



Review of the Europeana Public Domain Charter

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The Public Domain Charter review process

The Public Domain Charter was developed by the Europeana Initiative in 2010. It sought to encourage cultural heritage institutions who shared their data with Europeana to maintain the public domain status of cultural heritage in the digital realm and thus ensure that cultural heritage could be reused as widely as possible. It has since acted as a valuable non-binding policy statement for the Europeana Initiative and inspired the work of the broader cultural heritage sector. The Charter sets out a set of principles for making public domain material available online.

The 2010 Public Domain Charter set forth three important **principles**:

1. Copyright protection is temporary
2. What is in the public domain needs to remain in the public domain
3. The lawful user of a digital copy of a public domain work should be free to (re-) use, copy and modify the work

The Public Domain Charter also contains a section on **guidelines** for preserving the function of the public domain. They seek to counter threats of shrinking the public domain using new legislation, and primarily focus on two areas:

1. Any modification to copyright protection must consider its impact on the public domain.
2. The public domain is crucial to maintaining copyright's internal balance, and it must not be compromised by attempts to establish exclusivity through external regulations or technological protection measures.

The purpose of this review is to assess whether the principles identified in the 2010 Public Domain Charter are still relevant today, and whether they need to be revised or updated in light of new developments. The review is an important step in ensuring that the Public Domain Charter remains relevant and effective in the evolving digital age. It will help to ensure that public domain material is digitally available for everyone to enjoy and reuse, and that the benefits of the public domain are maximised.

About the review process

The [Article 14 Task Force](#) of the Europeana Copyright Community initiated a review of the Europeana Public Domain Charter at the beginning of 2024. They initially brought forward a number of factors to consider, including:

- the increasing amount of public domain material being accessed and reused;
- the challenges posed by new technologies and business models, such as the use of artificial intelligence and the rise of platform economies;
- and the evolving legal and policy landscape, including the adoption and implementation of new provisions in copyright law.

After various discussions within the [Article 14 Task Force](#) and the [Copyright Community Steering Group](#), some initial insights were shared with participants at the 2024 [Public](#)

[Domain Day Event in Brussels](#), and their feedback was incorporated into the review elements.

In order to further collect feedback, a copyright [office hours session](#) was organised on 20 June 2024. During the session, [Maarten Zeinstra \(IP Squared\)](#) and [Brigitte Vézina \(Creative Commons\)](#) shared current challenges identified, and evaluated them in light of the ones that motivated the adoption of the Public Domain Charter. Feedback gathered during this session helped inform revisions to the Public Domain Charter.

On the basis of all the feedback collected, the [Article 14 Task Force](#) and the [Copyright Community Steering Group](#) prepared a new version of the Public Domain Charter, adopted by the Europeana Initiative in December 2024.

Newly identified challenges to the public domain

The Public Domain Charter acknowledges the challenges faced by the public domain when first drafted, including public-private partnerships that limited the reuse of public domain material, and practices by cultural heritage institutions that placed restrictions on the reuse of public domain material. While recent legislation has formally discouraged these practices¹, some cultural heritage institutions continue to place limitations to the reuse of public domain material. Additionally, new challenges have arisen over the fifteen years since the Charter's adoption.

This section explores the challenges of a thriving (digital) public domain and opportunities to overcome them. They are categorised into three key areas: [technological](#), [legal](#) and [societal](#). These challenges form the basis for developing a new version of the Public Domain Charter.

Technological challenges

Using public domain material for artificial intelligence

Artificial intelligence is the latest powerful disruption to impact the cultural heritage sector and bring new possibilities. The text and data mining exceptions in the Copyright in the Digital Single Market Directive² have made it possible to conduct text and data mining on copyright-protected material without the authorisation of rights holders, under certain conditions³. By doing that, they support innovative techniques and safeguard text and data mining in particular in the area of scientific research.

Cultural heritage institutions are both beneficiaries of the text and data mining provisions, and a valuable source of material that third parties can use under this

¹ See e.g. art 12 of Directive (EU) 2019/1024 on open data and the re-use of public sector information.

² Directive (EU) 2019/790 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 (Text with EEA relevance.)

³ These conditions include the need to have lawful access; the possibility of storing of copies with an appropriate level of security, when text and data mining is conducted by research organisations and cultural heritage institutions; and the possibility for rights holders to opt-out to reserve their rights, when text and data mining is conducted by organisations other than research and cultural heritage institutions.

technique, including public domain material. However, there are ongoing debates around the extent to which cultural heritage institutions should facilitate or restrict the availability of data to be mined by anyone, including commercial actors.

Without sufficiently precise solutions to limit text and data mining in certain circumstances and by certain actors, the opportunities to use public domain material through text and data mining risk being limited. It remains to be seen how the emerging machine readable standards that forbid text and data mining will enable distinguishing between copyright-protected material and public domain material.

3D digitisation

In the first two decades of the 21st century, efforts to digitise cultural heritage mostly led to two-dimensional reproductions. Due to more readily available technology and a new focus on 3D in EU policies⁴, there has been an increase in the availability of 3D reproductions of cultural heritage objects, and more 3D models are expected to be published in the near future.

While this format opens up valuable opportunities, some organisations seem reluctant to recognising the public domain status of the 3D models⁵, claiming that copyright might arise in the reproductions. However, the more faithful to reality the 3D model is, the more likely it is that no originality exists (and therefore no new copyright arises). Because of the many positive applications that stem from 3D models being in the public domain, it is important that cultural heritage institutions accurately reflect the copyright status of these works.

The future public domain depends on the availability of digital (born) material

Cultural materials are increasingly produced and accessed in digital form. The preservation of digital-born materials has its own specific challenges, such as the access control of distributors of digital culture, or mediums that risk becoming obsolete. Yet their preservation is crucial to them being available to the public once they enter the public domain.

These materials are increasingly streamed and not in the possession of users or cultural heritage institutions. Cultural heritage institutions are therefore not always legally nor technically able to access and preserve them⁶. For example, cultural heritage institutions in the Netherlands have no mandate to webarchive the internet. In such a scenario, the preservation of cultural materials strongly depends on the platforms that provide access to them, and without a commitment from these private actors, there is a risk of losing these materials forever⁷.

⁴ Commission Recommendation (EU) 2021/1970 of 10 November 2021 on a common European data space for cultural heritage

⁵ [3D Models and Rights Management report](#), by Dr Andrea Wallace and Dr Francesca Farmer, GLAM-E Lab at the University of Exeter Law School

⁶ [Digital Legal Deposit: Comparative Summary](#)

⁷ This development is also illustrated by the recent cases of legacy video-sharing platforms on the national level shutting down or removing decades old user generated content without notice due to the implementation of art 17 of the CDSM Directive. For instance, in 2023 the Portuguese 'user generated

Cultural heritage institutions should be able to rely on technical and legal safeguards to preserve all types of digital born materials. Such preservation efforts should be done in a coordinated way to ensure an efficient use of resources and interoperability.

Labelling materials in the public domain

The amount of cultural heritage objects labelled as 'public domain' has significantly increased over the past years. With the introduction of the Public Domain Mark by Creative Commons in 2010, we see over 12 million objects, about 20% of the collections made available through Europeana.eu, marked as being in the public domain, as well as over 9% of all works on Wikimedia Commons⁸.

2016 saw the launch of Rights Statements, a set of standardised statements that can be used to communicate the copyright and reuse status of digital cultural heritage objects. These introduced four additional ways to label cultural heritage objects as public domain.

However, public domain material is often accompanied by rights statements or Creative Commons licences that incorrectly imply that copyright exists in a specific digital object⁹. This could stem from a lack of copyright literacy as well as in some cases a desire from the cultural heritage institution to 'control' the reuse conditions or enforce conditions such as 'attribution'¹⁰. The latter has no legal validity and it hampers reuse by misleading users into believing that the material is not in the public domain¹¹.

Data quality

Making public domain material available in a way that meaningfully supports reuse brings up questions about data quality. For access to truly enable reuse, cultural heritage institutions need to make high-resolution files available (not only low-resolution previews or thumbnails).

This challenge relates to other issues identified in the review process of the Public Domain Charter regarding the standardisation and interoperability of data (allowing linking and enrichment) and to marking the public domain (ensuring the metadata includes machine-readable public domain information, licensing or rights statements information).

content' platform Sapo Videos closed down their activity, with the exception of commercial partnerships, one month after the transposition law amending the Copyright Code was published and two weeks after its entering into force. In January 2024 the Bulgarian video sharing platform Vbox7 made most user-uploaded videos from 2006 to early 2024 (except for videos on vetted and partner accounts) unavailable to the public. This happened the month after the Bulgarian Copyright in the Digital Single Market Directive implementation came into force and without any prior warning to the users.

⁸ <https://commons.wikimedia.org/wiki/Category:CC-PD-Mark>

⁹ See [Research Paper: The Accuracy of Rights Statements on Europeana.eu - Kennisland](#) and [3D Models and Rights Management report | Europeana PRO](#).

¹⁰ Certain jurisdictions have a perpetual right of attribution. See also the section below on perpetual right of integrity.

¹¹ Creative Commons' publication 'Nudging Users to Reference Institutions when Using Public Domain Materials' aims to address this problem: [Where in the world is... this public domain material? Helping users refer to host institutions. - Creative Commons'](#)

Whenever possible, cultural heritage institutions should strive to make high quality data available. A digital file reproducing public domain material will maximise its value and potential when it is made available in a quality that allows reuse to the fullest extent possible. The higher the quality, the higher the value for reusers.

Legal challenges

Cultural heritage laws

Several countries in the European Union (for example Bulgaria¹², France¹³, Greece¹⁴ Italy¹⁵, and Portugal¹⁶) have introduced provisions in their cultural heritage laws that impose a fee for the commercial use of state-owned works, including those that are no longer protected by copyright, extending to the use of their digital reproductions¹⁷.

While cultural heritage laws are essential for the preservation of our shared cultural heritage, the provisions referred to above can curtail the positive impact of enabling access and reuse of this heritage¹⁸ by erecting a financial barrier. Any revenue generated by collecting this fee is likely to be outweighed by the cost for members of society who are deprived of possibilities to access and enjoy culture, knowledge and information. The transformative use of public domain materials - even in a commercial context - should not be perceived as necessarily diminishing them. They can bring value to cultural heritage and ensure that our heritage remains relevant.

Perpetual moral rights of integrity

Cultural heritage institutions are committed to respecting copyright law, including the various moral rights recognised to authors. However, some practical challenges have arisen in jurisdictions that recognise perpetual moral rights of integrity - the right of the author to object to any changes to their work that may harm their reputation. Their perpetuity means that they continue to exist even after the work in question has entered the public domain, because exploitation rights have expired.

For example, under Bulgarian Copyright Law, after expiry of the copyright term, works may be freely used, provided that the rights to paternity and integrity (which continue indefinitely) are not being infringed¹⁹. A state body is responsible for exercising the moral right of integrity, and in a recent case, a publisher was sanctioned on formal

¹² Bulgaria (Article 172 et seq. of the [Law on the Protection of the Cultural Heritage](#)).

¹³ France (Article L621-42 of [Code du Patrimoine](#))

¹⁴ Greece (Article 46 of Law no. 3028/2002 on the Protection of Antiques and Cultural Heritage in General)

¹⁵ Italy (Article 107-108 of D. Lgs. 22 January 2004, n. 42, Cultural heritage code)

¹⁶ Portugal ([Administrative Order no. 10946/2014 on the Use of Images of Museums, Monuments and other Properties allocated to the Directorate-General for Cultural Heritage](#))

¹⁷ In 2022, the [Uffizi Museum in Florence took legal action against French designer Jean Paul Gaultier](#) for his use (without payment) of the public domain painting Birth of Venus by Renaissance artist Boticelli. In another case, the puzzle-maker Ravensburger was [sued by a Venice museum for using an image of the Vitruvian man](#) by Leonardo da Vinci.

¹⁸ See [Access to Cultural Heritage in the Digital Age | by Lucy Cunningham | Creative Commons: We Like to Share | Nov. 2024 | Medium](#).

¹⁹ Article 34 of the Law stipulates that the Ministry of Culture “shall ensure that these rights are respected and may, by exception only, authorise changes to the work.”

grounds because it published an adaptation of a public domain national literary classic without seeking the Ministry's authorisation first. Such an exercise of the right of integrity did not seem to be based on an actual reputational harm.

New rights on previously unpublished works

In the European Union any person who lawfully publishes a previously unpublished work that is in the public domain benefits from exploitation rights for a duration of 25 years²⁰. As a result of the recognition of such a right, which effectively extends some copyright protection over public domain materials, certain materials cannot be freely accessed and used²¹. In a way, this is philosophically in conflict with article 14 of the Copyright in the Digital Single Market Directive according to which works of visual arts that are in the public domain should not attract neighbouring rights when digitised. The interplay between these provisions causes confusion and raises the level of administrative burden for users of digital cultural heritage.

Privacy and data protection interactions with copyright

Efforts by cultural heritage institutions to make digital cultural heritage available online are affected by numerous legal considerations. Copyright is one of them, and while it might be possible to determine that a cultural heritage object is in the public domain, other legal areas might lead to conditions or restrictions limiting its access and reuse possibilities. The lack of existence of copyright does not mean that other considerations do not play a role, such as personal data and personality rights²².

It is important that the value of providing access to and facilitating the reuse of public domain material continues to be taken into consideration by cultural heritage institutions. While it is understandable that other considerations need to be evaluated when deciding whether to disseminate certain materials, efforts should be made to ensure that decisions are not based on an excessively conservative interpretation of these other legal considerations, in order to continue to safeguard access to public domain material.

Limited scope of Article 14

The Copyright in the Digital Single Market Directive brought forward a provision safeguarding the public domain. Its article 14 establishes that 'when the term of protection of a work of visual art has expired, any material resulting from an act of reproduction of that work is not subject to copyright or related rights, unless the material resulting from that act of reproduction is original in the sense that it is the author's own intellectual creation'.

Given that the provision applies to works of visual arts, other materials, such as literary works, musical works and sound recordings, audiovisual works, maps, or even materials

²⁰ As set out in article 4 of Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights

²¹ See the [example of the Nebra Sky Disk](#).

²² The right of protection of personal data is guaranteed under art. 8 EU Charter of fundamental rights and the right to respect for private and family life under art. 7 of the Charter.

that were never subject to copyright, are not subject to this public domain safeguard. In order to respect the spirit of this provision and of other European Union policies, it is important that cultural heritage organisations generally stand by the principle that faithful reproductions of public domain materials, regardless of their type, are not subject to additional protection.

Societal challenges

Enclosures by private commercial actors

The world wide web was initially intended as a technological architecture and ecosystem embodying open ideals, standards and protocols, making sharing and collaboration across the world transparent and nearly seamless. Europeana's mission²³ aligns with the idea of the open web, where barriers are overcome through interoperability and standardisation.

Over time, the Internet has broken up into a handful of discrete digital spaces: proprietary, monopolistic, non-interoperable, closed networks and platforms, so-called 'walled gardens'²⁴. In the current state, a large part of the (future) public domain is in the hands and control of a few private players. As a result, the sharing of cultural heritage can fall victim to this fragmentation and platformisation, the major trend characterising web 2.0.

Cultural heritage institutions should continue to be able to fulfill their public mission by being allowed to access, capture and preserve relevant content from these platforms in the public interest. At the same time, Europeana and the common European data space for cultural heritage should strive to provide a decentralised alternative, driven by public values.

Ethical considerations and cultural sensitivities

In addition to copyright considerations, access and use of cultural materials might be subject to other aspects dictated by ethics, values and cultural factors.²⁵ When deciding what to make available openly, institutions need not only ascertain an object's copyright status, but also enquire about any other frameworks and protocols that might govern who is allowed to access and use it and under which conditions. Such additional considerations might fall under the following broad categories:

- Cultural sensitivities and ethics, including respect for ancestral remains and funerary objects, as well as objects of cultural, spiritual or sacred significance.
- Rights of Indigenous peoples and other local communities of origin.
- Protection of minorities, vulnerable groups and individuals, such as children, young people, women and marginalised people.

²³ See <https://pro.europeana.eu/about-us>

²⁴ See https://en.wikipedia.org/wiki/Closed_platform

²⁵ For more information on ethical considerations related to openness of cultural heritage, see [Beyond Copyright: the Ethics of Open Sharing | by Josie Fraser | Creative Commons: We Like to Share | Medium](#) and [Collaborate, Communicate, and Navigate Ethical Considerations with the Ethical Sharing Card Game | by Isaac Oloruntimilehin | Creative Commons: We Like to Share | Medium](#)

As currently drafted, the Public Domain Charter does not refer to such additional considerations based on ethics or cultural sensitivities, and this risks causing harm to vulnerable groups.

Climate change

The importance of access to cultural heritage to support research and understanding of climate change is undeniable. Whether it's 16th century navigators' observations about the weather in logbooks, ancient maps demonstrating the erosion of shorelines, or representations of traditional irrigation techniques in paintings, information held in institutions' collections can help us better understand our ecosystems and explore collaborative solutions to address the current climate emergency.

At the same time, climate change poses a huge threat to the very existence of collections, which are at risk of degradation or irremediable loss due to rising temperatures and extreme weather cataclysms. This makes preservation and access to public domain cultural heritage all the more urgent and calls for resilience and strategic actions to ensure the public domain remains available for current and future generations.

Another angle to the intricate relationship between climate change and the public domain is the environmental impact of cultural heritage digitisation, storing and making digital cultural heritage available, which rely on energy-intensive processes that contribute to climate change. The cultural heritage sector's carbon footprint can be significant and must be mitigated. We have a responsibility to conduct activities, including those around access and use of public domain cultural heritage in ways that do not unduly contribute to the global climate crisis. In view of the important skills gap, lack of understanding of the environmental impact of digitisation, of data and measurement methodologies, this requires increased attention²⁶.

Updates needed to the Public Domain Charter

After analysing the 2010 Public Domain Charter in light of current challenges to the public domain and opportunities to maximise its positive impact, the Europeana Initiative proposes various recommendations for updating the Charter as follows:

- The principles identified in the Public Domain Charter continue to be relevant and should remain relatively short and general to stand the test of time. Few principles should be added.
- For the sake of clarity, the structure of the charter should be slightly modified, first providing a definition of the public domain for context, followed by a set of principles and guidelines which constitute the core messages of the Charter, and background information as further reading at the very end.
- The guidelines for preserving the function of the public domain should be rephrased as 'actions' to emphasise the need for concrete steps and measures

²⁶ See the efforts conducted by the Europeana Climate Action Community <https://pro.europeana.eu/page/climate-action-community>

to be implemented. Additional actions should be added reflecting the current state of play as described above.

- The definition of the public domain should be maintained, but unfolded for clarity. Defining the public domain has been subject to scholarly debate for decades, with at least two broad conceptualisations of the public domain implicit in the literature.²⁷ A narrow one describes the public domain as a negative space consisting of works and information that cannot be protected by copyright or whose copyright protection has expired. A broader 'behavioural' conceptualisation also includes the uses of protected works that do not require permission, such as those permitted by copyright exceptions.²⁸ The revised Charter should maintain the narrow definition of the public domain and focus on content rather than uses, while recognising the importance of advancing the discussion on these two conceptualisations.

²⁷ For an academic review of different definitions of the Public Domain, see Erickson, K., Heald, P., Homberg, F., Kretschmer, M., and Mendis, D. (2015) Copyright and the Value of the Public Domain: An Empirical Assessment. Project Report. UK Intellectual Property Office, Newport, pp. 1-81. Available open access at: <https://www.create.ac.uk/valuing-the-public-domain-resource-page/>

²⁸ Accessible and authoritative legal guidance on copyright exceptions and other aspects of EU copyright law can be found on the website [CopyrightUser.EU](https://www.copyrightuser.eu/), developed by CREATE (University of Glasgow) as part of the Horizon 2020 consortium ReCreating Europe.