devices,¹²¹ internet, online services or infrastructure,¹²² and not having the relevant digital skills, knowledge and training to access digital culture.¹²³ For example, not having access to email or an email address was identified:

‘One of the things I notice a lot is that you must have an email address and a lot of Travellers wouldn't have an e-mail address... you need an email address for nearly everything. A lot of Travellers don't have e-mail. They can text, maybe WhatsApp, but they don't necessarily have an email. And so that is an issue’.¹²⁴

¹¹⁸ MT_DIS.

¹¹⁹ HRV_ROM.

¹²⁰ DK_DIS. This is supported by EU studies and by literature. See for example, in the context of European Parliament, C. Codagnone, G. Liva, L. Gunderson, G. Misuraca and E. Rebesco, ‘Europe’s Digital Decade and Autonomy’ (2021) <[https://www.europarl.europa.eu/RegData/etudes/STUD/2021/695465/IPOL_STU\(2021\)695465_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/695465/IPOL_STU(2021)695465_EN.pdf)> (last access 24 May 2022): ‘Since technological progress is fast, such skills are quickly becoming obsolete with new skills always being scarce.’ See also D.J. Deming and K. L. Noray, ‘STEM Careers and the Changing Skill Requirements of Work’ (2018) *National Bureau of Economic Research (NBER)* <<https://ideas.repec.org/p/nbr/nberwo/25065.html>> (last access 24 May 2022).

¹²¹ BE_MIG_ETH; BE_ROM; DE_MIG; DE_ROM; EE_ETH_LANG; ES_MIG; ES_ROM; HRV_ROM (individual expert); HUNG_LANG; HUNG_ROM; IT_MIG_Eng; IT_ROM; MT_MIG.

¹²² BE_ROM; DE_MIG; DE_ROM; DK_ETH_LANG; EE_ROM; ES_MIG; ES_ROM; FI_ETH_LANG; HRV_DIS; HRV_LANG; HRV_MIG (cost of data charges); HRV_ROM; HRV_ROM (individual expert); HUNG_LANG; HUNG_ROM; IE_TR_ROM; IT_MIG_Eng; IT_ROM; MT_MIG.

¹²³ BE_ROM; DK_DIS; EE_ETH_LANG; ES_MIG; ES_ROM; HUNG_ROM; IE_TR_ROM; IT_ROM; MT_MIG.

¹²⁴ IE_TR_ROM. Also an issue raised by MT_MIG.



The same interviewee also raised an interesting point of how a lack of digital skills can lead to a lack of privacy, as having another person assist them in accessing digital services means they will have to share with them information they would prefer to keep to themselves:

*'To do online applications to access services or websites or webinars or whatever, [you need education]. You must have the basic understandings of the reading and know how to apply for. If applications would be a normal, straightforward, plain English – there are words that a lot of Travellers cannot understand and you get the embarrassment then, because if I were to apply for a service, it would be a private service subsidized. I would not want to see them because they might be [people who I know].'*¹²⁵

This can be exacerbated by low approval rates for the provision of digital devices or services to vulnerable End-users.¹²⁶ One interviewee said digital devices are only available to migrants for a singular purpose of language education, and not for accessing digital culture.¹²⁷

Conversely, some interviewees identified improvements in terms of the availability of digital devices, such as smartphones, to members of the vulnerable groups.¹²⁸ However, obstacles still remain as sometimes a smartphone will not suffice (e.g., a laptop is needed for education purposes,¹²⁹ or even where they gain access to a device, they still need to have an internet connection and digital skills to operate the device). Also, there is the issue of families – often large families – or a group of people sharing a single device.¹³⁰ A Spanish Roma organization made an interesting suggestion in that regard:

*'We have become more dependent on the online world. So, when we see that we can't access the online world, that we can't do the paperwork, we can't even see shows or enjoy culture in general and Roma culture in particular. So, the issue here is that something that is a public service is left in private hands. Nowadays, Internet access should be a good protected by the State as an element of social cohesion. If you have a lot of resources, you need to have a much better connection, much more powerful and much better prepared.'*¹³¹

Accessibility

When it comes to accessibility of content, the data indicate that the private media broadcasters trail the public sector in providing accessible content. This was raised primarily, although not exclusively, in the context of disability accessibility.¹³² This accessibility discrepancy is rooted in the fact that public broadcasters are obliged by law to provide accessible content: *'one thing is what is happening in the public broadcasting sector, but when it comes to private companies like media companies, for instance, or cultural institutions,*

¹²⁵ IE_TR_ROM. A similar situation was raised by DE_MIG concerning privacy.

¹²⁶ DE_ROM: *'Only 10% out of 100 applications for digital devices were approved.'*

¹²⁷ MT_MIG.

¹²⁸ DE_MIG_ETH_REL; DE_ROM; DK_ETH_LANG; EE_MIG.

¹²⁹ EE_MIG

¹³⁰ For example, IT_ROM: *'one member of the family has a mobile phone, afford the cost for a mobile phone, for internet and streaming, but only one for the whole family because it is needed, and it's a tool that maybe can help.'*

Also MT_MIG.

¹³¹ ES_ROM.

¹³² It was also raised, both through the identification of the efforts of public broadcasters and through critiques of private broadcasters, by: BE_LANG; DK_MIG; ES_ROM; ES_ROM; FI_ETH_LANG; IE_LANG; IE_TR_ROM; IT_LANG.



it's a bit murkier as there may not be provisions in the law, they may not be obligated to make things accessible.'¹³³ However, the same interviewee identified a lack of action taken by public broadcasters in pursuit of this obligation: 'on our public service TV providers, one of the broadcasters, they are very reluctant about making audio description on their programs and documentaries and series and they are obligated to do that, but they haven't done it yet.'¹³⁴ This was corroborated by other interviewees, for example an Irish language organization: 'And it was very critical of RTÉ'¹³⁵ saying basically that there were far below the amount of Irish language that they should meet with broadcasting.'¹³⁶ A Spanish Roma organization highlighted how Roma people had been failed by public broadcasting:

*'In Spain, public television channels do not have channels for the dissemination of Romani culture, they do not, they may have channels for Ecuadorian immigration, which we are happy about, but there are no channels for the dissemination of Romani culture. Neither cultural, nor of the history of the culture of the Romani people. It does not exist and the general public, not only the Romani population, is not given the opportunity to watch these shows to acquire knowledge about the development of the Romani population in Spain on a cultural, linguistic, economic, defence, legal rights level. Therefore, public television channels in Spain and their digital platforms are neglecting their responsibility to offer cultural dissemination products.'*¹³⁷

Where efforts are made in the private sector to provide accessible content, this appears to be largely driven by collaborative projects with minority organizations, for example:

*'When I was in the moderation of deaf people, we managed to do a project called Movistar Plus 5S (5 senses) and so they are doing a remarkable job, translating traditional subtitles into sign language, which is done directly by deaf people, native signers. Subtitling and audio description of Movistar Plus content. The platform is therefore available to people, who of course have to subscribe. I think there were offers, lower prices, but well, I mean, the important thing here is that they are a company.'*¹³⁸

Financial Barriers and Structural Inequalities

Non-digital barriers in accessing digital content correlate to structural inequalities, and include financial barriers, financial hardship or poverty (can't afford to access digital culture).¹³⁹ The **cost** of access to digital cultural goods or the cost of making existing goods accessible to vulnerable End-users, coupled with the lack of funding for accessibility, was broadly identified by interviewees as a barrier across all vulnerable groups, in eight of the twelve countries.¹⁴⁰ **Financial barriers** identified by these interviewees included high costs

¹³³ DK_DIS. Similarly, FI_DIS: 'commercial channels, even when they have news programs, or current affairs programs, they don't necessarily have the same level of subtitles. No texting or they don't have the same level of obligation as the public service broadcaster.'

¹³⁴ DK_DIS.

¹³⁵ Raidió Teilifís Éireann (RTÉ), the national broadcaster.

¹³⁶ IE_LANG.

¹³⁷ ES_ROM.

¹³⁸ ES_DIS.

¹³⁹ BE_MIG_ETH; BE_ROM; DE_ROM; DK_MIG; DK_ETH_LANG; ES_DIS; ES_MIG; FI_DIS; HRV_MIG; HRV_ROM; HUNG_DIS; HUNG_MIG; HUNG_ROM; IE_TR_ROM; IT_ROM.

¹⁴⁰ Belgium, Germany, Estonia, Spain, France, Croatia, Hungary, Ireland.

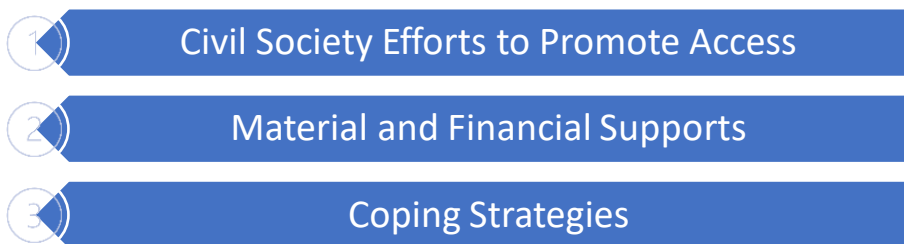


related to content translation,¹⁴¹ or making services accessible,¹⁴² the cost of digital skills training for vulnerable End-users,¹⁴³ and not enough funding for civil society organizations to promote the work they do.¹⁴⁴ Further support to the NGO sector is important, to engage in an array of activities that support vulnerable groups. A migrant organization in Hungary highlighted the Government’s blunt refusal to support initiatives for migrants. *‘No, no, no. At the moment, and then for the past five years, the government is explicitly not supporting civil society activities related to Migration.’*¹⁴⁵

Other barriers correlate to engendered structural inequalities: social or physical isolation,¹⁴⁶ unemployment or insecure, informal employment,¹⁴⁷ low education levels,¹⁴⁸ insecure or illegal immigration status,¹⁴⁹ experiencing discrimination or barriers in terms of accessing public assistance or social assistance,¹⁵⁰ or being unable to access basic services such as opening a bank account¹⁵¹ or entering into a contract.¹⁵² However, coping strategies in this regard were also identified, for example, by a Belgian Roma organization, who identified community support:

*‘Migrants experiencing financial difficulties or who live more isolated find it more difficult to get access both to cultural goods and to online services. Migrants who can fall back on the support of a community obtain information on online goods and services within that community. E.g., even if many Roma are relatively poor, they often live in tight-knit communities where information is passed around rapid.’*¹⁵³

4.2.2 Supports



¹⁴¹ BE_LANG; ES_LANG; HUNG_LANG.

¹⁴² DE_DIS; DE_ROM; EE_DIS; ES_DIS; FR_DIS; FR_LANG; HRV_DIS; HUNG_LANG; HUNG_MIG.

¹⁴³ EE_DIS.

¹⁴⁴ IE_TR_ROM.

¹⁴⁵ HUNG_MIG.

¹⁴⁶ BE_MIG_ETH.

¹⁴⁷ BE_MIG_ETH; ES_MIG; IE_DIS.

¹⁴⁸ BE_MIG_ETH; DE_ROM; EE_ROM; HRV_ROM; HUNG_DIS; IT_ROM.

¹⁴⁹ BE_MIG_ETH; DE_MIG; ES_MIG; MT_MIG (initial detention of migrants where they have no internet access).

¹⁵⁰ DE_ROM: *‘What’s more, if an employment agency approves a digital device, the families must advance the money which often is already an enormous obstacle for small families, but even more so for families with more than five children.’* Also, IT_ROM.

¹⁵¹ ES_MIG; MT_MIG.

¹⁵² DE_MIG; IT_ROM.

¹⁵³ BE_ROM.



Civil Society Efforts to Promote Vulnerable End-user Access

Various practical actions taken by civil society organizations were identified as supportive to vulnerable End-users' cultural access and participation. Such actions include campaigning to make cultural content more accessible, in terms of disability and linguistic accessibility,¹⁵⁴ as well as efforts such as campaigns to create and produce content which does not stigmatize or discriminate against minority groups, as explained by a Roma organization:

*'We do have a programme in our organization called "Rromani Pativ", which means Roma dignity, which focuses on Antigypsyism in social networks and in the media. So, in the field of information, strictly speaking, we do have a line of action within this programme called "Aliados con palabra" ("Allies with words"), which are professionals and media that are sensitive to the cause of the fight against racism, discrimination against the Romani people and one of the lines that we provide is advice, documentation, even graphically to be able to show other types of things, initiatives, values, other types of images.'*¹⁵⁵

Tangentially, awareness-raising around the promotion of cross-cultural understanding by civil society organizations was identified as a support by interviewees from seven States.¹⁵⁶ This is important in any society where minority cultures are respected and promoted, particularly to make mainstream society more aware of the vulnerable situation of minority group. For example, one participant from a refugee organization in Italy explains how:

*'Another school in Rome put together a group of boys and a group of refugees and the Italian boys were teaching to the refugees in Italian how to use the computer, while the foreign boys were teaching French, Arabic... to them. So, it became almost an exchange, and there is parity. [Refugees are not represented] as victims. Another example that I want to tell you: in Trapani, [they did a project on] on photography... They gave each boy [...] a camera telling [them] to represent [their] city together. [They did] some spectacular work. [...] [The exchange]... i.e. you give me, I give you... makes them feel... important.'*¹⁵⁷

Civil society efforts to host and support accessible events, exhibitions and projects were identified as a support to cultural access and participation by a number of interviewees.¹⁵⁸ For example, in terms of disability accessibility, one interviewee mentioned that:

'last year we organised an exhibition on LGTB Cinema and Disability, these two scopes. We organised an exhibition that showed the cover of the film, a small trailer, which could be accessed with a QR code, and that QR code, everything was in sign language, subtitled and so on; the text was both in

¹⁵⁴ Disability Accessibility: EE_DIS; IT_DIS; MT_DIS. Linguistic Accessibility: ES_LANG; IT_LANG.

¹⁵⁵ ES_ROM.

¹⁵⁶ Germany, Denmark, Spain, Croatia, Hungary, Italy, Malta.

¹⁵⁷ IT_MIG_Eng. Another example: DE_MIG_ETH_REL: *'we have had photographic exhibitions, youth projects, which actually were producing cultural content, a number of attempts to influence (not always successful) the content of the curriculum, schoolbooks, all in which all with a cultural element in terms of increasing the level of understanding of social diversity in the current state of affairs of a multicultural society.'*

¹⁵⁸ ES_DIS; FR_LANG; FR_MIG; HUNG_MIG; MT_MIG.



*Spanish and accessible reading, even in pictograms, we did that. There was a short film explaining the exhibition that was also accessible.*¹⁵⁹

Similarly, in terms of language accessibility, a French language organization stated: *'Our association has taken the decision to initiate bilingual visits in the form of audio-tours of sites (IZI.travel application) in order to validate the cultural elements provided in French and to give visibility to the existence and to the use of the Occitan language.'*¹⁶⁰

Interviewees also identified existing civil society organization projects that educate and otherwise facilitate vulnerable End-users to access digital culture, for example, by producing digitally accessible cultural goods or making non-accessible material accessible.¹⁶¹ Other civil society efforts identified included influencing rightholders to make content accessible, or alternatively, establishing volunteer networks that translate works into accessible formats,¹⁶² organizing events with accessible cultural content,¹⁶³ providing access to digital cultural platforms and materials,¹⁶⁴ digital inclusion projects,¹⁶⁵ providing digital training for minority End-users,¹⁶⁶ and providing accessibility training for cultural sites and production companies.¹⁶⁷

Facilitating integration through digital means was identified as another key support, such as hosting webinars – webinars are identified as a support in the context of progress towards inclusive digitization - and providing information to introduce minority group members to their host community, society, and culture.¹⁶⁸ For example, one migrant representative organization described how they had hosted *'a webinar connecting communities, bringing people from Lebanon and Syria. We also had a program that could run like that and there was funding for that. But all the seminars that are organised within the organization get funded by the organization.'*¹⁶⁹ They even pointed to the provision of more general important information to vulnerable communities, such as in relation to the Covid-19 pandemic, as a support: *'we did a lot of digital content during the pandemic, not necessarily related to culture. Again, a lot of our stuff is focused on information provision. We did videos that provided information on the pandemic and that was translated into different languages and disseminated.'*¹⁷⁰

The role of civil society was also conceived of as essential to achieving increased accessibility.¹⁷¹ For example, one interviewee stated: *'We recently managed to convince the Office of the Estonian President to provide*

¹⁵⁹ ES_DIS.

¹⁶⁰ FR_LANG.

¹⁶¹ EE_DIS; ES_DIS; FI_DIS; FR_LANG; HUNG_DIS; HUNG_LANG.

¹⁶² EE_DIS; IT_MIG_Eng.

¹⁶³ ES_DIS.

¹⁶⁴ ES_MIG; FR_LANG; IT_Rom: *'The devices were given by the State, some devices for schooling, but not all and not to everybody, especially those living in marginalisation and in poverty. They could not afford it, they do not have the possibilities and the tools - the economic possibilities, the knowledge, tools, and possibilities to afford those kinds of things. We tried to have like a little lab within the work. Three or four [people] of the staff trying to help people to get access to documents, to schooling programs or whatever. So, we had developed this thing a little bit more during this period, especially for those things. But the issue still remains with or without Covid-19.'* See also, ES_MIG: *'we put a lot of effort in showing empathy concerning equal treatment, we offered access to several film forums, and we provided links to read books of choice or watch movies.'*

¹⁶⁵ FR_MIG.

¹⁶⁶ EE_DIS.

¹⁶⁷ EE_DIS.

¹⁶⁸ IT_MIG_Eng; MT_MIG.

¹⁶⁹ IE_MIG.

¹⁷⁰ MT_MIG.

¹⁷¹ Disability: EE_DIS; ES_DIS (for universal access); MT_DIS. General: HRV_LANG; IT_MIG_Eng.



audio description on the presidential live TV shows that are main, two of them per year and once a year there is also like a play, a theatre plays broadcast over the national TV.¹⁷²

Finally, collaborative efforts, both cultural and technical, that aim to promote minority cultural access and participation were identified as a support to cultural access and participation for vulnerable End-users. In terms of cultural collaborations, this primarily relates to collaborations which make the minority culture more visible, or which provide minority cultures with more relevant cultural content. These were identified as events organised by both civil society organizations and cultural or heritage sites, such as theatres and museums, or by public authorities, education institutes, or vulnerable End-users themselves.¹⁷³ Two Roma organizations identified this, in the context of promoting Roma cultural content,¹⁷⁴ with the Spanish organization explaining:

*'We have offered ourselves as a source to improve the quality of products that deal with the Roma, as a source of documentation and advice. Fortunately, the Romani people also have professionals in the different technical and artistic fields, so that they can also advise these companies so that any company dedicated to culture and communication, which has a component of social responsibility, can finally do its work in better conditions and with better quality, and that is the important thing.'*¹⁷⁵

In terms of technical collaborations, these relate primarily to disability accessibility, such as technical support provided by disability organizations to cultural institutions to make the latter's cultural offering accessible for persons with disabilities. For example: *'we are very often helping these institutions and bring our knowledge from the accessibility to these cultural institutions.'*¹⁷⁶ Another interviewee provides a useful illustration of how such collaborations operate, and particularly their limitations, stating that:

*'it has to be a dialogue thing, taking context to the given institution to say "can we work together making your offerings more accessible?" But of course, that takes time and it often happens only in one case, you know, we get maybe some complaints from some of our members saying "we would like to do this, but we can't because it's not accessible", and then we would try to approach the institution or the company whatever to have a dialogue with them and say, can we actually solve this? And sometimes we can. We may not necessarily get to the point where everything is 100 per cent accessible, but at least we can have a dialogue and maybe make things somewhat better, maybe on a case basis.'*¹⁷⁷

Material and Financial Supports

There have been coherent efforts to better facilitate cultural access and to increase diversity amongst cultural offerings, by public authorities and entities, including public libraries, civil society, and private companies, in

¹⁷² EE_DIS.

¹⁷³ DK_DIS; EE_MIG; EE_ROM; ES_MIG; ES_ROM; FI_ETH_LANG: *'There has been like this Gaming company that contacted to us, to make some kind of reindeer herding game, you can throw the lasso, for example, catch the reindeer. So they want to make a game, but It would also be an educational platform for the kids in the world to learn about Sami culture'*; IE_MIG; IE_TR_ROM; IT_LANG; MT_MIG.

¹⁷⁴ DE_ROM; ES_ROM.

¹⁷⁵ ES_ROM.

¹⁷⁶ DE_DIS.

¹⁷⁷ DK_DIS. Also: EE_DIS; ES_DIS; HRV_DIS; MT_DIS .



the form of material and financial support.¹⁷⁸ The provision of accessible digital cultural platforms and accessible content by public authorities was identified as a support to cultural access and participation, although only three interviewees mentioned this type of support: two language organizations and one disability organization, in Estonia, Hungary and Malta respectively.¹⁷⁹

The role of national and public libraries was identified as a support by interviewees representing all vulnerable groups, albeit primarily persons with disabilities, across nine States. They provide accessible cultural content, or support those who do not otherwise have access by providing access to digital devices or internet access, or, in terms of participation, by exposing mainstream society to minority culture, whether collaboratively with civil society organizations, or independently.¹⁸⁰ As explained by one interviewee:

*'we're looking a culture really as a way of communication, because [name of the organization] on its own, could never hope to have the kind of exposure that, say, working with the National Library or producing something at that level could give, we would never get that exposure normally.'*¹⁸¹

In the context of disability, interviewees referred to the power of these public libraries to implement copyright exceptions that benefit persons with disabilities.¹⁸² For example, one interviewee suggested:

*'Denmark has a very good, well-organized public library. With lots of new material, new films, new movies, new books, computers and everything, and I know that a lot of people who don't have computers at home maybe can't afford to buy new books, etc., they go to the public libraries and use them. And they are open almost all day. And even if there's nobody there, you can access with the healthcare card. I think that... [this] kind of balances out the... [restrictions put in place by]... copyright legislation, which is there to protect the rights of the copyright holder. But at the same time, there are all these possibilities to get access to the goods through to the public library.'*¹⁸³

However, a Spanish disability organization was critical that libraries do not do enough:

*'For example, in public libraries, there is a great lack of accessible digital content. The Community of Madrid has a strong digital collection of books and also a collection of audiobooks, which is still not enough, in my opinion... And well, with the issue of accessible copies, I think that it is still very limited to disability organizations, but it has not yet made the leap to the network of libraries, to the network of bookshops, to cultural agents.'*¹⁸⁴

¹⁷⁸ This corroborates the finding in the also European Commission Staff Working Document, 'Report on the availability of certain copyright protected works for persons with disabilities within the internal market' (2022) SWD (2022) 109 final <<https://digital-strategy.ec.europa.eu/en/library/report-availability-copyright-protected-works-persons-disabilities>> (last access 24 May 2022), 14-15.

¹⁷⁹ EE_ETH_LANG; HUNG_LANG; MT_DIS.

¹⁸⁰ Collaboratively: DK_DIS; EE_DIS; FR_DIS; HRV_DIS; IE_DIS; IE_TR_ROM; IT_DIS. Independently: BE_LANG; DK_MIG; ES_DIS; FI_DIS; FI_MIG.

¹⁸¹ IE_TR_ROM.

¹⁸² For example, IT_DIS; IE_DIS. The EU Commission Staff Working Document also identifies the important role of libraries, providing the example of the National Library in Estonia which provides an audio-description service. See, EU Commission *supra* nt. 168, 15.

¹⁸³ DK_MIG.

¹⁸⁴ ES_DIS.



Related to the support for cultural access provided by national public libraries is the provision of open access cultural material¹⁸⁵:

*'We always ensure that copies of works are as successful as possible. So it's a mindset because, in the olden days, people made materials that were kept in their own closet. Well, that's not the idea. I think we have been moving along with Europe in that respect.'*¹⁸⁶

Also, translation efforts and language promotion efforts are identified, with interviewees highlighting increased efforts to translate cultural content and to promote minority languages, particularly via digital platforms, such as Netflix and Zoom, as important.¹⁸⁷ One linguistic minority organization provided the example of the provision of *'digitalized children's books and materials that enable parents to work with different languages within the family context.'*¹⁸⁸ A representative of a French minority language organization made an interesting suggestion for Open Access, culturally diverse, representative, digital content, in the specific context of photographs: *'We would need a database that is truly representative of our cultures and our territories (not "international" photographs with an African, an Asian, etc.... or which correspond to terms in American universities...).* This database, after the rights are purchased, could be free for every use in favour of the linguistic group?¹⁸⁹

Financial support from both EU and national sources, for making goods and services accessible, was another external support identified by interviewees. Funding from civil society organizations goes towards the provision of accessible digital devices and resources,¹⁹⁰ assisting minority artists,¹⁹¹ or making digital cultural content accessible.¹⁹² Public sources of funding¹⁹³ assist minority representative organization activities to facilitate digital cultural access,¹⁹⁴ and subsidize digital entertainment or cultural industries to make their offerings accessible.¹⁹⁵ It also consists of government budget allocation to the promotion of the minority culture and language.¹⁹⁶

Coping Strategies

¹⁸⁵ Identified by two linguistic minority, two ethnic minority (Roma) and one migrant organization, in Belgium, France and Hungary respectively BE_LANG; BE_ROM; FR_LANG; HUNG_MIG; HUNG_ROM.

¹⁸⁶ BE_LANG.

¹⁸⁷ BE_LANG; BE_MIG_ETH; FI_ETH_LANG; FR_DIS; FR_MIG; IT_MIG_ENG; MT_MIG.

¹⁸⁸ BE_MIG_ETH.

¹⁸⁹ FR_LANG.

¹⁹⁰ ES_MIG; HRV_LANG.

¹⁹¹ MT_MIG.

¹⁹² MT_DIS. Including through linguistic or sign language translation of content. See, BE_LANG; DK_ETH_LANG.

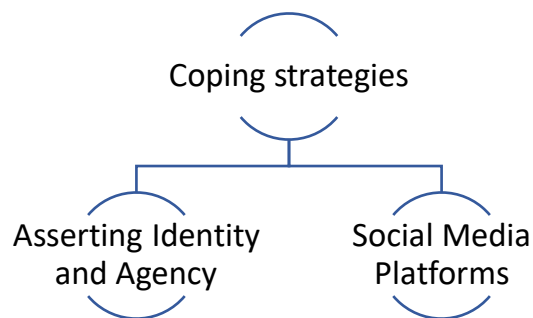
¹⁹³ Identified by interviewees in seven States: Denmark, Estonia, Spain, Finland, France, Ireland, Malta.

¹⁹⁴ DK_DIS; ES_MIG; FR_MIG.

¹⁹⁵ Through, for example, accessibility adjustments, reduced pricing for vulnerable patrons etc. DK_MIG; EE_DIS; ES_DIS; MT_DIS.

¹⁹⁶ IE_LANG.





In addition to the supports for digital cultural access and participation that emanate from organizations, companies and public authorities, vulnerable End-users have developed coping strategies to overcome barriers to access and participation in culture, which are rooted in their own agency, that is, asserting their own cultural identity in a positive way, and utilizing the digital platforms available to create and publish their own cultural content, increasing the accessibility of digital culture for members of their own communities.

Minorities' struggle to assert their own cultural identity within mainstream society was raised by two linguistic minority and one disability organization.¹⁹⁷ Grassroots efforts by Flemish people in Belgium influenced today's strong legislative protections for their language.¹⁹⁸ An Irish language organization identified the sense of cultural and linguistic pride among Irish speakers in Ireland as driving protection of language efforts.¹⁹⁹ The representative of a Maltese disability organization highlights the agency and efforts of the disability community:

*'now have a very strong disabled voice and we have over 70 NGOs related to disability in various formats. But they are more vocal now than they were. And because of that, we are in a situation whereby it makes it easier for us as the regulator to put more demands on people because their voice is coming from society. And generally, we get letters in the Times of Malta, which is our main newspaper, complaining about things at the same time as they are complaining to us. And disabled people are very happy to go and hunt down the local politicians and again, because of the size of Malta, because everybody knows everybody, it is very difficult for a politician to ignore a disabled person who either email them with a complaint or turns up more often in their office. And as a result, that makes our job a bit easier.'*²⁰⁰

Perpetuating a positive self-image is another way for vulnerable End-users to exercise agency, and this was widely identified in the interviews.²⁰¹ For example, a Belgian ethnic minority and migrant representative organization 'opened a small-scale migration museum (MigratieMuseumMigration or MMM) in 2019. Part of its collection is digital as well and is aimed at bringing to the fore the important role that immigrants have

¹⁹⁷ Located in Belgium, Ireland and Malta respectively.

¹⁹⁸ BE_LANG: 'people had to fight for their linguistic identity and for a very long time were a linguistic minority group, they now have rules and regulations and a lot of laws that determine what the language is like in the region of Flanders.'

¹⁹⁹ IE_LANG: 'Irish speakers are quite protective of the language, are very kind of proud, I suppose, in a way that you see across a lot of different minority languages. So I'd say definitely once there's an opportunity, once it is available, I'd say it's definitely accessed and with the vigour.'

²⁰⁰ MT_DIS.

²⁰¹ This was identified by interviewees representing disability, migrant and ethnic minority groups in Belgium, Denmark, Spain, Croatia, Ireland and Italy.



played in the shaping of Brussels into the city that it is today.²⁰² An Irish Traveller representative organization stated that:

*'being part of traditional music, all those cultural things have a huge potential to actually communicate positive messages about Travellers culture and identity and Travellers themselves access their own identity in a positive way... If you're asking about barriers and how to try to overcome them, that's kind of one way you try to capture people's imagination with something.'*²⁰³

This concept of capturing peoples' imagination with empowering, positive representations is underlined by an Italian disability organization:

*'There is a famous pianist with that produced a good perception [in society]. There are others, for example, the Paralympic athletes that are very famous because they are persons very young and very communicative. And it is evident that there is an evolution.'*²⁰⁴

It is clear from the data that social media and self-publishing digital platforms play a significant role in the agency of minority groups. It was identified by interviewees from all vulnerable groups, particularly migrant and ethnic minorities, then disability, and, to a lesser extent, linguistic minorities, across ten States²⁰⁵ as a means of self-propagating support for promoting vulnerable End-user cultural access and participation, and empowering minority group members to create, publish and participate in culture. As elucidated by a Belgian migrant and ethnic minority organization:

*'the rise of social media with its influencers and vloggers has given an impetus to the online representation of minorities. Everyone, including members of minority groups, can now produce and upload their own content, and they do so. A fairly recent (2019) survey among teenagers, most of whom were from a Moroccan background, taught us that, along with major and internationally popular productions, YouTube channels, TikTok and Instagram accounts represented a very large share of their digital consumption and they looked for content that spoke to them and in which they could recognize themselves... certainly makes some groups feel left out, although people consume culture in some way or other and they do turn to the cultural content that is accessible to them. The rise of social media has contributed very much in this respect.'*²⁰⁶

Similarly, a Hungarian Roma organization states: *'Roma people are getting the present, they're taking more and more spaces, let just say this is all from a social media point of view because that's the only place where you can interact with media. It's been going in that direction and then the Pandemic kind of made us all go like five times faster.'*²⁰⁷ However, a Traveller representative organization in Ireland refers to the rather insular nature in which members of the Travelling community tend to use social media: *'I think it's kind of controlled within because obviously if you're on Facebook, you've got friends and you've got followers. So it's not public, it's public within the community and maybe some of the YouTube stuff might be a bit more*

²⁰² BE_MIG.

²⁰³ IE_TR_ROM.

²⁰⁴ IT_DIS.

²⁰⁵ Belgium, Germany, Denmark, Estonia, Spain, France, Croatia, Ireland, Italy, Malta. This was not identified in Finland and Hungary.

²⁰⁶ BE_ETH_MIG.

²⁰⁷ HRV_ROM.



public.²⁰⁸ This can be linked to the abuse and harassment suffered by members of this community within mainstream digital media:

‘There is also a more like a psychological or sociological barrier, which is, do Roma people feel safe on the Internet? Are they afraid of it? Even some people maybe have all the opportunities to access, the money, the Internet connection is there, but they don't use it because they are saying “this is not a space for me, this is a space where I get bullied, or I get harassed, the internet is evil. I'm not going to do it.” [...]. There is definitely potential for that kind of fear aspect from technology also, but I don't think that's a big of a factor compared to the access and the literacy.’²⁰⁹

This relates to failures in content moderation of online social media platforms which can exacerbate issues of online hate and abuse targeted at minority groups by failing to protect them from such content.²¹⁰ The Council of Europe’s guidelines on self-regulating content moderation point out the dangers of discriminatory effects of content moderation technologies, whereby ‘accidentally or deliberately, an operator might not prioritise dealing with racist abuse against one group more than another.’²¹¹

A Maltese migrant representative organization referred to the ease of access to social media platforms compared to other digital cultural content services or platforms, in terms of requirements for signing up, and of internet access requirements:

‘Also, having a mobile contract implies that you have an employment, that you would have a permanent address and things like this, which a lot of people don't have, they do not have access to the Internet the same way at some of the centres to provide free Wi-Fi. But it's very, very weak. You would not be able to access cultural content for sure. I mean, you may be able to use some social media, but that's it.’²¹²

4.3 Progress towards Inclusive Digitization and the Impact of Covid-19

Notwithstanding the ‘digital divide’, all minority groups across all Member States considered, with the exception of Croatia, remarked positively upon the effect of digitization in fostering more inclusive cultural access and participation for minority End-users. Thus, once the ‘digital divide’ can be bridged, vulnerable End-users can benefit from digitization, but there remains a lot of work to be done in this regard, as illustrated by the following participant:

‘with regards to websites and digital content, they are getting better. I think there is a lot of work that needs to be done on it. Our hope is that when we have a full set of accessible public websites, that the private sector will catch on to the idea that disabled people are very willing to participate if they are able to. And certainly, we run campaigns, which we get a lot of feedback from disabled

²⁰⁸ IE_TR_ROM.

²⁰⁹ HRV_ROM (individual expert); IE_TR_ROM - referred to being the target of ‘hate speech’ online.

²¹⁰ See generally Díaz and Hecht-Felella, *supra* nt. 86. This is also subject of an ongoing study conducted under the auspices of the EU Agency for Fundamental Rights, *supra* nt. 87.

²¹¹ Council of Europe, *supra* nt. 86, 25.

²¹² MT_MIG.



*people saying that it has made a difference. Most disabled people in Malta can access the websites and get the information one way or another. Not perfectly but they get by.'*²¹³

Digitization has broadened the market of available content and created better quality choice of readily accessible cultural content for vulnerable End-users.²¹⁴ Notably, the development of webinar-based activities been welcomed:

*'Webinars, I think are a very good trend. And I hope this continues because, again, it allows you to quickly absorb information from across the world. I personally participated in a lot of those. I wouldn't have had the resources to travel to all of those conferences. And I would say that the webinar is a more accessible format in a way that when travelling physically to a conference, you will, as a blind person, need a guide. You need a way to move around and get all that information. Now, most of the information in those webinars is communicated digitally, which means, a screen reader can usually read the slide show or the documents. It's also easier to ask questions through the chat and it's easier to be visible. So those things are huge pluses to the webinars.'*²¹⁵

Digitization has increased cultural connections, such as through the creation of:

*'a website where Travellers could access their own culture by going on to this Web site called Travellers Connection. And that was something that Travellers could submit things. So say if you have an object or something that was very important to your family that you wanted to be up there, you can photograph and send it in, and then people will be able to travel to be able to access their own culture, because at the moment, you can't you know, there's very little out there for Travellers to access in terms of their own identity.'*²¹⁶

Similarly, another interviewee identified how improvements in terms of accessing cultural content can be attributed to digitization: *'And then the next issue is whether refugees or immigrants' access to the prior dominant cultural content, I think it's getting better by the years because the IT and communication technology is developing.'*²¹⁷

Digitization has been equally useful in exposing mainstream society to minority cultures, as an education tool, as identified by an Indigenous organization in Finland:

*'There has been like this Gaming company that contacted to us, to make some kind of reindeer herding game, you can throw the lasso, for example, catch the reindeer. So they want to make a game, but It would also be an educational platform for the kids in the world to learn about Sami culture. So that kind of approaches, but I think not too much concrete has come out of that yet.'*²¹⁸

Digitization has opened up cultural access and participation beyond consumption. For example, in Finland, it has enabled Indigenous culture, knowledge, and observations to contribute to the fight against climate change, via digital means, although it does raise a privacy rights issue for the Indigenous contributors:

²¹³ MT_DIS.

²¹⁴ BE_MIG_ETH: *'Since there is a wider range of cultural content, more people have access to it as well... Content is less of a problem'*; IT_LANG; MT_MIG.

²¹⁵ EE_DIS.

²¹⁶ IE_TR_ROM.

²¹⁷ HUNG_MIG.

²¹⁸ FI_ETH_LANG.



*'We want everybody to know where the reindeer are coming from or the salmon in the river. Maybe that might be very useful to preventing environmental catastrophes or finding out what the source of infection actually is. But sometimes they have this more intimate or sensitive information that people are not so willing to share.'*²¹⁹

With regard to disability, digitization has been perceived as a particularly useful tool to enhance accessibility: *'More things that are published online in an accessible format, means that I can check, I can find everything before I need to on hand. The possibility of the Internet and technology is absolutely phenomenal in terms of equality, equal access and participation.'*²²⁰ The increased availability of digital content has enabled persons with disabilities to:

*'get out of the lethargy caused by conventional television with content that, in my opinion, is very weak. You have another series of interests. For example, I now have Filmin. You can watch festivals at home. Independent film festivals, independent cinema. There is also another dimension to this, since many cinemas are not accessible. So you can watch films, quality films. Even new films, because you can buy them, without having to go through the hassle of not reaching the ticket window, you don't have the hassle of the hall, the stairs and so on; and above all, for many deaf people, these platforms come with subtitles by default. But in rural Spain, where there are no cinemas, or if there are any at all, they never have the original version. It also gives the possibility, which is very important and is a claim of "CERMI", to see Spanish cinema, Latin American cinema, subtitled. Because in all this cultural baggage, for example, Almodóvar's films were not available for many deaf people. So, well, these digital contents, these digital platforms are already activated by default. It is marvellous.'*²²¹

The increased availability of cultural content on streaming platforms has been heralded as an important step forward. Digitization appears to have simplified the process of cultural access for persons with disabilities, as encapsulated by one interviewee: *'Yesterday I was at a concert, which was not especially for disabled people, but with the link, I could access the concert last night.'*²²² However, one interviewee in Ireland stated that accessible content takes longer to become available.²²³

Digital education is a prerequisite for vulnerable End-users being able to benefit from digitization, and, as mentioned earlier in this report, the 'digital divide' remains an important barrier. This includes educating people on how to use digital platforms and to access digital cultural content and material,²²⁴ and also how to safely operate in the digital sphere,²²⁵ and how to legally operate in the digital sphere – education and training around the rules pertaining to copyright so that they may access these things within the confines of the law.²²⁶ The importance of investment in digital education and training was identified consistently by

²¹⁹ Ibid.

²²⁰ IE_DIS.

²²¹ ES_DIS.

²²² FR_DIS.

²²³ IE_DIS.

²²⁴ BE_LANG; BE_MIG_ETH; DK_DIS; EE_DIS; EE_ETH_LANG; EE_MIG; ES_MIG; FR_MIG; HRV_MIG; HUNG_DIS IE_DIS2; IT_ROM; MT_MIG.

²²⁵ For example, BE_MIG_ETH: *'media awareness workshops for young people that deal with topics such as manipulation, extremist messages and propaganda. Many of the young people taking part in these workshops have an immigrant background.'*

²²⁶ HUNG_LANG.



interviewees.²²⁷ It must be an ongoing, sustained effort, due to the evolutionary nature of the digital world, i.e. digital skills learned initially may no longer be applicable to updated technologies,²²⁸ as outlined above.²²⁹

Finally, in line with previous research,²³⁰ the analysis of our interviews points to the impact of Covid-19 in terms of the accessibility of digital culture. However, the perception of this impact varies across interviewees, from positive to negative,²³¹ in equal measure.²³² The negative impact is rooted in digital fatigue - *'people are getting very tired and tired of speaking through a flat-screen'*²³³ - as well as the exacerbation of the 'digital divide' which is exemplified by the following quotation:

*'I think there are two opposing forces operating here as far as we could observe them during covid. Covid tends to reproduce and amplify the kinds of difficulties and discriminatory patterns as far as not only access to content and cultural expression exercises concerned but also the whole range of issues surrounding minority experience in minority existence in Germany and elsewhere.'*²³⁴

Another interviewee spoke of the negative impact of the inability to host physical cultural events: *'Cultural events were no longer possible in the same way. The Covid-19 pandemic also put a stop to circuses, exhibitor trades, etc'*, the impact of which was exacerbated by the fact that not all artists could afford to digitalize their content.²³⁵ A different interviewee raised the point that the digital contact cannot completely compensate for in-person engagement:

*'But they were very good at communicating with each other online or just writing to each other or FaceTime. In that case, they have managed very well. But we have also experienced that they have missed each other. And that area has impacted a lot in their social account, but they have been managing very well because they have been very good at helping each other. If they notice someone being a little sad, they just contact them again and see if they can help each other.'*²³⁶

²²⁷ EE_DIS; EE_ETH_LANG; ES_MIG. For example, IT_ROM: *'For example – we, under COVID-19, under lockdown, we tried to have a little bit of financing or external financing to have digital devices for kids to [allow them] continue school. We had that, but we had many problems because they did not have this kind of tools [and skills]. They did not understand how it works. The parents did not know how to make them work. We had to do it on our own. It's not like "take this device, take this app and think this phone and then do it". It's like education on digital tools and stuff. So, that could be a good thing for the government, the national governments or local governments to know and to improve, to start improving digital education in those parts of society where it's totally absent.'*

²²⁸ DK_DIS; EE_DIS (sustainability of training).

²²⁹ See s.3.2.1. *Disempowerment of Vulnerable End-Users* (b).

²³⁰ See D.2.2, *supra* nt. 4. See also EU Commission *supra* nt. 169, 10.

²³¹ Issues such as digital fatigue, end-user difficulties with internet access or lack of digital devices, creator/producer lack of resources/ funding for making content accessible, prioritising health/ survival concerns over culture. Identified by interviewees from organizations representing: disability (9), migrant (9), ethnic minority (10), linguistic minority (7).

²³² 32 references for positive and 32 references for negative. This mixed review of the impact of Covid-19 tallies with research conducted by the EU: EU Commission *supra* nt. 169, 11.

²³³ BE_LANG.

²³⁴ DE_MIG_ETH_REL.

²³⁵ DE_ROM. This interviewee further stated: *'Better-off musicians organised live music streams on YouTube so that our music was sometimes represented as well. However, there was usually not enough money to organise a professional livestream to be broadcast over the Internet.'*

²³⁶ DK_ETH_LANG2.

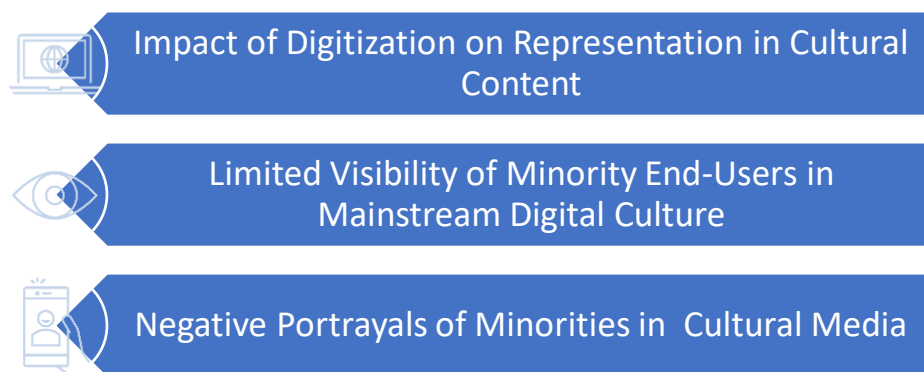


A positive side-effect of the restrictions on social gatherings imposed as a result of Covid-19 is identified by interviewees in terms of facilitating digital access²³⁷ and in terms of casting digital access inequalities into the mainstream spotlight. Many interviewees saw it as a lesson-learning experience. One interviewee called Covid-19 ‘a wake-up call, not just to policymakers, but to everybody.’²³⁸ And another stated:

‘Most of the mainstream cultural content is still not as representative as we would like, but there are clearly two tendencies: greater awareness of the need for diversity and representation in mainstream media and cultural productions, as well as the development of more ‘niche’ cultural productions by ethnic and linguistic minorities.’²³⁹

4.4 Representation of Vulnerable Groups in Digital Culture

The final theme that emerges from the interviews, and that was solicited by questions, relates to representation of vulnerable groups in cultural content generally available online. Our TA revealed three subthemes under representation:



4.4.1 Impact of Digitization on Representation in Cultural Content

We outlined in the previous section of this report that digitization has, in general, positively impacted cultural accessibility and participation. The data also reveals that digitization has increased representation of vulnerable groups in cultural content generally. An illustrative example of this is provided by an interviewee from a disability organization in Spain:

‘The series Special - I don't like the word special associated with disability, because for me special doesn't lead to gratification but to discrimination and segregation. But well, to see a person with cerebral palsy represented in that series is fucking great; when I saw Game of Thrones I said: “This is

²³⁷ Disability (9), migrant (10), ethnic minority (11), linguistic minority (6). This corroborates research conducted by the EU: ‘Some stakeholders also reported positive impacts. For example, they stated that, because of the lack of access to museums or theatres, many museums started to offer podcasts accessible for people with visual impairments. Theatrical performances have been increasingly streamed online making them more accessible to persons with disabilities.’ EU Commission *supra* nt. 169, 11.

²³⁸ IE_MIG.

²³⁹ BE_MIG_ETH.



*fucking cool!" It has a positive impact on you as a person, on your identity as an individual, on your collective identity.'*²⁴⁰

We can identify from the data the positive impact of digitization on representation, in that it has facilitated the creation and availability of a wider variety of cultural content, which is representative of broader society, particularly minority groups. Representation has been improved from the bottom up, as opposed to from the top-down, as people who are typically excluded from mainstream culture are ensuring their own representation,²⁴¹ via digital media platforms, such as through Spotify,²⁴² or YouTube:

*'it's also a question of who is engaged in terms of, for example, position as a blogger, a reporter, someone who has a voice in the online world and at the same time happens to have a minoritarian ethnocultural identity. So, the opportunities are very limited, reduced. And I would say as a result that they do tend to be underrepresented in the general scheme of things. However, you do see specific outlets, where these communities do develop some kind of action and access and content, but that content is usually centred around a person and a person having resonance, for example, having a YouTube channel and circulating content in that way.'*²⁴³

Another interviewee communicates this sense amongst the minority community of having to take matters into their own hands:

*'we start to understand that we need to show ourselves in a very beautiful way - we have culture, so this pushes us, [especially] with the negative news in the newspapers about the Roma crime. This pushed us fully to make the balance in the media. We push ourselves to do these things, but we are not professionals. So we start to figure out what to do and how to do it. Now we have some Roma kids at the cultural centre, where they are studying dance, the language, education, some issues, whatever what is connected with the culture and what is supported by the Education Ministry. I think non-Roma people started to call us because we make the festival, call us to events, big events some, outside the country, and cooperate with other countries. I think it's very interesting.'*²⁴⁴

A suggestion made by an interviewee illustrates the role vulnerable End-users can play in improving representation from the bottom up:

'I would increase the capacity of creators. So why don't we have Roma directors or Roma actors, Roma-whomever is in charge of making digital, Roma as a computer science? I think that's also important to be a graphic designer and so on. As a Roma person, if you ever have this kind of project and there's a technical body of employable people who can be taken control over some creative project about Roma. So invest in education, not only in digital literacy but also - what kind of people make digital content? A policy can help that, to create scholarship programs, to produce these things and so on. In an indirect way I would help increase Roma content, but not necessarily demonize and scrutinize people who are not Roma, who are taking space in the Roma discussion because in a way I

²⁴⁰ ES_DIS.

²⁴¹ 11 interviewees referred to self-representation efforts, across the minority groups and subject states:

DE_MIG_ETH_REL; EE_ROM; ES_DIS; ES_LANG; ES_ROM; FI_ETH_LANG; HRV_ROM; HRV_ROM_individual expert; IT_ROM; MT_MIG; MT_DIS.

²⁴² HRV_ROM_individual expert: *'Music on Spotify, there is more and more Roma artist. In Croatia maybe not so much online music.'*

²⁴³ DE_MIG_ETH_REL.

²⁴⁴ EE_ROM.



*want to build also this bridge where we can all talk about it, where, in a protest tomorrow you will not only see normal people protesting, but Roma holding hands with non-Roma, protesting for Roma rights just like it was in the civil rights movement. It should be reflected in all areas, including digital.*²⁴⁵

Notwithstanding the efforts of minority groups themselves to ensure more diverse representation in digital cultural content, there is still work to do, specifically in terms of public bodies, digital cultural content providers and broadcasters disseminating more diverse content that caters to vulnerable End-users,²⁴⁶ and minority communities are certainly ready to assist in this process:

*'Fortunately, the Romani people also have professionals in the different technical and artistic fields, so that they can also advise these companies so that any company dedicated to culture and communication, which has a component of social responsibility, can finally do its work in better conditions and with better quality, and that is the important thing.'*²⁴⁷

4.4.2 Limited Visibility and Non-Inclusive Representation of Minorities in Digital Culture

Despite the positive impact of digitization on representation of minority groups in digital culture, the data shows that poor visibility of minorities in mainstream digital cultural content remains an issue, and even where minorities are represented, it is often not by members of their own community, or they are portrayed in a negative or stereotypical manner.²⁴⁸ Poor visibility within mainstream cultural content was an issue raised by interviewees from all groups, and overwhelmingly so by both ethnic minority and migrant groups, in addition to three linguistic minority organizations and two disability organizations.²⁴⁹ Interviewees referred to exposure as a factor in representation, notably in terms of having exposure in the news or international digital media platforms, such as Netflix, or through digital publishing mediums, such as podcasts.²⁵⁰ Conversely, a German migrant organization raised an issue arising from increased volumes of content on platforms like Netflix, which is that of content filtering, which limits their community's exposure within mainstream content:

'I think that it's getting more diverse in digital content in general and in the media and podcasts and Netflix. But I see only the problem that now everyone just gets filtered what he or she sees online. In the end, because there's too much content, which is on one side, of course, is good, because there are more possibilities, I think, but we only get the filtered content. This can be a problem, if you only get more into your bubble and you don't see what's going on there. I mean, for example, Netflix works with filters, they know what kind of movies I like, and they know that I'm a woman. I get only the recommended movies I want to see. So, if am on this platform, I get maybe many movies about women or different cultures, because I'm interested in these topics. But the problem can be that someone who is not interested in this topic gets some different movies, on YouTube also. This could be a problem which can lead to racism, like that you just get the content you want to worry about. In

²⁴⁵ HRV_ROM (individual expert – Roma person).

²⁴⁶ EE_ETH_LANG.

²⁴⁷ ES_ROM.

²⁴⁸ 1 interviewee pointed simply to a lack of representation of the group they represent [IT_ROM].

²⁴⁹ DK_ETH_LANG; DK_DIS; EE_ROM; ES_LANG; IE_TR_ROM; IT_ROM.

²⁵⁰ DE_MIG_ETH_REL; DE_ROM; DK_ETH_LANG; HRV_ROM; HUNG_MIG; IE_LANG.



*general, I think it's growing like there is more content, but maybe still less than it should be. But I think it's growing, and this is also the good part about this digital movement.'*²⁵¹

The implementation of content filtering mechanisms on such platforms can pigeon-hole End-users and limit their exposure to the more diverse and representative content that is available on the platforms, which is already restricted through content moderation policies (as explained above),²⁵² and can, according to this interviewee, serve to reinforce existing negative perceptions of minority cultures. Another interviewee referred to the lack of diversity in more traditional broadcasting mediums, such as television: *'So, if you watch Hungarian TV, you don't see black or Asian people very often, or if you see them, then you see them more as a curiosity than as something that is absolutely true.'*²⁵³

This lack of diversity in digital cultural content is also linked to the issues surrounding content moderation, as the rapid growth in the production of online content and the expansion of online access has placed digital social media platforms under increasing pressure to identify and remove illegal content from their platforms, such as hate speech and violent extremism.²⁵⁴ However, this can reduce the diversity of digital cultural content when conducted in a discriminative manner, and studies show that moderation of content can operate discriminatively against minority End-users, through overblocking and biased enforcement of social media platforms terms of service.²⁵⁵

A Spanish Roma organization critiqued Spanish authorities for their failure to disseminate Roma culture through its digital platforms: *'public television channels in Spain and their digital platforms are neglecting their responsibility to offer cultural dissemination products.'*²⁵⁶ By contrast, an interviewee suggests that Finnish authorities have engaged more with dissemination of minority culture:

'among the mainstream, Sámi are, in my opinion, quite well, but they could be more. We have the National News Broadcasting in Finland like we have the Sámi news every day, I think. So if you want, you can watch the Sámi news from the Sámi area. Are combined news with Norwegian, Finnish and Swedish Sámi. So if you are interested, you can get a lot of information from the Sámi on that.'

A Maltese migrant organization highlighted the positive impact of EU initiatives such as the European Capital of Culture,²⁵⁷ whilst integration of minority cultures into mainstream cultural offerings were identified as routes to greater inclusion.²⁵⁸

The lack of diversity in representation means that minority groups are rarely represented in digital cultural content broadly. For example, there is an absence of characters with disabilities in mainstream television shows:

²⁵¹ DE_MIG.

²⁵² See *supra* nt. 86-87.

²⁵³ HUNG_MIG.

²⁵⁴ T. Dias Oliva, 'Content Moderation Technologies: Applying Human Rights Standards To Protect Freedom of Expression' (2020) 20 *Human Rights Law Review* 4, 608.

²⁵⁵ *Ibid*, 610. See also N. Alkiviadou, 'Automated Content Moderation, Hate Speech and Human Rights' (9 November 2021) *Human Rights Here Blog*, <<https://www.humanrightshere.com/post/automated-content-moderation-hate-speech-and-human-rights>> (last access 24 May 2022).

²⁵⁶ ES_ROM.

²⁵⁷ MT_MIG.

²⁵⁸ ES_DIS; IE_TR_ROM; IT_ROM; MT_MIG.



*'some people responsible of programs that think that it is not so fashionable to introduce a person with a disability in the main programs. Person[s] with disabilit[ies] are not in [a] talk show [or] speaking about a political issue. Organizations of persons with disabilities sometimes are invited but is very limited.'*²⁵⁹

The lack of inclusivity in representation means that where minority people are represented, it is not by members of their own community, an example being non-minority actors playing minority roles.²⁶⁰ Conversely, interviewees also identified an issue of the marginalization of minority actors to minority character roles:

*'the studies that have been made showed that also in Denmark there is a problem with representation in the media and in the culture as well. For example, actors and so on don't get main parts and only get parts if they're supposed to be minority persons or some things like that.'*²⁶¹

Minority characters are not integrated into mainstream cultural content.²⁶² This is exacerbated by the lack of minority individuals in production roles, such as directors.²⁶³ Thus while visibility of minorities might be increasing in cultural content, their representation is not necessarily inclusive of minority individuals themselves, who face both issues of misrepresentation and of underrepresentation, with an interviewee from an organization representing Roma people highlighting that the misrepresentation can be more problematic than no representation at all:

*'many times Roma are wrongly represented and sometimes that's even a bigger problem than under-represent because not being a part of a culture, but use a lot of problems and consequences, but being presented wrongly produce discrimination directly and stereotypes, all stereotypes make it even harder and this is more difficult to break.'*²⁶⁴

Beyond entertainment media, there is an absence of minority group representation in public discussion platforms, such as talk shows,²⁶⁵ or within minority representation organizations themselves,²⁶⁶ although representation is improving.²⁶⁷ An interesting point was raised by a Roma representative organization about the role of a moral – as opposed to legal - obligation that exists for providers of cultural goods and services to ensure inclusivity and accessibility in their offerings, as opposed to relying completely on such obligations arising from law and policy:

²⁵⁹ IT_DIS. Also identified by DE_DIS; EE_DIS.

²⁶⁰ DK_DIS stated: *'our group is highly underrepresented. I think there is one blind actor in Denmark who makes some kind of amateur theatre. She's really good. But she hasn't had a big breakthrough yet.'*

²⁶¹ DK_MIG.

²⁶² EE_DIS: *'So it's probably more happening in bigger markets in the US and in basically English based culture, where we occasionally might see some of the disabled characters. But in Estonia, I really can't think of a good recent example of a blind character being in a product or of some sort. So, this picture definitely is underrepresented.'*

²⁶³ DK_DIS; DK_MIG; IT_DIS; ES_MIG; HRV_ROM.

²⁶⁴ HRV_ROM.

²⁶⁵ DE_DIS; IT_DIS: *'some people responsible of programs that think that it is not so fashionable to introduce a person with a disability in the main programs. Person[s] with a disability[ies] are not in [a] talk show [or] speaking about a political issue. Organizations of persons with disabilities sometimes are invited but is very limited.'*

²⁶⁶ IT_MIG.

²⁶⁷ FI_MIG; MT_DIS; IE_TR_ROM: *'Compared to 10 years ago, there is a growing awareness in that area, especially from RTÉ, the national broadcaster, of including Travellers more. You also see it in some of the newspapers if they are doing something by Christmas they want to include a Traveller perspective.'*



'Obviously, we are in Europe. Europe is a multicultural, multinational, multiracial union. We are celebrating the diversity that basically some fundamental values that we all tend to believe in the EU and celebrate it and respect. So if that's really true, then we should also make sure that the digital space, not only the European space, is as inclusive and diverse as our people and our nations are. To do that, we need to make sure that these people, all of the marginalized groups, that are traditionally in real-world excluded, they should be included in this digital parallel world that we built. Two ways to do that would be: increasing access to the Internet, ICT, but also that digital literacy, so that the Roma communities have all the necessary tools. Possible to access this and for representativeness. So, for policymakers - this is not something policymakers will be able to maybe influence. This is more like a moral issue and an art issue. It's an issue of personal choice. You can tell artists do not draw this Roma, a painting, you're not Roma, I mean, you can tell that, but not as a politician, there shouldn't be a law that restricts scientists, researchers, content creators, media creators to do something if they are not belonging to that group it's going to be scrutinized. It's going to be criticized by the public, hopefully. But I feel like this whole freedom of expression thing could get endangered if we start sanctioning. However, to a different non-political, non-policymaker way, I would increase the capacity of creators. So why don't we have Roma directors or Roma actors, Roma-whomever is in charge of making digital, Roma as a computer science?'²⁶⁸

This interviewee talks of the difficulties in legislating for such obligations on creators or providers of culture, in terms of striking the balance between freedom of expression of artists or creators and the accessibility and equality rights of vulnerable End-users. He proposes a solution to this conflict of rights which involves increasing diversity in cultural creation, as including minority creators will increase the availability of cultural content that is representative of and accessible to minority End-users.

4.4.3 Negative Portrayals of Minorities in Cultural Media

Stereotypical, discriminative and homogenizing or reductionist portrayals of minority groups in cultural productions was identified by interviewees representing ethnic minority/ Roma,²⁶⁹ migrant²⁷⁰ and disability²⁷¹ communities, from 10 States.²⁷² The types of manifestations of this differ between the minority groups. Migrants and ethnic minorities referred more to being demonized, whereas persons with disabilities tended to indicate their being subject to paternalism and victimization. The negative exposure of minority groups in the news media is compounded by a lack of recognition of the groups' cultural contributions. For example, in Spain, news media often focuses on the criminality of Roma people and fails to acknowledge their cultural contributions, specifically the Roma origins of flamenco in Spain.²⁷³

²⁶⁸ HRV_ROM.

²⁶⁹ DE_ROM; ES_ROM; HRV_ROM.

²⁷⁰ IT_MIG_Eng; FR_MIG: *'think Migrants are underrepresented in online cultural content, especially portrayals of successful Migrants. To sum up, I find that we do not put enough emphasis on the agency of Migrants.'*; HUNG_MIG: refers to "exoticism".

²⁷¹ DK_DIS; EE_DIS; ES_DIS; HRV_DIS ; IE_DIS ; IT_DIS; MT_DIS.

²⁷² Germany, Denmark, Estonia, Spain, France, Croatia, Hungary, Ireland, Italy, Malta.

²⁷³ ES_ROM; HUNG_ROM: *'the Roma population is barely mentioned, or we are mentioned mainly as a poverty issue, Romani people being poor and not emphasising the cultural aspects and the racial aspect of our history here in Hungary.'*



Roma representative interviewees from Spain and Italy referred to discrimination in terms of exclusion, and the use of anti-Gypsyism as a strategy for making Roma people invisible:

*'Antigypsyism is not only what is done, but what is not done. For example, the fact that the word "Roma" does not appear once in Spain's request for flamenco to be considered Intangible Heritage of Humanity, which is obviously an extensive document made with precision, is an expression of Antigypsyism.'*²⁷⁴

Moreover, they stated that this discrimination has been perpetuated with digitization: *'the access to the digital world and its services was developed using existing patterns of discrimination.'*²⁷⁵ The Italian and Irish Roma representative interviewees also referred to this extension of social exclusion and negative portrayals of Roma people into the digital world.²⁷⁶

For persons with disabilities, their representation in mainstream media is often reduced to events exclusively for persons with disabilities, such as the Paralympics.²⁷⁷ A representative of a Spanish disability organization made an interesting observation that the fear of 'getting it wrong', or not being politically correct, inhibits content creators from including persons with disabilities:

*'But well, especially in Spanish fiction, we still have many shortcomings in this sense when it comes to having actresses and actors with disabilities and also when it comes to this approach. I think that many directors don't know how to fit this in, they don't know how to approach it because they are afraid of making a mistake, because now that everything is politically correct, they have fear of screwing it up, so they think: "Ah, no, then I won't do it."'*²⁷⁸

Further, representatives of organizations representing persons with disabilities observed that paternalistic, stereotypical or victimizing portrayals of disability in cultural content are still relatively frequent:

*'because disability is a positive collective, it is accepted, and it does not generate phobias, like migration, or feminism, or other collectives. In general, almost everyone homogenises disability from the point of view of charity, of the "poor little thing".'*²⁷⁹

Another interviewee stated:

*'I would comment on how they are represented in the media, in the mainstream media. You generally have blind people who are if not, superheroes, extremely talented in one sense or another, or they are not just in a tough life situation and they're struggling with something of any help, but they never are actually just ordinary people.'*²⁸⁰

²⁷⁴ ES_ROM.

²⁷⁵ Ibid.

²⁷⁶ IT_ROM: *'they are more excluded from society, even though in digital ways. This makes them more marginalized and more excluded. This is the main impact'*; IE_TR_ROM: *'A lot of Travellers say to me that if you open Google or YouTube or whatever website, it is mostly kind of negative stories of Travellers. There are a lot of negative videos and the people do not really enjoy that.'*

²⁷⁷ FI_DIS: *'the only way you are visible is through Paralympic.'*

²⁷⁸ ES_DIS.

²⁷⁹ Ibid.

²⁸⁰ HRV_DIS.



Homogenization is distinguished from stereotyping, in that the latter refers to a singular view of the whole community based on the perception or experience of one or a small number of members of that community.²⁸¹ In contrast, homogenization is referred to here in the context of not distinguishing between different cultures – for example, different African cultures,²⁸² or Roma people and Travellers,²⁸³ or regarding the myriad forms of disability in a singular way.²⁸⁴ This displays a level of ignorance of, or lack of respect for, cultural differences on the part of public authorities and wider society, which are then perpetuated through digital culture.²⁸⁵ In Ireland, a migrant organization raised this as a challenge in the specific context of the Direct Provision system (the government-mandated system for asylum seekers),²⁸⁶ where grouping different cultures, with different cultural practices, together in close quarters was identified as an issue in terms of migrants' perception of their own culture, and of mainstream society's perceived lack of respect for minority cultures:

*'We had people French Quarter, our background is completely different from an English cultural background, somebody from Zimbabwe may have some natural history with somebody in South Africa, but that doesn't mean you have the same cultural practice with South practice.... These are different practices, all in single room.... so you see that you have your own values are not respected, your culture is completely disregarded. They don't care if that Muslim person that needed a quiet moment to pray deserve to be respected.'*²⁸⁷

Three Roma organizations from Croatia, Estonia, and Spain referred extensively to portrayals of Roma people in a culturally exploitative or appropriative manner in mainstream cultural content, particularly the creation of 'non-representative, low-quality Roma content'²⁸⁸ by non-Roma, and even some Roma, people. The Croatian interviewee stated that non-Roma donors who fund Roma-led projects enforce their own views on the project, which is detrimental to Roma cultural expression: *'It's not always a bad organization, they are organizations with good intentions, liberal white liberal organizations who want to help and they found out about Roma and now they want to start working on this, but they have no knowledge.'*²⁸⁹ The Estonian interviewee spoke about an integration project - a photograph exhibition of Roma life in Estonia - in which the photographs were exhibited without consent of the Roma subjects, who then had no power to stop it.

²⁸¹ The Cambridge English Dictionary defines a stereotype as 'a set idea that people have about what someone or something is like, especially an idea that is wrong.' <<https://dictionary.cambridge.org/dictionary/english/stereotype>> (last access 24 May 2022).

²⁸² IE_MIG.

²⁸³ BE_MIG_ETH.

²⁸⁴ IE_DIS: *'Or disability is just a lump that you just throw it together, you just, you know, you can just throw everybody into that category. They are absolutely and totally and utterly, completely different experiences and somebody in a wheelchair may be completely brilliant at Twitter and Facebook and be able to watch movies, not only the audio description, but their experience has also got to be completely and totally different, their needs of access are absolutely and totally different if somebody is blind. I don't think it's helpful when they speak about disabled people. You know, there are different types of disability.'*

²⁸⁵ DE_MIG_ETH_REL: *'in terms of German language media, as I said, there is a tradition of having a very limited content, which is designed to cater to those groups from the perspective of the State and then private initiatives - you have a variation. It's not homogenous, but as far as the State is concerned, know that even for the national minority groups, there is very limited content as well.'*

²⁸⁶ N. Higgins, L. Serra and D. Ferri, 'The Right to Culture for Asylum Seekers in Ireland: Lessons to be Learned for the International Legal System' (2022) in *Migration and Culture Implementation of Cultural Rights of Migrants* (Rome, Consiglio Nazionale delle Ricerche).

²⁸⁷ IE_MIG.

²⁸⁸ HRV_ROM.

²⁸⁹ HRV_ROM.



They also spoke of non-Roma people writing books about the experience of Roma during the Holocaust, without remunerating Roma people for their contribution to the project.²⁹⁰ Another issue raised is the appropriation of Roma culture, for purely commercial benefit, without consulting the Roma community,²⁹¹ and non-Roma people presenting or advocating for Roma issues in the mainstream media.²⁹² An issue specific to the Roma community in Spain is mainstream Spanish culture's appropriation of Flamenco, which is part of Roma culture:

*'I dare to say, when flamenco is projected internationally as Spain's identity, which is undeniably Roma, at least for a good part of it, we are extremely underrepresented on a cultural level... the fact that the word "Roma" does not appear once in Spain's request for flamenco to be considered Intangible Heritage of Humanity, which is obviously an extensive document made with precision, is an expression of Antigypsyism. Of course, there is a debate; we have a clear position on this, but with regard to flamenco, it is fundamentally driven by Romani creators, and then there are other non-Roma people who have contributed, because, in the end, art is always about sharing. But flamenco cannot be understood without the Roma. What's more, the first records of flamenco emerged after the Great Gypsy Round-up, the first episode of genocide in Europe. Unfortunately, in Spain, we have this false privilege and it actually emerged as an expression of pain. We always compare it to the blues. The blues is the expression of pain of the North American black community, of their processes of slavery. Well, it's kind of the same thing. Spain and Andalusia are appropriating flamenco, excluding the Romani people from the fundamental role they have played in the past, that they currently play and will play in the development of flamenco. But flamenco cannot be understood without Romani people, they have created it.'*²⁹³

Again, the interviewee from Spain spoke of the appropriation of Roma culture being rooted in anti-Gypsy sentiment:

*'Some production companies try to make a profit, because Antigypsyism sells, with a programme, a television show that denigrates the Roma. In Spain, they make a reality show called Los Gipsy King, it's a TV show, but it shows an incomplete Roma reality, it takes the most freakish things possible and from that they generate a kind of universality, they project that this is the Roma identity and in the end it's a show that absolutely denigrates us.'*²⁹⁴

To conclude, in general we can identify the positive impact of digitization on representation, in that it has facilitated increased creation and broader availability of cultural content, which is representative of all of society, particularly minority groups. However, it still remains an issue that minority groups are either not

²⁹⁰ EE_ROM: 'There were so many researchers from outside of Estonia visiting some Estonian Roma family whose family members were victims of the Holocaust and took many interviews and promised the right of the books and whatever [outcome]. [...] But nothing, all promises.'

²⁹¹ EE_ROM: 'Another thing that has happened to Roma is that dancing, gipsy dance, this is like a non-Roma thing, that is used for commercial purposes. Roma people feels it's part of their culture that is misused by non-Roma, or non-Roma pretending to be Roma want to do it.'

²⁹² EE_ROM: 'The non-Roma are on different digital media, as sort of the speakers of Roma community - you would have the *International Roma Day in April*. In Estonian TV channels, you would have non-Roma talking about the situation of Roma in Estonia. They are not non-Roma who are working with Roma, but they are, for example, dancers [dancing a Roma dance], and they have looked up the information from Google.'

²⁹³ ES_ROM.

²⁹⁴ Ibid.



visible at all in mainstream digital cultural content, or, where they are, they are not represented by members of their own community, or they are portrayed unfavourably or are culturally exploited.

5. Discussion of Results of the Thematic Analysis

This section builds on the TA and discusses the results, identifying key issues and illuminating how the qualitative data gathered confirms well-established trends, particularly in relation to existing barriers, and shows the extant attitudes and perceptions around cultural participation. Rather than discussing each theme specifically, the section focuses on those key issues and then presents divergences among groups.

5.1 Persistent Inequality, Structural Barriers and the ‘Digital Divide’

The data confirms that there are several factors that determine the level of equality in cultural participation, and, with regard to access, which is the focus of this WP2, there are also different barriers that affect access to, and enjoyment of, cultural goods and services. The interviews conducted confirm that participation is unequal,²⁹⁵ and the ‘digital divide’ is still a significant hurdle. A cleavage was identified between the existence of equality on paper and equality in practice by an interviewee who stated, in response to the question on whether they believe that Roma can participate as End-users on an equal basis with others, that ‘*[o]fficially, yes, but practically no - we are not on such a level. Most of the Roma community are not because we are dealing with social problems, how to feed today our kids. So mostly not.*’²⁹⁶

²⁹⁵ See for example, Voices of Culture, ‘Culture and the United Nations Sustainable Development Goals: Challenges and Opportunities’ (2021) <<https://voicesofculture.eu/wp-content/uploads/2021/02/VoC-Brainstorming-Report-Culture-and-SDGs.pdf>> (last access 23 May 2022); CultureWatchEurope Conference (Joost Smiers), ‘Digitisation and cultural democracy, an (as yet) unfulfilled promise, in Cultural Access and Participation – from Indicators to Policies for Democracy’ (2012) 36 <<https://rm.coe.int/16806a34cd>>; M. Sabina, A. Leguina, and J. Downey ‘Culture is Digital: Cultural Participation, Diversity and the Digital Divide’, (2019) 21 *New Media & Society* 7; E. Hargittai & Y. P. Hsieh, ‘Digital inequality’ in Dutton, W.H., (ed) *Oxford handbook of Internet studies* (Oxford University Press 2013); W. H. Dutton & B. C. Reisdorf ‘Cultural Divides and Digital Inequalities: Attitudes Shaping Internet and Social Media Divides’ (2017) 22 *Information, Communication & Society* 1; J. O’Hagan, European Statistics on Cultural Participation and their International Comparability’ (2016) 22 *International Journal of Cultural Policy* 2; European Blind Union, ‘EBU Access to Culture Survey 2012 - Mapping Current Levels of Accessibility to Cultural Venues and Activities in Europe’ (2012) <http://www.kulttuuriakaikille.fi/doc/research_and_reports/SUMMARY-REPORT-OF-THE-EBU-Access-to-Culture-Survey-2012-and-EBU-call-for-action.pdf> (last access 23 May 2022); the Working Group of EU Member States’ Experts on Promoting Reading in the Digital Environment Under the Open Method of Coordination, ‘European Agenda for Culture – Working Agenda for Culture 2015-2018: Report on Promoting Reading in the Digital Environment (2016) <<https://op.europa.eu/en/publication-detail/-/publication/9052931a-2ece-11e6-b497-01aa75ed71a1>> (last access 23 May 2022); the Working Group of EU Member States’ Experts on Promoting Access to Culture Via Digital Means Under the Open Method of Coordination, ‘European Agenda for Culture – Working Agenda for Culture 2015-2018: Final Report on Promoting Access to Culture via Digital Means: Policies and Strategies for Audience Development’ (2017) <<https://op.europa.eu/en/publication-detail/-/publication/7839cb98-651d-11e7-b2f2-01aa75ed71a1>> (last access 23 May 2023); European Audiovisual Observatory (EAO), ‘Reports on diversity and inclusion in the European audiovisual sector: an overview’ (2021); The European Expert Network on Culture (C. Da Milano, and N. Righolt), ‘Mapping of practices in the EU Member States on promoting access to culture via digital means’ (2015) <<http://www.interarts.net/descargas/interarts2539.pdf>> (last access 23 May 2022).

²⁹⁶ EE_ROM.



Similarly, an Irish disability organization rooted this lack of equal participation in socio-economic struggles of persons with disabilities, which operate as a fundamental barrier to equal participation, irrespective of the formal existence of equality:

*'Just to say that 86% of people with severe visual impairment in this country are unemployed, and because of the sort of the massive discrimination that's already there, unemployed people don't have the same opportunity to pay for things, then that the things aren't as accessible. So basically they're discouraged in all angles of getting involved on the same level with people as equals.'*²⁹⁷

A migrant organization in Ireland regards the lack of equality in practice as a consequence of ineffective policymaking and poor political representation of migrants:

*'As End-users, we've always advocated for the bottom-up approach in everything that the government does, because when you do the bottom-up approach, it gives the end-users the very last unit of the community, the ability to assess these services. Well, when you take that bottom-up approach, it never really gets to the end-users who are actually the most affected within the community. And I think that there is no representation at that level, no proper representation.'*²⁹⁸

This correlation between socio-economic struggle and poor political representation, and the inability of vulnerable End-users to participate equally, in practice, in digital culture can be statistically illustrated. In Ireland, for example, no member of parliament elected in the most recent general election in 2020 belonged to the migrant community, and just 9 of the state's 949 local councillors are migrants,²⁹⁹ although more low-level migrant participation in decision-making on issues of migrant integration is promoted through local Council-facilitated Migrant Integration Forums.³⁰⁰ The 2016 Irish Census shows that the unemployment rate for migrants was 20%³⁰¹, compared to the general unemployment rate of 12.9%.³⁰² Similarly, there are poor

²⁹⁷ IE_DIS.

²⁹⁸ IE_MIG.

²⁹⁹ R. Early, 'Migrant Voices Need to be Heard in the Dàil' (9 July 2020) *Irish Times*

<<https://www.thetimes.co.uk/article/migrant-voices-need-to-be-heard-in-the-dail-057785fjc>> (last access 24 May 2022). The Irish Houses of Parliament do not officially report on diversity of its members, other than in terms of age and gender: Houses of the Oireachtas, 'Forum on a Family Friendly and Inclusive Family: Report as Presented to the Ceann Comhairle, Mr Seán Ó Feargháil TD' (2021)

<https://data.oireachtas.ie/ie/oireachtas/parliamentaryBusiness/other/2021-11-02_report-of-the-forum-on-a-family-friendly-and-inclusive-parliament_en.pdf> (last access 24 May 2022) 39.

³⁰⁰ N. Higgins and K. Donnellan, 'Ireland's Cultural Policy and the Protection and Promotion of Cultural Rights in Ireland' (2022) *Cultural Trends* 10, 7-8.

³⁰¹ Central Statistics Office website, 'Census of Population 2016 – Profile 11 Employment, Occupations and Industry' <<https://www.cso.ie/en/releasesandpublications/ep/p-cp11eoi/cp11eoi/lfnmfl/>> (last access 10 June 2022). Please note that the most recent Census was conducted in 2022. The preliminary results of the 2022 Census were published on 3 April 2022 and the final results are being published on a rolling basis between April and December 2022. See Central Statistics Office, 'Census of Population 2022 – Preliminary Results' <<https://www.cso.ie/en/csolatestnews/presspages/2022/censusofpopulation2022-preliminaryresults/>> (last access 27 June 2022).

³⁰² Central Statistics Office website, 'Press Statement Census of Population 2016 – Profile 11 Employment, Occupations and Industry' <[https://www.cso.ie/en/csolatestnews/pressreleases/2017pressreleases/pressstatementcensus2016resultsprofile11-employmentoccupationsandindustry/#:~:text=The%20unemployment%20rate%20as%20measured,fell%20by%2024%2C050%20\(16.0%25\)](https://www.cso.ie/en/csolatestnews/pressreleases/2017pressreleases/pressstatementcensus2016resultsprofile11-employmentoccupationsandindustry/#:~:text=The%20unemployment%20rate%20as%20measured,fell%20by%2024%2C050%20(16.0%25))> (last access 10 June 2022).



rates of political representation of Travellers in Ireland³⁰³ and the 2016 census revealed an unemployment rate of 80.2% among that group.³⁰⁴ Persons with disabilities are also underrepresented at both national and local levels in Ireland, and the National Disability Authority of Ireland reports that unemployment rates among that group are upwards of 70%.³⁰⁵

Our research also confirms, once again, that lack of education or low levels of education is a structural barrier and, by contrast, education was identified as significant for facilitating cultural participation.³⁰⁶ This has been consistently highlighted in all most recent reports. In 2018, the European Parliament's report stated that the 'educational level is one of the most important factors having a significant impact on the level of participation in culture; stresses that a higher level of education translates into a higher level of participation in cultural events'.³⁰⁷

When it comes to digital cultural content, digital literacy is a fundamental prerequisite for a person. As a representative of a Belgian linguistic minority organization suggested: *'but also low literacy because online cultural content has to do with both. I mean, you need language, but you also need the online language. You need the competence to engage with whatever is online.'*³⁰⁸ This is particularly important for older End-users, to whom the digital world is relatively unfamiliar: *'For example, the older generation still needs help in using digital opportunities. It is also necessary to improve the level of knowledge in this area for all target groups.'*³⁰⁹ The lack of digital education is part of a broader digital divide, which is a long-standing topic of investigation.³¹⁰ This confirms findings of well-established studies.³¹¹

5.2 Constructive Dialogue as the Way Forward

The data collected through the interviews show the positive role that civil society, if adequately supported, can play. The data also reveals the significant role that public authorities can play in fostering access to culture. In this context, dialogue and collaboration between civil society and public institutions is favoured,

³⁰³ See generally, Seanad Public Consultation Committee, 'Report on Travellers Towards a More Equitable Ireland Post-Recognition' (2020)

<https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/seanad_public_consultation_committee/reports/2020/2020-01-23_report-on-travellers-towards-a-more-equitable-ireland-post-recognition_en.pdf> (last access 10 June 2022). This report outlines the lack of political participation for the Travellers in Ireland.

³⁰⁴ Central Statistics Office website, 'Census of Population 2016 – Profile 8 Irish Travellers, Ethnicity and Religion' <<https://www.cso.ie/en/releasesandpublications/ep/p-cp8iter/p8iter/p8itseah/>> (last access 10 June 2022).

³⁰⁵ See National Disability Authority website, 'A Strategy for Equality: Report of the Commission on the Status of People with Disabilities' <<https://nda.ie/disability-overview/key-policy-documents/report-of-the-commission-on-the-status-of-people-with-disabilities/a-strategy-for-equality/a-strategy-for-equality-report-of-the-commission-on-the-status-of-people-with-disabilities/political-rights/>> (last access 24 May 2022).

³⁰⁶ Culture Action Europe, 'Culture Action Europe Reflection on Structural and Financial Barriers to Access to Culture (2018)' <<https://cultureactioneurope.org/files/2018/01/CAE-Reflection-on-Barriers-to-Access-to-Culture.pdf>> (last access 7 June 2022).

³⁰⁷ European Parliament, 'Structural and Financial Barriers in the Access to Culture' (2018) 2017/2255(INI) <<https://oeil.secure.europarl.europa.eu/oeil/popups/summary.do?id=1539808&t=e&l=en>> (last access 7 June 2022).

³⁰⁸ BE_LANG.

³⁰⁹ EE_ETH_LANG.

³¹⁰ G. W. Muschert and R. Massimo, *The Digital Divide: The Internet and Social Inequality in International Perspective* (Routledge, 2015).

³¹¹ This is supported by EU studies and by literature. See for example, C. Codagnone et al, *supra* nt. 120: 'Since technological progress is fast, such skills are quickly becoming obsolete with new skills always being scarce.' See also D.J. Deming and K. L. Noray, *supra* nt. 120.



as a more effective approach to address barriers and issues. Judicial enforcement of rights (or more general adversarial procedures) are not perceived to be an effective means for achieving access to culture.³¹² The inefficiency of litigation is well-documented in the literature, due to reasons of both caseload congestion and high costs of taking proceedings.³¹³ Interviewees illustrated a sense that litigation is prioritized in relation to more urgent or serious matters, such as hate speech, racism,³¹⁴ or discrimination,³¹⁵ under-representation in employment,³¹⁶ forced evictions³¹⁷, or even digital access for the purposes of education, especially during Covid-19.³¹⁸ One disability organization also pointed to a de-sensitization among the group they represent to the discrimination they face on a daily basis, to the point that they are so used to it they see no merit in reporting it:

‘For people with disabilities in general, and even for organizations as well, any litigation is very costly, in many ways. Discrimination is very much a part of our daily life for people with disabilities. And it is very common for us. So, we do not understand that this is a reason to report it.’³¹⁹

Interviewees identified other barriers to pursuing litigation in the context of digital cultural access, such as resource costs associated with it – i.e., time, money, workforce³²⁰ - or the slowness of the litigation process.³²¹ Some interviewees did identify litigation which involved the groups they represented, however these concern general - as opposed to digital - cultural access,³²² which underlines a lack of priority for litigating for digital cultural access and participation rights.

A variety of legal and political activities were identified by interviewees as methods of pursuing access to, and participation in, culture, which represent different levels or means of interaction with State authorities in order to achieve their objectives. **Advocacy and campaigning** were identified in this regard, encompassing

³¹² DK_ETH_LANG_2; FI_DIS; FR_DIS.

³¹³ See generally, European Cooperation in Science and Technology, ‘Memorandum of Understanding for the implementation of the COST Action “Efficient Justice for All: Improving Court Efficiency through EU Benchmarking” (Efficient Justice) CA20131’ (2021); European Union Agency for Fundamental Rights, ‘Handbook on European Law Relating to Access to Justice’ (2016) <https://www.echr.coe.int/documents/handbook_access_justice_eng.pdf> (last access 24 May 2022).

³¹⁴ Notwithstanding the overwhelming preference for dialogue and collaboration to resolve issues, some interviewees did state they have resorted to making complaints. See DE_MIG_ETH_REL. A Roma organization said it had made a complaint about negative portrayal of Roma people in printed books HUNG_ROM. See also ES_ROM.

³¹⁵ IT_DIS.

³¹⁶ FR_DIS; IE_DIS; IE_MIG.

³¹⁷ IT_ROM in reference to cases taken to the European Court of Human Rights.

³¹⁸ IE_TR_ROM.

³¹⁹ ES_DIS.

³²⁰ DE_MIG: ‘We had some scenarios where we thought about this, but we actually never did it. I think the main problem for us is because we do our project and then to make this step it’s hard because we are all volunteers but we, as an organization, we never did it. Only we made this statement about Afghanistan is not safe.’

³²¹ IT_DIS.

³²² One linguistic minority organization from Spain did refer to a judgement of the Spanish Supreme Court regarding a Cinema Law, however this did not relate to digital cinema [ES_LANG]; a Hungarian disability organization pointed to an ECtHR case taken by Denmark concerning accessibility of picture houses, concerning physical as opposed to digital accessibility - HUNG_DIS: ‘We do not necessarily get complaints about digital cultural content, but we do get complaints about digital content in other areas. For example, the phone network providers and Internet network providers. We have had complaints about their websites. ATMs in banks, we have had a long campaign so that all of those are accessible to people with visual impairments. So not necessarily cultural things in the strictest terms, but for some goods and services, we have had complaints that have been resolved quite successfully.’ Similarly, a Maltese disability organization noted that complaints involving the digital were related more to services such as banking, as opposed to cultural platforms [MT_DIS].



awareness-raising efforts by minority representative organizations around the discrimination against minorities perpetuated by media companies,³²³ signature-gathering for the purposes of effecting change,³²⁴ and advocating on behalf of minority groups to State authorities in order to achieve law and policy outcomes that better favour their access to and participation in culture.³²⁵ A Maltese disability organization identified as a benefit to this the strength of their position within the small country:

*'we have quite a good influence on the government. We are probably in a better position than larger countries because if we go to the press or to TV broadcast, as we say, we have an issue that we need to discuss because not very much happens in Malta. We will always get newspapers or radio or TV coverage, and people are genuinely interested in making things better for disabled people. We have all areas of disability covered. And I think that enables us to give a very strong voice in most areas. [describes again the small of the island], it's very difficult for the politicians to ignore us.'*³²⁶

Collaboration between representative organizations, civil society and public authorities or digital service providers to resolve issues of inaccessibility to culture and improve access for vulnerable End-users was another means identified by interviewees across the different countries and vulnerable groups.³²⁷ A Croatian disability organization stated:

*'Generally, if there are some public sites or governmental services which are not accessible, we do contact the person in charge and we do sort of try to let them know that the accessibility is an issue and advise them on how to do it, especially if it's a service which many of our members require.'*³²⁸

Participation is a cornerstone of the CRPD, and it vital to the exercise of minority rights (see Article 15 FCNM). In this regard, interviews confirm that participation is key to enhance cultural participation. For example, legislative and policy **consultation** processes were identified as a useful tool for securing access to culture.³²⁹ Three interviewees identified initiating **dialogue** with political representatives as an alternative to filing a complaint with an Ombudsman.³³⁰ They emphasized the utility and efficacy of a more direct approach. Two were from Denmark, the other from Estonia, both geographically and demographically³³¹ small countries, relative to other sample States. It might be reasonable to presume that direct political dialogue with civil society is facilitated by the smaller systems of bureaucracy. Although, following this reasoning you might expect interviewees from Malta and Ireland to raise this point also.³³² It may just be that the political systems in Denmark and Estonia are better organized to facilitate cooperation and dialogue. Indeed, a Council of Europe report on civil participation in decision-making processes uses Denmark as an example of

³²³ For example, ES_ROM: *'we have often made campaigns condemning how some production companies and television channels show products on their televisions and online platforms that degrade us.'*

³²⁴ ES_LANG.

³²⁵ ES_LANG; FI_DIS; HRV_LANG; IT_DIS.

³²⁶ MT_DIS.

³²⁷ DE_ROM; EE_DIS; HRV_DIS; IT_MIG; MT_DIS.

³²⁸ HRV_DIS.

³²⁹ Identified by interviewees most prominently from Spain: ES_DIS; ES_LANG; ES_ROM. But also from other States: HRV_LANG; IE_TR_ROM; IT_LANG; MT_DIS.

³³⁰ DK_DIS; EE_MIG; EE_ROM.

³³¹ Population of Estonia 1.3 million, Denmark 5.3 million

³³² Population of Malta 0.5 million; Ireland 5 million. The population data was collected from Eurostat website, 'Latest demography report' <<https://ec.europa.eu/eurostat/web/population-demography/publications/demography-report>> (last access 24 May 2022).



collaborative dialogue between public authorities and civil society organizations in policy formation.³³³ The same report identifies a number of factors as key to ensuring meaningful civil participation in practice, including integrating guarantees for participation in national legal frameworks, as well as implementing instruments and practices that ensure meaningful participation.³³⁴ This approach is reliant on legal and political systems that facilitate such input from representative and civil society organizations,³³⁵ and is not something that the latter can make happen without support from the authorities.³³⁶ Seven interviewees referred to **political representation** as an important support for securing accessibility, across all vulnerable groups,³³⁷ as it facilitates a more bottom up approach to law and policymaking.³³⁸

5.3 Divergences among Vulnerable Groups

Having identified common themes, there were two issues that characterized respectively interviews with representatives of minorities, and interviews with representatives of organizations of persons with disabilities.

5.3.1 Cultural Rights versus Disability Accessibility Laws

While in general interviewees identified that legislation pertaining to human rights, accessibility, protection and/or legal recognition of minority groups is an important tool that is used as the basis for policies and initiatives that protect the cultural rights of vulnerable groups, minority groups placed emphasis on specific minority rights legislation and non-discrimination legislation. Eleven organizations made reference to the existence of legislation that recognises the rights of the minority group,³³⁹ enables access to digital and/or cultural content, and protects the culture of the minority group,³⁴⁰ for example, through strong legislative and/or Constitutional protection of their language,³⁴¹ or through anti-discrimination legislation.³⁴²

Among the disability cohort strong emphasis was placed on the CRPD, as an overarching framework. This resonates with the emphasis that scholarship has placed on the CRPD as a vital human rights instrument to protect and promote disability rights.³⁴³ An Estonian disability organization referred to the influence of CRPD ratification in supporting collaboration with public authorities:

³³³ See, Council of Europe, 'Civil Participation in Decision-Making Processes. An Overview of Standards and Practices in Council of Europe Member States' (2016) <<https://rm.coe.int/civil-participation-in-decision-making-processes-an-overview-of-standa/1680701801>> (last access 24 May 2022) 29.

³³⁴ Ibid, 31-35.

³³⁵ HRV_ROM.

³³⁶ IT_LANG.

³³⁷ 3 from Italy, 1 from Ireland, 1 from Malta and 1 from Croatia: HRV_ROM; IE_DIS; IE_MIG; IT_DIS; IT_LANG; IT_ROM; MT_DIS. Although 1 from Italy (IT_ROM) was in a negative context i.e. stating that their organization/ the people they represent do not have strong political representation.

³³⁸ IE_MIG.

³³⁹ IE_TR_ROM.

³⁴⁰ BE_LANG; EE_DIS; ES_DIS; HRV_ROM; HUNG_LANG; IE_LANG; IE_TR_ROM; IT_DIS; IT_LANG; IT_MIG_Eng; MT_DIS.

³⁴¹ BE_LANG: 'everything is being really nicely regulated because of our past... since 1963 everything has been absolutely cast in stone.' Also, HUNG_LANG; IE_LANG; IT_LANG.

³⁴² HRV_ROM.

³⁴³ O.M. Arnadóttir and G. Quinn, *The UN Convention on the Rights of Persons with Disabilities. European and Scandinavian Perspectives* (Bill Nijoff, 2009); A. Kanter, 'The Promise and Challenge of the United Nations Convention



*'because of the CRPD, which Estonia [ratified it], we have now more talks of equal treatment and the [commissioner] of equal treatment in Estonia, their bureau now already includes somebody who takes care of issues regarding disability. So, through this office, we have been in talks. But usually, those complaints end up in a collaboration fixing the issue rather than demanding compensation, which I think is quite OK.'*³⁴⁴

Interviewees also made reference to the Marrakesh Treaty,³⁴⁵ as well as EU and national accessibility legislation. With regard to the Marrakesh Treaty, interviews also made evident a good awareness of its existence but a rather patchy knowledge of the Treaty itself. Only representatives of disability organizations from seven Member States identified the Marrakesh Treaty as a source of legislative support for access to digital culture, and in particular with a focus on people who are blind and/or visually impaired, displaying a general awareness of this Treaty. One interviewee noted that:

*'... the Marrakesh treaty [...] allows us as an to make print documents accessible. It is allowing us to do our job and also to exchange our accessible materials with others and to give it to users who are disabled here in Germany, but in other countries as well'*³⁴⁶

Another interviewee noted the importance of cross-border exchange of accessible copies:

*'...So, if other countries have got the same WIPO decisions, like the ones we have in France, then we can exchange books with those countries. For example, the French-speaking countries of Africa, some of which have signed and ratified. So, we will be able to send them books. If the blind organization or organization for disabled people have been authorized to receive our books.'*³⁴⁷

Some interviewees were also aware that the Treaty had been ratified by the EU on behalf of its Member States. For example, one interviewee noted *'...France wanted to ratify ...[the Marrakesh Treaty], but then it was decided that the EU should do it for all its member countries. So now it's been done'*.³⁴⁸ In a similar vein, another interviewee suggested:

*'... of course, the Marrakesh Treaty has been agreed upon within the EU [...] that it should be implemented within the EU countries... [...] we have been aware of it and we have been aware of the Marrakesh Treaty and following how it is being implemented on the EU level, but we are not sure or not fully aware where it stands at the moment...'*³⁴⁹

However, most interviewees did not have specific knowledge of the role of the EU in ratifying the Marrakesh Treaty, nor of its competence and action in that regard. One interviewee suggested, as a critical point, that the Member State in which they were based had not ratified the Treaty yet, blaming strong resistance from

on the Right of Persons with Disabilities?' 34 *Syracuse Journal of International Law & Commerce* 287 (2006-2007); A. Kanter, *The development of disability rights under international law: from charity to human rights* (Routledge, 2017); I. Bantekas et al., *The UN Convention on the Rights of Persons with Disabilities. A Commentary* (Oxford University Press, 2018); V. Della Fina, R. Cera and E G. Palmisano (eds.), *The United Nations Convention on the Rights of Persons with Disabilities: A Commentary* (Springer, 2017). See also A. Broderick and D. Ferri, *International and European Disability Law and Policy: Text, Cases and Materials* (Cambridge University Press, 2019).

³⁴⁴ EE_DIS.

³⁴⁵ *Supra* nt. 54.

³⁴⁶ DE_DIS.

³⁴⁷ FR_DIS.

³⁴⁸ *Ibid.*

³⁴⁹ DK_DIS.



publishing houses as one of the causes of the delay in ratification.³⁵⁰ Notably, some interviewees indicated that they had not heard of the Marrakesh Treaty at all.³⁵¹ Even those interviewees that indicated their knowledge of the Marrakesh Treaty and the role of the EU in implementing it, did not engage with any of the Treaty's technical aspects. In this respect there is a stark contrast between the emphasis placed on the Treaty by scholarship (both copyright and disability law scholarship)³⁵² as well as major umbrella organizations at the regional level, such as the EBU, and by grassroots organizations. Unsurprisingly organizations representing people who are blind and people who are visually impaired had a better knowledge of the Treaty, compared to representatives of umbrella organizations, regardless of the fact that indeed the Marrakesh Treaty also encompasses people that are otherwise print disabled.

Strong emphasis was also placed on EU accessibility law, namely the WAD,³⁵³ and the EAA.³⁵⁴ One interviewee mentioned:

*'...we see coming up the European Accessibility Act, which is a law that will bring the publishers [...] to make their books and e-books accessible, and we collaborate at the moment with the publishers to help them and to make more books accessible to our customers.'*³⁵⁵

The EAA was also seen as a tool to better exploit the potential that new technologies bring. One interviewee noted:

*'...And I think that's why it's important to work together and to use modern technology, new technology, digital technology to improve this process of making more science, metrical, medical, technical documents accessible.'*³⁵⁶

5.3.2 Language Barriers for Minority Groups

In D2.2 we briefly discussed linguistic barriers to digital cultural access. Further analysis of the whole dataset reveals the much broader scope of this theme, identified by migrants, linguistic minorities, and ethnic minorities. This operates at a basic level in terms of End-users not being able to meaningfully access and interact with information, digital platforms or content due to the language barrier.³⁵⁷ An interviewee from a migrant organization in Croatia provides a good synopsis of this:

³⁵⁰ IT_DIS.

³⁵¹ HRV_DIS.

³⁵² M. K. Land, The Marrakesh Treaty as “Bottom Up” Lawmaking: Supporting Human Rights Action on IP Policies, (2018) 8 *UCILR* 3, 553; K. Köklü, ‘The Marrakesh Treaty – Time To End The book Famine For Visually Impaired Persons Worldwide’ 45 *International Review of Intellectual Property and Competition Law* 7; M. Senftleben, ‘A Copyright Limitations Treaty Based on the Marrakesh Model: Nightmare or Dream Come True?’ In S. Balganes, N. Wee Loon, & H. Sun (Eds.), *The Cambridge Handbook of Copyright Limitations and Exceptions*. (Cambridge Law Handbooks: Cambridge university Press, 2021); L. R. Helfer, M. K. Land, R. L. Okediji, and J. H. Reichman, *The world blind union guide to the Marrakesh treaty—Facilitating access to books for print-disabled individuals* (Oxford University Press, 2017). See also C. B. Ncube, B. E. Reid and D. O. Oriakhogba, ‘Beyond the Marrakesh VIP Treaty: Typology of Copyright access-enabling Provisions for Persons with Disabilities’ (2020) 23 *The Journal of World Intellectual Property* 3-4.

³⁵³ *Supra* nt. 45.

³⁵⁴ EE_DIS; IT_DIS; MT_DIS.

³⁵⁵ DE_DIS.

³⁵⁶ DE_DIS.

³⁵⁷ BE_MIG_ETH; DE_MIG; DK_ETH_LANG; EE_MIG; ES_MIG; FI_MIG; FR_MIG; HRV_DIS; HRV_ROM; HUNG_LANG; IE_MIG; IT_ROM; MT_MIG.



*'What may make things so tricky is that, for example, when it comes to movies that are available online or via digital channels, then, to enjoying the movie, you need to know the language. But the subtitles usually are in English, maybe in Russian, or there is Russian audio, but when your mother tongue is Arabic and your Estonian is not so good yet, then in that sense it's not accessible.'*³⁵⁸

Language is central to cultural expression, and language barriers prevent people from (fully) engaging in a culture that is expressed in a language they do not understand. Lack of majority-language knowledge on the part of migrants and minority/lesser-used language speakers is a barrier to understanding how to access and participate in the majority/mainstream culture: *'Language, of course. Not realizing what the culture is, not realizing what the rules with the cultural norms are and how to deal with them... They don't understand the culture of the place they're in.'*³⁵⁹ In the case of migrants, language also acts as a barrier to integration, as outlined by a migrant organization in Ireland:

*'We have those who come in and have no understanding of the system and have problems with language. So, first of all, we have to deal with the language issue because if they don't have some level of English, they will not even know where to find themselves or even identify their own cultural group where they can ally with.'*³⁶⁰

Conversely, cultural participation is impeded when there is no platform given to cultural expression in a person's particular language.³⁶¹ More mainstream language content can drown out minority language content, as often cultural content is only available in limited, widely-spoken languages: *'most of the popular culture is through English... the number of cultural items or cultural expressions is different in other languages and being totally swamped by Anglo Saxon culture and because of the economic reasons.'*³⁶²

The importance of language to cultural integration and participation is well-established in literature, and ensuring respect for the cultural rights, including the linguistic rights, of migrants helps to facilitate their better integration into, and consequent contribution to, their adopted society, in addition to various other benefits in terms of health, wellbeing and social inclusion.³⁶³

As outlined in D2.2, for linguistic minorities, language barriers are considered a symbol of the lack of recognition of linguistic rights. In that regard, one interviewee representing a minority linguistic community in Spain, explaining how digital cultural content providers had simply not caught up yet in terms of digitization, which limits the Catalan digital cultural content, stated:

³⁵⁸ EE_MIG.

³⁵⁹ HRV_MIG. See also, HUNG_MIG: *'We find it very problematic that people don't have sufficient access to this content due to language barriers, due to the issues of the cultural references and the content and how the whole thing is framed.'*

³⁶⁰ IE_MIG.

³⁶¹ BE_LANG; DK_DIS; ES_LANG; FI_ETH_LANG.

³⁶² BE_LANG. See also, ES_LANG; FR_MIG; HRV_DIS; HRV_ROM; HRV_ROM (individual expert); HUNG_LANG.

³⁶³ See L. O. Bygren, G. Weissglas, B. M. Wikström, B. B. Konlaan, A. Grjibovski, A. B. Karlsson, S. O. Andersson and M. Sjöström, 'Cultural participation and health: A randomized controlled trial among medical care staff' (2009) 71 *Psychomatic Medicine* 4; P. Camic and H. Chatterjee, 'Museums and art galleries as partners for public health interventions' (2013) 133 *Perspectives in Public Health* 1; A. D. Napier, C. Ancarno, B. Butler, J. Calabrese, A. Chater, H. Chatterjee, F. Guesnet, R. Horne, S. Jacyna, S. Jadhav and A. Macdonald, 'Culture and health. The Lancet Commissions' (2014) 384 *Lancet* 9954; N. Kawashima, 'Audience Development and social inclusion in Britain' (2006) 12 *International Journal of Cultural Policy* 1; S. Hadley and E. Belfiore, 'Cultural democracy and cultural policy' (2018) 27 *Cultural Trends*, 3. See generally, *supra* nt. 284.



'...if you go to Netflix or Disney, or other online film platforms and access those films translated with public money, they do not have these language options in those films into the platforms. So, we made research last December on Netflix. More than 2100 movies, of which 334 films have a Catalan version, all paid with public money, and Netflix just offered four films of those. We contacted Netflix, and they said, "we have no problem to introduce the language in the linguistic menu, but we have to receive this version; for us, it's just a little bit of time to put another version". The main responsible here for this problem is the government because they paid for these versions and these versions must circulate after [and they aren't] because otherwise, it's wasted public money, and also the film distributors that have received this public money to translate and to release the films in the cinemas should give these versions'.³⁶⁴

5.3.3 Links to Origin Country as a Key Issue for Migrants and Linguistic Minorities

Two migrant and two linguistic minority representative groups discussed how their access to digital culture was facilitated by their/ their language's country of origin.³⁶⁵ A German organization referred to the *'nature of the digital world, the kind of content that some States produces. For example, the Russian minority has some dependent or a large dependence on content produced within Russia and circulated online.'*³⁶⁶ An Italian organization also raised this point, albeit in a geographically limited way: *'easy for certain communities, namely for the German, Slovenian and French, that are able to follow all programs and platforms from abroad, from the countries on the other side of the border, because there are some agreements between the States to allow and to have digital television, or everything'*.³⁶⁷ Conversely, a Hungarian organization stated:

*'Those minorities that do not possess a mother country have a more difficult situation by reaching their own cultural language, both online and offline. The lack of institutions and legislations makes their situation harder because they don't have support from their mother country.'*³⁶⁸

The barriers faced by migrants in accessing culture, as outlined in this report, can push migrants back towards their home cultural content, made accessible through digitization, which can further isolate them from the culture and society of the host country. This was elaborated by a Hungarian interviewee:

'it's equally interesting to see to what extent migrants who live in Hungary [are] still related to, even contribute to this cultural content in the countries of origin, in their previous place of residence, and in a "cultural harbour", in a cultural milieu to which they have always belonged to, but their migration didn't change this... The less access you have to local cultural content, the more likely is that you link to the transnational content that comes from back home and the way around as well. So, the more

³⁶⁴ ES_LANG.

³⁶⁵ DK_MIG; HUNG_MIG.

³⁶⁶ DE_MIG_ETH_REL.

³⁶⁷ IT_LANG. Further states: *'There are 12 languages, and these communities have links with other States and with the communities in different States. For example, the Occitan community in Italy has more links with the Occitan in France. Catalans in Spain are eight million, nine million speakers, and this is more than three thousand people oriented towards Catalonia rather than Tyrol. It is similar to the Albanian community ourselves in Italy. The Albanian government supports them. And we have also a Greek community in Southern Italy, two small communities, and the Greek government supports them. And there is a small Croatian community in central Italy and there is an agreement between Italy and Croatia because there is also an Italian community in Croatia to deliver mutual support to those communities. To have a book, to have a text or something is not difficult for them, also to have some digital material is not difficult for them.'*

³⁶⁸ HUNG_LANG.



*you are interested in, the less inclined you are to learn the language, to start familiarising [yourself] with the local cultural settings.'*³⁶⁹

This fosters what the interviewee identifies as 'a very myopic conception of the mainstream receiving society, that migrants are the people who appear here, who end up here, and who from a certain time belong only here.'³⁷⁰ This insulation and "ghettoization" of migrant communities was elucidated by a Danish migrant organization:

*'In Denmark, the high concentration of ethnic minorities in these low-cost housing areas, and the fact that they have these powerful satellites on the houses all over is seen as a kind of proof that they are not interested in Danish society, that their interest is oriented towards their hometown place. It's seen as a symbol of this that the minorities are foreign.'*³⁷¹

Another negative side-effect of the cross-border reach of accessible digital content is the potential it creates for the circulation of nefarious content, due to poor regulation of digital information: 'how content is circulated through that means under the name of cultural identity or religious identity or ethnic identity, and a lot of that not so benevolent type of content also reaches those communities in that way.'³⁷²

6. Survey Analysis

6.1 Demographic Data

As noted above, the analysis presented refers to 154 completed surveys (across 12 States). A comprehensive analysis of the demographic data of participants was conducted, building upon the preliminary analysis conducted for D2.2. There is substantial variance in participant demographics, in terms of both their geographical location and their chosen language (see Charts 3 and 4 below). Spanish speaking participants located in Spain comprised almost one third of survey participants, with participants located in Croatia and in Estonia respectively comprising the second and third most common survey participants. There is a sizeable chasm between the top three participating States and the remaining nine, with a failure to secure any participation from Denmark. One participant located in Belgium answered the survey, two in France, and four in Germany and Finland respectively. The lowest participation States comprise much of the Nordic and central European blocs of the study sample. The low rate of participation, including the rate of abandonment, of the survey after a few questions, can most likely be traced back to the perception among vulnerable End-users that the topic of the survey is not an issue for or relevant to them at that given time. This tallies with the motivation given by organizations when deciding not to participate in the interviews, which was discussed in D 2.2.³⁷³

³⁶⁹ HUNG_MIG.

³⁷⁰ Ibid.

³⁷¹ DK_MIG.

³⁷² DE_MIG_ETH_REL.

³⁷³ See D2.2, *supra* nt. 4, 28.



In terms of language, English, Estonian and Croatian comprise respectively the second, third and fourth most prominent participation languages, following the Spanish majority. It is therefore difficult to draw any firm conclusions based on this quantitative data due to this disparity in participation.

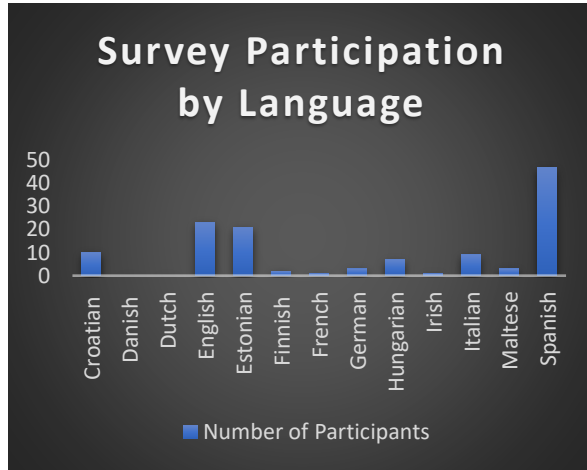
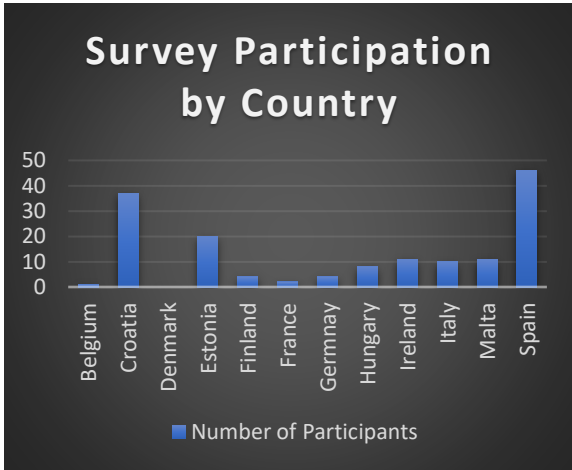


Chart 3: Country breakdown of participants

Chart 4: Language breakdown of participants

The age and gender breakdown of survey participants is more balanced, with the exception of the 18–24-year-old age bracket which had comparatively low participation at just 7% (see Chart 5 below). In terms of gender, 56% of participants were female, 43% were male, and 1% identified as non-binary. (See Chart 6 below).

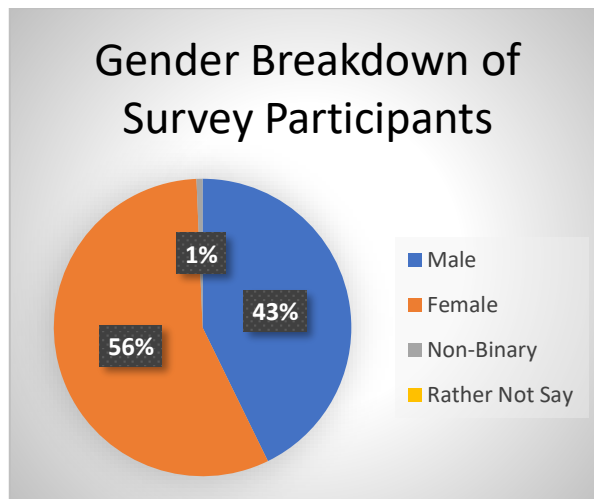
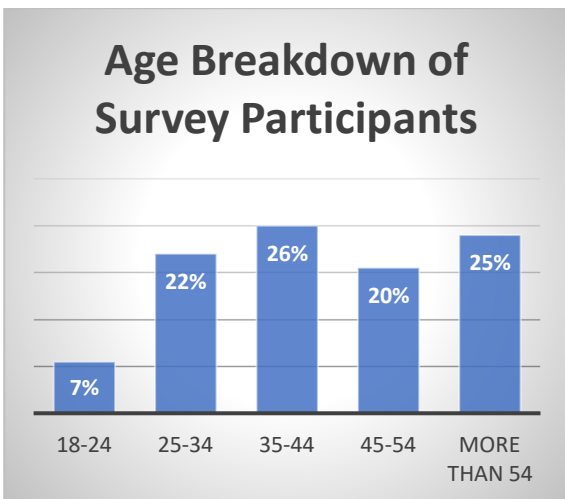


Chart 5: Age range breakdown of participants

Chart 6: Gender breakdown of participants

As with the language and location demographics, there is discrepancy in participation in terms of minority identity. An overwhelming majority of survey participants identified as persons with disabilities (60%),



This project has received funding from the European Union’s Horizon 2020 research and innovation programme under grant agreement No 870626

followed by migrants at just 13%, then by persons belonging to an ethnic minority (11%), Indigenous persons (7%), persons belonging to a linguistic minority (7%), and finally persons belonging to a religious minority, who accounted for a negligible proportion of participants (2%). No participant identified as a refugee (See Chart 7 below). In this connection, it is important to note that the data is heavily skewed towards the specific issue of disability accessibility, as explained in D2.2.³⁷⁴

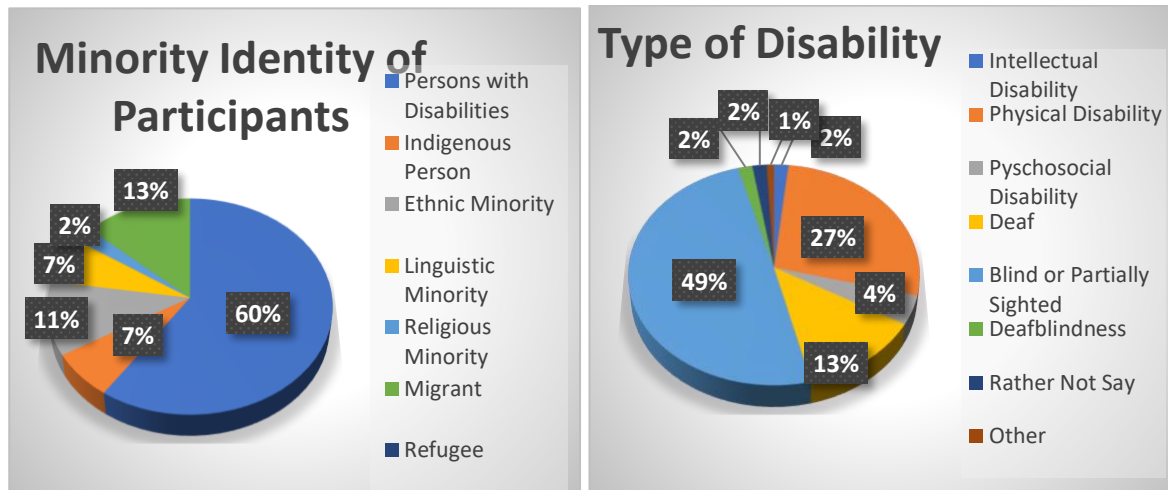


Chart 7: Minority identity of participants

Chart 8: Type of disability

Among those participants who identified as persons with disabilities, blind or partially sighted persons accounted for 49%, followed by persons with a physical disability (27%), and deaf persons (13%). Beyond these three dominant categories, 4% of participants identified as having a psychosocial disability, 2% as being deafblind, 2% as having an intellectual disability, and 1% as having an unspecified, ‘other’ disability³⁷⁵ (see Chart 8 above).

To gain a deeper insight into the imbalance in the data, cross-tabulations of the dataset were performed to reveal the cross-sections of participant identities. First, we determined the breakdown of participant minority identity and geographical location. Again, this revealed a sizeable disparity in the data, with participation comprising primarily by persons with disabilities located across five subject States: Croatia, Estonia, Spain, Italy and Malta. Second, we cross-tabulated participant location and language data. The interview data established language as an important factor in accessing digital culture.³⁷⁶ Moreover, in its recent ‘Report on the availability of copyright protected works for persons with disabilities’,³⁷⁷ the EU Commission refers multiple times to language as an important factor in the accessibility of content as well as the facilitation of cross-border exchange of accessible content.³⁷⁸ Our analysis of the language data revealed a lack of

³⁷⁴ [A]ccessibility for Persons with Disabilities refers to the extent to which products, systems, services, environments and facilities can be used by people with the widest range of characteristics and capabilities.’ D2.2, *supra* nt. 4, 11.

³⁷⁵ The “Other” type of disability specified is ADHD Neurodevelopmental.

³⁷⁶ A broad spectrum of interviewees, representing persons belonging to linguistic minorities, ethnic minorities, migrants and persons with disabilities, identified linguistic barriers to digital cultural access. See D2.2, *supra* nt. 4, 53-54.

³⁷⁷ European Commission Staff Working Document, *supra* nt. 178, 10.

³⁷⁸ *Ibid.* This report is based on a targeted consultation conducted by the Commission with key stakeholders in relation to the Marrakesh Treaty - including persons with disabilities, representative organizations and content producers. See



uniformity and correlation between geographical location and chosen language of participants, which makes it difficult to draw any firm conclusions from this data on language barriers to access.³⁷⁹

Overall, the lack of balance in the demographic data skews the analysis towards disability, and specifically persons who are blind or partially sighted. The latter data seems to point to a particular interest from this cohort of people in accessing digital cultural goods, and may correlate also to the legal developments such as the Marrakesh Treaty. It is testimony to the work done on accessibility, to ensure participation of persons with disabilities. As discussed in D.2.2, before launching the online survey, we made sure to comply with most recent web accessibility standards and best practices on accessibility for persons with disabilities, in line with the WAD. However, following some complaints from respondents with visual impairments in one of the 12 countries in relation to the accessibility of the navigation controls system of the platform, we undertook an additional extensive investigation, and asked for opinions from various users with visual impairments across Europe, and we also engaged with the survey platform. This entailed consultations with different Accessibility experts, and with the Maynooth University Access Office. This led to the creation of a set of additional versions of the survey, including a Word-format version (elaborated in collaboration with accessibility experts from ONCE Foundation - Spain), to make sure that everyone could participate on an equal basis with each other. While we did not obtain any definite answer as to what caused the issues experienced by the participants who raised the complaints, and no other complaints were raised, we made sure to address the issue efficiently and promptly.

6.2 Connectivity

99% of participants have access to a digital device, and that access is regular (98%). 95% pay for their internet access while just 4% enjoy free internet access. The frequency of participants' internet access yielded a relatively more balanced response, with 69% of participants enjoying daily access, 18% having weekly access and just 13% having occasional access to internet. Of those who enjoy daily access, 25% connect for 1-2 hours, 14% for 2-3 hours, and 23% for more than 3 hours per day. Internet connectivity and access, and frequency of connection to the internet, is generally not an issue for participants, although it relies on their ability to pay for it (see Charts 9-13 below).

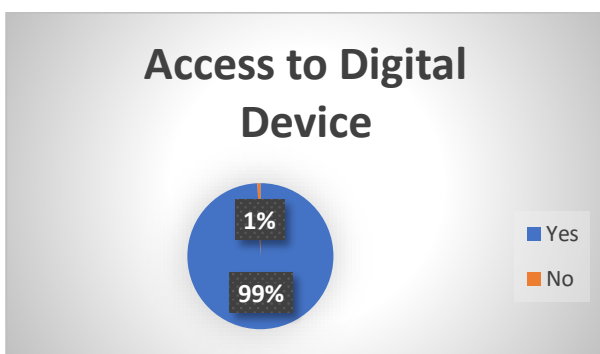


Chart 9: Access to digital device

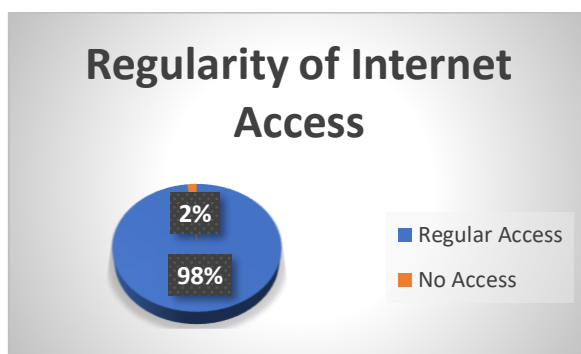


Chart 10: regularity of internet access

for example, at 17: 'Member States' replies, indicating potential gaps in accessibility, focused mainly on the availability of audiovisual works to persons with disabilities. Member States highlighted the following issues, in some cases reporting positions expressed by their stakeholders: insufficient subtitles in own language'.

³⁷⁹ For example, there exists a lack of correlation between levels of participation by persons with disabilities through the Irish and Maltese language versions of the survey and levels of participation of persons with disabilities located in Ireland and Malta. This may be explained by the fact that English is an official language in both Ireland and Malta.



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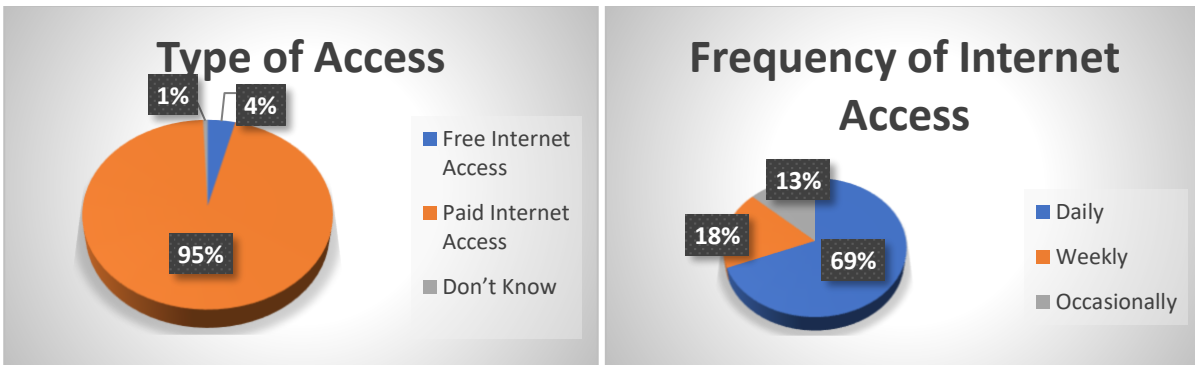


Chart 11: Type of internet access

Chart 12: Frequency of internet access

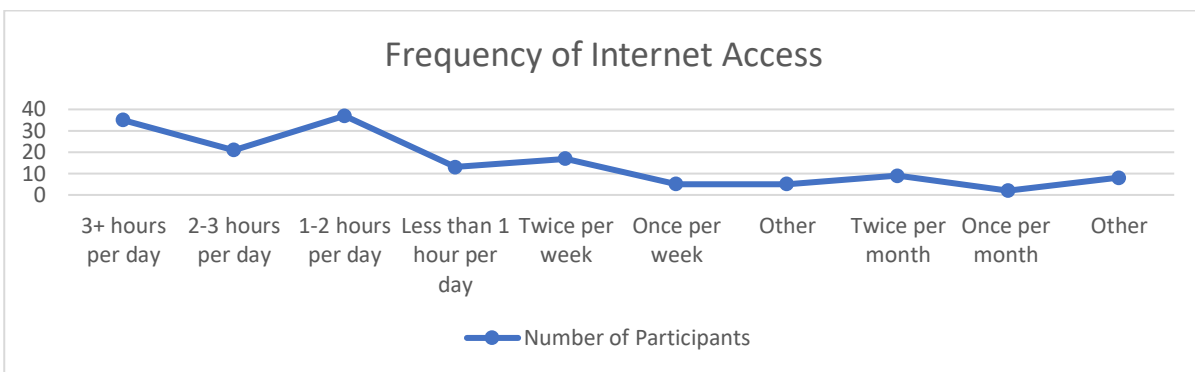


Chart 13: Frequency of internet access

This is somewhat at odds with the finding of interviews that highlighted connectivity issues, but it can be explained considering the very limited survey sample and the obvious fact that the online survey targeted and was completed by vulnerable End-users who could access the survey, necessarily excluding those who are unable to access the internet to complete the survey. This highlights the limitations of online surveys when addressing particularly disadvantaged cohorts.

6.3 Consumption Channels

The types of cultural products consumed identified in our research, are primarily music and podcasts (26%), journals and newspapers (25%), films and tv shows (21%), and books (16%). Comparatively small proportions of participants consume culture via art galleries and museums (4%), videogames (4%) and 'other' products (4%), a category which comprises a variety of products, ranging from 'TED Talks' to research photography, to social media, to radio (see Chart 14 below). The variety of products consumed is quite well-balanced and represents a mix of both highbrow and lowbrow culture, as defined in D2.2.³⁸⁰ This contrasts with a description given by an interview participant regarding the lack of accessibility of highbrow culture for migrants, and the difficulties in making highbrow culture more inclusive:

'I think that there is a very broad spectrum of culture, and some cultural experiences are really, really expensive, and of course, we know that the ethnic minorities in Denmark but especially the recent immigrants will not have very big economic resources. So that in itself will be excluding towards them.'

³⁸⁰ See *supra* nt. 4, 20.



I think that at least those kinds of cultural outputs would be very "white" if you want to say that. I know that the Danish Royal Theatre in Copenhagen had an attempt to try and get more ethnic minorities to come and see the place. I think that it didn't go very well because they weren't allowed to say, "if you are an ethnic minority, you can get this ticket really, really cheap". They couldn't do that because that would be preferential treatment on the grounds of ethnicity. So, they had a really hard time trying to attract ethnic minorities and didn't really know how to do it. I don't know if they continue to have special information and campaigns targeting those groups. I think that kind of culture is very divided in ethnicity. Then, there is the question of Netflix and that kind of [platforms]. I think that, in my experience, Netflix is very international, at least it's not very Danish. I could imagine that there is much better representation and in the access to Netflix and HBO and so on, many more minorities have used that compared to the other very expensive cultural goods.'³⁸¹

The data reaffirms previous studies which have highlighted 'the role of the unprecedented and quick digitalization of the cultural sector... [which] has obviously triggered a move to online cultural activities.'³⁸² This is evidenced, in particular, by data showing that 66% of participants are subscribed to digital platforms (see Chart 15 below).

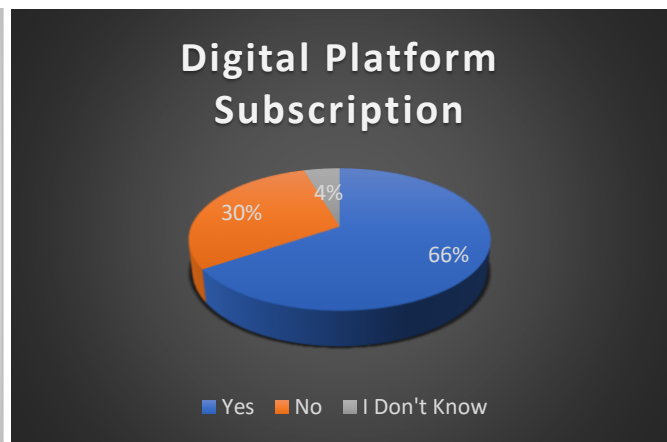
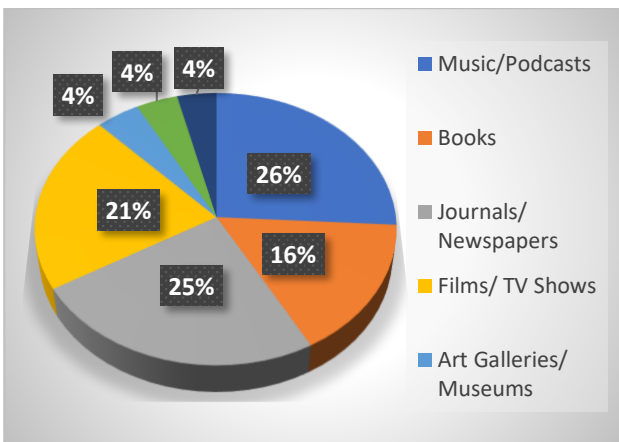


Chart 14: Consumption of digital cultural products Chart 15: Digital platform subscriptions

The data was cross-tabulated to determine the correlation of participants' age and types of cultural products they consume (see Chart 16 below). Music and podcasts are the most popular products for participants aged 18 to 44. They are also popular among older participants (aged over 45), second only to journals and newspapers. More traditional channels of cultural consumption (books, journals, newspapers, films, TV shows) are consistently popular for participants over the age of 24. Art galleries, museums, videogames, and 'other' were identified as the least popular channels of consumption of culture amongst participants across all age brackets. This data reveals the importance of digitization on cultural consumption by vulnerable End-users, of all ages, particularly through the medium of digital audio platforms.

³⁸¹ DK_MIG.

³⁸² See D2.2, *supra* nt. 4, 20.



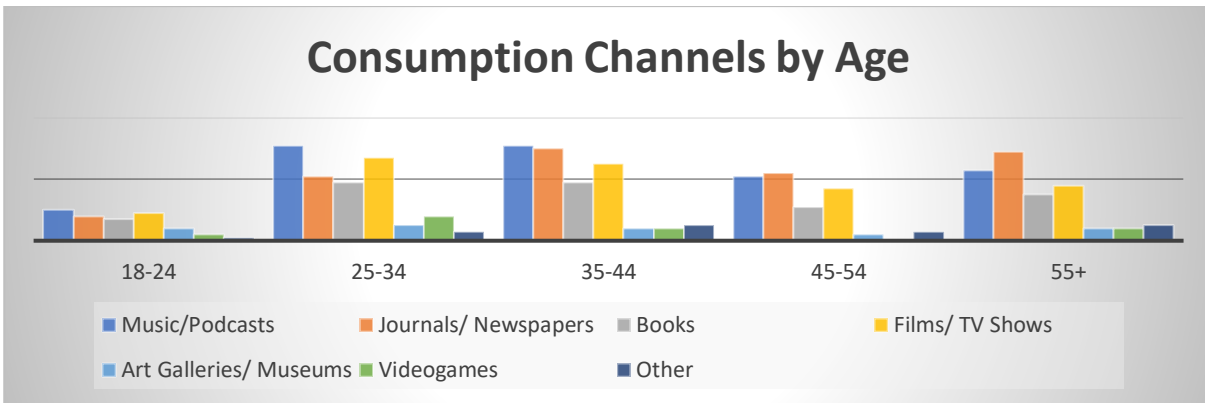


Chart 16: Cross-tabulation of age and preferred consumption channels of participants

Cross-tabulation was also conducted to determine the correlation between consumption channels and the type of disability identified by participants who identified as persons with disabilities.³⁸³ The data reveals that music and podcasts, journals and newspapers, films and TV shows, and books are popular across all types of disability identified. Music and podcasts are the favoured consumption channel among persons who are blind or visually impaired, followed by journals and newspapers, then books, and then films and TV shows, indicating there is some availability of cultural content in formats accessible to persons with disabilities. This also aligns with 2.2 interview findings that the provision of accessible digital cultural platforms and content supports digital cultural access and participation.

6.4 Attitudes and Opinions in Accessing Digital Culture

Survey data provides insight into participants' own perceptions of the accessibility of digital cultural content, their experiences of barriers to access, and means of navigating those barriers.

Poor Representation of Minorities in Cultural Content: Representation in cultural content was identified as a significant factor in cultural access and participation in the Task 2.2 interview data. Survey participants' general perception of representation in both cultural content available online and in cultural content disseminated through more traditional routes (for example, national broadcasters and famous authors) was quite poor. The data indicates a slight improvement in representation with digitalization: in online cultural content 43% of participants perceive themselves to be slightly represented, 32% unrepresented, 18% moderately represented and 7% well represented while in more traditional content, 43% of participants perceive themselves to be unrepresented, 35% slightly represented, 17% moderately represented and just 5% well represented (see Charts 17 and 18 below).

³⁸³ We focused specifically on persons with disabilities, and not on the whole spectrum of minority groups who were subject of the study, due to the imbalance in participation as outlined above.



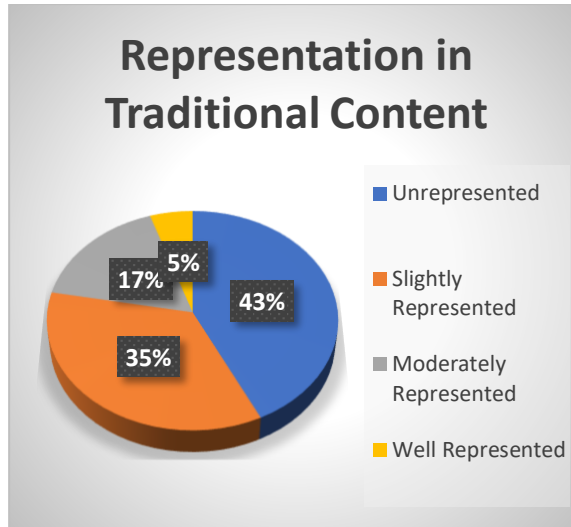
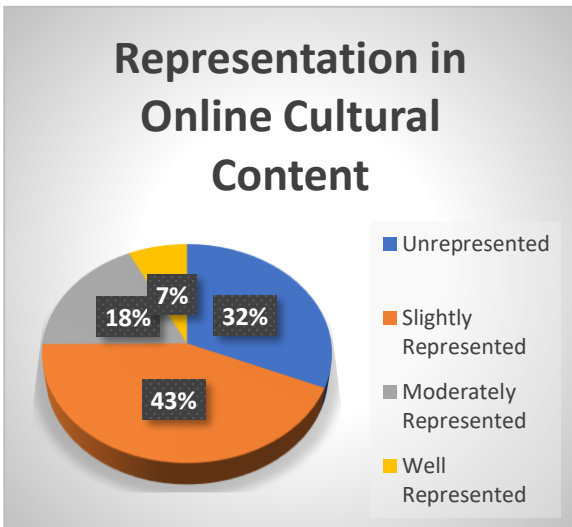


Chart 17: Representation in online content

Chart 18: Representation in traditional content

Good Accessibility of Digital Cultural Platforms: The accessibility of digital cultural platforms is perceived in a far more positive light than representation in cultural content. 50% of participants find digital cultural platforms partially accessible, 27% find them fully accessible, 20% find them mostly inaccessible and just 3% find them inaccessible (see Chart 19 below).

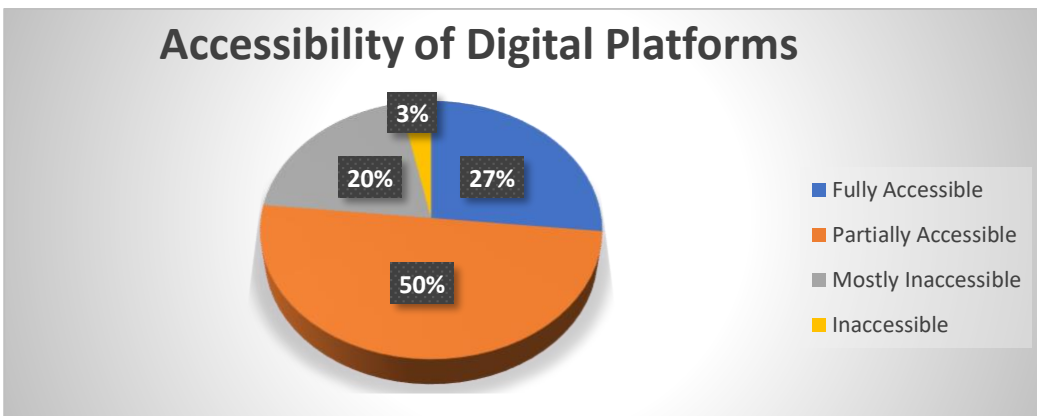


Chart 19: Perceptions of accessibility of digital cultural platforms

Variety of barriers to access: From the choice of broadly categorized barriers offered to participants via multiple choice question, the most prevalent ones identified were cost barriers (27%) and visual barriers (26%), closely followed by hearing (23%) and then language barriers (20%). Among the small proportion (4%) of ‘Other’ barriers identified were technical barriers,³⁸⁴ particularly in terms of disability accessibility (see Chart 20 below). For example, one participant elaborated that: ‘When using a screen reader often parts of the site can’t be accessed with keyboard, only mouse, D.G. buttons, list boxes, sometimes text boxes. Sometimes the payment section is totally inaccessible because parts are accessible but the card type is mouse

³⁸⁴ 5 participants identified technical barriers: participants [716513-716504-75845446](#); [716513-716504-76206181](#); [716513-716504-76281940](#); [716513-716504-77667925](#); and [719076-719067-78014147](#).



only activated. Also the "I am not a robot" check box capture which is often use, is mostly inaccessible, the check box can't be checked using the enter key'.³⁸⁵

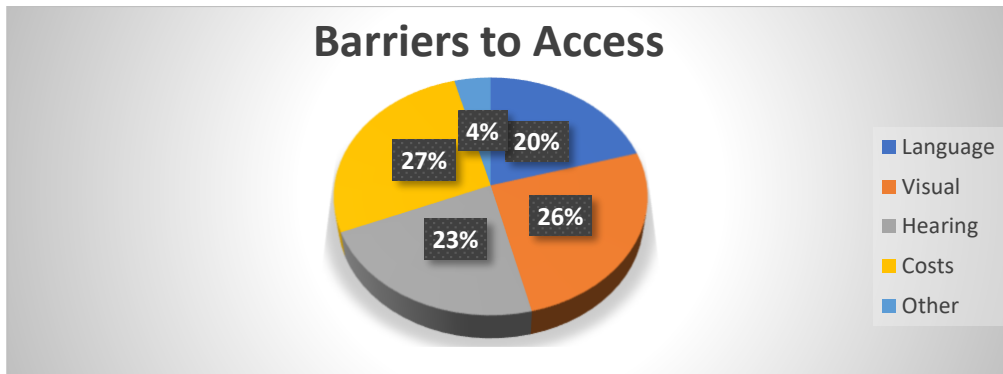


Chart 20: Barriers to access identified by participants

Participants generally perceive themselves to be disadvantaged in accessing digital culture: We also investigated participants' feelings of being disadvantaged in accessing digital cultural content. Chart 21 below shows the data collectively across all minority groups. 58% of participants feel disadvantaged, 29% feel they are not, 13% are unsure.

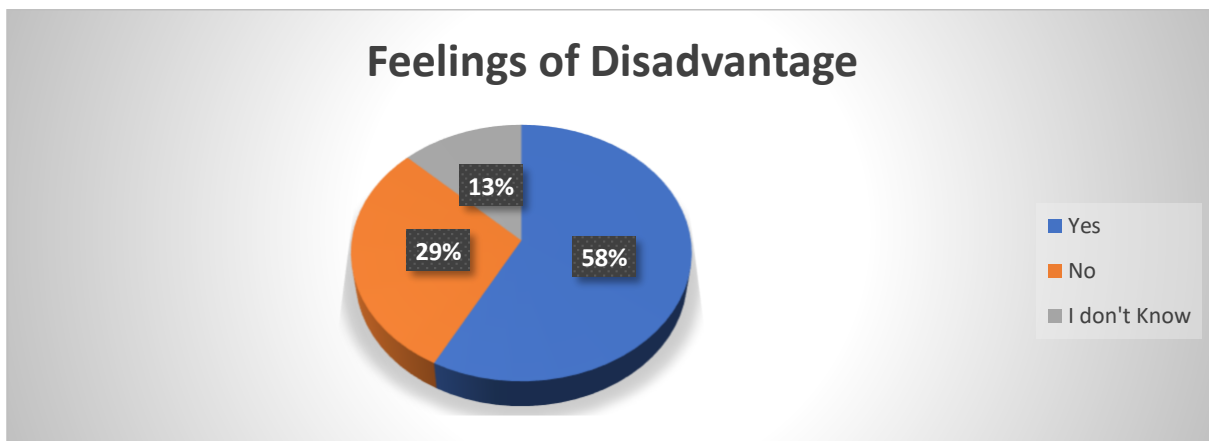


Chart 21: Feelings of accessibility disadvantage

We analyzed the perception of disadvantage according to each minority group, although it is important to highlight that the study sample is not representative of all vulnerable groups, as outlined above.³⁸⁶ The majority of participants identifying as persons with disabilities (61%), ethnic minorities (53%), linguistic minorities (75%) and migrants (65%) feel disadvantaged. 50% of participants belonging to a religious minority felt they are not disadvantaged, 25% felt they are disadvantaged, and 25% did not know. Indigenous Peoples were the only group in which the majority (67%) indicated that they do not feel disadvantaged. However, this data must be read in light of the relatively low participation rate of minority groups other than persons with disabilities (see Charts 22-27 below).

³⁸⁵ English – participant [716513-716504-75845446](#).

³⁸⁶ The category 'Refugees' was omitted from this analysis as no participant who identified as a refugee engaged with this question.



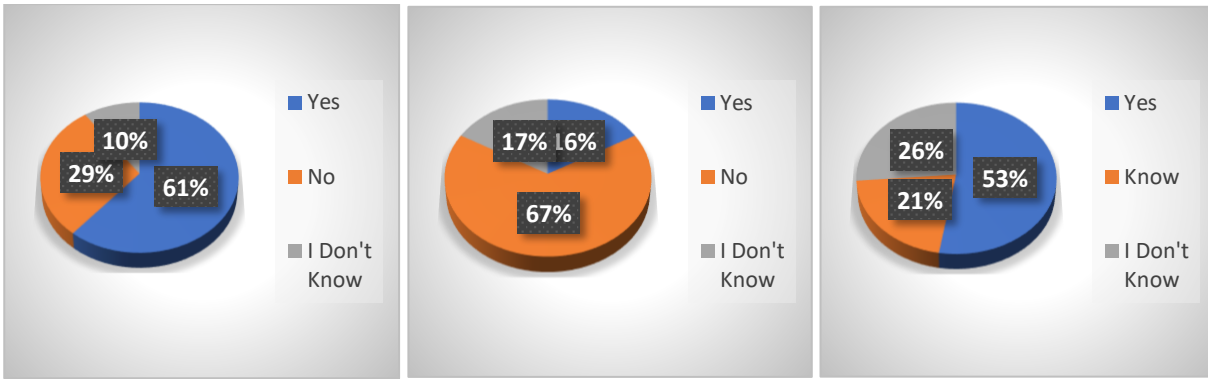


Chart 22: Persons with disabilities Chart 23: Indigenous Peoples Chart 24: Ethnic Minorities

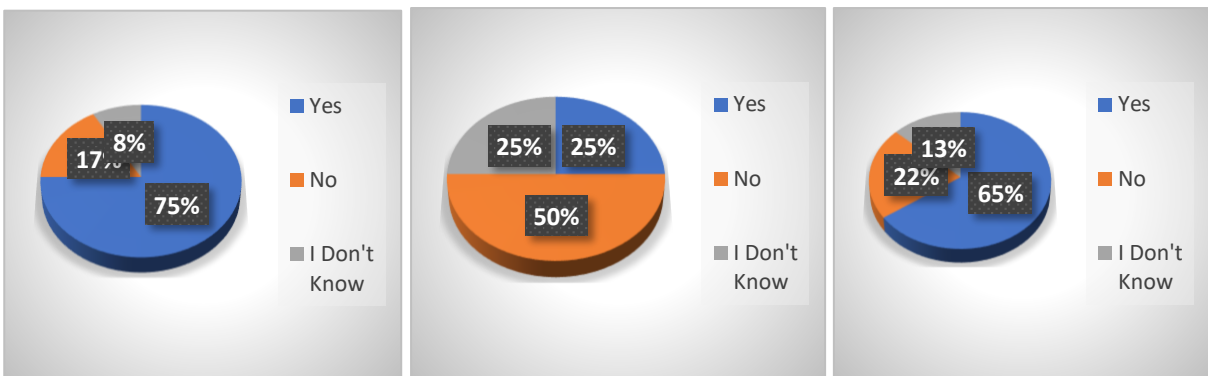


Chart 25: Linguistic Minorities Chart 26: Religious Minorities Chart 27: Migrants

54% of participants who perceive themselves to be disadvantaged indicated this occurs only sometimes, 41% indicated it occurs always, and just 5% indicated it occurs rarely (see Chart 28 below).

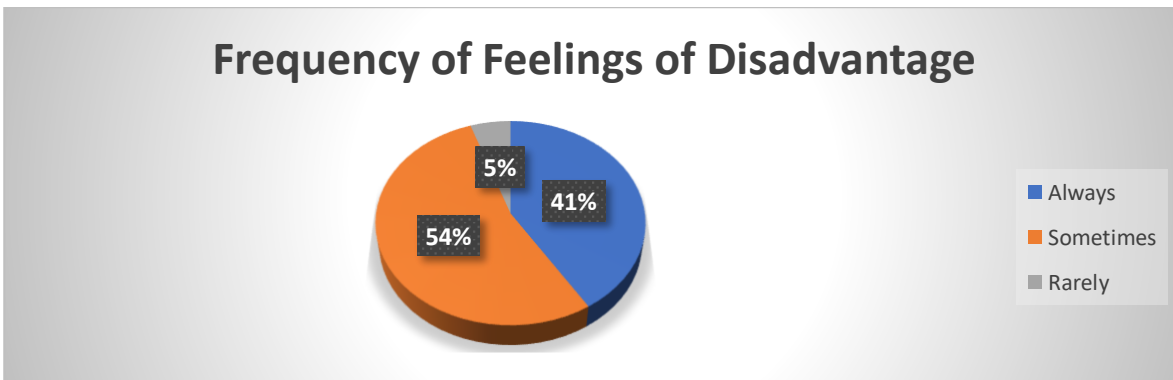


Chart 28: Combined occurrences of feelings of disadvantage among participants

Perceptions of Digitalization and Copyright Laws

As outlined in D2.2, and recalled above, digitalization of the cultural sector has occurred at an unprecedented rate, raising issues of digital exclusion, particularly for vulnerable End-users.³⁸⁷ In this connection, it is important to determine the perceptions that vulnerable End-users themselves have of digitalization, of any

³⁸⁷ *Supra* nt. 4, 21-22. See also at 9, which outlines the core tenets of the research question.



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digital exclusion they may be subject to, as well as their perceptions of the benefits it brings as a means of overcoming barriers to cultural access. Relatedly, copyright laws, and particularly creators' rights, may play a role in exacerbating barriers to access to digital cultural content, and thus it is important to also determine End-users' perceptions of those.

In line with the findings of the interviews, participants' familiarity of copyright law is limited: 60% indicated they are moderately familiar, 32% unfamiliar, and just 7% indicating that they are very familiar with copyright laws and creators' rights (see Chart 29 below).

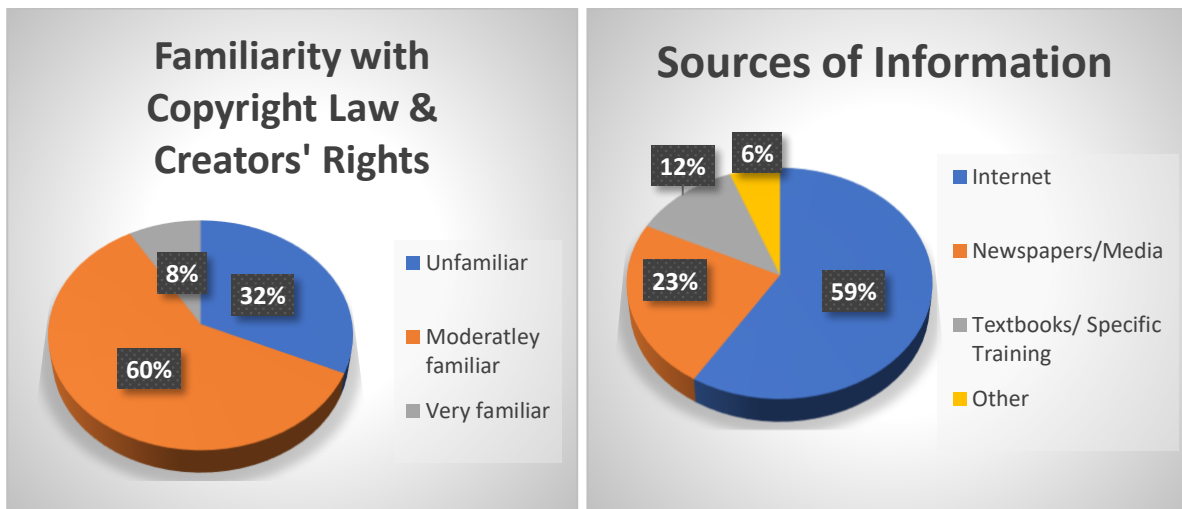


Chart 29: Familiarity with copyright law

Chart 30: Sources of information on copyright law

Participants primarily indicated that informal sources of information underpinned their knowledge, such as the internet (59%) and newspapers and the media (23%). Formal, targeted information sources, namely textbooks and specific training were identified as a source of information by just 12% of participants. 'Other' sources of information made up just 6% of responses, and these sources ranged from information gained through working with civil society or representative organizations working in this field³⁸⁸ to gaining information through seminars³⁸⁹ or from lawyers³⁹⁰ (see Chart 30 above). In this connection, a large proportion (69%) of participants indicated they wanted to increase their knowledge of copyright law and creators' rights, with 31% indicating they had no such desire.

More specifically, we asked participants about their familiarity with Open Access policies, defined by the EU Commission as 'the practice of providing online access to scientific information that is free of charge to the user and is reusable.'³⁹¹ The responses revealed participants' knowledge of Open Access policies was

³⁸⁸ For example, one participant stated they gained knowledge as a result of working within a blind organization and engaging directly with people who face copyright barriers and fight for policy change. (English - participant [716513-716504-75845446](#); participant [716513-716504-78115270](#)).

³⁸⁹ Español - participant [716496-716487-78524357](#).

³⁹⁰ Plain English - participant [716519-716510-75629095](#); Hungarian - participant [720721-720712-76954050](#).

³⁹¹ EU Commission Directorate General for Research and Innovation (RTD), 'Background Note on Open Access to Scientific Publications and Open Research Data' (2016)



marginally better than their knowledge of copyright law: 47% of participants indicated they were unfamiliar, 47% indicated they were moderately familiar, and 6% indicated they were very familiar. Overall, the data show moderate levels of familiarity of copyright law among participants, with a slightly better knowledge of Open Access policies (that support inclusive access), derived primarily from more with informal sources of information rather than through specific, targeted training.

6.5 Experiences or Behaviours in Accessing Digital Culture

The survey data provides insight into participants’ own experiences in accessing digital cultural content.

Digitalization supports access to cultural content: A diversity of media are used by participants to access accessible copies of literary or artistic works, particularly digital media: 30% of participants indicated that they download cultural content from online catalogues or e-libraries, while 21% use streaming platforms, and 15% access digitised copies. The ‘Other’ media via which participants stated they access literary or artistic works all entail use of the internet.³⁹² Participants also access works via paid subscriptions or individual purchases (19%), and a small proportion (9%) receive accessible copies from an organization to which they belong. Just 4% of participants indicated that they do not access literary or artistic works at all.

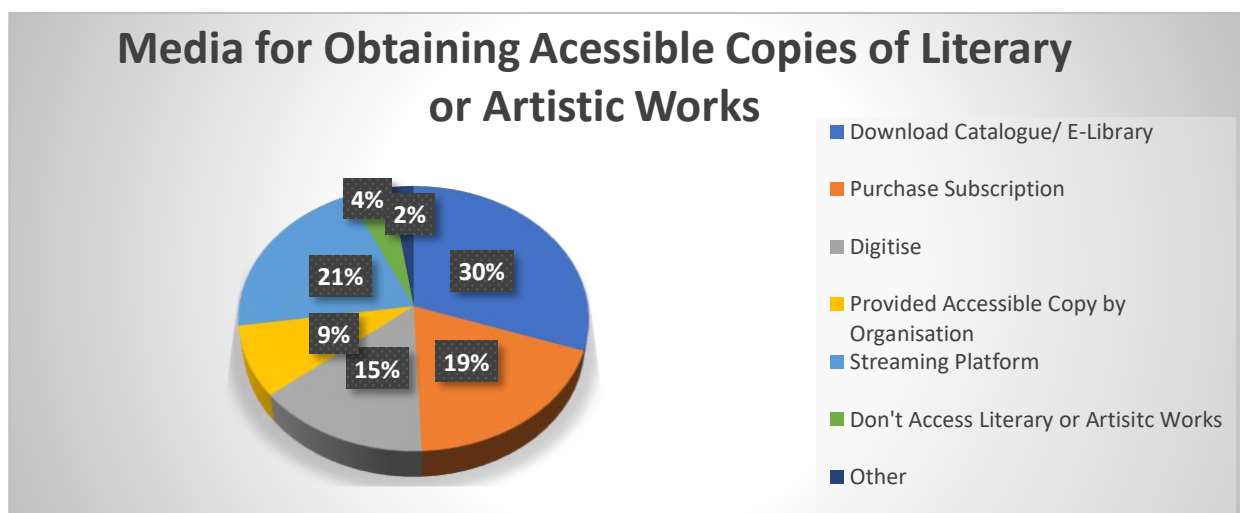


Chart 31: Media used for obtaining accessible copies of literary or artistic works

There are diverse barriers to digitizing accessible works: 37% of participants indicated that they experience barriers to digitizing literary or artistic work, 28% indicated they that do not experience barriers, and 35% indicated that they do not digitize literary or artistic works. Participants experience a variety of barriers to digitizing works, in almost equal measure: lack of knowledge of intellectual property law and creators’ rights (25%), lack of awareness of open-source policies (24%), lack of digitization technology (24%), budget constraints (23%) (see Chart 32 below). Just 4% of responses accounted for ‘other’ barriers, which included both technical/ practical and non-technical barriers. In relation to the former, a participant indicated a ‘[I]ack

<https://ec.europa.eu/info/sites/default/files/research_and_innovation/strategy_on_research_and_innovation/documents/ec_rtd_background-note-open-access.pdf> (last access 24 May 2022) 1.

³⁹² 3 of the participants stated ‘Google’ (Español participant [716496-716487-78533911](#)), ‘Internet’ (Español participant [716496-716487-78536764](#)), I read online (Español participant [716496-716487-78540949](#)). Another participant didn’t want to elaborate on what medium they use (Hrvatski participant [719076-719067-78175233](#)).



of help’;³⁹³ another raised the issue that ‘[b]ooks that have been withdrawn cannot be digitised’;³⁹⁴ and another stated that ‘[w]hen digitizing books or other literature, scanning them loses some data due to damage to the scanned literature (underlined text, mottled page or a lot of complex photos or images on the page).’³⁹⁵ In terms of the latter, one participant stated that: ‘Often there is a reluctance to do anything about digitising because I think a blind person wanting to read the information is considered irrelevant.’³⁹⁶

Concerns among participants about the legality of making, re-using or sharing accessible copies of literary or artistic work varied, with 48% indicating that they do have concerns, 44% indicating that they do not, and 8% being unsure.

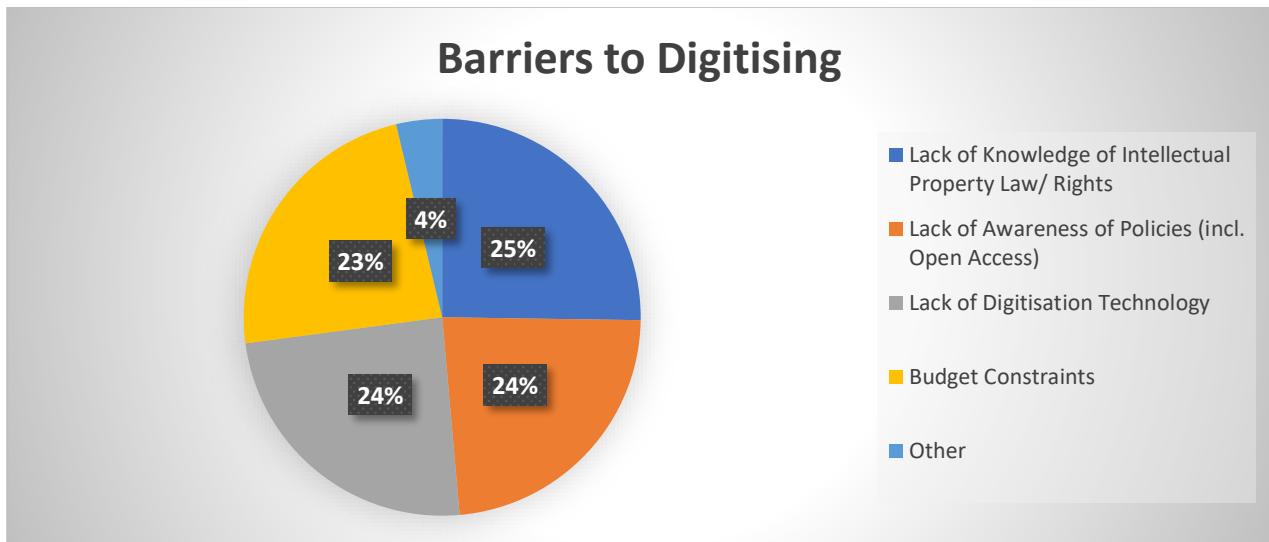


Chart 32: Types of barriers to digitising literary or artistic works

Limited Impact of Covid-19 Restrictions: 51% of participants indicated that Covid-19 restrictions had no impact on their access to digital culture, 25% indicated they were slightly impacted by restrictions, 13% indicated they were moderately impacted and just 12% stated that restrictions heavily impacted their access to digital culture (see Chart 33 below).

³⁹³ Encuesta (Español) participant [716496-716487-78486304](#).

³⁹⁴ Anketa (Hrvatski) participant [719076-719067-77955904](#).

³⁹⁵ Anketa (Hrvatski) participant [719076-719067-78006551](#).

³⁹⁶ Survey (English) participant [716513-716504-75845446](#).



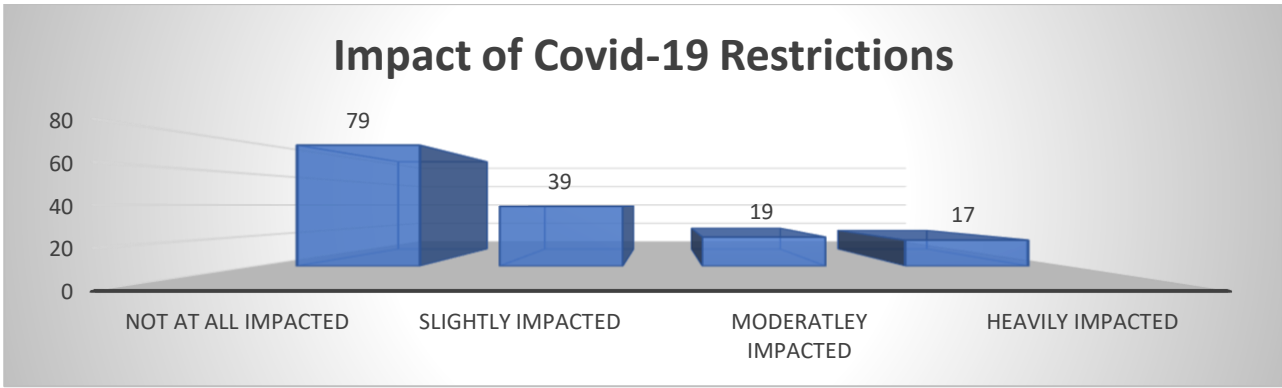


Chart 33: Impact of Covid-19 restrictions on access to digital cultural content



7. Conclusions

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

First, the research conducted aimed to identify what barriers people belonging to vulnerable groups face in accessing digital cultural content. In this respect, the data analysis of the interviews shows that there are persistent structural barriers that undermine the cultural participation of vulnerable groups. In this respect, this report confirms the results of other past and well-established research. The barriers to access and participation identified by interview participants related to their lower socio-economic status of minority groups, their economic, social and political disempowerment, the paternalistic attitudes they face from creators and providers of digital cultural goods and services, and the well-studied ‘digital divide’. In relation to the ‘digital divide’, the survey data appear somewhat at odds with this finding, as connectivity among survey participants was quite high, although this can be explained by the fact that the survey data targeted End-users directly, and so it follows that only those End-users with internet connection could participate. Survey participants also identified cost barriers to accessing digital culture, which correlates to the socio-economic barriers identified by interview participants, as well as language barriers and disability accessibility-specific barriers, such as visual and hearing barriers. Survey participants largely felt they are disadvantaged in terms of accessing digital culture.

The interview and survey data also showed the representation of minority groups in digital cultural content impacts their capacity to access and participate in digital culture. Generally, increased digitization has increased the volume of digital cultural content, which in turn has increased diversity in digital cultural content, making it more broadly representative of society, including minority groups. However, interview participants still identified the perception among vulnerable End-users that they are not visible within digital cultural content, or if they are, they are represented or portrayed in an unfavourable manner. Similarly, survey participants elicited a perception of being poorly represented in digital cultural content, although they indicated that representation had improved in comparison to traditional cultural content.

Language barriers were identified as a major barrier for different minority groups. Another key divergence identified was that migrants (but also linguistic minorities) tend to rely on their attachment to their country of origin for securing access to digital culture. While there is an undoubted positive impact in providing an alternative route for accessing culture, it can also operate to further isolate vulnerable End users within their host country, which can in turn perpetuate further marginalization of the minority group within the mainstream society.

When it comes to the perceptions of those groups about digitization as a means to overcome barriers to access, both the interviews and the survey confirms that digitization may have a positive impact on access, but the potential of digitization is subject to addressing the ‘digital divide’ and structural barriers. Further, the survey data revealed that a diverse range of consumption channels of digital cultural content are used by vulnerable End-users, spanning both sides of the highbrow/lowbrow culture divide, and appear to contrast with interview data which reveals concerns among participants about the inaccessibility of highbrow culture for minority groups. In any case, as outlined in our policy recommendations below, democratization of culture and audience development strategies have an important role to play in ensuring this highbrow/



lowbrow culture gap is bridged, and that the full spectrum of digital cultural offerings becomes increasingly available to all sectors of society, and particularly to vulnerable End-users.

In terms of what may support overcoming barriers to access digital culture, constructive dialogue between minority representative organizations and public authorities and media companies, as well as advocacy, were identified as useful tools to address those barriers. The role of the regulatory framework remains rather in the background. In general, there is a limited awareness of the role of copyright legislation in enhancing cultural participation. Such awareness is (understandably) higher when it comes to persons with disabilities and links back to the existence of disability exceptions in copyright law, as well as to the recent developments that have occurred with the Marrakesh Treaty.³⁹⁷ There is limited emphasis on human rights law, but organizations of persons with disabilities unequivocally pointed to the CRPD³⁹⁸ as an overarching legal framework for enforcing disability rights.

The role of the EU regulatory framework³⁹⁹ in supporting more equal access to digital culture, including digitized and digital-born cultural goods and services, emerged prominently when it comes to disability rights, with references to EU accessibility law⁴⁰⁰ as a key development. The limited degree of knowledge of copyright law and a limited the understanding of its relevance in relation to the consumption of digital cultural content led to a perceived limited role of copyright legislation. However, for example, the issues of representation faced by vulnerable End-users, and the coping strategies they have developed in face of the barriers to access to and participation in digital culture correlate to the topic of content moderation, a topic which is the subject of research being conducted under WP6 of the project on intermediaries. Interviews showed that content moderation restricts diversity in digital culture and the failure of such technologies to protect minority End-users from harmful content, both of which were identified as barriers to access and participation for vulnerable End-users in the interview data.

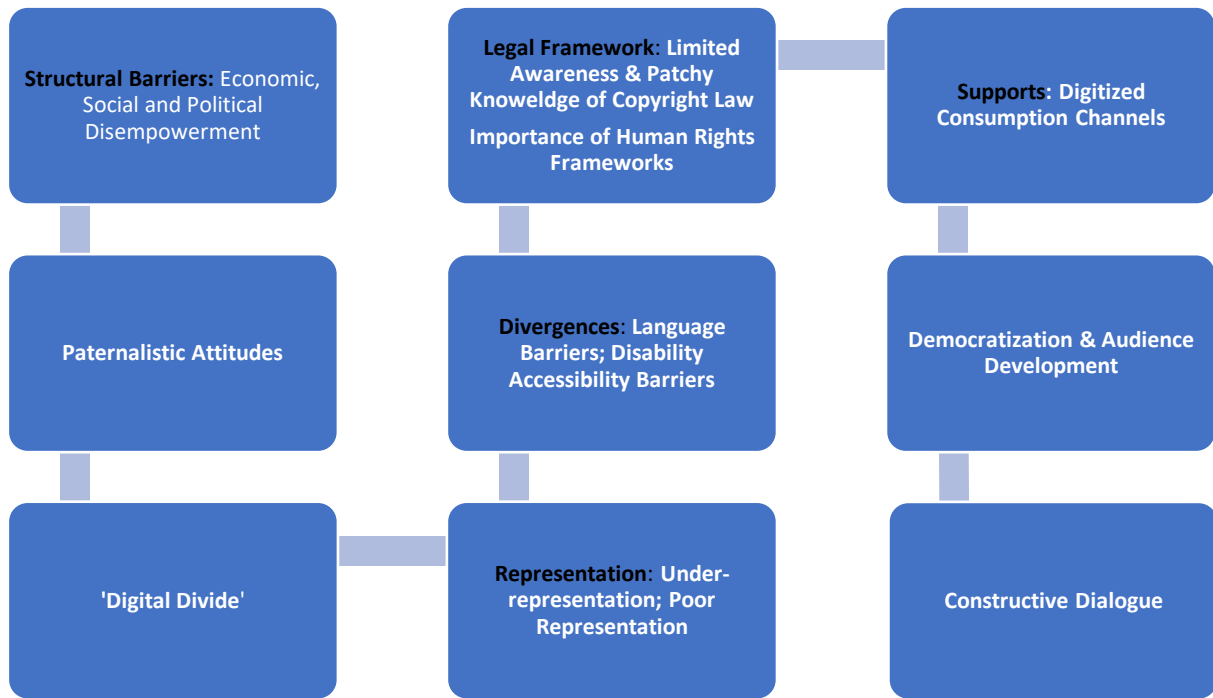
³⁹⁷ *Supra* nt. 54.

³⁹⁸ *Supra* nt. 26.

³⁹⁹ See the various EU instruments cited *supra* nt. 39 -45.

⁴⁰⁰ See EAA, *supra* nt. 47 and WAD, *supra* nt. 45.

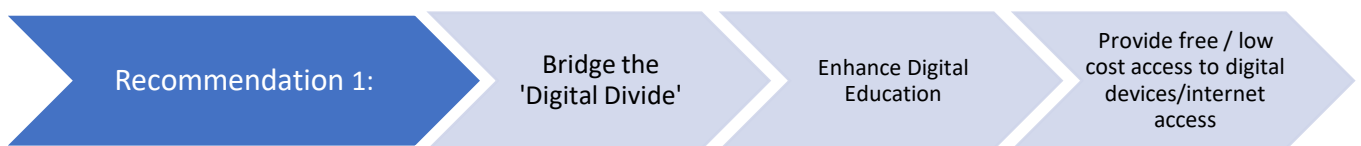




8. Recommendations

In line with the overall aims of the *reCreating Europe* project, this deliverable also aims to offer some recommendations to national and EU decision-makers for breaking down the barriers faced by vulnerable End-users in accessing and participating in digital cultural goods and services, and endorse a robust human rights approach to access to digital culture.

Recommendation 1



Good quality, continuing education in digital skills is needed to facilitate vulnerable groups in accessing digital cultural content. National education systems should incorporate digital skills education in their curricula, specific provision should be made for ‘new’ minorities/migrants on arrival, to facilitate their integration into the host State and to help them maintain connection with their home State. Further, digital education must take into account the accessibility needs of persons with disabilities. The EU has so far adopted a range of initiatives on digital rights and digitalization, and the Commission has recently proposed a declaration on European digital rights and principles to promote a digital transition shaped by European values.⁴⁰¹ This Declaration places emphasis on education and could support a more robust EU role in tackling the ‘digital divide’ for all. Notably, the proposed Declaration should complement the Charter of Fundamental Rights, although remaining de jure a soft law instrument. The Next Generation EU (NGEU),⁴⁰² a temporary fund worth €750 billion, operational from 2022 until the end of 2023, for post-Covid recovery, may also support more targeted actions to bridge the ‘digital divide’. The Recovery and Resilience Facility of €560 billion will offer financial support for investments and reforms, which will include those in relation to green and digital transitions and the resilience of national economies. It comprises of €310 billion to be distributed in grants and €250 to be made available in loans.⁴⁰³

⁴⁰¹ European Commission, ‘European Declaration on Digital Rights and Principles for the Digital Decade’ (2022) COM(2022) 28 final.

⁴⁰² See European Commission, ‘Recovery Plan for Europe’ <https://ec.europa.eu/info/strategy/recovery-plan-europe_en> (last access 9 June 2022).

⁴⁰³ See European Commission, ‘Recovery and Resilience Facility’ <https://ec.europa.eu/info/business-economy-euro/recovery-coronavirus/recovery-and-resilience-facility_en> (last access 9 June 2022).

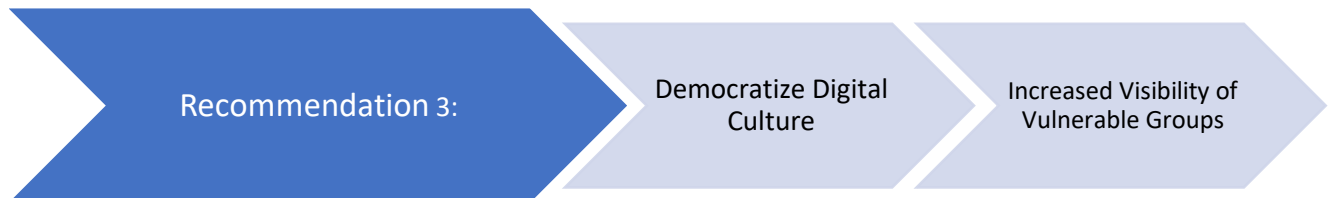


Recommendation 2



The EU has a key role to play in supporting policies aimed at improving the socio-economic situation of vulnerable End-users, assisting in the fulfilment of their basic economic and social rights so as to create some space for the prioritization of cultural rights.

Recommendation 3



The EU should encourage Member States to support a more diverse cultural offering. National Broadcasters should make and distribute content which is culturally diverse and fairly reflects the demography of the State. State aid is already largely use in the media/cultural sector. National funding should be further allocated to creators representing/ members of vulnerable groups to make and produce digital cultural content. This funding could tally with funding provided through the Creative Europe Programme.⁴⁰⁴

The EU should also support the deployment of national cultural policies that place emphasis on the promotion of the culture of vulnerable groups. National cultural policies should be developed in line with national disability policies and policies in relation to minority integration to ensure a coherent and consistent State approach.

⁴⁰⁴ See European Commission, 'Creative Europe' <<https://culture.ec.europa.eu/creative-europe>> (last access 9 June 2022).



EU Member States should employ audience development strategies to help ensure cultural democracy

National Cultural Institutions should ensure that their programme of events is culturally diverse and democratic

Public Libraries should include accessible, representative and linguistically diverse resources, available to all users

There should be increased collaboration between civil society organizations, representing vulnerable End-users, and national cultural institutions to ensure that audience development strategies are adequately developed

Recommendation 4



The EU and its Member States should promote a human rights approach to cultural access. They should prioritize changing the perception of cultural rights as the neglected category of human rights, and promote an approach to content moderation by social media platforms that seeks to better protect the human rights of minority groups, and particularly to better protect them from abuse and discrimination online.

Recommendation 5



Ensure a better knowledge of copyright law and clarify how it can ensure lawful access to content and protects the right of minority groups over works they own or create. Open access (OA), which refers to ‘free and unrestricted online availability’ of literature and artistic works may support wider lawful access. It may also complement audience development policies targeted to vulnerable groups.



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10. Annexes

10.1 Annex 1: Interview Guide

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



Interview guide reCreating Europe

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

Introduction

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

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

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

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

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

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





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





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

Is there anything else you would like us to know?



10.2 Annex 2. Survey

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

reCreating Europe Survey (English)

Page 1: Information and Consent Statement

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

- Yes
- No



Page 2: General Information

In which country are you based?

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

Which category best describes your age?

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

Gender

- Male

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- Female
- Non-binary
- Rather not say

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

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

Please, specify

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

If you selected Other, please specify:



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

Please specify the Indigenous Group to which you belong

Please specify the Ethnic Group to which you belong

Please specify the Linguistic Minority Group to which you belong

Please specify the Religious Minority Group to which you belong

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

- Eligible
- Ineligible



Page 3: Connectivity

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

- Yes
- No

Do you share a device?

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

If you selected Other, please specify:

Do you have access to the Internet regularly?

- Yes
- No

Do you have Internet access:

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

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I do not know

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

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

How often do you access digital cultural content online?

- Every day
- Every week
- Occasionally

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

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

Please, specify

- Once a week
- Twice a week
- Other

If you selected Other, please specify:

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Please, specify

- Once a month
- Twice a month
- Other

If you selected Other, please specify:

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

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

If you selected Other, please specify:

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

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cultural content?

- Yes
- No
- I do not know

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

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



Page 5: Representation

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

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

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

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



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



Page 6: Accessibility

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

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

- Fully accessible
- Partially accessible
- Mostly inaccessible
- Inaccessible

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

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

If you selected Other, please specify:



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

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

*If you selected Other, please specify:

If you consider yourself as:

A person with Disabilities

An Indigenous person

A person belonging to an Ethnic Minority Group

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

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

- Yes
- No
- I do not know

Please, specify

- Always
- Sometimes
- Rarely

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

- Yes
- No
- I do not know

Please, specify

- Always
- Sometimes
- Rarely



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

- Yes
- No
- I do not know

Please, specify

- Always
- Sometimes
- Rarely

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

- Yes
- No
- I do not know

Please, specify

- Always
- Sometimes
- Rarely

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

- Yes

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- No
- I do not know

Please, specify

- Always
- Sometimes
- Rarely

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

- Yes
- No
- I do not know

Please, specify

- Always
- Sometimes
- Rarely

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

- Yes
- No
- I do not know

Please, specify

- Always

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- Sometimes
- Rarely



Page 7: Perception of copyright laws

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

- Unfamiliar
- Moderately familiar
- Very familiar

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

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

If you selected Other, please specify:

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

- Yes
- No

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

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

If you selected Other, please specify:

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

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

- Yes
- No
- I do not digitise

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

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

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Other

If you selected Other, please specify:

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

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

- Yes
- No
- I do not know

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

- Unfamiliar
- Moderately familiar
- Very familiar



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

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

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

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





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