



## Europeana Position Paper on the review of the EU copyright rules

### **Enabling access to digitised cultural heritage: the need for new copyright rules**

Europeana brings together online the cultural heritage content of more than 3,500 galleries, libraries, museums and archives. This, alongside the Europeana Network of 1700+ members, represents the largest network of cultural heritage institutions and professionals across Europe. Enabled by Europeana Strategy 2020, our ambition is to provide new forms of access to culture, to inspire creativity and to stimulate social and economic growth.

In 2014, Europeana developed a consensus driven position on copyright reform with our stakeholders to respond to the public consultation on a review of the EU copyright rules. Our response underlines the needs and expectations that cultural heritage institutions have for a modern copyright system that enables them to fulfil their missions in the digital environment. This paper describes where the existing copyright framework must be improved:

- Copyright rules need to provide more room, and greater certainty, for Europe's cultural heritage institutions to make collections available online
- Cultural heritage institutions should be allowed to make available online, for non-commercial use, those works from their collections that are no longer available via commercial channels, or are not otherwise actively managed by their rights holders.
- The exceptions benefitting cultural heritage institutions ought to be made mandatory across Europe

### **Updating the InfoSoc exceptions: enabling cultural heritage institutions to share collections online**

The shift from analogue to digital represents one of the biggest changes in how cultural heritage institutions preserve and provide access to their collections.

The Information Society Directive (2001/29/EC) contains two specific exceptions (detailed below) benefitting Museums, Libraries and Archives. We consider these exceptions outdated in the digital environment. They should be amended to better address the issues faced by cultural heritage institutions that are increasingly expected to digitise their collections and to provide online access to them.

### **Empowering memory institutions to share collections online**

The first exception (Article 5.2.c - the reproduction exception) allows 'publicly accessible libraries, educational establishments or museums, or archives' to undertake 'spe-



cific acts of reproduction' which 'are not for direct or indirect economic or commercial advantage' without having to obtain permission from rights holders.

Cultural heritage institutions across Europe are digitising their collections so that they can share them online. They need the legal space to do so without having to engage in negotiations with copyright holders who can be impossible to find, where it is cost prohibitive to find them, and who may, once located, not have an incentive to engage in such negotiations.

***The reproduction exception should be updated to allow for all acts of reproduction of works in the collections of beneficiary institutions as long as they are not for direct commercial advantage.***

Allowing the mere digitisation of works that are contained in the collections of cultural heritage institutions does not interfere with the normal exploitation of these works by their rights holders. Simultaneously, expanding the scope of the existing exception to cover all acts of reproduction (including digitising works) provides much needed legal certainty for cultural heritage institutions struggling with the shift from analogue to digital and will ensure that Europe's institutions are fit for the digital age already upon us.

### **Enabling the discovery of cultural heritage from any device**

The second exception (Article 5.3.n, the private consultation exception) allows institutions to make available 'works in their collections' that are 'not subject to purchase or licensing terms' 'for the purpose of research or private study, to individual members of the public by dedicated terminals on their premises' without having to obtain permission from rights holders. It is the only exception that allows cultural heritage institutions to make works available from their collections that can be widely applied.

Citizens expect to be able to consult the collections of cultural heritage institutions online from their own devices. Limiting this right to dedicated terminals on the premises of the institutions is anachronistic in a world where citizens have universal internet access from almost everywhere.

***The private consultation exception should be expanded to allow online access to those works in the collections of cultural heritage institutions not longer available via commercial channels, or that are not otherwise actively managed by their rights holders.***

We believe that, where the ability to provide online access is limited to works that are not in commercial circulation anymore (including available for licensing via collecting societies), the activities of cultural heritage institutions enabled by an expanded exception would be complementary to those of creators, publishers and other rights holders:

<b>Creators and Publishers</b>	<b>Cultural Heritage Institutions</b>
produce and engage in the primary exploitation of creative works (need to be protected from unfair competition by © law)	ensure that creative works that are not in commercial exploitation anymore remain available for the public (enabled by exceptions to © law)



The current exceptions in the InfoSoc directive do not allow cultural heritage institutions to carry out their tasks in the online environment. By carefully updating these exceptions the EU can ensure that ***all citizens of Europe will be able to enjoy unprecedented access to the full riches of our shared cultural heritage***, without causing harm to rights holders who continue to be able to exploit their works without undue competition from public interest institutions.

### **A harmonised pan-European copyright system**

The European copyright system needs to be harmonised. The current system, with a list of largely optional exceptions and limitations, creates legal uncertainty and make cross-border collaboration needlessly difficult. These imbalances disadvantage institutions and citizens in some member states vis à-vis those in other member states. The territorial fragmentation of the European copyright rules is neither in line with the realities of online collaboration across borders nor with the expectations citizens have towards the single market.

***Exceptions and limitations should be mandatory in all member states and should be implemented in a harmonised manner across the entire EU.***

Harmonisation is especially relevant for the exceptions and limitations benefitting the cultural heritage sector (see below for more detail), but also for exceptions and limitations that benefit our primary users groups (citizens and the education and research sectors). As a pan-European platform that provides online access to cultural heritage our users ***must*** have the same rights to access their cultural heritage online regardless of where they reside, or where they are located in the European Union when try to access the content.

### **Allowing e-Lending**

In addition to the needs expressed by institutions in large above, we also support the specific needs by libraries with regards to e-lending. There is a need to have clear rules for e-lending separate from the broadened exceptions described above. Such a new exception should allow libraries to electronically lend all works contained in their collections (commercially available or not) as long as they pay compensation to the rights holders. Such a new exception could take the form of a statutory license with fair compensation for authors.

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