



ReInHerit WEBINAR

“IP Management for Museums
and Cultural Heritage Institutions”

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IP MANAGEMENT FOR MUSEUMS AND CULTURAL HERITAGE INSTITUTIONS

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IP MANAGEMENT

...is important since it helps a museum exploit best its tangible and intangible assets towards the pursuit of its aims as well as avoid risks and liabilities in this process.

LET'S TAKE THINGS FROM THE START...



INTELLECTUAL PROPERTY (IP)

A set of **legal rights** aiming to protect the fruits of the human intellect by providing to rightholders absolute and exclusive rights on a territorial basis

Absolute and Exclusive Rights (legal monopoly)

“Absolute”: they belong only to the author/beneficiary

“Exclusive”: they may be asserted against anyone and may be violated by anyone

Subject to the Principle of Territoriality

The scope of protection of an IP right is limited to the territory of the State where the right is granted/recognised. This means that although IP rights differ from country to country (e.g., copyright laws are different in the UK and in Greece) or country to region (e.g., Canadian patent and European patent), and are independent from each other, they co-exist alongside each other on the same immaterial good.

COPYRIGHT AND RELATED RIGHTS

Copyright protects *original* creations of the mind in the field of literature, art or science, expressed in any form (i.e., works).

Related rights correspond to the protection of *performers*, performing artists, *producers of audio and/or video data carriers* and *broadcasting organizations*. These natural and legal persons make a great contribution to public performance, reproduction, propagation or production of certain copyrighted works. Due to the technical ability to record and the ease of multiplying copies of a work, these contributions need to be protected, so that they are not subjected to appropriation and unfair exploitation by third parties. Some countries also have the protection of print *publishers and press publishers for the online use of their works* and *those who publish for the first time unpublished works of authors in which copyright has expired*. The *makers of databases* should also be added to the related rights.



INDUSTRIAL PROPERTY

- Inventions/patents
 - industrial designs
 - trademarks, service marks, commercial names and designations, including indications of source and appellations of origin
-

- know how or trade secrets
- *protection against unfair competition*

- inventions are new solutions to technical problems (patentable subject matter, **new, inventive step (non-obvious) and industrially applicable (useful)**)
- industrial designs are aesthetic creations determining the appearance of industrial products (**new and individual character**)
- signs transmitting information to consumers, in particular as regards products and services offered on the market (**distinctive character**, i.e., able to distinguish the goods and services offered by a party, will not confuse consumers about the relationship between that party and others and will not otherwise deceive consumers with respect to the qualities of the products or services). They are there to protect both the enterprises and the consumers.

IP MANAGEMENT

- IP management can only be regarded as part of a Museum's general management plan.
- IP management needs to relate to the Museum's missions and goals.
- Usually, Museums are non-profit agencies that need to abide with the rules of the State (especially public museums). This should be taken into account.
- Having made a profit or not is not a criterion for measurement of success, efficiency or effectiveness (however, if ticket and fund raising are at issue, income is also a measurement)
- Still IP management allows a Museum to make the best out of its tangible and intangible assets and pursue its goals more effectively.

IN A NUTSHELL...

IP Management helps museums to set up processes to identify, organize, own, create value, license, disseminate and generally deal with and leverage 'business' opportunities in relation to content.

THE 3 PILLARS

1. **Protect effectively their IP assets** (protect creative content produced by the different divisions/departments or outsourced)
 - a) acquired by purchase, donation, etc. (transfer of ownership)
 - b) possessed on loan (no transfer of ownership), and/or
 - c) having created themselves (they own -or they should own- right from the start)

This also helps museums generate income and create added value from their collections/assets.
2. **Prevent the infringement of third-party IP rights**
3. **Disseminate content as they see appropriate** (e.g., making use of their proprietary rights, under open licenses, for free, etc.)

IP MANAGEMENT HAS A SPILLOVER EFFECT. IN FACT IT ALSO HELPS...

- Keeping Good Records
- Drafting Good Contracts, Licenses and Agreements (for loans, acquisition, employees, freelancers, etc.)
- Standardise the aforementioned contracts for easiness and introduction of consistent practices
- Tracking Ownership and Rights
- Realise what else should have been acquired or should be acquired now!
- Record what the museum is allowed to do by law
- Record what the museum is allowed to do on the basis of the rights acquired/licensed so far

CONT'D

- Identify what is still under protection and what has fallen in the public domain
- Identify contractual obligations (irrespective of IP rights)
- Monitor Infringements (enforcement) and dispute resolution
- Attach proper legal notices, credit lines, framing & linking, terms and conditions of website use
- Create guidelines and training courses for employees
- Make strategic options (e.g. register rights, offer them under open licenses, for free, decide whether to enforce rights or not, etc.)

NOT AN EASY TASK

- IP is an intangible economic asset. Because of its nature not readily recognizable as an asset and difficult to evaluate (e.g., an artefact can be evaluated, what about its image when licensed to third parties?)
- Difficult to distinguish between the medium and the IP asset incorporated in it (e.g., the fact that you own a painting does not mean that you can also exploit its image).
- IP laws are specialized, not always succinct and clear, not easy to apply. On most occasions you need expert advise.
- Enforcement requires financial resources.
- Museums do not always have legal departments. Even when they do, they do not have specialized lawyers.
- Need of training and education.
- IP Management for museums is not necessarily comparable to that of enterprises. Museums operate on a non-profit basis and need to take into account issues of cultural heritage, public policy, as well as ethics.

BASIC PRINCIPLES

- Even museums who have legal title to/own collection items cannot freely reproduce these items unless they have authorisation from the rightholders (or any copyright in them has expired).
- The copyright in content created by *non-staff*, such as volunteers, students, those commissioned/freelancers (e.g., photographers), contractors and interns will belong to these individuals (unless otherwise provided by contract).
- Employee rights usually belong to the museum, if work created in the context of their duties.
- In case of exhibitions on loan, contracts should provide what the rights of exploitation of their images, reproduction in catalogues and so on, are.
- To be on the safe side **draft succinct and clear contracts** (employment or other) and **ask for expert advice!**



SPECIFICS

- Museums need to have clear policies as to how one can take pictures in the museum.
- ---

Museums need to have clear policies as to how pictures of objects in their collections are exploited/licensed or otherwise used.
- Museums need to think forward. When they acquire an object, they need to think of all potential means of exploitation, if this object is still under copyright protection. E.g., the reproduction of items within exhibition spaces, online, on posters to promote exhibitions or other events, the creation of postcards to sell in their shop, designs of items for the shop, 3D exhibitions. All staff needs to have basic knowledge of copyright, the risks and the challenges.
- When you take authorisations don't forget to include online or new technology uses (immersive performances, virtual/augmented/mixed realities, 3D printing, AI, etc.).
- Keep a record of all authorisations and agreements.

EXCEPTIONS AND LIMITATIONS FOR MUSEUMS

- **National laws** usually provide for exceptions and limitations to copyright law tailormade for museums and CH institutions. General law may also provide for such exceptions. Make best use of them and make sure you have authorisations for the rest!
- **Examples:** reproduce works in catalogues, private study and research, orphan works, out-of-commerce works, additional copies for preservation purposes, parody, caricature and pastiche, appropriation art, use of works from the public domain, etc.

SOCIAL MEDIA, DIGITAL PLATFORMS, MUSEUMS AND THE FUTURE

Museums may use

- **social media** such as Facebook, Twitter, and Instagram
- **digital platforms** such as Google books, Google Art and Europeana, and
- **Smartphones, tablets or other devices**

to **share content and to connect to new audiences.**

But that could also be risky! Check terms and conditions and compare them to the museum's policy.



WHAT ABOUT OPEN INITIATIVES?

- Open initiatives are online initiatives that facilitate the use of works by the general public offering them for free on liberal/standardized terms compared to traditional copyright.
- Examples, (F)OSS, CC, Open Access to Scientific Publications
- We shall focus on the most relevant examples for our purposes...

CREATIVE COMMONS

Creative Commons is a nonprofit organization that enables the sharing and use of creativity and knowledge through free legal tools. Copyright licenses released under this label aim at providing a simple, standardized way to give the public permission to share and use the creative work made available under them.

CC licenses are rooted in copyright. They are not an alternative to it. They work alongside to it. If a user does respect their terms and conditions, the user is liable under copyright law and is considered to be an infringer. CC licenses aim at simplifying (by classifying and standardizing) terms of use and at allowing to share and use copyright material such as images, films, video, music, writings or any other copyright work on the basis of the license's conditions.







So, instead of “all rights reserved” CC licenses provide for “some rights reserved”.



HOW MANY TYPES OF CC LICENSES EXIST?

There are six standard (6) types of CC licenses

The 6 main CC Licences

by		Attribution
by-nc		Attribution-NonCommercial
by-sa		Attribution-Share Alike
by-nd		Attribution-No Derivatives
by-nc-sa		Attribution-Non-commercial-Share Alike
by-nc-nd		Attribution-Non-Commercial-No Derivatives

THE LICENSES

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WHAT ARE WORKS IN THE PUBLIC DOMAIN AND HOW
CAN I CREATE VALUE FROM WORKS THAT HAVE FALLEN
INTO THE PUBLIC DOMAIN?

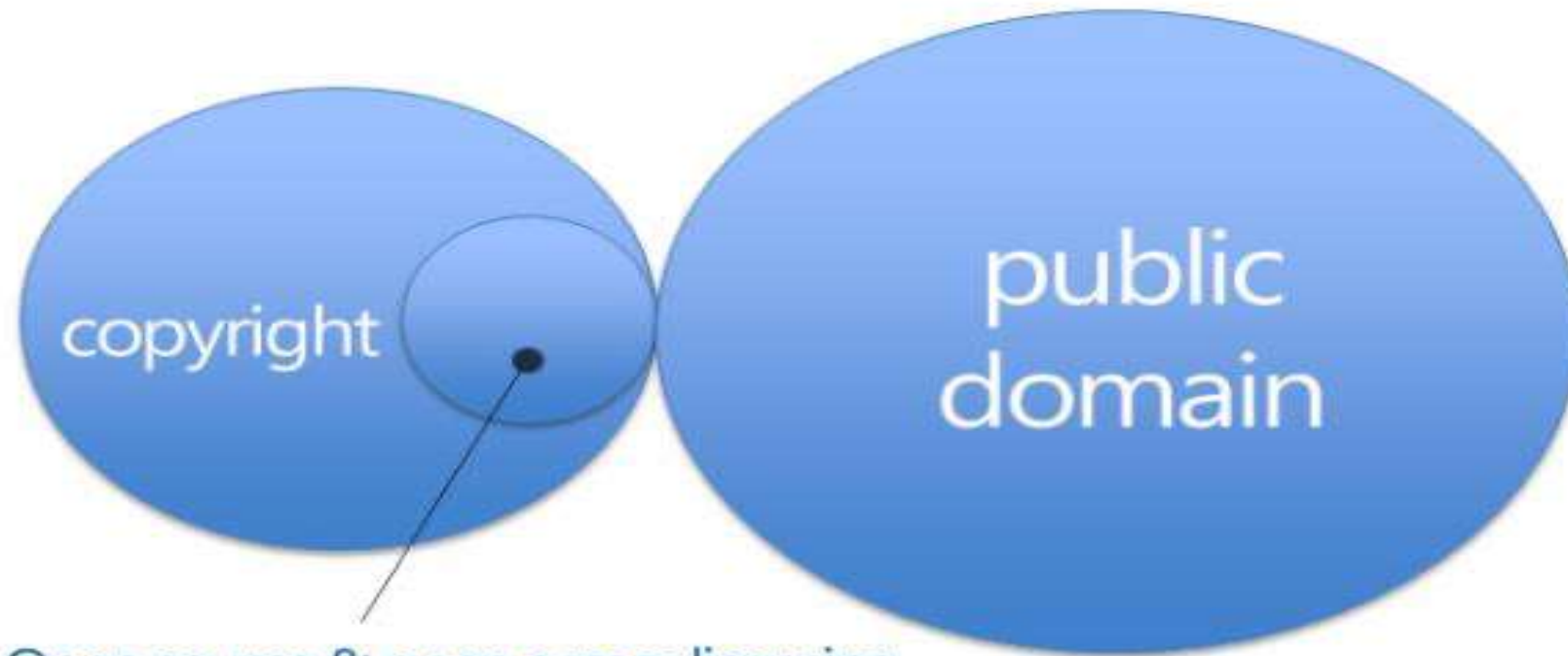


PUBLIC DOMAIN

- Subject matter **not** protected by copyright
- Works whose term of protection has **expired**
- Works in which the author has **waived** his rights (e.g., CC0 1.0 Universal*)

** A CC0 1.0 license indicates that one dedicates his/her work to the public domain by waiving all of his or her rights to the work worldwide under copyright law, including all related and neighboring rights, to the extent allowed by law.*

IN SCHEMAS...



Open source & open access licensing,
special legislative regimes and voluntary agreements

SOME OBSERVATIONS...

- The scope of copyright protection varies between the different jurisdictions (e.g., *eligible subject matter, originality, term of protection, etc.*)
- That has also effect on the scope of the public domain

CREATE VALUE

- **Make derivative works** (designs for items to be sold in the shop, adaptations, take photographs of them, etc.)
- **Include them in collections or databases**
- **Use contract law for further uses** (e.g., take pictures or video in the galleries, give access to photographs or digital material) even after copyright has expired!
- **Create *sui generis* rights for antiquities.** They cannot be enforced abroad though!

REPRODUCTIONS OF WORKS OF ART IN THE PUBLIC DOMAIN

- CH institutions *de facto* control access to CH works even if the latter have entered the public domain. When I visit a museum to see a Leonardo Da Vinci painting and I buy the entrance ticket the museum may use contractual means to control access, e.g., by prohibiting the making of photos or videos of the painting contained in its collection. At the same time the museum may offer the visitor a faithful reproduction of the painting as a photograph on a postcard. These faithful reproductions often come with a copyright notice and assuming that notice is backed up by the national copyright law granting copyright to such a faithful reproduction means that access is restricted further as the buyer will not be able to reproduce the work or communicate it to the public.
- **Article 14 DSM Directive** (Works of visual art in the public domain): [...] 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.

FAITHFUL REPRODUCTIONS OF WORKS OF THE VISUAL ARTS THAT ARE IN THE PUBLIC DOMAIN ARE NOT COVERED BY COPYRIGHT

- **Article 14** covers both copyright and related rights.
- It stops the application of mechanisms such as the one found in Article 72 of the German Copyright Act that put in place a weaker regime of protection for non-original photographs and that had been held by the Bundesgerichtshof to cover faithful reproductions.
- National provisions for copies protected by related rights of previously unpublished works whose copyright protection has expired are also affected.
- If a copy of a visual work in the public domain is original. i.e., passes the EU test of originality (constitutes its author's own intellectual creation), then it is protected.
- Reproductions falling outside the EU originality criterion (e.g., UK originality criterion) are not protected.
- By reproductions we mean both 2D and 3D.

IS THERE ANY OTHER WAY I CAN EXPLOIT WORKS OF ART IN MY COLLECTION IF COPYRIGHT IN THEM HAS EXPIRED?

Reproductions of digital works of art that are in the public domain can be sold in hard copies in museum shops or CH institution websites where digital JPEG format version can be offered for download. Yet, once a single copy has been acquired, they can be copied and transferred easily without loss of quality. Difficult to commercially exploit them given also the fact that the standard TPMs are cumbersome and unpopular with the public. This is where NFTs come in. There may be a market for the **'original' of the creative reproduction**. Whereas fungible means are exchangeable a non-fungible token is by definition non-exchangeable. NFTs are therefore unique collectible tokens that are permanently tied to works of digital art. They cannot be separated and in a sense the token is the art, and the art is the token. A **non-fungible token (NFT)** is a unit of data stored on a blockchain or digital ledger. That unit of data certifies the digital asset to be unique and therefore not interchangeable. Plenty of other copies of the creative reproduction of the public domain work of art can be made, sold, copied and circulated, but there will only be one NFT certified original.



THANK YOU FOR YOUR ATTENTION!

