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STUDY ON COPYRIGHT LIMITATIONS AND EXCEPTIONS FOR MUSEUMS

prepared by Jean-François Canat and Lucie Guibault, in collaboration with Elisabeth Logeais

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1. INTRODUCTION

1.1. CONTEXT

This study investigates the issue of limitations and exceptions to copyright for the benefit of museums, with a view to strengthening the international understanding of the need to have adequate limitations, exploring existing and proposed models of protection, and moving towards agreement regarding specific exceptions or limitations.

Museums, worldwide, have existed for centuries in their current form. They come in all shapes and sizes. They assemble in their collections a wealth of knowledge and culture for the benefit of their visitors. They are the caretakers of their nation's cultural heritage. The objects gathered are as heterogeneous as the missions they pursue: objects of art or technique, texts, drawings, paintings, photographs, maps, films and sound recordings. All are collected and organized for the promotion of the art, anthropology, archaeology, science etc. To do so, museums engage in different types of activities in relation to the objects they hold, the core of which concerns their acquisition and curation, their dissemination to the public and the promotion of their use in support of education and research. With the significant technical and social changes brought about by the advent of information technologies, museums are now forced to adapt their ways and to consider digitizing and disseminating their collection via the Internet, if they wish to remain socially and culturally relevant in the 21st century.

The fulfilment of a museum's mandates often involves the making of reproductions and the communication to the public of the works in its collection. To accomplish these acts with respect to copyright protected works, museums in principle need the rights holders' permission, unless an exception or limitation on copyright applies. The intersection between copyright law and a museum's activities has therefore the potential of posing a challenge to the latter's functioning as is the case for the majority of potential users of copyrighted works.

Not all museums are confronted in the same measure with issues relating to copyright law, however. First, not all items assembled in the collection of a museum necessarily enjoy copyright protection: in some cases, the objects do not qualify as a work under copyright law (e.g. a bicycle in a history museum, a natural landscape); but in most cases, the term of the copyright protection on the object will have lapsed (e.g. Egyptian artefact or Shakespeare's manuscripts).¹ From the perspective of copyright law, these objects can therefore be used without restriction. Second, museums attempt as far as possible to obtain through contractual agreement the assignment of copyright, or at least a license of rights, together with the physical ownership of the works in their collection.² Museums would hardly be in a state of realizing their mandate if they did not ensure that they are legally authorized to accomplish the acts necessary to do so. But museums are not always in a position to secure these rights. Moreover, the situation may not be so clear with respect to objects acquired before the advent of the digital networked environment: to whom belong the 'digital rights' on those objects, between the initial author or the museum?³ What if the author can no longer be identified or located, in which case the work is 'orphan'?

¹ Pursuant to art. 7(1) of the Berne Convention, the term of protection lasts during the life of the author plus 50 years after death; a number of countries, including the countries of the European Union, Australia and others have adopted an even longer term of protection lasting for the life of the author plus 70 years after death. The term of protection in the United States lasts for 95 years from the date of first publication.

² D. Weber-Karlitz, "Survey – Museums, Artists and Copyright", (1983) 2 *Cardozo Arts & Ent. L.J.* 121-144.

³ K.L. Milone, "Dithering Over Digitization: International Copyright And Licensing Agreements Between Museums, Artists, And New Media Publishers", (1994-1995) 5 *Ind. Int'l & Comp. L. Rev.* 393-423.

The question addressed in this study is whether the current state of copyright exceptions and limitations in copyright law are fitted so as to enable museums to carry their mandates and if not so, how to ensure that the provision of museum services falling in the scope of their mandates, is not impeded taking account of the interests of all stakeholders. How can the rights holders' authorization best be ascertained, through the law or through contract? Can the exceptions and limitations in the copyright acts of the Members of the Berne Union be amended to alleviate problems of legal uncertainty?

1.2. STRUCTURE AND METHODOLOGY

Pursuing a two-fold objective, this study first provides a description of the current state of copyright law and exceptions and limitations regarding the use of copyright protected works by museums and their patrons; second, based on the findings of the first part, the study considers from a normative perspective possible ways to facilitate the provision of museum services in compliance with the norms of copyright law.

Before turning to the description of the statutory exceptions and limitations adopted in favour of museums in Chapter 3, and after the present introduction of **Chapter 1**, **Chapter 2** puts museums in their global theoretical and legal contexts. The chapter first gives a brief overview of the development of museums throughout history (section 2.1), and a definition of the notion of "*museum*" as it is used in the rest of the report. The chapter then provides a description the main mandates pursued by museums (section 2.2), which encompass the acquisition and protection of cultural heritage, the communication and exhibition of cultural heritage, as well as the support of education, study and research. Section 2.3 follows with a brief discussion of the key rationales behind the adoption of statutory exceptions and limitations on copyright to the benefit of museums and their patrons. Among the main rationales are the citizen's right to self-fulfilment, participation in cultural life, education and research, as well as the promotion of the state's cultural heritage policy. Section 2.3 situates the discussion regarding museums and the achievement of their goals in the international legal copyright framework, having a look at the treaties administered by the World Intellectual Property Organization (WIPO), namely the Berne Convention and the WIPO Copyright Treaty ; the Agreement on the Trade Related Aspects of Intellectual Property Rights (TRIPs), administered by the World Trade Organization (WTO); the UNESCO Conventions on the Safeguarding of Intangible Cultural Heritage (2003) and on the Protection and Promotion of the Diversity of Cultural Expressions (2005); and the relevant regional conventions on intellectual property and the preservation of cultural heritage.

Chapter 3 opens with a brief overview of the protection of moral rights and how it can have an effect on the activities of museums. Section 3.2 and 3.3 then analyze the exceptions and limitations that are relevant for the fulfilment of the museums' mandates, e.g. specific and general exceptions and limitations, and resale right as this right is invoked in relation to museum activities. Specific exceptions include the possibility for museums to make reproduction for preservation purposes, to use works in exhibition catalogues, to exhibit works, to make the works available to the public for study or research on the premises of the museum, to make certain uses of orphan works (section 3.2). General exceptions that are relevant for the exercise of museums activities encompass the right to make reproductions for private purposes, to make reprographic reproductions, to use works for educational and scientific research (section 3.3). Section 3.4 describes how the resale right regime put in place in several regions of the world could affect museum activities.

In view of the limited resources available for this study, the analysis of the exceptions and limitations applicable to museums in the national laws of the Members of the Berne Union

rests for a large extent on the extensive WIPO Study on libraries and archives prepared in 2008, and recently updated in 2014, by Kenneth Crews.⁴ The two Studies on libraries and archives formed the starting point to identify the countries where the copyright act expressly mentions museums as beneficiaries of exceptions and limitations, assuming that where legislators have deemed it desirable to regulate the use of works by libraries, they may also have regulated the museums' use of copyright protected works. This research was completed by a key-word search in the WIPO Lex database of IP legislation. The information in the prior WIPO Studies was then completed by direct reference to the statutory provisions in the national laws. The resulting list of national laws includes therefore only those countries where the law expressly refers to "*museum(s)*". In rare cases, like Austria, countries were added to list when there was reasonable ground to assume that a law that is deemed applicable to "*public collections*" would also apply to museum collections. On the other hand, we have refrained from including countries in the list, like the United States and Sweden, where the laws expressly refer only to libraries and archives, without ever mentioning museums. Nevertheless, it could have happened that a national law that does cover museum activities will have escaped our radar. Also, it is important to note that the analysis of the results does not constitute a comparative law analysis in the traditional sense of the expression. To do a comparative law analysis, we would need to have a better understanding of the legal traditions, legislation, case law and commentaries of each country. Hence, the analysis in Chapter 3 is meant to give an overview of the relevant legislative provisions in each country and to compare them with each other, at face value.

Of the 188 countries of the world that are members of WIPO, the laws of only forty-five countries contain provisions that specifically permit museums to make certain uses of works in their collection without the prior authorization of the rights holder. The country fiches can be consulted in **Appendix II**.⁵

A survey was conducted among the members of the International Council of Museums (ICOM)⁶ to enquire about the nature of their mandate and the composition of their collection, but most importantly about the type of activities they carry out with respect to the works in their collection. The questionnaire is reproduced in **Appendix I**. Respondents were asked to describe whether they make reproductions of works, communicate them to the public or distribute them to the public, either in analogue or digital form. They were also asked to give their opinion on the adequacy of the rules on copyright in their own country in permitting museums to accomplish their mission. The results of this survey are analysed in **Chapter 4** and form the basis for the case studies presented in the same chapter⁷.

Chapter 5 concludes by summarizing the main findings on the study and by providing an analysis of alternative ways of addressing the identified copyright problems.

Finally, it is worth pointing out that due to the limited scope of this study a number of issues are not examined in detail. Among them are the specific national legislative provisions setting out the mandates of museums, the national provisions on the protection of cultural or

⁴ Study on Copyright Limitations and Exceptions for Libraries and Archives, prepared by Kenneth Crews, J.D, Ph.D, Attorney at Law, SCCR/29/3, November 5, 2014; Study on Copyright Limitations and Exceptions for Libraries and Archives prepared by Kenneth Crews, Director, Copyright Advisory Office, Columbia University SCCR/17/2, August 26, 2008.

⁵ Special thanks to Emilie Kannekens and Svetlana Iakovleva, both research master students at the Institute for Information Law of the University of Amsterdam, for their help in compiling the information in the tables of Appendix II.

⁶ ICOM is an international organization representing more than 20 000 museums and about 32 000 museum professionals since 1946. It was created in 1946 as an UNESCO initiative to succeed the former Office International des Musées established in 1926 by the SDN (Société des Nations).

⁷ Special thanks as well to Charlotte Poirve and Anne-Laure Duthoit, student attorneys for assisting in the conduct of the survey, the compilation and the presentation of the answers to the questionnaire.

national heritage, museum services for the visually impaired neighbouring/related rights, legislation on access to public data, laws governing the circumvention of technological protection measures and the definition of public domain.

2. MUSEUMS AND COPYRIGHT LAW

2.1. BRIEF OVERVIEW OF THE DEVELOPMENT OF MUSEUMS

2.1.1. Museal venture

Originally established in the 3rd century BC, the “*Mouseion*” of Alexandria was a place for philosophical discussion, closer to the concept of university with scientists, artists, scholars and libraries. In the 15th century, the “*mouseion*” turned “*museum*” was revived to designate more comprehensively a place and a collection of works called then “*cabinet de curiosités*”. The purposes of learning and of display of collections were thus at the inception of the modern concept of museum which became an established concrete institution in the 17th century with the opening to the public of the Ashmolean museum in Oxford (UK) in 1683 followed by the British Museum in 1753, the Louvre in Paris in 1793, the Peale Museum in Philadelphia (USA) in 1786.⁸

If the word museum has a Greek origin, the concept is universal and the collection of objects for preservation of heritage, glory of princes and potents and respect of the dead and their relics were known at the same time in Asia, the Arab world and Africa (Mausoleum of Qin Shi Huangdi in China, Kanga Moussa in Mali). In Europe, the Italian Renaissance and rediscovery of the Greco-Roman Antiquity spurred the creation of the first outstanding collections notably the Medici’s and the royal collections in most European countries. The Eighteenth century (the “*Siècle des Lumières*”) and the Nineteenth century were an “*âge d’or*” for museums which blossomed in many fields and countries, thanks to the support and patronage of successful entrepreneurs (merchants, bankers), nobles and crowned heads as well as learned societies such as the Royal Society in England and the Academy of Sciences in Paris⁹.

In the 20th century, more than 55 000 national and regional museums are counted worldwide¹⁰. This century has enshrined the prominent role of museums in cementing societal, historical and cultural affiliation and simultaneous giving broad access to other manifestations of arts, areas of knowledge and different heritages. It also changed substantially the traditional management and presentation of art collections to the public.

First the violent events of the 20th century (the 1917 Russian revolution, 2 world wars and several independence wars) have stressed the memorial and political dimension of missions assigned to museums as guardians of collective memory and heritage as well as contributors to public policies on education and research. For instance, memorial museums and open-air/in site museums are new forms of museums that developed in the 20th century¹¹.

⁸ See in the Encyclopedia Britannica, “*The history of museums*” by Geoffrey Lewis, available on http://www.museum.ee/uploads/files/g._lewis_the_history_of_museums.pdf.

M. Lewis explains in particular that the first public museum was the Ashmolean museum. Elias Ashmole bequeathed his collection to Oxford University on the condition that a place be built to receive it, which place opened in 1683 and became known as the Ashmolean Museum.

⁹ Amongst the many openings of museums in the 18th-19th centuries, M. Lewis notes in his article: the Prado Museum in Madrid commissioned in 1785 opened in 1819, the Alte Pinakothek in Munich in 1836, the Hermitage Museum in St Petersburg in 1852, the Royal Museums in Brussels in 1835, the National Museum of Pest in 1807, and many other museums opened simultaneously in Asia, South America, Africa and the Middle East, as a result of the European colonial presence in many of these countries.

¹⁰ <http://icom.museum/resources/frequently-asked-questions/> “*ICOM is not aware of the accurate number of museums in the world. However, in its 21st edition (2014), the most comprehensive directory Museums of the World published by De Gruyter covers more than 55,000 museums in 202 countries.*”

¹¹ Anne Frank museum in Amsterdam, World war II sites and buildings: the Tuol Sleng Museum in Phnom Penh, former S-21 torture center; Ellis Island Immigration Museum in the US.

Simultaneously the reconstruction of the economies of the many countries engaged in World War II also favored a new approach to restore the museum buildings, to display differently the collections and to address a large middle class as well as tourists appreciative of arts and culture. The emergence of environmental sensitiveness also led to new museums of historic and natural landscapes, like Gorée (a small island off the Senegal coast formerly dedicated to slave trade) or the Museo y Yacimiento Arqueológicos de las Eretas in Spain, a fortified village built in the 7th century BC.

Last but not least, the advent of the information technologies, with easy digitization and dissemination via the Internet has compelled museums to keep up with technical and social changes such as the surge of mobile media, of big data, of community's networks and has offered them the possibility to leverage these new means to carry on their mandates.

In the present century which may start a transition to a new "age", a number of museums seek to adjust the ways and means to carry their mandates successfully, with due consideration to financial sustainability and potentialities of developments arising from a closer and quality interaction of museums with their public¹².

Museums' collections, whether protected by copyright or in the public domain, are and shall remain for long the core and focus of the activities of museums which house, maintain, exhibit and promote them. Museums are themselves creative in carrying their mandates and they develop copyright-protected materials calling upon their skills for contextualizing content and facilitating its intelligible reception by the public¹³. Hence copyright permeates museal activities and the understanding by museums of copyright fundamentals and practical implementation is key for the management of their activities.

2.1.2. Definition of "museum"

Copyright laws generally confer to the author/copyright owner an exclusive right, for a certain duration, to disclose, use and reap benefit from her "original" work. They also provide exceptions and limitations to the author's exclusive rights in particular for the fulfilment by certain entities, of some purposes of public interest or policy, such as libraries and research establishments.

Curiously, it appears that explicit exceptions in favour of museums are not often found in the national laws on copyright. Maybe even more surprising, is the rare definition of what is a "museum" in copyright laws and treaties.

In fact the definition of a "museum" was first given by philosophers (for instance Diderot in its Encyclopaedia of 1747-1765) and later by learned societies or associations¹⁴.

¹² According to Jasper Visser, the four key concepts that should define the museum AD 2014 are value, community, engagement and co-creation (article published on the blog of Jasper Visser "*the museum of the future.com*" and issued from an opening keynote lecture at the Canadian Museum Association conference in Toronto, April 2014).

¹³ See Rina Pantalony's WIPO 2013 publication on "*Managing IP for museums*" (i) quoting Paul Saffo's 1994 article announcing that "*the future belongs to neither the conduit or content players but those who control the filtering, searching and sense-making tools we will rely on to navigate through the expanses of cyberspace*" and (ii) highlighting the "*integrity, authority and contextualization that museums bring to their content*".

¹⁴ The English Museums Association (MA) agreed to a definition in 1998: "*Museums enable people to explore collections for inspiration, learning and enjoyment. They are institutions that collect, safeguard and make accessible artefacts and specimens, which they hold in trust for society. This definition includes art galleries with collections of works of art, as well as museums with historical collection of objects*".

Many intellectuals have also discussed the notion of "museum".

As of today, only a few copyright national laws include a definition of a museum or of “*cultural institution*” for exception purposes.

The 1985 Canadian copyright law defines altogether “*library, archive or museum*” as:

- (a) *an institution, whether or not incorporated, that is not established or conducted for profit or that does not form a part of, or is not administered or directly or indirectly controlled by, a body that is established or conducted for profit, in which is held and maintained a collection of documents and other materials that is open to the public or to researchers, or*
- (b) *any other non-profit institution prescribed by regulation;*

The international instruments examined thereafter (WIPO Treaties, EU 2001 copyright directive, etc.) also do not define what is a “*museum*” in relation to copyright and its exceptions and limitations.

However the definition of museums can be found in national laws on heritage. Indeed there is a strong and longstanding perception of museums as the guardians of the “*temple*”, sheltering national culture and heritage.

For example, article L 140-1 of the French Heritage Code¹⁵ defines a museum as “*any permanent collection comprising property the preservation and conservation of which benefits public interest and which is organised for purposes of knowledge, education and public enjoyment*”.

ICOM updated in 2007 its definition of “*museum*”:

*“A museum is a non-profit, permanent institution in the service of society and its development, open to the public, which acquires, conserves, researches, communicates and exhibits the tangible and intangible heritage of humanity and its environment for the purposes of education, study and enjoyment”.*¹⁶

The ICOM definition encompasses a wide array of museums and in an attempt to distinguish the various subsets, museums can be categorized according to:

- ✓ their origin: public encyclopaedic museums in Europe (British Museum and the Louvre), museums of learned societies (Indian Museum of Calcutta), national museums, university museums, etc.
- ✓ the kind of « works of art » forming their collection(s): history, fine arts, sciences, techniques, ethnology, archaeology, etc.
- ✓ their legal status and ownership:
 - museums belonging to public entities (government, territorial entity such as a region, a city, an establishment created and financed by public funds)
 - museums belonging to non-profit organizations such as associations, charities

¹⁵ This definition was adopted by a law of 4 January 2002 and broadens the former definition of museums dating back 1945 and limited to museums of fine arts.

¹⁶ <http://icom.museum/the-vision/museum-definition/>. The Glossary of ICOM's code of Ethics defines the non profit organisation as “*A legally established body corporate or unincorporated – whose income (including any surplus or profit) is used solely for the benefit of that body and its operations. The term ‘not-for-profit’ has the same meaning.*”

- private foundations, corporate foundations, (Louis Vuitton, Cartier, Total, Getty, the Leopold Museum private foundation)
- “public” museums operated by private companies (Culturespaces)
- sui generis categories (“Musées de France”, “National Trust in the UK”)
- ✓ their location:
 - site museums, for instance historic residences or natural sites¹⁷ (Colonial Williamsburg) and virtual museums (Virtual Museum of Canada)¹⁸
- ✓ their duration: most of public museums are there to stay for ever and their collections are often their inalienable property. Museums can also close and/or their collections be dispersed but these are accidental events. Yet the concept of “ephemeral museum” has taken off and short-lived events around live creations (street art) or specific temporary locations (buildings doomed to destruction) are spreading.

The extreme diversity of museums and of entities owning and/ or managing their collections raises potential needs for clarification and simplification.

One issue is the eligibility to claim the benefit of a copyright exception or limitation intended for museums.

As most copyright laws do not define “museums”, the question then arises of whether definitions of museums, found outside the copyright context, can be validly relied upon to assert the benefit of a copyright exception or limitation for museums.

The issue of determination of entities eligible to the qualification of “museum” for purposes of implementation of copyright law shall not be addressed in this Study and in fact we shall refer to the application of the concerned national laws to this effect (the identification of which is not addressed in the Study either¹⁹).

A second issue is that compliance of museums with copyright law does not have the same impact depending on (i) whether the collections of a given museum are mainly copyright-protected or in the public domain; (ii) the kind of works which may fall under a specific copyright scheme (music is different from audiovisual works and from fashion for instance) and on (iii) whether the museum has acquired the copyright rights with the ownership of the physical medium embodying the art work. Also financial means available for museums vary greatly and affect their capacity to carry on their mandates with the targeted efficiency.

The Study will not specifically develop the various situations of implementation of the copyright exceptions and limitations for each kind of works or each possible category of museums, except where relevant to highlight a transversal feature.

2.1.3. Mandates of museums

The ICOM definition of museum will be the guiding reference throughout this Study for the purpose of analyzing the mandates of the museums. It follows from the ICOM definition that the main mandates of museums are: 1) the acquisition/enrichment /preservation of collections; 2) the communication to the public for entertainment and learning; and 3)

¹⁷ See www.exarc.net, ICOM affiliated organisation representing archeological open-air museums, experimental archeology, ancient technology and interpretation.

¹⁸ The Canadian Heritage Information Network (CHIN) launched the virtual Museum of Canada, an online only museum of virtual exhibitions produced by the Department of Canadian Heritage.

¹⁹ See footnote 6 page 3

education and study/ research to improve and share cultural knowledge. These mandates, which serve public policy non-commercial goals²⁰, appear also in the UNESCO Convention for the Safeguarding of Intangible Cultural Heritage of 29 September 2003 which article 13 provides that:

“Each State Party shall endeavour to
*(b) designate or establish one or more competent bodies for the **safeguarding** of the intangible cultural heritage present in its territory.*
(...)
(d) adopt appropriate legal ; technical, administrative and financial measures aimed at :
(ii) ensuring access to the intangible cultural heritage while respecting customary practices governing access to specific aspects of such heritage”.

These mandates can also be found in many national heritage laws.²¹

Acquire and protect cultural heritage

Since the early days of museums, their primary mandate was and remains the gathering, organization and preservation of elements of cultural heritage.

Today, the acquisition of artworks, their maintenance and their preservation entail a few indispensable actions:

- The assessment of the legal implications of the acquisition of a work of art: the conditions attached to the form of acquisition (a donation, a regular purchase funded by the museum or through crowd funding, a long term loan) etc.
- The entry of the works in the museum’s special inventory books and/or databases with indication of provenance, title (gift, loan, bequest or exchange) and descriptive information of the work including images of it.
- The identification of “*orphan works*” and what to do with them.
- The verification of rights and /or restrictions conveyed with the artwork purchased, loaned or exchanged, notably the right of reproduction and the right to restore/repair as the case maybe.
- The digitization of the collections and their availability to third parties (public, students, researchers) for permitted purposes.
- The migration of the artwork on different media for archival purposes.

²⁰ For the sake of clarity, the copyright issues impacting activities such as merchandising and sponsorship are not covered in the Study

²¹ Articles L 441-1 & 2 of the French Heritage Code.

L 441-1: The appellation “*Musée de France*” may be given to museums belonging to the State, to another legal entity under public law or a legal person in private law nonprofit.

L 441-2: Permanent missions of “*Musées de France*” are:

- a) To maintain, restore, study and enrich their collections
- b) To make their collections accessible to the wider public;
- c) To develop and implement educational activities and dissemination to ensure equal access for all to culture;
- d) To contribute to the advancement of knowledge and research and its dissemination.

When implementing these actions, museums may have to seek the authorization of the author and/or rightholder where there is reproduction of the work in any format or medium as it involves the author's right of reproduction and potentially his moral rights. For instance, case law on reproduction of works of art from museums' collections on websites of on line art dealers illustrate a recurring practical question of museums.

Intangible cultural heritage, as such, is generally regarded as not copyrightable because it may not meet the necessary requirements for protection, such as originality, fixation and identifiable authorship. Nevertheless, even in those cases, managing collections of cultural heritage by museums is not devoid of intellectual property questions and legal obligations, as well as responsibilities vis-à-vis the traditional practitioners and custodians of the heritage, on the one hand, and the wider public, on the other.

Cultural heritage may encompass traditional knowledge (TK) and traditional cultural expressions (TCEs)/or folklore, like music, dances, designs, art, artefacts, narratives and traditional know-how, that express long standing but living practices, and are transmitted and developed from generation to generation by indigenous peoples or local communities. There are two IP-related issues. First, TK and TCEs may be adapted, recorded and/or collected, in which case new IP rights may vest in the resulting derivative works, recordings and collections. Second, several national and regional laws provide indigenous peoples or local communities with IP-like collective rights that protect their TK and TCEs as such from being used, especially commercially, by third parties without their prior and informed consent. That may also apply to museums, libraries and archives, although uses such as recording and documenting cultural heritage for preservation and safeguarding purposes may be covered by exceptions and limitations. In some cases, cultural institutions have concluded specific agreements and protocols with the interested communities on a voluntary basis. A WIPO publication addresses this specific issue: *IP and the Safeguarding of Traditional Cultures: Legal Issues and Practical Options for Museums, Libraries and Archives*.²²

Communicate and exhibit cultural heritage

For a museum, the main purpose of building and enriching a collection of artwork is to communicate it to the public, for its enjoyment and learning.

The ways available for museums to communicate to the public are both diverse and sophisticated. The added value of museography plays a critical role in this respect.

Communication means primarily exhibition of works in locations accessible to the public.

Museums exhibitions are usually located in dedicated sites and buildings which are often themselves architectural historical or modern masterpieces (Belvédère in Budapest). Modern or post-modern museums turned now cultural centers with many facilities for kindred activities (libraries, auditoriums, learning workshops, etc.).

Exhibitions entail at least 2 major elements of content provided by the museum sheltering the exhibition: (i) the supply of documentation relating to the collection of works being

²² Negotiations regarding an international legal instrument or instruments that will ensure the protection of TK and TCEs/folklore as such are taking place at WIPO. See WIPO resources on the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore. See also a Brief on IP issues relating to the Documentation of Traditional Knowledge and Traditional Cultural Expressions; more resources, including databases of standard agreements and protocols, are available at <http://www.wipo.int/tk/en/resources/museums.html>.

exhibited, which is submitted in various media (books, audio-guides, tablets, augmented reality devices, virtual visits, etc.): (ii) the itinerary of the visit conceived to present the works in accordance with the intended content and messages.

Exhibitions, above all travelling and/or partnering exhibitions, which are increasing, entail as well a careful monitoring of the complexity of coordinating various applicable laws, notably copyright laws which, furthermore, do not all acknowledge a right of exhibition of the owner of a copyrighted artwork

Communication means also a publishing activity and more and more a permanent interaction with the museum's actual and potential audience. Museums' websites are a key tool to reach out to the "*aficionados*" and to gain their closer involvement in the museum's activities, from enlisting as "*amis du musée*" to contributing to crowd-funded projects of the museum.

Support education, study and research

Improving knowledge and enabling scholars as well as students and researchers to access and develop their own knowledge in relation to museums' collections is the mandate of museums that is probably most expanding and demanding. Indeed, we are in a society of knowledge where searching and sharing information have become much easier with the new technologies and these new practices fuel what appears to be the next ADN of the digital economy.

As mentioned previously, museums are now cultural centers and tourist' attractions. Whereas academic searchers and students are mostly drawn towards the resources of libraries, in particular universities libraries, the demand for access to museums' collections for education, study and research is growing. Indeed, as emphasized in a 2012 policy brief prepared by the Ukrainian Committee of ICOM and CIS experts, "*Museums, which have been accumulating civilization experience of the humankind for centuries along with universities and scientific and research institutions, represent valuable sources of such information. As a unique intermediary between the object of historical and cultural heritage and recipient of cultural codes –the visitor- museums offer almost unlimited possibilities in the area of education*".²³

The boom of e-learning, the appetite for continuing life-time self education²⁴ and the attraction of large unexplored data and metadata repositories in Museums have highlighted opportunities for museums to diversify and expand their educational offer. In this field however, overlaps with educational /research mandates of other entities and the complex copyright limitations framework have not yet allowed a plain assessment of opportunities and hurdles for museums in pursuing their educational mandate.

2.2. RATIONALES FOR MUSEUM EXCEPTIONS AND LIMITATIONS

Limitations on copyright are an integral part of the copyright system, for they are the recognition in positive law of the users' legitimate interests in making certain unauthorized uses of copyrighted material.²⁵ Such legitimate interests include the protection of the users'

²³ "*Role of Museums in Education and Cultural Tourism Development : Policy brief*", published in 2012 with the support of UNESCO

²⁴ See the success of the Ecole du Louvre and of the Université Populaire de Caen run by the French philosopher Michel Onfray, attracting many seniors.

²⁵ Guibault 2002, p. 109.

fundamental rights, the promotion of free flow of information, education, research and the dissemination of knowledge. With respect to museums and the fulfilment of their mandate, the protection of all these interests coincide with and are reflected in a country's cultural heritage policy. A cultural heritage policy usually relies on several principles and societal goals such as: support of creativity and free expression for the common welfare; a tribute to those who contributed before to community life; a need to pass on cultural roots, to educate the next generation and to encourage its own contribution. It thus reflects the above rights of individuals.

At international level, the pioneer convention in this field is the World Heritage Convention (WHC), which was adopted by the UNESCO General Conference on 16 November 1972²⁶. Many countries have developed or are planning to put in place a cultural heritage policy to protect and preserve heritage for present and future generations.²⁷

The Australian government, which one of the first States to ratify the WHC in 1974, recently launched in 2011 the first "*State Cultural Heritage Policy*" which will be monitored by the Heritage Council and the National Trust of Australia (WA).²⁸

The policy aims at recognizing, protecting and promoting heritage

- (i) by ensuring that Heritage legislation is open, transparent, simple to operate and to understand, and able to reflect best practice in the recognition and protection of heritage places,
- (ii) by maintaining a comprehensive list of culturally significant heritage places through entry onto the State Register of Heritage Places,
- (iii) by improving public awareness and appreciation of the State's heritage through the development of a comprehensive heritage education and learning strategy and
- (iv) by working with professional and representative organizations to encourage appropriate use and enhanced conservation outcomes in the wider community.

In the **European Union**, whilst cultural policy is primarily the responsibility of Member States, Article 3.3 of the Lisbon Treaty provides that: "*The Union shall respect its rich cultural and linguistic diversity, and [...] ensure that Europe's cultural heritage is safeguarded and enhanced*". The Treaty on the Functioning of the European Union gives the Commission the specific tasks of contributing to the flowering of culture in the Member States, while respecting their diversity, and bringing "the common cultural heritage to the fore" (Article 167 TFEU).

European cultural heritage benefits from a range of EU policies, programs and funding including for conservation, digitization, infrastructure, research and skills. With the goal of making Europe's cultural and scientific heritage to the public, the Europeana digital library project was launched in 2008.²⁹ Following a request of the EU Culture Ministers in May

²⁶ 191 States are parties to the Convention. At August 2007 there were 851 sites on the World Heritage List. The List includes 660 cultural properties, 166 natural properties and 25 properties that meet both cultural and natural criteria.

²⁷ V. Vadi, "*The Cultural Wealth of Nations in International Law*", 21 (2012) Tul. J. Int'l & Comp. L. 87-132.
²⁸ <http://www.stateheritage.wa.gov.au/about-us/acts-policies/state-cultural-heritage-policy>

²⁹ The objectives of Europeana are "*to facilitate formal agreement amongst museums, archives, audiovisual archives and libraries on how to cooperate in the delivery and sustainability of a joint portal ; to stimulate and facilitate initiatives to bring together existing digital content ; to support and facilitate digitisation of Europe's cultural and scientific heritage*".

2014, the European Commission adopted in July 2014 communication "*Towards an integrated approach to cultural heritage for Europe*".³⁰

In the USA, the US department of Art and Culture (USDAC) exists to cultivate the public interest in art and culture and catalyze art and culture in the public interest. USDAC helps Cultural Agents and Citizen Artists to develop cultural policies for their own organizations, communities, counties, or even states. A cultural policy is like a contract between the government or organization that adopts it and the public.³¹

In Russia in the 1990s, the issue of historical significance in the cultural field was a transition from the Soviet model of cultural policy to a new one. In December 1991, the new Russian Federation (RF) was established and in June 1993, the government of the Russian Federation approved the goals of a federal cultural policy, e.g. freedom of expression, preservation of cultural heritage and creating a network of state cultural institutions, which formed the basis of the Federal Programme for the Development and Preservation of Culture and the Arts, 1993-1995. Today, several heritage institutions exist at federal and regional levels.³²

In Brazil, The Brazilian Constitution (1988) defines cultural heritage as material and immaterial assets holders and refers to the identity, action and memory of the different groups that form Brazilian society. The Constitution also states that it is the duty of the authorities in collaboration with the community to promote and protect Brazil's Cultural Heritage by means of inventories, surveillance, listing and other preservation means. In addition to this, heritage protection institutions carry out a work of promotion and investment in heritage.³³

The **African Union** has adopted a Charter on African Cultural Renaissance in which Article 22 deals with assistance to artistic creation. Within this context, African States are encouraged to adopt conventions that promote artistic creation, tax exemptions for cultural goods and services and measures to protect IPRS of these cultural goods³⁴.

2.3. INTERNATIONAL COPYRIGHT FRAMEWORK

2.3.1. Berne Convention and WIPO Copyright Treaty

Most countries around the world accept the notion that copyright and related rights law must preserve a balance between the interests of rights holders and those of users. The safeguard of fundamental rights and freedoms, more particularly the users' freedom of expression and right to privacy, and the need to promote the dissemination of knowledge and culture constitute the two main justifications for the adoption of limitations on copyright and related rights. The need to preserve a balance of interests within the copyright regime is even reflected in the Preamble to both WIPO Internet Treaties, where Contracting Parties: "*Recogniz[e] the need to maintain a balance between the rights of authors and the larger public interest, particularly education, research and access to information, as reflected in the*

³⁰ http://ec.europa.eu/culture/policy/culture-policies/cultural-heritage_en.htm

³¹ <http://usdac.us/cultural-policy/>

³² Russia (http://www.culturalpolicies.net/down/russia_022013.pdf)

³³ <https://www.heritagecanada.org/sites/heritagecanada.org/files/Mazurov.pdf>

³⁴ <http://www.culturalexchange-br.nl/mapping-brazil/heritage/heritage-field-brazil/where-brazils-heritage>

³⁴ Charter on African Cultural Renaissance, signed on 2006 by 30 African States, not yet in force, available on WIPO website.

Berne Convention".³⁵ Nevertheless, relatively few limitations on copyright can be found in the relevant international instruments.

Limitations and exceptions on copyright have never been harmonised at the international level. The limitations listed in the Berne Convention of 1971 are the result of serious compromise on the part of national delegations – between those that wished to extend user privileges and those that wished to keep them to a strict minimum – reached over a number of diplomatic conferences and revision exercises. Consequently, all but one limitation set out in the text of the Berne Convention are optional: countries of the Union are free to decide whether or not to implement them into their national legislation. These provisions are meant to set the minimum boundaries within which such regulation may be carried out.³⁶ The limitations provided for under the Berne Convention permit quotation (article 10(1)), uses for teaching purposes (article 10(2)), press usage (arts. 10*bis*(1) and (2)), reservations and conditions on the exercise of mechanical reproduction rights under article 13, and conditions for the exercise of broadcasting and other rights under article 11*bis*.³⁷

One of the most important provisions introduced in the Convention during the Stockholm Revision Conference of 1967 is article 9(2), which establishes a three-step-test for the imposition of limitations on the reproduction right. According to this test, limitations must be confined to special cases, they must not conflict with normal exploitation of the protected subject-matter nor must they unreasonably prejudice the legitimate interests of the author. No clear interpretation has ever been given of what constitutes a “*normal exploitation of a work*” or an “*unreasonable prejudice to the legitimate interests of the author*”.³⁸ Basically, where the normal exploitation of the work is threatened, no reproduction is authorised. If the normal exploitation is not affected, one must still examine whether the reproduction causes an unreasonable prejudice to the interests of the author. Unreasonable prejudice may however, in some cases, be avoided by the payment of remuneration under a statutory license.

By the late 1980s, the spectacular growth of the digital networked environment had sparked the need to review the rules on copyright and related rights. The protection afforded to authors under the Berne Convention was deemed no longer sufficient to cope with the characteristics of the new environment. However, instead of calling for a diplomatic conference on the revision of the existing convention, the WIPO convened the countries of the Union to the negotiation of new norms of protection. This led to the adoption in December 1996 of two treaties known as the “*WIPO Internet Treaties*”, namely the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). Unable to reach a consensus on the inclusion of any limitation on copyright and related rights, the text of the Treaties reproduced the so-called “*three-step-test*”. Article 10 of the WCT and Article 16 of the WPPT not only confirm the application of this test in the area of copyright - making it applicable to all authors' rights and not only to the reproduction right - but extend it also to the area of neighbouring rights. The model of the Rome Convention has thus been abandoned. The three-step test serves as a general restriction to *all* exemptions presently found, or to be introduced, in the national copyright and neighbouring rights laws. Even if an exemption falls within one of the enumerated categories of permitted exceptions, it is for

³⁵ L. Guibault, “*The Nature and Scope of Limitations and Exceptions to Copyright and Neighbouring Rights with Regard to General Interest Missions for the Transmission of Knowledge: Prospects for Their Adaptation to the Digital Environment*”, *UNESCO e-Copyright Bulletin*, October-December 2003, available at : http://portal.unesco.org/culture/en/files/17316/10874797751l_guibault_en.pdf/1_guibault_en.pdf.

³⁶ Ricketson & Ginsburg (2005), p. 756.

³⁷ WIPO Standing Committee on Copyright and Related Rights, “*WIPO Study on Limitations and Exceptions of Copyright and Related Rights in the Digital Environment*”, 9th Session, June 23-27, 2003, WIPO Doc. SCCR/9/7 (April 5, 2003).

³⁸ Hugenholtz and Visser, 1995, p. 4.

the national legislatures (and, eventually, the courts) to determine on a case-by-case basis whether the general criteria of the three-step test are met.

In view of the absence of specific provision in the Berne Convention and the WIPO Internet Treaties concerning museums, the general limitation of article 9(2) of the Berne Convention and 10 of the WIPO Copyright Treaty has formed the basis for the adoption of several specific limitations appearing in national legislation, such as reproductions for private use, research and scientific purposes, for preservation purposes in museums or for inclusion of artistic works in exhibition catalogues.³⁹

2.3.2. TRIPs Agreement

The WTO/TRIPS Agreement, signed in Marrakech in April 1994, constitutes today the main source of international obligations in the field of intellectual property law.⁴⁰ With respect to copyright and related rights, the TRIPS Agreement introduced no new limitation, other than expanding the “*three-step-test*” to all rights contained in the Berne Convention and to the rights contained in the TRIPS Agreement itself, such as the rental right. Article 13 of the TRIPS Agreement therefore extends the application of the three-step test to all exclusive rights that the agreements sets minimum standards for. Article 10 of the WCT and 16 of the WPPT similarly apply the Berne formula to the minimum rights established by their respective texts.⁴¹

2.3.3. UNESCO Conventions

The United Nations organisation that is probably the most closely engaged in fostering cultural diversity, and thereby promoting the values of strong cultural heritage, is the UNESCO. To this end the UNESCO has adopted one multilateral instrument setting out the basic principles regarding the promotion of cultural diversity. The 2005 UNESCO Convention on the Diversity of Cultural Expressions is aimed at “*the flourishing of human existence in its several forms and as a whole*”. Above all it clarifies and consolidates the concept of “*cultural diversity*”, which was solemnly declared “*the common heritage of humanity*” (Article 1) by the Universal Declaration on Cultural Diversity adopted unanimously by the 2001 UNESCO Conference.⁴²

*“The diversity of cultural expressions becomes a norm to be complied with. Ethnocultural plurality had been an accepted state of affairs. Now it has become a norm, a legal principle about ‘diversity’ aimed at preserving and promoting ‘plurality’. This entails new rights and obligations extending far beyond the simple ‘cultural exception’. The principle of the ‘diversity of cultural expressions’ relativizes the principle of ‘cultural exception’, even if the latter still has effects within the context of the WTO.”*⁴³

Museums are not expressly mentioned in the multilateral instrument. Nevertheless it is clear that as museums are one of the primary channels through which cultural diversity can be promoted and presented to the public, creating a legal framework that will allow them to fulfill

³⁹ Ricketson, 1987, p. 485 and ff.

⁴⁰ World Trade Agreement 1994 (establishing the WTO and including GATT 1994), Annex 1C, signed in Marrakech, 15 April 1994.

⁴¹ P.B. Hugenholtz & Ruth L. Okediji, “*Conceiving an International Instrument on Limitations and Exceptions to Copyright*, s.l.”, March 2008, study supported by the Open Society Institute, available at: <http://www.ivir.nl/publicaties/hugenholtz/finalreport2008.pdf>

⁴² E. Tourme-Jouannet, “*The International Law of Recognition*”, (2013) 24 European Journal of International Law 667-690, at 674.

⁴³ Peter K. Yu, “*Cultural Relics, Intellectual Property, And Intangible Heritage*”, (2008) 81 Temple Law Review 433-506.

their mandate will ensure that the goals of the Cultural Diversity Convention are achieved. This is where abidance to the principles of the UNESCO Convention for the Safeguarding of Intangible Cultural Heritage of 29 September 2003 would also make a contribution to the good functioning of museums towards achievement of their goals.

2.3.4. Regional Conventions

In several regions of the world, conventions have been signed over the years on the topic of intellectual property such as:

- Inter-American Convention on the rights of the author in literary, scientific and artistic works. Concluded at Washington on 22 June 1946.
- Agreement Revising the Bangui Agreement of March 2, 1977 establishing an African Intellectual Property Organization (AIPO).
- NAFTA (North American Free Trade Agreement) signed in December 8th, 1993 between Canada, the United States of America and Mexico
- Comunidad Andina, Subregional Integration Agreement (CARTAGENA AGREEMENT) Decision No. 351—Common Provisions on Copyright and Neighboring Rights (of December 17, 1993)
- ASEAN Framework Agreement on Intellectual Property Cooperation adopted in December 1995 (not yet in force)
- Agreement on Unified Principles of Regulation in the Spheres of IPRs Protection; adopted in 2010 and in force since 2012 between members of the Eurasian Economic Community, namely Belarus, Kazakhstan, Federation of Russia. Since the relevant documents only exist in the Russian language, no further information is available at this time.

The oldest regional agreement on the topic of intellectual property law is the Inter-American Convention, signed shortly after World War II by sixteen countries of Central and South America. On the topic of exceptions and limitations, the Convention only sets out one limitation in favour of the press, and one for educational purposes.

The NAFTA Agreement, like the TRIPs Agreement after it, only refers to the three-step-test as a permissible boundary to the adoption of exceptions and limitations on copyright. No other exception or limitation was included in the agreement.

Articles 21 and 22 of the Cartagena Agreement actually contain a list of exceptions and limitations on copyright. Among them is the right to reproduce a work in single copies on behalf of a library or for archives whose activities are not conducted for any direct or indirect profit-making purposes, provided that the original forms part of the permanent stocks of the said library or archives and the reproduction is made for preservation or replacement purposes in the event of loss, destruction or irreparable damage. Other exceptions cover the right to make reproductions by reprographic means for teaching purposes, to make single private copies, and to effect the performance or execution of a work in the course of the activities of an educational institution. This Agreement contains no exception or limitation specifically crafted to meet the needs of museums.

The ASEAN Framework Agreement on Intellectual Property Cooperation was signed by the Member States of the Association of South East Asian Nations, but has yet to come into force. As its name indicates it is a Cooperation agreement where the Parties agree to carry out certain coordinating activities in respect of intellectual property. The Agreement does not set out any substantive provisions dealing with exceptions and limitations.

Among the regional agreements that contains interesting provisions regarding museums is the Agreement Revising the Bangui Agreement of March 2, 1977 establishing an African

Intellectual Property Organization (ARIPO). Indeed Annex VII of the Agreement, pertaining to the protection of literary and artistic, is divided into three chapters: one on the protection of authors' rights, a second on the protection of related rights, and a third one on the protection of cultural heritage. The section of the protection of authors' rights, articles 11 to 21 allow Contracting Parties to adopt exceptions and limitations among others, with respect to certain acts of reproduction of works by reprographic means, for educational purposes, for preservation or replacement of copies by libraries or archives whose activities are not conducted for any direct or indirect profit-making purposes, and for private use. Articles 67 to 97 of the Annex VII concern the protection, safeguard and promotion of the cultural heritage. Cultural heritage is defined as "*all human productions in tangible and intangible form that are characteristic of a people in time and space*", such productions relate to folklore, sites and monuments, and ensembles. These concepts are interpreted broadly inside the Convention. According to article 74 of the Convention, cultural heritage goods may be used freely for educational purposes or for the creation of new original works.

One of the most integrated regions in the world, whether economically, politically and legally, is probably the European Union. The secondary legislation adopted by the institutions of the European Union (the Parliament, Commission and Council) apply to the twenty-eight Member States of the Union as well as to the countries of the European Economic Area: Lichtenstein, Norway and Iceland. Such secondary legislation, mostly in the form of directives, is not directly applicable in the Member States but must be transposed in the national legal order. At the European level, copyright limitations have been truly harmonised so far only with respect to computer programs and databases.⁴⁴ Besides implementing the WIPO Treaties, 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 Society⁴⁵ was intended to resolve some of the uncertainty about the extent of permissible limitations under European copyright law, with respect to both analogue and digital works. The European Commission was of the opinion that without adequate harmonization of these exceptions, as well as of the conditions of their application, Member States might continue to apply a large number of rather different limitations and exceptions to these rights and, consequently, apply these rights in different forms.⁴⁶ The difficulty of choosing and delimiting the scope of the limitations on copyright and related rights that would be acceptable to all Member States proved to be almost insurmountable. As a result of a compromise, the Directive sets one mandatory exception for transient or incidental reproduction and introduces an exhaustive list of twenty-one optional limitations with the safeguard "*three-step-test*".⁴⁷ Pursuant to the European Court of Justice, the "*three-step test*" does not purport to extend the boundaries of the various exceptions and limitations provided by the Directive⁴⁸.

The European *acquis communautaire* relating to exceptions and limitations on copyright was recently augmented with two new exceptions through the adoption of Directive 2012/24/EC on certain permitted uses of orphan works. In December 2013, the European commission kicked off a broad consultation on the reform of copyright law in the EU,⁴⁹ which tackles inter alia, the scope of copyright exceptions and limitations.

⁴⁴ Council Directive of 14 May 1991 on the legal protection of computer programs (91/250/EEC), O.J.E.C. no. L 122, 17/05/91 p. 42, art. 5 and 6 [hereinafter "*Computer programs directive*"]; and Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases, O.J.E.C. of 27/3/96 no L 77 p. 20, art. 6 [hereinafter "*Database directive*"].

⁴⁵ O.J.C.E. L 167, 22 June 2001, p. 10 - 19 [hereinafter "*Directive on copyright in the information society*"].

⁴⁶ European Commission, Explanatory Memorandum to the Proposal for a European Parliament And Council Directive on the harmonization of certain aspects of copyright and related rights in the Information Society, 10 December 1997, COM(97) 628 final, p. 35.

⁴⁷ Guibault 2003, p. 558.

⁴⁸ ECJ 27 February 2014 "OSA" C-351/12 point 40 and ECJ 10 April 2014 "ACI Adam" C-435/12 point 26

⁴⁹ http://ec.europa.eu/internal_market/consultations/2013/copyright-rules/index_fr.htm

3. COPYRIGHT EXCEPTIONS AND LIMITATIONS TO THE BENEFIT OF MUSEUMS

3.1. GENERAL REMARKS

A number of exceptions and limitations share the common objective of encouraging the preservation, dissemination of knowledge and information among the members of society at large. This is the case of the limitations adopted in favour of museums.

These limitations serve as a tool in enhancing democracy within society and in carrying out a government's information policy. They therefore reflect the government's belief that society as a whole derives greater benefit from allowing certain uses to take place without the rights owners' authorization, than from maintaining strict control over protected works.

The fact that these objectives justify the use of copyrighted material without the rights owners' authorisation does not however necessarily imply that such use should occur without the payment of a fair compensation to the rights owner. The choice between recognizing an exemption and establishing a statutory licence is also part of each legislator's balancing process between the interests of rights owners and those of the users. On the other hand, a number of countries have decided not to adopt specific provisions applicable to educational institutions, libraries, archives or museums, yet have established exceptions for educational purposes, the private use exemption and the setting up of a reprography regime.

Typical functions of any museum are the collection, preservation, and dissemination of information. The preservation of copyrighted works often involves the making of reproductions from original works, either because they have been damaged, lost, or stolen. The dissemination of information takes place in a number of ways, either by exhibiting works to the public; by permitting the public consultation of works on the premises of the museum or the consultation of electronic material at a distance; by allowing patrons to make their own reproductions of works for personal purposes using freely accessible machines (photocopy, microfiches or printer).

Exceptions and limitations adopted for the benefit of museums are thus meant to allow these to perform their general tasks and to encourage the dissemination of knowledge and information among members of society at large, in furtherance of the common good. However, the need to adopt specific measures to meet this particular common good objective is evaluated differently from one country to the next. Moreover, since museums come in different shapes and sizes each pursuing different types of objectives, the public interest dimension of museums has been interpreted differently depending on whether they are publicly or privately funded, accessible to the general public or only to a restricted group.

With the digitization of works, several of the museums' main activities have given rise to an intensification of use of works internally or by the public, either off- or on-line, on the premises or at a distance. A number of these activities, when carried out in the digital environment, raise some uncertainty under copyright law, the most problematic of which are the making of digital copies of materials held in their collections and the digitization and online dissemination of copyright material held in the collections of museums. Lawmakers generally agree that the extension of the current limitations to the digital domain, thereby also allowing the digitization of works, may not be valid in all cases. In practice, the differences in accessing and marketing material in the digital environment may warrant differing approaches in different situations.⁵⁰ The reactions of the legislators vary

⁵⁰ The Parliament of the Commonwealth of Australia, "Advisory Report on Copyright Amendment (Digital Agenda) Bill 1999", Commonwealth of Australia, Canberra, November 1999, p. 16.

significantly from one country to the next, even if these issues are still far from being settled everywhere.

As mentioned in the introduction, the copyright laws of forty-five countries have been identified as containing a provision dealing expressly with museums. Regrouped per continent, these are:

- Africa: Ethiopia, Lesotho, Nigeria, Sierra Leone, Israel
- America: Canada, Chile,
- Asia: Bangladesh, China, India, South Korea, Mongolia, Pakistan
- Europe: Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Cyprus, Denmark, Estonia, Finland, France, Germany, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Macedonia, Malta, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, Switzerland, Turkey, United Kingdom
- Oceania: Australia, Fiji

At least two types of provisions were encountered in the laws of a couple of countries but which will not be analyzed any further.

The first one, found in the copyright laws of Costa Rica and Panamá, states that “*It shall be lawful to make reproductions by photographic or other pictorial processes, provided this reproduction is not-for-profit, of statues, monuments and other works of art acquired by the authorities that are displayed in streets, parks and museums*”. Contrary to the other provisions examined in the section below, this article is aimed at allowing the general public to make pictures in public places, rather than at facilitating the operations of the museums themselves.

A second type of provision that should be mentioned, without going into further detail, can be found in the laws of Bangladesh, India and Pakistan. This article states: “*Provided that where the identity of the author of any such work, or in the case of a work of joint authorship of any of the authors, is known to the museum the provision of this clause shall apply only if such reproduction is made at a time more than sixty years from the date of the death of the author or, in the case of a work of joint authorship, the death of the author whose identity is known or, if the identity of more authors than one is known, from the death of such one of those authors who dies last*”. This provision essentially recognises the fact that the general public is authorised to use copyright protected works once the period of protection has expired, e.g. that public domain works are freely usable.

The exceptions and limitations analysed in the sections below are classified in two categories: specific ones, addressing special needs and activities of museums; and general ones, through the application of which museums can achieve part of their functions, particularly in their inter-relations with their visitors. This being said, it is quite conceivable that the laws of countries not listed among the forty-five countries in Appendix II as expressly regulating exceptions and limitations for the benefit of museums, will nevertheless contain general type exceptions and limitations that will cater to some of the needs of museums or their visitors. It can be safely assumed that such general type exceptions and limitations in these other countries will be structured and formulated in a comparable manner as those examined in section 3.4 below.

It should be stressed, however, that in some countries, like the United States, exceptions and limitations on copyright take a different form. Unlike the limitations recognised under most laws of countries following the author's rights tradition, the defence of fair use can be raised in relation to a large number of different factual circumstances, which courts examine

on a case-by-case basis according to the factors laid down, for example in Section 107 of the United States Copyright Act of 1976.⁵¹ The fair use doctrine basically incorporates as one open limitation the many exceptions and limitations that exist in the closed authors' rights systems. In practice, the doctrine has been raised in an endless variety of situations and combinations of circumstances and it was the legislator's intent, at the time of its codification in the Act, that the doctrine evolve with time, especially in view of rapid technological change. Initially a purely American concept, the doctrine of fair use has been making its way in the course of the last decade into the legislations of other countries, like the Philippines, South Korea, and Israel. The introduction of a fair use defense is under consideration in other countries as part of current discussions on copyright reform.⁵²

3.2. MORAL RIGHTS

The author of a copyrightable work enjoys economic/patrimonial rights and moral rights. Article 6bis of the Berne Convention⁵³ and later Article 5 of the WPPT 1996 WIPO Treaty have established the author's and the performer's moral rights. Many States have included in their national laws provisions aiming to respect the author's moral rights with variable scope.

Moral rights usually allow the author to demand (i) identification of his name as author of a given work (right of attribution) and (ii) respect of the integrity of his work which may not suffer alteration without his prior consent (right of integrity) and depending on countries, (iii) to exercise the exclusive right to disclose his work to the public for the first time (right of disclosure⁵⁴ and the right to withdraw his work from circulation

Whereas France acknowledges these four rights in its copyright law and considers "*le droit moral*" as perpetual, the USA⁵⁵ and Australia⁵⁶ introduced in their legislation the rights of authorship and attribution for specific works of art with some limitations.

⁵¹ Section 107 of the US Copyright Act of 1976 reads as follows: "*Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include -*

(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;

(2) the nature of the copyrighted work;

(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

(4) the effect of the use upon the potential market for or value of the copyrighted work. The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors."

⁵² The introduction of a fair use defence is being debated in Ireland and Australia.

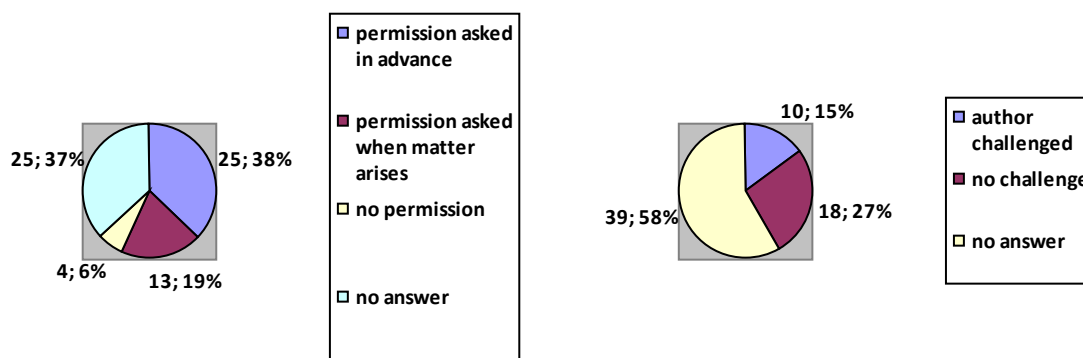
⁵³ Berne Convention, art. 6 bis (1928): "*(1) Independantly of the author's economic rights and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation, other modification of, or other derogatory action in relation to the said, which would be prejudicial to his honor and reputation. (2) The rights granted to the author in accordance with the preceding paragraph shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorized by the legislation of the country where protection is claimed. However, those countries whose legislation, at the moment of their ratification of or accession to this Act, does not provide for the protection after the death of the author of all the rights set out in the preceding paragraph may provide that some of these rights may, after his death, cease to be maintained. (3) The means of redress for safeguarding the rights granted by this Article shall be governed by the legislation of the country where protection is claimed."*

⁵⁴ France, Cour de Cassation, Chambre Civile 1, 25 Mars 2010, 09-67515; Cour de Cassation, Chambre Civile 1, 11 Décembre 2013, 11-22031.

⁵⁵ The United States joined the Berne Convention in 1988 and invoked a package of laws providing equivalent protection of the moral rights of art.6bis. Later in 1990, the Visual Artists Rights Act (VARA)

Many national laws and case law would enforce reasonable agreements with the author determining in advance which acts of alteration may infringe the artist's moral rights and should be authorized. Hence, in case of gift, bequeath, donation of works of art to a museum, the assignment deed usually contains provisions addressing the event of restoration of the work for preservation purpose or other purposes that may fall within the scope of the moral rights. Almost all museums which answered the questions on moral rights do not seem to consider that it was a real issue and said that an agreement was found most of the times and that they would not bypass the denial of consent of an author.

Respect of artist's moral right



3.3. SPECIFIC EXCEPTIONS AND LIMITATIONS

As already mentioned in section 2.1.3, the general mandates of museums include the acquisition and protection of cultural heritage, the communication and exhibition of cultural heritage and the support of education, study and research. Clearly, some acts necessary to achieve a museum's goal would involve making an act of reproduction and communication to the public if done without the rights holder's permission with respect to protected works and other subject matter. To enable museums to fulfil their mandates, national legislators have recognised the possibility for them to make, under certain conditions, specific acts of reproduction and of communication to the public. The specific exceptions and limitations examined below encompass the making of reproductions for preservation purposes, using works in exhibition catalogues, the exhibition of works, their making available for study and research purposes and the use of orphan works.

It must be noted however that it is not excluded that generally worded provisions in the copyright acts of some countries can also apply in the situations covered by the specific exceptions and limitations described below, even if museums are not mentioned expressly as beneficiaries of these exceptions.

3.3.1. Reproduction for preservation purposes

As part of their preservation mandate, museums must ensure that they have an accurate inventory of the objects in their collection and that these objects do not deteriorate, get lost or become obsolete. Making reproductions of works in their collection can therefore become

[Footnote continued from previous page]

introduced § 106A of the Copyright Act recognizing the author's rights of attribution and integrity for works of visual art.

⁵⁶ Moral rights were introduced into the Australian Copyright Act in 2000 which Act provides, for the duration of the copyright (with some exceptions), 3 rights: rights of attribution; right against false attribution; right against "derogatory treatment" to integrity of the work.

necessary. Digital technology appears as the ideal means to preserve or restore their collections. The question therefore arises of whether they are allowed to make digital reproductions of works and under what circumstances such reproductions could be allowed.⁵⁷

Can museums run a database of their works containing image reproductions for purposes of inventory and can they make this database accessible to the public? Can museums transpose works from one format to another, for example from one digital format to another, when conservation of the initial format is no longer assured because of obsolescence.

From the review of the relevant legislative provisions, it appears that the laws of a vast majority of forty-five countries studied here contain a provision permitting museums to make reproductions for preservation (including archiving) purposes. Recognising the museums' capital role in the preservation of a nation's cultural and historical heritage, the copyright systems of a number of industrialised countries expressly allow the digitisation of certain categories of works, albeit under more or less strict conditions. Most laws are silent however, on the question of whether museums may convert hardcopies of works into digital copies for purposes of preservation and restoration of their collections. The Chinese Copyright Act is one exception, where the Act clearly states that digital copies are permitted. Moreover, even if digitisation is allowed in certain circumstances, the law is not always clear on whether digitisation is permitted only for printed works or also for other types of works, like sound and audiovisual works.

Among them Australia, Austria, Canada, China, Ethiopia, Fiji, Lesotho, Lithuania, Mongolia, United Kingdom, Montenegro, Norway, Sierra Leone, Slovenia, Turkey have implemented a provision addressing this issue and allowing change of format for preservation purposes. Some statutes expressly limit the possibility to make reproductions to cases where the work is in danger of loss or deterioration. The Australian Copyright Act is a telling example of this type of regulation, where the reproduction of different categories of works is allowed under the condition that the officer in charge of the collection strictly adheres to the detailed prescriptions in the Act.

With respect to artistic works, for example, Article 51B(3) of the Australian Act states:

"If the work is held in the form of an original artistic work, the copyright in the work is not infringed by an authorized officer of the library or archives making up to 3 comprehensive photographic reproductions of the work from the original artistic work for the purpose of preserving it against loss or deterioration if the officer is satisfied that a photographic reproduction (not being a second-hand reproduction) of the work cannot be obtained within a reasonable time at an ordinary commercial price."

The Australian Act, and the Canadian Act along with it, requires that the work copied not be otherwise available for purchase new within a reasonable time at an ordinary commercial price. This requirement is logical when invoked in connection with books, films, sound recordings or other works that are widely distributed to the public. But as artistic works gathered in museums are often unique (e.g. paintings, sculptures etc.), the strict application of this requirement will either prove useless in practice, if the museum is in a position to prove that no other photographic reproduction exists on the market; or it may give rise to cumbersome search obligations on museums to look for such photographic reproductions before then can engage in making a preservation copy.

⁵⁷ See: L. Guibault, "The nature and scope of limitations and exceptions to copyright and neighbouring rights with regard to general interest missions for the transmission of knowledge: prospects for their adaptation to the digital environment", Copyright Bulletin December 2003.

Besides putting restrictions regarding the type of circumstances where reproductions are permitted, e.g. to prevent deterioration, loss or damage, the laws of Belgium, Bosnia Herzegovina, Bulgaria, Cyprus, Denmark, Estonia, Finland, France, Hungary, Iceland, Italy, Latvia, Luxembourg, Macedonia, and the Netherlands also prescribe that reproductions may only be effectuated by institutions that are not for direct or indirect economic or commercial advantage. This requirement actually stems from article 5(2)c) of the Europe Directive 2001/29/EC on Copyright in the Information Society, which allows Member States to adopt limitations in respect of specific acts of reproduction made by publicly accessible libraries, educational establishments or museums, or by archives, which are not for direct or indirect economic or commercial advantage.

Not all European Member States have implemented the optional limitation of article 5(2)c) of Directive 2001/29/EC and those that did have often chosen different ways to do it, subjecting the act of reproduction to different conditions of application and requirements. Some Member States only allow reproductions to be made in analogue format; others restrict the digitisation to certain types of works, while yet other Member States allow all categories of works to be reproduced in both analogue and digital form.⁵⁸ In addition, Member States have identified different beneficiaries of this limitation.

The scope of article 5(2) of Directive 2001/29/EC gave rise to interpretation by the Court of Justice of the European Union in a recent case.⁵⁹ In this case, the Darmstadt University Library was making reproductions of certain works in its collections for the benefit of its patrons. The Court ruled that this provision does not preclude Member States from granting to publicly accessible libraries covered by those provisions the right to digitise the works contained in their collections, if such act of reproduction is necessary for the purpose of making those works available to users, by means of dedicated terminals, within those establishments. However, *“such acts of reproduction, unlike some operations involving the digitisation of a work, also cannot be permitted under an ancillary right stemming from the combined provisions of Articles 5(2)(c) and 5(3)(n) of Directive 2001/29, since they are not necessary for the purpose of making the work available to the users of that work, by dedicated terminals, in accordance with the conditions laid down by those provisions”*. In other words, the Court excluded the possibility for cultural heritage institutions to rely on article 5(2)(c) for the digitisation of entire collections.

The situation appears quite different in the **United States**, where the digitisation of literary works in the Google Books project gave rise to a challenge under the fair use doctrine. The Google Books program consists of two programs: the *“Partner Program”* involving the hosting and display of material provided by book publishers or other rights holders, and the *“Library Program”* involving the digital scanning of books in the collections of several public and university libraries. These programs entailed several activities including making text available and offering the tools for online searching of the content of the books and displaying *“snippets”* of the books. After the rejection of the proposed settlement between The Authors Guild and Google in March 2011, The Authors Guild continued its lawsuit against Google and at the same time sued HathiTrust, a partnership of major academic research libraries that relies on Google Books Search to create a digital archive of library materials (the HathiTrust Digital Library, or *“HDL”*). Works within the HDL are used for three purposes: (1) full-text searches; (2) preservation; and (3) facilitate access for print-disabled persons. In both cases, the Federal District Court of New York had to rule whether

⁵⁸ L. Guibault, *“Why Cherry-Picking Never Leads to Harmonisation: The Case of the Limitations on Copyright under Directive 2001/29/EC”*, JIPITEC 2010-2.

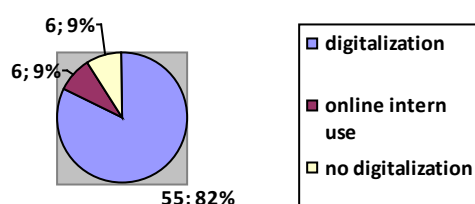
⁵⁹ Case 117-13, Decision of the Court of Justice of the EU, 11 September 2014 (Technische Universität Darmstadt/Eugen Ulmer KG)

digitization of books is a legal fair use of copyrighted material. The decisions were rendered by different judges (on October 10, 2012⁶⁰ and November 14, 2013⁶¹ respectively), both of whom ruled against the Authors Guild and in favour of the application of the fair use doctrine. It is therefore safe to assume that, should a museum digitise parts of its collection for preservation and archiving purposes, this practice would fall within the bounds of the fair use defence as well.

In addition to the possibility to invoke the fair use doctrine, section 108 of the US Copyright Act allows a museum library or archives to make up to three copies of a work and to distribute such copies for purposes notably of preservation and security; replacement of a damaged, lost or stolen copy.

The American example is more the exception than the rule: in most countries severe uncertainty persists regarding the scope of the preservation exception. It appears from the survey that 82 % of the 71 museums have at least one database with digitized inventory of their collections (references, text and images), mostly for internal use with limited access made available to the public and in this case, the photos are provided in low resolution. Most of museums stressed the significant costs of digitizing their whole collections and for many of them this is a work in progress.

Preservation through digitization



Hence the scope of the exception for preservation purposes vary amongst the countries, as regards types of works and their initial format (analogue or digital), the means of copying and the number of copies, as well as the definition of preservation purposes (security back-up copies, non commercial direct or indirect purposes). Besides, because of the variety of museum inventory databases which are not made available or which any way are not interoperable, it is often time consuming for museums to identify promptly rightholders to ease management of rights and cross-border lending and licensing.

3.3.2. Use of works in exhibition catalogues

Museums advertise permanent and temporary exhibitions in all sorts of ways. Most commonly, they make posters, and reproduce the work for all standard museum purposes, including specifically (but not limited to) exhibition and collections catalogues (whether offered for sale through commercial channels or not), hand-outs, brochures, didactic labels, magazines, journals, newspapers, and the like. In many cases, museums will wish to

⁶⁰ Text of the decision available from: <http://docs.justia.com/cases/federal/district-courts/new-york/nysdce/1:2011cv06351/384619/156>. It should be noted that The Authors Guild is appealing the decision in Authors Guild v. HathiTrust to the Second Circuit and announced it would also appeal the ruling in Authors Guild v. Google.

⁶¹ Text of the decision available from: <http://www.nysd.uscourts.gov/cases/show.php?db=special&id=115>

advertise their exhibitions by means of a reproduction of certain objects in the collection. Is such a reproduction permitted by law or is permission of the right holder necessary?

The need for museums to be able to exhibit and promote individuals works in their collections seems to be recognised among the exceptions and limitation provided by the copyright laws of several of the countries in the list in Appendix II. The laws of Belgium, Bosnia Herzegovina, Denmark, Estonia, Finland, France, Germany, Macedonia, Malta, Netherlands, Norway, Poland, Portugal, Serbia, Slovenia, Slovakia, Switzerland, Turkey and the United Kingdom all contain a reference to using a work in catalogues.

All countries are in the European continent, where the tendency is strong to implement the optional provision of Directive 2001/29/EC. Article 5(3)(j) indeed allows Member States to provide copyright exceptions and limitations for "*the purpose of advertising the public exhibition or sale of artistic works, to the extent necessary to promote the event, excluding any other commercial use*".

Hence, according to Article 33(2) of the Polish Act, the works exhibited in commonly accessible public collections such as museums, galleries, and exhibition halls, though only in catalogues and printed publications for promotion of such works and also in press and television current event reports within the limits justified by information purposes. Article 58 (2) of the German Act states that it is permissible to reproduce and distribute the works referred to in paragraph (1) in lists issued by public libraries, educational institutions or museums in connection with an exhibition with respect to content and time, or to take inventory, and with which no independent gainful purpose is served. This provision of the German Act was interpreted by the Federal Supreme Court as being also applicable to the reproduction of works in museum catalogues, even if the works are in storage because of lack of display space in the exhibition halls of the museum.⁶² Similarly, Article 26 of the Swiss Act provides that it is permissible to reproduce works found in publicly accessible collections in catalogues published by the administrator of that collection. This rule also applies to the issue of exhibition and auction catalogs.

French copyright law provides a long list of exceptions and limitations, notably for full or part reproductions of plastic or graphic works in catalogs for the purpose of judicial auction sales (art.L122-4 CPI). Yet there is no explicit exception of the reproduction of artwork in museum's exhibition catalog.

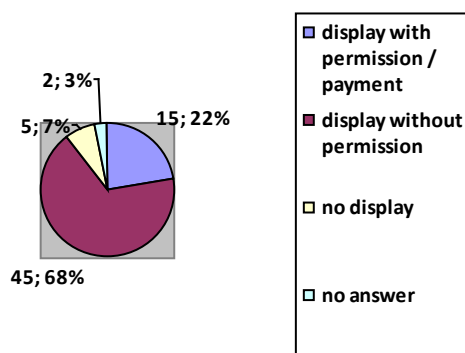
3.3.3. Exhibition of works

In theory, one would think that a museum that has acquired works of art, as part of its collection, should be able to display them to the public, rather than merely collecting and preserving them for internal use or storage. For disseminating works of art and culture to the public constitutes an important dimension of a museum's mandate. May a museum display an item when the museum does not hold the copyright in the item? For example, may a museum display a picture or sculpture of a painting without the prior permission of the rights holder? On this very question, the national laws of the countries surveyed take either one of three positions: or the right to exhibit a work constitutes an exclusive right of the rights owner for which permission must be obtained, or the act is expressly covered by an exception or limitation, or the physical ownership of a copy of a work expressly encompasses its exhibition to the public.

⁶² BGH GRUR 1994, 803 – *Museum-Katalog*.

The answers of the museums that have answered the questionnaire show that a majority of them display their art work in exhibitions without asking the rightholders' permission, bearing in mind that 7% % of them own only works in the public domain.

Displaying in public exhibitions in museum or abroad / Permission & payment of right owner



The copyright laws of some countries grant the copyright owner a right of exhibition. This is the case in **Canada**, where article 3(g) of the Act reserves to the copyright owner the right “to present at a public exhibition, for a purpose other than sale or hire, an artistic work created after June 7, 1988, other than a map, chart or plan”. This provision is completed by article 27(2)c) which states that it is an infringement of copyright for any person to exhibit in public “a copy of a work, sound recording or fixation of a performer’s performance or of a communication signal that the person knows or should have known infringes copyright or would infringe copyright if it had been made in Canada by the person who made it.”

French law is silent on the owner’s right of exhibition of copyrighted works belonging to him (whether a unique work like a painting or an embodiment of an original art piece). In practice, public exhibition of works owned by a museum in the museum does not or should not raise problems. The French High Court has confirmed that the author’s right to communicate his work to the public includes the right of public exhibition which entails that the rightholder retains the right to authorize the various modes of exhibiting his work to the public even if he no longer owns the object .⁶³

German law provides that the author enjoys a right of exhibition of his work which is understood as “the right to display in public the original or the copies of an unpublished artistic work or an unpublished photographic work”. However, article 44(2) of the Act provides that “the owner of the original of an artistic work or of a photographic work shall be authorised to exhibit the work in public even if it has not yet been published, unless the author has explicitly ruled this out at the time of the sale of the original.”

Other copyright acts, on the other hand, do make special arrangements for museums. Hence, according to article 37 of the **Serbian** Copyright Act, the owner of the original version of a painting, sculpture and photograph has the right to exhibit such item, regardless of whether it has been disclosed, unless expressly prohibited by the author in writing, at the time original version was disposed of. However, the second paragraph specifies that “no author may prohibit the displaying of the original version of a work belonging to a museum, art gallery or a similar public institution”. Similarly, article 69(2) of the Hungarian Copyright Act states that while the exhibition of fine art, artistic photographic, architectural and applied art creations is subject to the author’s authorization, no authorisation or payment of a fee is required for the exhibition of a work forming part of a public collection.

⁶³ Cass. 6 November 2002/n°00-21868 and 00-21867. These cases involved the public exhibition of photographs authorized by the owners of the prints but not by the photographer.

Finally, the laws of **Denmark** and **Poland** specifically provide that where a work has been published or if a copy of a work of art has been transferred to other parties by the author, the published or transferred copies may be exhibited in public.

Hence it appears that the right of exhibition of the owner of a copyrighted work is not a question harmonized throughout the EU. There may be several reasons for this, notably:

- There is a long standing and useful distinction between ownership of intellectual property rights and ownership of a physical medium embodying the original work ;
- The right of exhibition has an uncertain or mixed nature at best; sometimes perceived as a right of disclosure of the work which is akin to a moral right or sometimes is considered as an economic right, with the result that, depending on the countries, said right may be exercised only once or several times and may be or may not be subject, as such, to a royalty payment. Besides, in a digital creative environment, the distinction of a physical medium may not be so clear as well as the relevance of distinguishing virtual versus physical exhibitions.

As a result of the absence of specific provisions regarding such right of exhibition, museums may have to carry a legal search and address the issue when mounting domestic exhibitions with foreign works as well as exhibitions abroad displaying works they own.

As a result too, museums are now better aware of the importance of negotiating an assignment of rights, whenever possible, when they acquire property of a physical piece of art (whether by donation, bequeath, purchase).

3.3.4. Communication to the public on the premises of the museum

One of the main mandates of museums is to communicate the works contained in their collections to the public. This traditionally occurs by allowing visitors to have access to and consult the works that are kept on the physical premises of the museum. Displaying works through means of digital technology is more difficult as the current legal framework would generally seem to leave little to no room for this type of communication to the public. The need for museums to communicate to the public the works in their collections seems to be recognised among the exceptions and limitation provided by the copyright laws of several of the countries in the list in Appendix II. The laws of Australia, Belgium, Bulgaria, Chile, China, Cyprus, Denmark, Finland, France, Germany, Hungary, Iceland, Italy, Latvia, Lithuania, Macedonia, Malta, Montenegro, Netherlands, Norway, Portugal, Sierra Leone, Spain and the United Kingdom all contain a provision on the communication to the public of works contained in the collection of museums.

According to article 71 of the Copyright Act of **Chile** the utilisation of a work in a museum does not amount to a communication to the public, provided that such utilisation always takes place without motives for profit.

In **Europe**, article 5(3)n) Directive 2001/29/EC allows Member States to adopt an exception to the right of communication to the public and the making available right for the purpose of research or private study by means of dedicated terminals located on the premises of such establishments. Not only is the implementation of this provision not mandatory, but even where it has been implemented, its scope remains extremely narrow: a work may only be communicated or made available to individual members of the public, if each patron establishes that the use is for his exclusive research or private study. The works may only be communicated or made available by means of dedicated terminals on the premises of non-commercial establishments, which excludes any access via an extranet or other

protected network connection that users can access at a distance. Moreover, this provision only finds application insofar as no purchase or licensing terms provide otherwise, which is in practice rarely the case.

In view of the uncertainty around the scope and workings of article 5(3)n) of Directive 2001/29/EC, the Court of Justice of the EU was asked to give its interpretation in a request for a preliminary ruling from the German Supreme Court.⁶⁴ The decision in the Darmstadt case came down at the time of writing these lines. Essentially the Court ruled that where an establishment, such as a publicly accessible library gives access to a work contained in its collection to a “public”, namely all of the individual members of the public using the dedicated terminals installed on its premises for the purpose of research or private study, that must be considered to be “making [that work] available” and, therefore, an “act of communication” for the purposes of Article 3(1) of that directive. Such a right of communication of works enjoyed by the establishments covered by article 5(3)(n) of Directive 2001/29 would risk being rendered largely meaningless, or indeed ineffective, if those establishments did not have an ancillary right to digitise the works in question. Those establishments are recognised as having such a right pursuant to Article 5(2)(c) of Directive 2001/29, provided that “specific acts of reproduction” are involved. That condition of specificity must be understood as meaning that, as a general rule, the establishments in question may not digitise their entire collections.⁶⁵

3.3.5. Use of orphan works

Objects from recent times tend to be underrepresented in the online collections of museums, as the copyright on these objects may not yet have expired. In most cases, the cultural heritage institution needs permission from the copyright holder to reproduce and make the works available online.⁶⁶ Due to the territorial nature of copyright, permission is needed for all countries from which the website can be viewed, which essentially means that the cultural heritage institution needs to clear the rights for every country in the world.⁶⁷ This can genuinely limit the objects being published online, as it is unquestionably very difficult to find and contact the rights holders for every single copyrighted object among the thousands or millions of objects that institutions have in their collection. It becomes even more difficult when the author or rights holder of a copyrighted work is unknown or unlocatable, as this makes it impossible to acquire permission for the dissemination of the “orphaned” work.⁶⁸ The challenge of identifying and locating rights holders would be reduced in practice, if cultural heritage institutions were able to rely on rights holder information contained in registries of collecting societies and publishers, or in kept the databases of libraries. Unfortunately, there exists to this day no comprehensive database where all rights management information on copyright protected works.

⁶⁴ Case 117-13, Decision of the Court of Justice of the EU, 11 September 2014 (Technische Universität Darmstadt/Eugen Ulmer KG), cited above.

⁶⁵ Id., para. 42-45.

⁶⁶ Except when rights were transferred with the purchase of the work, but normally this is not the case.

⁶⁷ P.B. Hugenholtz, “*The Last Frontier: Territoriality*”, in: M. van Eechoud, P.B. Hugenholtz, S. van Gompel, L. Guibault and N. Helberger, “*Harmonizing European Copyright Law: The Challenges of Better Lawmaking*”, Kluwer Law International: Alphen aan den Rijn 2009, p. 309.

⁶⁸ Commission Staff Working Paper, “*Impact Assessment on the cross-border online access to orphan works*” accompanying the document “*Proposal for a directive of the European Parliament and of the Council on certain permitted uses of orphan works*”, (SEC(2011) 615 final), p. 11-12.

Of the forty-five countries examined, only the Member States of the European Union have implemented or are in the process of doing so a specific regime allowing cultural heritage institutions, like museums, to use orphan works.⁶⁹

The European Orphan Works Directive (OWD)⁷⁰ is one measure put in place to solve the problem of orphan works, understood as copyright protected works of which the rights holder is unknown or cannot be located. The OWD is a minimum harmonization directive, introduced for the particular purpose of encouraging large-scale digitisation initiatives.⁷¹ When the rights holder of a work cannot be identified or located, a cultural heritage institution cannot acquire the permission necessary to disseminate the work through the Internet. As a result cultural heritage institutions are unable to facilitate online-access to large parts of their collections without infringing copyright. The Directive creates a legal framework designed to prevent the infringement of rights from occurring and to favour the cross-border digitisation and dissemination of works within the single market. The Directive achieves this essentially by targeting the specific problem of the legal determination of orphan work status and its consequences in terms of the permitted users and permitted uses of works or phonograms considered to be orphan works. The OWD allows designated cultural institutions to reproduce and make available works that have been declared “*orphan*” following a diligent search for the rights holders. The OWD also introduces the principle of “*mutual recognition*” according to which work that is declared orphan in one Member State shall be deemed and orphan work in all Member States and can be used without the consent of the unknown rightholder. The OWD does not cover some works, like photographs that are not embedded in another work, which hinders the use by museums of the many “*orphan*” photographs which they often have in their collections/archives⁷². Member States must take the necessary measures to ensure that the information concerning the search is recorded in a single publicly accessible online database established and managed by the Office for Harmonization in the Internal Market (“*the Office*”) in accordance with Regulation (EU) No 386/2012. To that end, Member States must forward that information to the Office without delay upon receiving it from the organisations concerned. The new database of the Office is not yet fully functioning but it should become operational within the near future, as the Member States start forwarding information about the orphan works contained in the collections of their institutions.

Outside Europe, the orphan works problem is dealt with in different ways. **Canada** set up a legal regime whereby the Copyright Board of Canada (CBC) may authorise the use of orphan works defined as published works to the third party showing that he carried reasonable searches to find the rightholder and willing to pay the requested fee. The system is in place since 1989 but as of January 2015, only 300 requests have been filed and 281 licenses granted.⁷³

⁶⁹ Countries that have implemented the OWD : Austria, Denmark, Estonia, Finland, France, Germany, Italy, Latvia, Lithuania, Netherlands, Portugal, Romania, Slovakia, Spain, United Kingdom; Countries that must still implement the OWD: Belgium, Bulgaria, Cyprus, Hungary, Luxembourg, Malta, Poland, Slovenia

⁷⁰ Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works (2012 OJ L 299/5).

⁷¹ S.J. van Gompel, “*Het richtlijnvoorstel verweesde werken - Een kritische beschouwing*”, *AMI* 2011-6, p. 206, E. Rosati, “*The Orphan Works Directive, or throwing a stone and hiding the hand*”, *Journal of Intellectual Property Law & Practice* 2013, p. 306.

⁷² This concern was highlighted by the National Board of Antiques in Finland which has received some large photo-archives from some organizations and several legal issues regarding these photos are unclear.

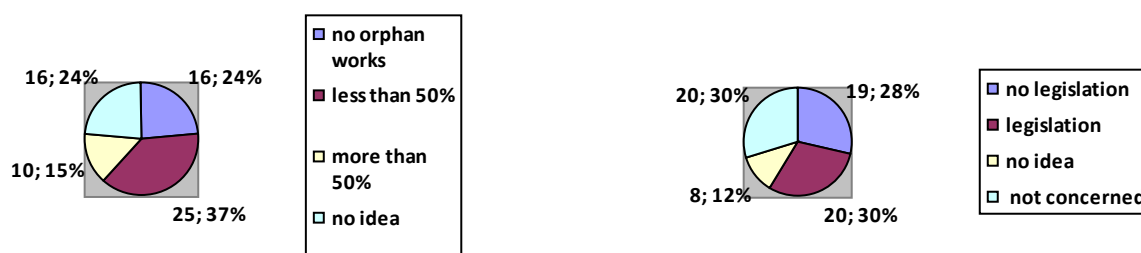
⁷³ J. De Beer & M. Bouchard, “*Canada’s ‘Orphan Works’ Regime: Unlocatable Copyright Owners and the Copyright Board*”, 10 *Oxford Univ. Commonwealth L.J.* 215, 242 (2010); Copyright Board of Canada, Decisions-Unlocatable Copyright Owners, Copyright Board of Canada (Jan. 28, 2015), <http://www.cb-cda.gc.ca/unlocatable-introuvables/licences-e.html>

Countries like Japan, Fuji Islands, and India have implemented a similar system run by a public entity.

In the US, orphan works concept appeared in the mid-2000 after a massive digitisation initiative of libraries funds that wanted to upload works which right holders could not be found. Discussions have been conducted since 2005 to enable potential users to upload such works and put them online with the support of companies like Google. Google also settled in the fall of 2014 a lawsuit over copyrighted material in Google Books which had been initiated by a group of photographers, visual artists and affiliated associations. In December 2014, UC Berkeley and American University researchers released a New Statement on Best Practices in the use of orphan works by libraries, archives and other institutions.⁷⁴ The new Statement of Best Practices in Fair Use of Collections Containing Orphan Works for Libraries, Archives, and Other Memory Institutions is the result of intense discussion group meetings held since 2012 with over 150 professionals from libraries, archives and other institutions from across the United States. The Statement lays down guidelines on how to apply fair use to collections with orphan works and how to make them available online. It outlines the fair use rationale and identifies best practices in the preservation of, and access to, those collections.

The way of dealing with orphan works, whether published or unpublished, is a concern for many museums that answered the questionnaire.

Orphan works



This is an area that deserves more guidance provided to the museums that are not aware of the legal regime in their countries and may also mistake the status of orphan works with the status of out-of-print works.

3.4. GENERAL EXCEPTIONS AND LIMITATIONS

While specific exceptions and limitations on copyright for the benefit of museums will tend to address the needs of cultural heritage institutions in carrying out their standard operations, general exceptions will generally aim facilitating the dissemination and use of works by the public. Relevant exceptions and limitations in this context concern the reproduction of works for private purposes, reproductions by means of reprography and use of works for educational and scientific research purposes. These exceptions and limitations therefore cater to the needs of the patrons of the museums.

⁷⁴ <http://www.cmsimpact.org/fair-use/best-practices/statement-best-practices-fair-use-orphan-works-libraries-archives>

3.4.1. Reproduction for private purposes

In theory, copyright does not protect against acts of consumption or reception of information by individuals. The view that copyright protection does not extend to the private sphere of the individual was well accepted by copyright scholars during the first part of the twentieth century. Indeed, the private or otherwise personal use of copyrighted works without authorisation of the rights owner was seen as enabling individuals to participate fully in the intellectual life and to develop their personality. The notion that copyright protection does not extend into the private sphere could also be inferred from the definition of a number of exclusive rights granted to authors under the early texts of the Berne Convention and under most national copyright acts of the time.

The Berne Convention does not regulate reproductions for private purposes expressly. Instead it establishes in article 9(2) a general norm, otherwise known as the “*three-step-test*”, for the recognition of limitations on the reproduction right. This norm, which was first introduced in the Berne Convention during the Stockholm Revision Conference of 1967, has in fact become the international standard for the adoption and application of limitations on copyright and related rights. In fact, the negotiations leading to the adoption of the recent international instruments failed to result in the recognition of any new limitation other than the three-step test. Article 13 of the TRIPS Agreement extends the application of the three-step test to all minimum rights recognised under the Treaty. Articles 10 of the WCT and 16 of the WPPT similarly apply the Berne formula to the minimum rights established by their respective texts. The test provides for the right of a Contracting Party “*to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author*”. All reproductions permitted under article 9(2) of the Berne Convention must be for a specific purpose and conform to the two conditions set out in the article.

Article 9(2) of the Berne Convention is often seen as the ground for adoption of the private use exception. However, the historical evolution of the copyright regime and the technological developments of the last fifty years have brought commentators to nuance their position twice with regard to the scope of copyright protection and the limitation for private use, first after the advent of the tape-recorder and the photocopy machine, and second with the emergence of the digital networked environment. Digital networked technology now offers users the possibility to reproduce a work at low cost in countless amounts of perfect copies and to transmit these to an unlimited number of people across the globe, thereby posing a threat to the economic interests of rights owners. With the advent of the Internet, the private copying exception has remained with a more or less flexible scope depending on the countries. Yet the system of levies for private copying⁷⁵ is often perceived as complex and sometimes ill-fitted to evolving digital technology and works.

As shown from the sample of the forty-five countries listed in Annex II, the possibility to make reproductions for private purposes is recognised around the world as one of the most important exceptions on copyright. This exception takes various forms, however, being sometimes restricted to a certain amount of copies, to certain categories of works (published or unpublished; literary, musical, audiovisual or otherwise), or to the payment of compensation etc. In its simplest form, the private use exception provides that a “*lawfully published work may be reproduced and translated by a natural person for the purposes of personal use without the authorisation of its author and without payment of remuneration on the condition that such activities are not carried out for commercial purposes.*”⁷⁶

⁷⁵ A royalty is levied on blank recording media used by individuals for private purposes.

⁷⁶ Estonian Copyright Act, art. 17.

In **Europe**, the biggest uncertainty with respect to the private copying exception comes from the wording of article 5(2)(b) of the Information Society Directive, which permits Member States to adopt an exception:

“In respect of reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, on condition that the rights holders receive fair compensation which takes account of the application or non-application of technological measures referred to in Article 6 to the work or subject-matter concerned.”

At least three areas of uncertainties emerge in connection with this provision. First, since the implementation of this provision was left at the discretion of the Member States, not all of them have chosen to transpose it into their national legal order. Hence, the United Kingdom and Ireland currently admit in their copyright law only a very narrow private copying exception for purposes of time-shifting of broadcasting programs.⁷⁷ All other forms of private copying in these countries are subject to the authorisation of the rights owner. Second, in countries where 5(2)(b) of the Directive has been implemented, the Directive requires that “*fair compensation*” be paid to rights holders for acts of private copying.⁷⁸ To the exception of Recital 35⁷⁹, the Directive itself provides little guidance in interpreting this notion. By introducing the concept of “*fair compensation*” the framers of the Directive have attempted to bridge the gap between those (continental-European) Member States having a levy system that provides for “*equitable remuneration*”, and those (such as Ireland and until recently the United Kingdom) that have so far resisted levies altogether. In practice, Member States have set up widely diverging levy regimes, making any harmonising effort extremely complex. Third, the Directive prescribes that the level of fair compensation should take full account of the degree of use of technological protection measures. This implies that compensation would be wholly unjustified in cases where private copying has been made technically impossible, or at least practically infeasible, as in the case of DVD’s. The Directive gives no indication, however, regarding the manner in which account must be taken of the use of technical protection measures.⁸⁰

In the **United States**, reproductions for private use would typically be assessed pursuant to the criteria of the fair use doctrine as codified in section 107 of the Copyright Act 1976.

3.4.2. Reprographic reproduction

The exception allowing reproductions for private purposes and the exception allowing reproductions by means of reprography share common roots. With the development of reprographic equipment, national legislatures started regulating this activity under specific provisions.

⁷⁷ Gowers Review of Intellectual Property, Crown Copyright, November 2006, p. 62.

⁷⁸ P.B. Hugenholtz, L. Guibault and S. van Geffen, “*The Future of Copyright Levies in a Digital Environment*”, report commissioned by the Business Software Alliance, March 2003, p. 37.

⁷⁹ Information Society Directive, Recital 35 which reads as follows: “*In certain cases of exceptions or limitations, rightholders should receive fair compensation to compensate them adequately for the use made of their protected works or other subject-matter. When determining the form, detailed arrangements and possible level of such fair compensation, account should be taken of the particular circumstances of each case. When evaluating these circumstances, a valuable criterion would be the possible harm to the rightholders resulting from the act in question. In cases where rightholders have already received payment in some other form, for instance as part of a license fee, no specific or separate payment may be due. The level of fair compensation should take full account of the degree of use of technological protection measures referred to in this Directive. In certain situations where the prejudice to the rightholder would be minimal, no obligation for payment may arise.*”

⁸⁰ Hugenholtz, Guibault and van Geffen 2003, chap. 6.

A number of countries have chosen to regulate the reprographic use of protected material by educational institutions, libraries and other institutions through the implementation of a non-voluntary licence regime. According to such a regime, levies may be imposed following either one of four ways: 1) on the sale of reproduction equipment, such as photocopy machines, and facsimile machines; 2) proportional to the amount of copies realised in a year; 3) proportional to the number of students or employees; or 4) a combination of either one of the three preceding systems. Reprography regimes are usually not limited to schools or libraries, but may also extend to all reproductions made by governmental organisations, enterprises, administration offices, and copy shops where reprographic equipment is available. The sums paid under reprography regimes are administered by a collective society, often on a mandatory basis. In the Nordic countries, reprographic reproduction outside the field of private use - is subject to the so-called extended collective agreement license.⁸¹ As a rule, the obligation to pay the remuneration imposed on reprographic equipment does not lie on the end-user, but rather on the manufacturers, importers, or acquirers of such devices.

In some countries, copying under the reprography regime is not authorised if, or to the extent that, licences are available authorising the copying and the person making the copies knew or ought to have been aware of that fact.⁸² In other countries, like the United States, there is no reprography regime in force for the making of reproductions of works. Unless such activities qualify as a fair use, users, like museums, must obtain a licence from the rights holder in order to make photocopies of works.⁸³

3.4.3. Use for educational and scientific research⁸⁴

From the point of view of copyright law, the use of copyrighted material in educational institution and in research follows a similar pattern, the primary objective of which is to disseminate existing knowledge.

Museums play an important role in support of education and scientific research. Educational purposes are generally understood and defined as non-commercial instruction or curriculum-based teaching by educators to students at non-profit educational institutions, and research and scholarly activities, defined as planned non-commercial study or investigation directed toward making a contribution to a field of knowledge and non-commercial presentation of research findings at peer conferences, workshops, or seminars.⁸⁵ Perhaps the biggest difference between lower or higher educational and research institutions lies in the fact that the latter are not only users of copyrighted material but also producers of new works. In practice, educators strive to adapt their teaching methods to new learning environments. To catch the students' attention and to improve their learning skills, educators rely heavily on contemporary books, newspapers, magazines, photographs, videos, slides, sound recordings, broadcasting programs and other media.⁸⁶

⁸¹ Consolidated Act No. 164 of Denmark of March 12, 2003, art. 50; Finnish Copyright Act [Law No. 404 of July 8, 1961, as last amended by Law No. 365 of April 25, 1997], art. 13; Swedish Copyright Act [Act No. 2 of May 12, 1961, as last amended by Law No. 27 of June 2, 1995], art. 26i; Norwegian Copyright Act [Law No. 729, of December 30, 1960, as last amended by Law No. 1274, of December 7, 1995], art. 36.

⁸² UK Copyright, Designs and Patents Act 1988, art. 36(3).

⁸³ *American Geophysical Union, et al v. Texaco Inc.*, 37 F.3d 881 (2nd Cir. 1994).

⁸⁴ It must be reminded here that many States have a long-existing system of legal deposit which UNESCO has intensively promoted since the 1950's in particular towards new independent countries. In addition to the collection and preservation, by designated national entities, of all documents produced and their indexation in national bibliographies, these documents (printed, graphic, photographic, sound recordings, audiovisual works...) can be generally communicated for purposes of research and study.

⁸⁵ United States Patents and Trademark Office, The Conference on Fair Use, Final Report to the Commissioner on the Conclusion of the Conference on Fair Use, Washington D.C., Nov. 1998, p. 35.

⁸⁶ Educational Multimedia Fair Use Guidelines Development Committee Fair Use Guidelines For Educational Multimedia, Washington D.C., July 17, 1996, § 1.2.

While the use of current material undeniably contributes to the intellectual development of students and to the progress of scientific research, it is surprising to note that limitations adopted for the benefit of educational and research institutions vary widely from one country to the next.⁸⁷ This is so because the regulation of the “*utilisation of works by way of illustration*” for teaching purposes has been left to the discretion of national legislations.⁸⁸ Under Article 10(2) of the *Berne Convention*, such utilisation is lawful if it is made for the purposes of teaching, if it is “*justified by the purpose*” and if it is “*compatible with fair practice*”. Illustrations can be made by means of publications, broadcasts or sound and audio-visual recordings, provided that they fulfil the listed requirements. Article 10(2) has been interpreted to apply to teaching at all levels, if dispensed in educational institutions and universities, municipal, state and private schools, but not to teaching dispensed outside these institutions such as general public and adult education facilities⁸⁹. As in the case of quotations, the utilisation of works for teaching purposes is not subject to any determined quantitative restriction. The words “*by way of illustration*” do impose some limitation on the size of the borrowing, but would not exclude the use of the whole of a work in appropriate circumstances⁹⁰.

If countries may make exceptions to copyright in “*certain special cases*” under Article 9 (2) of the Berne convention, which include public interest policies, the same article sets the famous triple test pursuant to which the exempted reproduction may not conflict with a normal exploitation of the work nor unreasonably prejudice the legitimate interests of the author.

The laws of the vast majority of the forty-five countries listed in Annex II recognize an exception for purposes of education and scientific research. This exception, just as the exception for reproductions for private purposes, is cast in many different ways in the national legislation. The wording of said exception, whether general or extremely detailed, often raise questions on ways to interpret it.

In **Europe**, article 5(3)(a) of the Information Society Directive allows Member States to provide for exceptions in the case of “*use for the sole purpose of illustration for teaching or scientific research, as long as the source, including the author's name, is indicated, unless this turns out to be impossible, and to the extent justified by the non-commercial purpose to be achieved*”. This exception is optional; Member States may decide whether to implement it or not. As a result, Member States have different rules and regulations in this context, where some countries recognize no research exception at all (like The Netherlands and Spain). The assessment made by De Wolf and partners is essentially that the research exception is generally vague and unevenly implemented at national level, which may put some researchers at a disadvantage.⁹¹

⁸⁷ Guibault 2002, p. 69.

⁸⁸ *Berne Convention*, art. 10(2) which reads as follows: “*It shall be a matter for legislation in the countries of the Union, and for special agreements existing or to be concluded between them, to permit the utilization, to the extent justified by the purpose, of literary or artistic works by way of illustration in publications, broadcasts or sound or visual recordings for teaching, provided that such utilization is compatible with fair practice*”.

⁸⁹ Stewart and Sandison 1989, p. 138.

⁹⁰ Ricketson 1987, p. 496.

⁹¹ De Wolf and partners, p. 403.

Furthermore Article 5.3 (n) allows the communication, for the purpose of research or private study, to individual members of the public by dedicated terminals on the premises of copyrighted content which is not subject to purchase or licensing terms⁹².

The scope of the restriction of communication solely on the premises of libraries, educational institutions and museums, was recently submitted for interpretation to the European Court of Justice which, in its decision of 11 September 2014 (C-117/13 above mentioned), admitted online communication of content for research purposes subject to authorisation and compensation of the copyright holder for printing on paper or recording on a USB key by the recipient of the content.

The **UK** overhauled its copyright law in 2014 and now researchers enjoy broader means to carry a non commercial research. They may for instance copy limited excerpts of all types of copyright works provided they lawfully accessed to said content and provided as well that they sufficiently acknowledge the original work. Text and data mining is allowed for non commercial research if researchers have lawful access to the works. Pursuant to the most recent UKIPO brochure on exceptions to copyright for libraries, archives and museums, *“the law has changed so that all types of published copyright works are now covered by the provisions in copyright law allowing limited copying for non commercial research and private study. Educational institutions, libraries, archives and museums are now permitted to offer access to copyright works on their premises at dedicated electronic terminals for research and private study”*.

In **France**, the specific educational exception allows use of copyrighted material by educational institutions which is limited to the right to reproduce and communicate excerpts of works (except educational works and musical scores) for the sole purposes of illustrating in the course of education and research, and subject to compensation. With the introduction in 1995 of a system of mandatory collective administration of the reprography right, schools and other educational institutions were finally allowed, under this general reprography regime and against payment of an equitable remuneration to the rights owners, to make reproductions of works for classroom use.

Other countries, like **Australia**, address the research exception under a fair dealing broader exception. In **Malaysia**, section 13 (2)(a) of the Copyright Act has a fair dealing provision saying *“fair dealing including for purposes of research private study, criticism, fair review or the reporting of news or current events : provided that it is accompanied by an acknowledgment of the title of the work and its authorship, except that no acknowledgment is required in connection with the reporting of news or current events by means of a sound recording , film or broadcast.”*⁹³

⁹² Art. 5.3. Member States may provide for exceptions or limitations to the rights provided for in Articles 2 and 3 in the following cases:

(a) use for the sole purpose of illustration for teaching or scientific research, as long as the source, including the author's name, is indicated, unless this turns out to be impossible and to the extent justified by the non-commercial purpose to be achieved;

(b) use by communication or making available, for the purpose of research or private study, to individual members of the public by dedicated terminals on the premises of establishments referred to in paragraph 2(c) of works and other subject-matter not subject to purchase or licensing terms which are contained in their collections;

Art.5.2 c) provides the following Member States may provide for exceptions and limitations to the reproduction right provided for in Article 2 in the following cases :

c) in respect of specific acts of reproduction made by publicly accessible libraries, educational establishments or museums, or by archives, which are not for direct or indirect economic or commercial advantage.

⁹³ Ratnaria Wahid and Khadijah Mohamed, *“A cobweb of exception to copyright law for research purposes”*, JICLT (Journal of International Commercial Law and Technology, Vol.9, n°4 (2014)

Canada also recognizes a fair dealing exception. To be exempted under the fair dealing exception, the purpose of the dealing must qualify as one of the allowable purposes under the Copyright Act, namely research, private study, education, parody, satire, criticism, review or news reporting.⁹⁴ Secondly, the dealing must be fair. In a 2004 decision, the Supreme Court of Canada broadened the scope of the exception significantly. In *CCH Canadian Ltd. v Law Society of Upper Canada*, a landmark case⁹⁵, the Court was asked to decide upon the application of the fair dealing defence for purposes of research and private study. The Court ruled that “*these allowable purposes should not be given a restrictive interpretation or this could result in the undue restriction of users’ rights*” (para. 54).

In **Thailand**, the Copyright Act 1994 mentions the three-step test and provides a list of 8 permitted purposes or uses that can be applied to all types of works, amongst which: exceptions for research and studies; reproductions by teachers for instruction purposes; reproductions by educational institutions. Implementation of these exceptions seems to raise issues of interpretation in Thailand, notably on the implementation of three-step test in the Berne convention and the TRIPS Agreement.⁹⁶

3.5. RESALE RIGHTS

The resale right is the royalty received by authors - and their heirs - of original graphic and plastic artworks when their works are resold by an art market professional. This way, the author and his heirs can receive consideration for successive transfers of the work. Thus, authors and their heirs are associated to the success of their work.

The specificity of visual artists is that their primary source of income is the material selling of their original works. While auction houses and galleries make their business by taking commissions, it would be paradoxical that artists do not benefit from the profit generated by their works on the art market.

This is why the resale right, which is not applicable to first transfers, was created. It also helps to restore the balance with the authors of other creative sectors (composers, screen-writers and film directors, writers...) whose rights of reproduction and communication to the public cannot be compared with those of visual artists.

Born in France in 1920, the resale right was created in response to the report that Jean-François Millet's family was living in poverty while his painting *The Angelus* (1858), purchased from the artist for FRF 1,200, was re-sold for FRF 580,000 in 1889 at the Secretan sale. The owner of the painting made a huge profit from this sale, whereas the family of the artist lived in poverty. Then, a drawing by Forain prior to the First World War is known to have ignited a major campaign in the popular press in favour of the resale right. The campaign depicted two children in rags outside an auction room. While the auctioneer says: “*Gone for 100,000 francs!*” one child says to the other: “*Look! They're selling one of Dad's paintings!*”

For the next half-century after France adopted a resale royalty law, other European countries recognized this right: Belgium in 1921, Poland in 1935 and Italy in 1941. In 1948, it was established internationally by Article 14ter of the Berne Convention at the International Intellectual Property Organization (WIPO), but non-binding. Harmonized in Europe by the

⁹⁴ “*Education, parody or satire*” added by the Canadian Modernization Act of 2012 (formerly Bill C-11).

⁹⁵ *CCH Canadian Ltd. v Law Society of Upper Canada*, 2004 SCC 13 at para 48, [2004] 1 SCR 339 [CCH] <http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/2125/index.do>.

⁹⁶ “*Copyright exceptions for research, study and libraries in Thailand*”, Thailand Law Journal, 2014 Spring issue 1, vol.17 at <http://www.thailawforum.com/articles/thai-copyright-exceptions-2.html>

Directive of 27 September 2001, that right is now recognized by 65 states (members of the European Union of course, but also Australia, Brazil, Russia, Mexico, Tunisia, Senegal...).

Currently, the top two countries in terms of the art market are considering introducing this right. Indeed, the United States draft bills were tabled in both houses of Congress so that the resale right, which already exists in the State of California⁹⁷, shall become a federal law. China has included this right in the revision of the law on intellectual property. Bills were also filed in Canada and Switzerland. And at WIPO, more and more voices are calling for the right to become mandatory within the Berne Convention.

❖ **Beneficiaries of resale royalty**

Authors and, after their death, their heirs, are usually eligible for resale royalty right. However, laws sometimes restrict the beneficiaries.

Under Chilean law, only the author is entitled to the resale right. Under French law, the resale right is transferred to the artist's legal heirs (namely descendants, ascendants, collateral relations, excluding legatees, even universal) subject to the beneficial ownership awarded to the surviving spouse. And under most laws, an author and all his heirs are entitled to the resale royalty right (EU, Congo, Venezuela...). Under all laws, it is an inalienable and unrenounceable right. This means that the artist cannot assign it, donate it or bequeath it.

❖ **Works of art to which the resale right applies**

The resale right concerns original work of visual art.

According to different laws, it refers to "*original works of fine arts*" (Russian law), "*original graphic and three-dimensional works and manuscripts*" (Senegal law), "*works of three-dimensional art*" (Venezuelan law).

The European directive defines the scope very precisely:

"1. 'original work of art' means works of graphic or plastic art such as pictures, collages, paintings, drawings, engravings, prints, lithographs, sculptures, tapestries, ceramics, glassware and photographs, provided they are made by the artist himself or are copies considered to be original works of art.

2. Copies of works of art covered by this Directive, which have been made in limited numbers by the artist himself or under his authority, shall be considered to be original works of art for the purposes of this Directive. Such copies will normally have been numbered, signed or otherwise duly authorized by the artist."

The resale right may only apply to works of art made by the artist himself. It can also apply to works of art made with his permission.

Serbian law only admits works of art made by the artist's own hand: "*As the originals of the works of fine art, from paragraph 1 of this article, are considered to be pictures, drawings, collages, graphics, photographs, tapestries, sculptures, works of art made in ceramics, glass or other material and similar works made by the artist's own hand.*"

⁹⁷ The US District Court, Central District Court of California held that the California Resale Royalty Act was violating the Commerce clause of the US Constitution. An appeal is pending before the US Court of Appeals, Ninth Circuit (Estate of Robert Graham et al. V. Sotheby's, Inc. Case number 12-56077).

Whereas Norwegian law allows a resale right for works of art made with the artist's permission: "*Original works of art are defined for this purpose as artworks produced in a limited number of copies by the artist him/herself or with his/her permission.*"

Usually, the author of an architectural work or a work of applied art may not object to its owner renting out the work or construction.

Under Australian law, manuscripts are not eligible to resale right, whereas they are eligible in many countries.

❖ Sales eligible for resale royalty

The resale right applies to all sales subsequent to the first transfer of ownership by the author him/herself.

The resale right applies when an art market professional acts as seller, buyer or agent. Under some laws, it only applies to public auctions.

Under Ecuadorian law, the resale right applies "*at a public auction, or where a dealer in such works is directly or indirectly involved in such resale as buyer, seller or agent*".

❖ Liability to pay resale royalty

The person by whom the royalty is payable is, according to most laws, the seller.

However, some countries provide that it can be borne by the seller and the buyer.

- ❖ A debate recently arose as to the party liable for paying the fee: is it only the seller according to French law, or can the contract provide that buyer is liable? The European court answered this question on February 26th 2015 and decided that a national legislation, such as French law, designating the seller as liable for the costs of the resale right does not prevent contractual arrangements allowing the buyer to bear all or part of such a liability.⁹⁸

❖ Rates

The levy of the royalty sometimes applies to the pre-tax price, sometimes on the gross price. Sometimes, the law does not provide anything on that subject.

The European directive provides that the resale royalty should be calculated based on the selling price net of tax.

Most countries do not provide any application threshold (Belarus, Burkina Faso, Chile, Ecuador...). However, Western countries generally provide an application threshold. In the

⁹⁸ CJUE, February 26th 2015, *Christies c/ Syndicat National des Antiquaires*, "Article 1(4) of Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art must be interpreted as not precluding the person by whom the resale royalty is payable, designated as such by national law, whether that is the seller or an art market professional involved in the transaction, from agreeing with any other person, including the buyer, that that other person will definitively bear, in whole or in part, the cost of the royalty, provided that a contractual arrangement of that kind does not affect the obligations and liability which the person by whom the royalty is payable has towards the author."

European Union, Member States have to provide a minimum price that is lower than EUR 3,000.

In Australia and in California, the tax threshold is USD 1,000.

In most countries, 5% of the selling price is payable in resale royalty on the commercial resale of an artwork. This rate varies between 2% and 10% across countries.

Some countries, European countries in particular, apply a decreasing rate.

It is possible to set a ceiling on the resale royalty. European Union fixed it at EUR 12,500. Serbia, Montenegro, Georgia, Iceland and Norway also set a maximum price. In India, it cannot be up to 10% of the resale price. In Turkey, it cannot exceed 10% of the price difference.

All other countries have not set a ceiling.

❖ **Duration of resale royalty right**

When it is transferred to the heirs, the duration of the resale royalty right ranges from 20 years (California) to 100 years (Mexico) after the artist's death. It usually ceases to apply upon expiration of the term of work's copyright. In the European Union and Australia, the resale right expires 70 years after the artist's death.

❖ **Collecting resale royalty**

Each country adopting the resale right has to create a collecting society. The collecting society then receives and handles declarations of sales covered by the resale right and collects and distributes royalties to the artists and beneficiaries it represents.

❖ **Special case of museums**

In some cases, museums are not concerned by the resale right when they buy works of art from private persons.

Under the European directive, the resale right should not extend to acts of resale by persons acting in their private capacity to museums which are not for profit and which are open to the public.

In the same way, Norwegian law provides: "*The right stated in the first paragraph does not apply to resale by private persons to museums that are open to the public and that are not operated as commercial enterprises, unless an agent as described in the first paragraph is involved in the sale.*"

Under most laws, museum collections are inalienable; this way, they cannot sell their works of art and they are not concerned by the resale right.

But in some instances, in the USA in particular, museums are allowed to sell their collections; therefore, they could pay resale royalties. However, there is no such resale right as yet in the US. A Bill had been introduced to this effect known as the 2014 American Royalties Too Act (ART) which did not survive the 113th Congress. Had it passed, ART

would have provided a resale royalty of five percent (up to \$35,000) to be paid to visual artists for every work sold for more than \$5,000 at public auction ⁹⁹

❖ Implementation

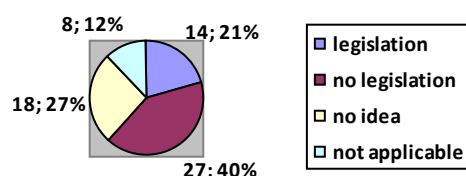
For an efficient application of the resale right, it is essential to focus on three major points.

Needless to say that in order to be effective the resale right has to be triggered by an authentic and well-organized art market in order to be applicable. For instance, a substantial art market not only needs a vivid artistic creation but also numerous and various auction houses and galleries, and secured transactions.

Secondly, States have to set up a collecting and redistributing system. Then, the art market professional could collect the resale right and redistribute it either directly to the artist or his heirs, or to a collecting society. And in that last case, artists appoint collecting societies to collect their royalties, and then it is up to them to redistribute royalties to the artists or their heirs.

Lastly, a monitoring system is essential to oversee the distribution of royalties. Then, it should ensure that art market professionals redistribute royalties to the artists or the collecting societies. And at a second level, it controls the payment of the royalties by the collecting societies to the artists or their heirs.

Resale right



Overall most of the 71 museums were not aware of a legislation in their country implementing a resale right, which is not a very surprising, all the more as the vast majority of public museums (as opposed to private museums) may not sell works of art in their collections, pursuant to national law (principle of inalienability of public collections).

However the resale right may become a growing concern for museums in the event that their national law becomes more flexible regarding the sale of artwork in public collections. There is already in place in many countries mechanisms of deaccessioning/decommissioning the works to dispose of them subsequently.

In the USA for instance, museums follow the recommendations of the American Association of Museums (AAM), author of the Code of Ethics for Museums in 1993. This text considers that the sale of an object of a collection must be used exclusively for the purchase of a new property (superior) or maintenance of collections ¹⁰⁰.

⁹⁹ TEXT: S. 2045 — 113TH CONGRESS (2013-2014) AT [HTTPS://WWW.CONGRESS.GOV/BILL/113TH-CONGRESS/SENATE-BILL/2045/TEXT](https://www.congress.gov/bills/113/congress/SENATE-BILL/2045/TEXT).

¹⁰⁰ “The museum ensures that: [...] Disposal of collections through sale, trade or research activities is **solely for the advancement of the museum’s mission**. Proceeds from the sale of nonliving collections are to be used consistent with the established standards of the museum’s discipline, but in **no event shall they be used for anything other than acquisition or direct care of collections**.” (AAM Code of Ethics for Museums). For information, “*Les peupliers à Giverny*”, a painting by Claude Monet in 1887 belonging to the New

In Europe, many States have a principle of inalienability but transfers can be made in various circumstances as in Germany, Denmark, Spain, Italy, the Netherlands and the United Kingdom. Denmark and the Netherlands are the two countries that have the most formalized alienation of public museums policy: the first, through the guidelines of the Heritage Agency which is responsible for enforcing the law on museums and the second through the code of the Institute for Protection of Cultural Heritage. In both countries, museum managers are encouraged to streamline their collections. These sales transactions may take place only after a thorough documentation of work.¹⁰¹ With the general trend of cuts of public funding, the temptation for museum to sell their artwork becomes more acute, notably in the UK.

[Footnote continued from previous page]

York MoMA's collection, will be auctioned at Sotheby's in London on February 3rd 2015. Auction sales had taken place earlier in 2011 In 2011 where the Moma sold nine masterpieces of modern art including works by Dubuffet, Magritte and de Chirico, which enabled the acquisition of new works by artists little or not represented in the museum.

¹⁰¹ Senat de France, “*L'alienation des collections publiques*” étude de législation comparée N°191, Service des études juridiques du sénat, Paris, Décembre 2008.

4. CASE STUDIES ON THE ROLE OF MUSEUM EXCEPTIONS AND LIMITATIONS

Seventy-one answers to the questionnaire reproduced in Annex I of this study were sent by museums. Out of these seventy-one answers, about ten were submitted on behalf of umbrella organizations representing several museums. The respondent museums ensure a geographical representation of the following regions/countries: forty (40) answers came from Europe, fourteen (14) from North America, four (4) from South America, three (3) from Oceania, three (3) from Asia, two (2) from Africa and two (2) from the Middle East, 1 from Iceland (on behalf of 47 museums). Overall, only six museums had collections of works totally in the public domain.

The feedback sent by the museums reveals the following main concerns:

- 1) Time spent and costs incurred for the completion of a digital inventory and the creation of corresponding databases and for management of rights when mounting exhibitions;
- 2) The boundaries of the making available of the collection to the public on their websites, for information, enjoyment and research and study.

As put by a European museum, when asked how do digital technologies affect your museum's activities, "*Digitisation, websites, social media, digitised collection presentation, apps for smartphone and tablets are a continuous concern for the museum staff*". *The yearly copyright fee for publication on the Internet of works not in the public domain is higher than the price for the development of a new thematic website*". In this respect, museums share concerns similar to those of content providers and owners, all trying to cope with new models to carry their activities. Yet museums do have specific public interest mandates which commend that they rely on a clear set of rules regarding the interface of their mandates and copyright exceptions and limitations.

Indeed, although museums' priorities differ depending on the kind of works contained in their collections and their copyright status, and despite the uneven geographic representation of the museums that participated in the survey, they are all keen to carry their mandates of preservation, communication to the public and support to education and research.

The concerns and challenges stemming from the museums' answers to the questionnaire and sample issues that museums must address in the digital age are presented below.

- **First**, the mandate of communication of collections to the public entail nowadays that museums have a proper digitized inventory, whether full or partial, basic or enriched with text and images, that will facilitate off line and online presentation of collections and related activities.
- **Second**, mounting exhibitions and promoting them in museums contribute to the recognition of the collections at home and abroad. Yet there is still a need to clarify some rules that weigh notably on the organization of travelling exhibitions, despite existing copyright exceptions.
- **Third**, in the course of their mandate to enrich and preserve their collections, museums tend to cope increasingly often with situations of repair and format-shifting of the works to ensure the continued existence and accessibility of the works with due respect of the author's moral rights;

- **Fourth**, in a knowledge society curious of cultural heritage and prone to online interaction, the role of museums in education and research is growing. Yet much uncertainty remains on the ins and outs and boundaries of permitted uses to fulfil these goals of supporting education and research;
- **Fifth**, museums purport to enrich their collections but most of public museums are prohibited from selling artworks in their collections. Yet inalienability of public museums' artworks is an issue that may evolve and although most of the seventy-one museums which answered the questionnaire do not feel concerned by the resale right, it appears useful to highlight a couple of points that could impact the acquisition of artworks by museums, and as the case may be, their sale.

4.1.1. COMMUNICATION OF THE MUSEUM COLLECTIONS AND CREATION OF DATABASES

Digitization of collections by museums is a long-term and expensive project which requires clear and complete inventory files with fact/information sheet for each piece of artwork and images of it. The creation of database(s) and sub-databases containing the museum collections raise some issues not yet clearly resolved regarding the exercise by the rightholder of his/her rights of reproduction and communication to the public¹⁰².

- ✓ **First the status of** orphan works and unpublished works prevent museums from obtaining the permission of authors (who are unknown or who failed to publish in their lifetime, as is often the case of private correspondence and photos). Also, for certain works, such as photographs, sound recordings, letters, prints, drawings, information about copyright ownership and documents supporting a transfer of the copyright to the museum is often lost long before the expiry of the copyright.

Hence museums, which may not be able to afford time-consuming copyright searches, are reluctant to digitize these works and a fortiori to exhibit them or to display them through other means. However if the potential copyright risk is limited, some museums may accept some risk in certain circumstances, relying for instance on specific exemptions or on the fair use defense.¹⁰³

- ✓ **Second**, the reproduction of the artwork itself in one or several databases is subject to the fulfilment of various requirements depending notably on the purported uses. Many museums are making high-resolution images of public domain works and of protected

¹⁰² It must be mentioned here that the European Directive 96/9/ of 11 March 1996 on the legal protection of databases confirms that databases are eligible to copyright protection and that the maker of a database enjoys, under certain conditions, a sui generis right allowing him to control to some extent uses of the content of his database.

¹⁰³ In comments filed on March 24, 2005 to the US Copyright Office in response to a Notice of Inquiry concerning orphan works, the counsel for The J. Paul Getty Trust gave the following example. "*Another recent instance in which decisions about copyright had to be made involved the Getty Museum's 2004 photography exhibition entitled **Close to home: an American Album**. As in the case of **Railroad Vision**, there was a book published as part of the exhibition. **Close to Home** was an exhibition of snapshot photographs from various sources: the photographers and their subjects were almost all unknown. There was no way the Getty could have identified or located the photographers and obtained their permission. Rather than forego the book, Getty Publications went forward with the book and has not received any claim of copyright ownership.*" For the previous exhibition book **Railroad Vision**, a note was included on the Photography Credits and Copyright page: "*Every effort has been made to contact photographers whose work may still be in copyright, or their estates. Any one having further information concerning copyright holders should contact the publisher so that this information can be included in future printings*".

US Copyright law provides specific exemptions which can be invoked by museums (sections 109, 108, 110, 201) and the well-known fair use defense which is only available as a defense in a copyright infringement suit.

works seeking in the latter case the permission from the rightholder. They also make thumbnail versions for purposes of inclusion in an inventory database for internal managerial uses, which would not require on its face the rightholder's permission. But the need of the rightholder's permission for other uses of thumbnails, including for reference data for search engines and for posting on the museums websites is not a matter clearly solved by law or in practice. In the US, one early 2003 court decision considered that thumbnail images could be fair use and 2011 guidelines of the Association of Art Museum Directors adopted the same approach. Still, the subsequent economic use of thumbnail images by third party users is a debated matter between various stakeholders in the copyright value chain. Uses of images of the artworks in museums' collections are essential in the carrying of their activities, both non-commercial and commercial, and deserve clarification for museums, rightholders and third party users of museums' images.¹⁰⁴ Policies on the making of high resolution images of artworks in collections and their making available for downloading for free or for a fee are being developed by museums as of necessity but legal certainty would facilitate their tasks and simplify negotiation of permissions.

- ✓ **Third**, virtual or online exhibition of museums' permanent collections is becoming a mainstream vehicle to educate the public and increase its knowledge of cultural matters. Museums can reach more easily and broadly online friends from everywhere and gain potential visitors.

For instance, since 2005, the Smithsonian Institute has accelerated its efforts to *"increase and diffuse knowledge through a learning model more aligned with technology"* which is based on the *"growing understanding of learning as a hybrid of formal education and self-directed discovery that can be brought together and enhanced by online tools and communities. Increasing online access to Smithsonian collections is part of its vision for promoting learning, encouraging re-use and sharing of its assets and allowing visitors to be our partners in the increase and diffusion of knowledge"*¹⁰⁵.

Today, initiatives like the Google Art Project that uses its Street View technology to record high definition 360° views of works, concern so far only major museums. As time goes by, more and more museums will be able to join the same or similar projects, at affordable costs thanks to the technological progress. Such digitization enhanced services offered by third party providers compel museums to (i) find out whether the rightholders' permission is required and in which terms and (ii) to negotiate a fair deal with both the rightholders and the service provider. The goal of comprehensive database(s) requires strategic choices in selecting content to be digitized in priority as well as budget planning. Amongst the museums that answered the questionnaire, a large majority exploit a database available to the public with images, five have no database at all and eight use only their database for internal purposes. For many of them, this is a work in progress representing a significant financial investment.

¹⁰⁴ Kelly V. Arriba, 336 F.3d 811 (9th Cir.2003) on fair use of thumbnail images.. AAMD policy on the use of *"thumbnail"* digital images in museum online initiatives, January 19, 2011, stating inter alia, that *"Museums should not be requested or required to pay fees for the fair use of such thumbnails images in the museum's collections image database, promotional materials to identify works in the museum's collection or online scholarly publications."*

¹⁰⁵ See, *"Inspiring generations through Knowledge and Discovery : Smithsonian Institution Strategic Plan Fiscal years 2010-2015"* at <http://www.si.edu/about> and the related Smithsonian Commons Initiative at <http://si.edu/commons/prototype/>

They are some centralized or joint databases established by museums on platforms, which have a geographical or thematic connection¹⁰⁶. Some museums are engaged with several databases or platforms. For instance, in Iceland, forty museums use online catalogues for the registration of their collections, one catalogue gathering thirty-eight museums (www.sarpur.is). These museums share the view that *“the relationship with people interested in the collection is better and more productive than before. It is common that online visitors share their knowledge of objects in the collection through the special ‘do you know more’ option that is a part of all posts in the catalogue. Many museums have had online exhibitions of works from their collections”*.

Some projects for setting up comprehensive databases for certain categories of works are progressing, such as the Global Repertoire Database for musical works, as are other projects aiming to develop templates facilitating management and licensing of rights.¹⁰⁷

Yet there is no worldwide repository of works of art owned or possessed by museums, whether open to the public or with access restricted to professionals. Some museums complain about this lack of repository when it comes to organizing an exhibition because of the need to locate the works and the museum to lend them.

However, there already exists cross-border projects of mega-databases, notably in Europe as a result of public or semi-public collective initiatives and in the US with Google’s Art Project

In **Europe**, two main initiatives aim at establishing a database of works: 1) the publicly accessible online database of the OHIM, which is being set up for the registration of orphan works pursuant to article 3(6) of the OWD Directive; and 2) the internet portal Europeana, which gives access to millions of books, paintings, films, museum objects and archival records that have been digitised throughout Europe, by more than 3,000 institutions. Europeana allows the public to explore Europe’s cultural and scientific heritage from prehistory to the modern day, by giving access to different types of content from different types of heritage institutions. The digital objects that users can find in Europeana are not stored on a central computer, but remain with the cultural institution and are hosted on their networks. Europeana collects contextual information – or metadata – about the items, including a small preview images.¹⁰⁸ However, even in the context of Europeana, the display of small preview images of copyright protected works of art may be subject to the authorisation of the rights holder.

The ARROW¹⁰⁹ project of a consortium of European national libraries, publishers and collective management organizations, aims in particular, to enhance the interoperability of rights information between rightholders, agents, libraries and users and developing solutions such as systems for the exchange of rights data, a registry of orphan works and a network of rights clearance centers.

¹⁰⁶ For instance, Portugal mentioned a public web based interface called «matriznet». Lithuania mentioned 2 Europeana related networks : Athena Plus and Ancient Photographic Vintage Repositories of Digitalized pictures of Historical Quality. Estonia mentioned the Estonian Museum public portal [ww.muis.ee](http://www.muis.ee). Slovakia cited the CEMUZ Project – Central database of museum collections.

¹⁰⁷ Note for musical works <http://www.globalrepertoiredatabase.com>. Also regarding the development of identifiers of works for their management and licensing: www.linkedcontentcoalition.org, funded in part by the EU commission for management; also www.copyrightthub.co.uk pursuant to art. 3.6 of the OWD Directive, a publicly accessible online database is currently being set up by OHIM for the registration of orphan works.

¹⁰⁸ <http://en.wikipedia.org/wiki/Europeana>

¹⁰⁹ ARROW for Accessible registries of Rights Information and Orphan Works towards Europeana (www.arrow-net.eu)

There is thus room for museums to join forces and efforts to create databases of their collections with a project of collective presentation to the public but also to cooperate for easier exchange of information on rights, loaning and licensing policies.

4.2. RIGHT OF EXHIBITION AND PROMOTION OF ARTISTS

Many national copyright laws do not provide clearly whether the exclusive rights include an exhibition right, hence whether public exhibition of artworks by a museum is subject to payment of an exhibition fee based on the right of communication to the public and whether the printing and dissemination of materials reproducing the works for the purpose of advertising the exhibition is also subject to payment of a compensation.

In Europe, article 5(3)(j) of the EU 2001/29/EC Directive allows Member States to provide a copyright exception or limitation for “*the purpose of advertising the public exhibition – or sale of artistic works- to the extent necessary to promote the event, excluding only any other commercial use*”. Yet the implementation of this exception at the Member State level is optional and its scope is not crystal clear.

In **Canada**, the exhibition right is expressly granted to the author and fees/copyright royalties are collected by collective societies¹¹⁰. In Switzerland the 2011 Copyright Act grants the author the “*exclusive right to decide whether, when, and how his work is used*” with no explicit exception for public exhibition. In Iceland, publicly accessible museums do not need the author’s permission to exhibit works in their collection pursuant to article 25 of the Copyright Act.¹¹¹ Conversely, permission is required in Finland and exhibition of copyrighted works is therefore limited due to money considerations. In the US, section 109 of the Copyright Act allows museums to display, lend and borrow works without the permission of or the obligation to pay a fee to the copyright owner.

The uncertainty surrounding the scope and costs of application of a right of exhibition of which an artist can avail himself, based on his national law or on the law of the country where the museum exhibition will take place, is often a matter of discussion and negotiation. The mandate of museums to make works available to the public for education and entertainment would be facilitated if clear rules were defined and applied evenly by museums when mounting exhibitions at home or abroad.

In addition to dealing with the author’s exhibition right, museums must also rely on the national legal provisions regarding the making and distribution of advertising media to promote the exhibition, including reproductions of the works being exhibited, which may or may not be subject to copyright royalties depending generally on their commercial nature or scale.

For instance, the Swiss Copyright Act in its version before 2007, contained an article 26 that provided for an exception to the copyright of visual artists and photographers according to which works located in a publicly accessible collection may be reproduced in a catalogue

¹¹⁰ The Canadian law of June 7 June 1988 establishes an exclusive exhibition right for artistic works other than a map, chart or plan created after June 8, 1988. The right can be bought, sold or waived when purchased by the museum. See the decision of the Supreme Court of Canada of 12 June 2014 on the fair negotiation of the exhibition fees due to artists. Canadian Artists’ Representation v National Gallery of Canada [2014] SCC 42 (can LII)

¹¹¹ Art. 25 of the Icelandic Copyright Act states: “*Once a copy of a work of visual art has been delivered to an owner that owner may, unless other reservation has been made, dispose of that work and exhibit it to the public. Public exhibition of the work at art exhibitions and in other comparable manner is, however, not authorised without the consent of the author, with the exception of exhibitions at publicly owned galleries which are open to the general public. The provisions of this paragraph shall also apply to published reproductions of art works*”.

edited by the institution without compensation to the author. A dispute arose between a Swiss royalty collection company and the Geneva Museum of Art and History in relation to an exhibition in 2001. The Museum initially obtained permission to reproduce certain artworks in the accompanying catalogue, on postcards and merchandise but subsequently refused to pay the royalty invoice as far as the exhibition catalogue was concerned, claiming the copyright exemption of article 26. The case went up to the Swiss Federal Supreme Court which determined that article 26 applied both to artworks that are part of the permanent collection of a museum and to those that are loaned for temporary exhibitions. Above all, the Court emphasized that the Act protects the copyright but also aims at not overly slowing down the diffusion of culture. The Court also stressed the fact that article 26 of the Swiss Act is compliant with art 9(2) of the Berne Convention allowing certain exceptions to copyright (three-step test) to the extent that other forms of reproduction of the works, including by the museum, are subject to the author's copyright. Furthermore, the Court held that the fact that several European States did not acknowledge in their laws, a right for museums to reproduce works in catalogues without permission and for free, had no impact on Swiss law.¹¹² A more recent example is given by the Museum Council of Iceland which highlighted the on-going debate over the last years on whether permission and compensation is required for catalogues that are available on the internet. Currently the matter is unresolved and the database contains few photographs of copyrighted artworks.

Generally, museums are desirous to post more texts and images online notably for special exhibitions. Nevertheless the implications of obtaining the rightholders' permission and the level of copyright royalties that may be requested are a concern for several museums, some of which feel that this problem impairs their ability to promote still unknown artists as they would like. Moreover, derogations allowed by the artist are not taken into account as noted by one museum in a non EU country.

4.3. THE PRESERVATION MANDATE AND PERMANENCE OF ARTWORKS

Museums need to preserve artworks in their collections and this need arises on various occasions: when the original work is too precious or too cumbersome to be easily exhibited; when the work is too fragile and frequent or permanent exhibition or loan may deteriorate its condition; when the object is damaged and in need of restoration; when the medium embodying the work is soon to become obsolete or to disappear; when back up or working copies appear useful (for research and study for instance).

The above examples are affecting the author's moral rights but also his reproduction right. Whereas works which are available in many copies for sale on the market (sound recordings, films, books) will not justify a museum's right to make a copy for preservation purposes, the situation is of course different for unique works. However, some national laws (Israel, Estonia) appear to allow broad copying of materials of any kind to be held in reserve in case the original would no longer be available.

The classical example is the need to restore a work or to transfer it on a different medium. Being a recurrent question, most museums submit agreements to potential donors or sellers with provisions aiming to address likely situations involving moral rights. A US museum (MOMA SF) answered that it has established programs for working with artists to manage agreed-upon strategies for translating works that are deemed appropriate into new media in the event that the original medium and/or installation becomes obsolete. One may also think for instance of the possibility to 3 D-print fragile or damaged artwork for preservation or repair purposes; the new 3D printing technology will certainly impact significantly the restoration of artworks and many more museums' activities.

¹¹² Pro Litteris v Ville de Genève, BGE 127 III 26

As moral rights are inheritable under many national laws, museums should anticipate that heirs shall have a say in the interpretation of the deceased's implicit will regarding future uses allegedly altering the moral rights. Mind reading a dead person may bring various outcomes¹¹³.

Also, moral rights may become an issue when works of art are donated/bequeathed to museums with conditions attached. For instance, there is a complex Peggy Guggenheim litigation about whether the Fondation Peggy Guggenheim situated in Venice, Italy which is the beneficiary owner of the building and the collections can be sued by Peggy's heirs for redesigning the museum and the display of the works, in violation of Peggy's donation and wish that the collection be kept as a whole.¹¹⁴

Museums work with artists and artists need the support of museums. Both have an interest in the preservation of the artist's work.

It appears that anticipation and negotiation is the best tool to play down issues of moral rights and solve them successfully. In their answers to the questionnaire, respect of the author's moral rights has not been highlighted as a problem by the museums¹¹⁵.

4.4. THE SCOPE OF THE "RESEARCH" EXCEPTION

Exceptions and limitations of copyright for research and study are acknowledged in most copyright statutes, which however are often silent on the uses/purposes of the research and study and appear to restrict access to one natural person. Furthermore, the access to copyrighted works under exception/limitation, rarely distinguish among the various categories of works and whether they are published or unpublished.

Whereas museums are increasingly involved in providing learning facilities to their visitors, patrons or friends, notably on the occasion of exhibitions, the development of actions and tools to facilitate research does not seem to raise many practical concerns for museums.

As highlighted though by the Finnish National Board of Antiquities, there is no definition of the word "research" in the EU Directive which Article 5.3 contains two provisions dealing with "research": Article 5.3 a) allows illustration with copyrighted works for teaching or scientific research and Article 5.3 n) which allows the communication on site of copyrighted content in their collections which is not subject to purchase or licensing terms "for research or private study" purposes.¹¹⁶

¹¹³ For instance in a 2007 decision, the French High Court held that writing a fiction sequel of "*les Misérables*" was not violating Victor Hugo's moral rights as claimed by one of his heirs. In a more recent decision of 10 September 2014, the French High Court addressed the complaint filed by the heirs of Picasso that the database of an online auction company containing digital reproductions of Picasso's works was infringing Picasso's economic and moral rights. The Court confirmed the infringement of economic rights but held that the mere coexistence, on the contentious website, of the Picasso works next to many other works, did not characterize a violation of Picasso's moral rights.

¹¹⁴ TGI Paris 2 Juillet 2014, N°RG 14/06216. The case turns essentially on the revocation of Peggy's Guggenheim donation; the question of a violation of her moral rights was set aside because a prior final judgment had already held that the collection of paintings did not enjoy copyright protection under Italian copyright law. The judgment may have been appealed.

¹¹⁵ Aside from the right of integrity of the artwork, the attribution right is also garnering attention in these last years as a result of the blossoming of works borrowing from previous ones, also known as "transformative" works of visual arts or "appropriation art" whereby an author reinterprets a prior work of another author.

¹¹⁶ Art. 5(3) Member States may provide for exceptions or limitations to the rights provided for in Articles 2 and 3 in the following cases:

Hence the research exception/limitation refers to **the concepts of “scientific research/private study” and non commercial purposes**. The educational and research purposes are already known in the Berne convention and the preamble of the WIPO 1996 treaty. Still, it appears from the answers to the questionnaire that a vast majority of museums do not seem to know well the scope of the research exception/limitation.

The reasons may be the following:

- The museum is part of a university¹¹⁷ and the research work by students falls within the teaching umbrella and educational mission of the university, with all libraries, lending and database facilities afforded by the university;
- The “*independant*” museum possesses documents, images, archives that are not intended or have not yet been shown to the public but which can be of interest for a researcher carrying a specific project, whether academic, private or professional. Most of the times, assuming the museum has adequate time for reviewing the scientific study, for selecting the materials and making them available, there will be a verbal or written agreement between the museum and the researcher or the collective society (which may then I address the case of unpublished works).
- Most of the times also, museums consider that the online collection can be used for research purposes as well as the public documents on the premises of the museum. It happens however that TPMS (Technical Protection Measures) placed on some media embodying the artwork will hinder or prevent effective uses for research and study.

In any event, when the museum is not the copyright owner, reproduction and communication of copyrighted items is subject to consent of the author or of the relevant collective society, unless the national law provides for an exception or limitation for research and study which is generally the case. Several collective societies have entered licensing agreements with universities and museums or often also with the ministers of Education and of Research to enable uses of copyrighted works for educational/ research purposes both non commercial and commercial uses. Still, incorporation of the exception/limitation in the national laws has sometimes resulted in complex provisions more or less restrictive, uneasy to monitor especially at cross border level and regarding permitted means of making available.

In a context of collaborative projects promoted by scholars and students taking advantage of the new digital tools to search, study, teach, create new forms of expression of content or artwork, the distinction between research and private study is increasingly blurred, all the more as there are no clear statutory definitions of these terms. The development of “*digital humanities*” projects, at the cross roads of digital media and humanistic studies, may be too early to draw attention of museums but it will certainly change substantially the carrying of their educational /research mandate.

[Footnote continued from previous page]

(a) use for the sole purpose of illustration for teaching or scientific research, as long as the source, including the author’s name, is indicated, unless this turns out to be impossible and to the extent justified by the non-commercial purpose to be achieved;

(n) use by communication or making available, for the purpose of research or private study, to individual members of the public by dedicated terminals on the premises of establishments referred to in paragraph 2(c) of works and other subject-matter not subject to purchase or licensing terms which are contained in their collections.

¹¹⁷ For instance, the University of Pennsylvania Museum of Archeology; the Oxford University Museum of National History

For the time being, practical issues need to be resolved to facilitate distance learning and study. For instance, in the EU context, the European Court of Justice held, in the Darmstadt decision of 11 September 2014 that the absence of existing licensing agreements in force between the university and the rightholders in the works, the library could make available on line (and not only on its premises) the works for research.¹¹⁸ But printing out of works on paper or their storage on a USB stick, carried out by users from dedicated terminals installed in publicly accessible libraries are not permitted, unless the national law provides for an exception/limitation and for compensation of the rightholder.

Another distinction, which is non-commercial/commercial nature of the activity, has never been obvious but has become an even more delicate exercise nowadays.

Most laws simply mention the research/study for non-commercial or non-economic purposes without requesting more, such as a proof of the purported uses of the works¹¹⁹. Some museums, like the UK, require in practice a statement of the user but this is not a common practice as it appears from the various answers to the questionnaire on this point. Museums may request mention of their name in the results of the research as well as a copy of said results; they may ask the researcher to sign a statement or a contract, with disclaimers of liability for the museum. Many museums do not seem to monitor closely whether the research is for commercial or non-commercial purposes..

Most of the museums that answered the questionnaire make their collections available online for education/research purposes, including images which then can be made available in high resolution in special circumstances. Some museums produce their educational digital material with the permission of the rightholders and some said that they offer an academic licensing service and Creative Commons license for educational use/research and private study. One mentioned an educational project with Google Art. Some rely on fair use. No issue was raised regarding legal impediments to the making available of content on line or on site for research purposes.

Considering the diversity of situations and practices, clarification of the permitted uses covered by copyright exceptions/limitations for research and study would provide useful guidance for harmonization purposes where needed.

4.5. RESALE RIGHT

The regime of the resale right is not very well-known so far for two reasons: first, it is a specific protection of the author and his heirs which is not recognized very broadly by applicable laws and second, only active art markets may be affected by such a right.

However, museums will be increasingly confronted with this matter, as they become more proactive in the management of their collections and as they deal with living artists as well as with their heirs.

¹¹⁸ ECJ, 11 September 2014, Technische Universität Darmstadt v Eugen Ulmer KG, C-117/13, already quoted.

¹¹⁹ Directive 2001/29/EC on Copyright in the Information Society states in recital (42) that: "*When applying the exception or limitation for non-commercial educational and scientific research purposes, including distance learning, the non-commercial nature of the activity in question should be determined by that activity as such. The organisational structure and the means of funding of the establishment concerned are not the decisive factors in this respect.*". However, this recital does not clarify much the non-commercial purposes.

In fact, the resale right has spurred two important legal questions which are now being tried or have been tried in a few countries. Still, the same questions may arise and be addressed differently in other jurisdictions. The museums should be aware of the stakes.

- ❖ The first question is who is liable to pay the resale right? The buyer or the purchaser of the artwork?

Article 1(4) of the EU Directive 2001/84/CE of November 27th 2001 puts the obligation to pay the royalty on the seller. However, the same article of the Directive also provides that “*Member States may provide that one of the natural or legal persons referred to in paragraph 2 other than the seller shall alone be liable or shall share liability with the seller for payment of the royalty.*”

Paragraph 2 of this article provides that “*The right referred to in paragraph 1 shall apply to all acts of resale involving as sellers, buyers or intermediaries art market professionals, such as salesrooms, art galleries and, in general, any dealers in works of art.*”

Article 122-8 of the French IP code, incorporates the provisions of the Directive and provides that “*The resale right is the responsibility of the seller.*”

The auction house Christies has interpreted the Directive in that it allows to ask the buyer to pay the resale right royalty and accordingly, it has introduced corresponding clauses in its contracts with its selling clients.

Yet the French syndicate of Antiquarians (SNA) disagreed with such interpretation and has sued Christies for unfair competition and nullity of the contractual clause whereby the buyer shall pay the resale right royalty.

On January 22nd 2014, the French High Court filed a preliminary ruling to the Court of Justice. The European court answered this question on February 26th 2015 and decided that a national legislation, such as French law, designating the seller as liable for the costs of the resale right does not prevent contractual arrangements allowing the buyer to bear all or part of such a liability. The court reminded that the aim of the directive is to protect authors, but also to contribute to the proper functioning of the common art market with a unified regime of the resale right between Member States.¹²⁰

Another ripple issue may arise from the provision in the directive providing that buyers and sellers are jointly responsible for paying the resale right. This so-called “*cascade effect,*” may lead to having the same person effectively paying twice when he/she buys and sells the same piece of work in a short time. Implementation of the resale right is in its inception in the EU and it is still unclear whether it will reach out to international sales taking place outside the EU.

- ❖ The second question deals with inheritability of the resale right

Article 6 of the EU Directive 2001/84/CE states that “*The royalty provided for under Article 1 shall be payable to the author of the work and, subject to Article 8(2), after his death to those entitled under him/her.*”

¹²⁰ Case C-41/14 Judgment of the Court (Fourth Chamber) of 26 February 2015 (Christie's France SNC v Syndicat national des antiquaires).

Every national law contains provisions on inheritance, wills and estates, which identify those survivors entitled to claim a share in the estate of the deceased. Yet the specificity of the resale right may raise the question of the legitimacy of bequeathing the benefit of the resale right to legatees.

For instance, French law (Article 123-7 of the IP code) reserves the benefit of the resale right exclusively to heirs and the surviving spouse, excluding legatees and other right holders.

The Foundation Hans Hartung and Anna Eva Bergman complained that this provision did not respect the principle of equality also enshrined in article 6 of the Declaration of Human Rights and Citizen saying that "*the law should be the same for all*". The French High Court referred in 2012 the matter to the Constitutional Council, which held that heirs and legatees are not on equal footing and thus, descendibility of the resale right to the heirs only establishes a difference in treatment between persons in different situations which does not violate a constitutional principle. Indeed the Council highlighted that the resale right purported to help the artist to support himself and his family during his lifetime and his family after his death.¹²¹

The disputed interpretation or implementation of the EU resale right regime highlights questions which may arise in all countries adopting a resale right. Museums should be aware of this background (which does not concern all types of works), when planning to buy and or sell pieces of artwork.

¹²¹ Décision 2012-276 QPC - 28 septembre 2012 - Fondation Hans Hartung et Anna Eva Bergman [Transmission du droit de suite sur les oeuvres d'art graphiques et plastiques].

5. CONCLUSION

5.1. SUMMARY OF MAIN FINDINGS

Typical functions of any museum are the collection, preservation, and dissemination of information. The preservation of copyrighted works often involves the making of reproductions from original works, either because they have been damaged, lost, or stolen. The dissemination of information takes place in a number of ways, either by exhibiting works to the public; by permitting the public consultation of works on the premises of the museum or the consultation of electronic material at a distance; by allowing patrons to make their own reproductions of works for personal purposes using freely accessible machines (photocopy, microfiches or printer).

Exceptions and limitations adopted for the benefit of museums are thus meant to allow these to perform their general tasks and to encourage the dissemination of knowledge and information among members of society at large, in furtherance of the common good. However, the need to adopt specific measures to meet this particular common good objective is evaluated differently from one country to the next. Moreover, since museums come in different shapes and sizes each pursuing different types of objectives, the public interest dimension of museums has been interpreted differently depending on whether they are publicly or privately funded, accessible to the general public or only to a restricted group.

With the digitization of works, several of the museums' main activities have given rise to an intensification of use of works internally or by the public, either off- or online, on the premises or at a distance. A number of these activities, when carried out in the digital environment, raise some uncertainty under copyright law, the most problematic of which are the making of digital copies of materials held in their collections and the digitization and online dissemination of copyright material held in the collections of museums. Lawmakers generally agree that the extension of the current limitations to the digital domain, thereby also allowing the digitization of works, may not be valid in all cases. In practice, the differences in accessing and marketing material in the digital environment may warrant differing approaches in different situations. The reactions of the legislators vary significantly from one country to the next, even if these issues are still far from being settled everywhere.

Of the 188 countries of the world that are members of the World Intellectual Property Organization, the laws of only forty-five countries contain provisions that specifically permit museums to make certain uses of works in their collection without the prior authorization of the rights holder. To enable museums to fulfil their mandates, national legislators have recognised the possibility for them to make, under certain conditions, specific acts of reproduction and of communication to the public. The specific exceptions and limitations encompass the making of reproductions for preservation purposes, using works in exhibition catalogues, the exhibition of works, their making available for study and research purposes and the use of orphan works.

In many countries, the generally worded provisions in the copyright acts may also apply in the situations covered by the specific exceptions and limitations, even if museums are not mentioned expressly as beneficiaries of these exceptions. This could be the case for example of the fair use defence in the United States, Israel and South Korea. The same remark applies to general exceptions and limitations, like the reproduction of works for private purposes, reproductions by means of reprography and use of works for educational and scientific research purposes. These exceptions and limitations therefore cater to the needs of the patrons of the museums.

The mainly European, regime on the resale right may also play a role in some of the activities of museums, by putting conditions on the acquisition and resale of artistic works.

The output of the survey among the seventy-one museums that participated revealed the following concerns

1) A wish of a more simple legal framework

Fast-evolving technologies open new opportunities to create, share, mix, embody, preserve, disseminate almost any kind of content and medium. These opportunities are available for a large chain of stakeholders who may be simultaneously, or alternatively, copyright holders and service providers. Copyright law is not simple as it addresses various kinds of creative works and sees to the protection of authors as well as of other public interests. Exceptions and limitations to copyright allow to balance these various interests and situations. Museums are established worldwide, promote both national and “*foreign*” cultural heritage and are experimenting with new technological means to carry they specific mandates. They know the diversity of their situations, the specificity of their mandates and the complexity of their international environment.

Whereas a few museums like Belgian museums would like to adjust copyright notably by advocating a general fair use exception, some other EU museums request more flexibility in order to account for technological changes which render obsolete some existing exceptions or limitations. In other parts of the world, clarification of exceptions and limitations applicable to museums is needed as well.

2) An improved regulation of non commercial uses/purposes

With the growth of the museal economy in the 21st century, boosted by the digital phenomenon and a strong appetite for culture and education, the distinction between commercial and non-commercial purposes is blurring. Furthermore, the need of museums to seek financial sources other than public funding and the growing demand of the public for structured teaching and attractive content are factors that compel to clarify the scope of non-commercial uses

3) Centralization of information on collections and artists

Several museums have expressed the desire to gain more information about the collections held in museums worldwide (Portugal, South Africa, New Zealand, Canada). Identifying promptly the copyrighted works, the authors and rightholders, the collective rights management societies, would save much time and costs for museums. The WATCH initiative (Writers, Artists and Their Copyright Holders) raises interest as a one-stop shop platform to direct to relevant copyright contact persons.

The needs expressed above refer to a package of information and guidance as well as to harmonization of rules on copyright exceptions and limitations.

More than a decade ago, the digital economy and the Internet had already started to reshape the ways content and knowledge are created, made available and shared by wide audiences. A regulatory framework was put in place regarding the digital economy and copyright protection in this new environment. The 1996 WIPO Treaties, the Digital Millennium Copyright Act in the USA and Directive 2001/29/EC in Europe sought to structure the relationship between the digital economy and the IPRs.

In the 21st century, the museal economy has taken off. Museums are experiencing new tools and means of communication in a more globalized context where they also have to

assimilate the subtleties of diverse copyright legal regimes and develop negotiation skills with rightholders and collective societies. This is an *acquis* that should not be lost but built upon, especially as museums are also creators and holders/assignees of copyright. The current discussions taking place worldwide on the copyright systems and as well on the liability legal regime of service providers in the digital economy show that the balance of interests in the stakeholders chain is fragile. Museums' requests fit into a broader movement of simplification of rules. But one size does not fit all and this applies to countries, businesses, museums, heritage and art works.

5.2. RECOMMENDATIONS

Legal certainty being the backbone for the development of activities, museums need to have a clear understanding of the rules that apply and should apply to fulfill their mandates which, for the purpose of this Study, are non-commercial as per the ICOM definition.

5.2.1. Recommendations to the lawmakers

1. Digitization of collections appears to be an inescapable step to fulfill their primary mandates of preservation and communication to the public for information on heritage resources to be visited.

In this respect, rules on digitization of artwork held in the permanent collection of a museum, whether or not orphan works, for preservation purposes, could be clarified and harmonized as exceptions or limitations. Digitization of unpublished works could follow the same rule as for orphan works, e.g. prior due diligence to locate rightholders and seek consent and disclosure only for legitimate reasons of public interest. Consultation on museums' websites (with restricted downloading) of the permanent collections, catalogues and archives could also be addressed as a limitation subject to the rightholder's consent and standard compensation.

2. The territoriality of rights and the difficulty associated with clearing rights in different territories is a long-enduring situation, which copyright collective management entities know well. They have indeed entered into reciprocal agreements with sister organisations to ease the licensing of copyright. Still there is no overall licensing framework for international exhibitions and the scope of the required authorisations for digital transmissions is not all that clear: differentiating acts of reproduction and communication to the public is not easy. Furthermore, "*communication to the public/making available*" is not explicitly defined in content, location and effect, notably regarding spin off effects on image search services which operate to some extent like image banks- and the implications of hyperlinking towards copyrighted works.¹²²
3. Education, research and study are often collaborative and cross-border activities. There are Creative Commons licenses for these purposes which museums can use for dissemination of their own copyrighted works. Yet, museums should develop their own policy to ensure the terms of a communication of their collections for research and study in accordance with their strategy, the requirement of non-commercial purposes and the development of text and data mining for instance. A minimum set of principles could be retained by ICOM or a group of museums willing to address this challenge.

¹²² In its decision of C-466/12 of 13 February 2014, Swensson, the European court of Justice held that (i) providing clickable links towards copyrighted content which the original rightholder has already made accessible to everyone is a communication to the public which does not require the rightholder's consent. but (ii) if access to said content was originally restricted to some recipients, then there could be a communication to a "new public", subject to the rightholder's consent.

5.2.2. Recommendations to the museum community

Museums and rightholders should cooperate to ensure that they get a fair return in the subsequent exploitation of the artwork by third party operators.

Museums should also negotiate with the various stakeholders and in particular with academics, artists and collective management organisations to update licenses and tariffs, to ease the acquisition of permissions and to anticipate new uses that may need authorisation. Joint action of museums would enhance their negotiation position and help draw a blue print where the lawmakers may not have set applicable rules or even figured out the stakes. Statements of the museums community on thumbnail images could provide some guidance, more will be needed with digital humanities and 3D printing as well as with crowdfunding.

Cooperation between museums should be encouraged and those more experienced could provide useful guidance to fellow museums through the aegis of ICOM and project partnerships.

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[Appendix I follows]

APPENDIX I: QUESTIONNAIRE**WIPO Study on museums and copyright
November 6, 2014**

Part I – General information

1. What is the general mission and area of activity of your museum?
2. Describe the main categories of works contained in your collection? (Literary, dramatic, musical and artistic works). Do you own all works in your collections? Has the museum acquired the copyright on (some of) the works contained in its collection, e.g. the economic rights of exploitation of the work (for instance with a donation of the work)?
3. Are the works contained in your collection still mainly protected by copyright law (life of author + 50 years after death/ in some countries: life of author + 70 years after death) or are they mainly in the public domain (term of protection expired)? What is the approximate percentage between in-copyright and public domain works in your collection?
4. Is your museum engaged in the digitization and online dissemination of whole or parts of the works contained in the collection, or are there plans for the future? How many databases do you have or plan to create for your activities?
5. How do new (digital) technologies affect your museum's activities?

Part II – Activities of museums

1. Do you make reproductions, e.g. copies on any support (either analogue or digital), of the works (either analogue or digital-born) contained in your collection for either one of the following purposes – if so, under which conditions (please provide a description in each case):
 - a) Drawing up an inventory of your collection
 - b) Mounting & promoting exhibitions
 - c) Preservation & restoration of the works
 - d) Education and study/research (internally or for the public)
 - e) Other
2. Do you display the works contained in your collection during public exhibitions on the premises of the museum or for temporary exhibitions abroad? Do you need the rights owner's permission to do this and if so, do specific conditions apply (including payment of royalty/compensation)?
3. Do you make available to the public online whole or parts of your collection for either one of the following purposes– if so, under which conditions (please provide a description in each case):
 - a) Giving the public access to your inventory
 - b) Mounting & promoting exhibitions of the works
 - c) Education and study/research (internally or for the public)
 - d) Other
4. Do you always know whether the legislation in your country allows you to make these acts of reproduction, display and making available to the public with respect to the works in your collection? Does the commercial or non-commercial nature of the activity play a role in your assessment? Please explain in which situation you are unsure.
5. In case of doubt, what do you do (please explain in each case mentioned above)?
 - a) Try to seek permission from the rights owner or his/her representatives (e.g. collective rights management organisation)?
 - b) Go ahead with the reproduction after a risk assessment?
 - c) Renounce pursuing the activity?

6. Do you encounter issues of respect of author's moral rights when carrying out your activities (restoration for instance)? If yes, how do you try to solve them?
 - a) Do you ask permission of the author:
 - i. in advance ?
 - ii. when the question arises?
 - b) Do you challenge the position of the author?
 - c) What is most of the times the end result of the discussion?

Part III- Specific issues

1. Orphan works

- a) What is the percentage of works in your collection for which the rights owner cannot be identified or located?
- b) Does your national legislation set out a specific regime for the identification (diligent search) and use of orphan works? If not, have you ever faced problems when trying to use an orphan work?
- c) Has the author of a work that was declared or presumed orphan, or his legal heirs, ever come forward? If yes, how did you deal with this situation?

2. Resale right¹²³

- a) Does your national law provide for a resale right in favour of authors of works of art?
- b) If you are allowed to sell works of art from your collection, must the museum pay a resale royalty to the author? If you acquire a work of art from an art market professional, which party must pay a resale royalty?
- c) Is the resale right effectively paid?
- d) Do you think that the resale right currently affects or is likely to affect your museums' activities? Or that it would help the emergence of an art market in your country?

3. Granting access to the public

- a) Does the making and offering of audio/video guiding programs in support of exhibitions raise specific copyright clearance issues for museums?
- b) Does the making and offering of educational materials (please specify which kind) about your collections raise specific copyright clearance issues for museums?
- c) What problems do members of the public who wish to do research on your collections/archives/libraries encounter (for instance the possibility to make copies) and how do you respond?
- d) Do technical/legal/monetary constraints limit the accessibility/uses of your collections for research purposes?
- e) Do you monitor the non-commercial character of a user's research?

¹²³ The resale right (recognized under European law) entitles authors of works of art to receive a royalty each time their work is resold by an auction house, gallery or art dealer.

Part IV- Matching museums' needs and rightholders' interests

1. Can you list the main copyright exceptions/limitations upon which you rely in carrying out the museum' mandates, whether general copyright exceptions or museum-specific ones?
2. What other activities of your museum would, in your opinion, benefit from additional or broader copyright exceptions/limitations?
3. Do you think that specific categories of works of art would deserve a specific regime?
4. How could negotiations with the right holders or their representatives be improved to obtain required consents to facilitate the fulfilment of museums?
5. What are, in your view, the most important factor(s) or means to consider for a better fulfilment by museums of their mandates taking into account the interests of the rightholders.

[Appendix II follows]

APPENDIX II: NATIONAL LEGISLATION

Note that the following list of national laws includes only those countries where the law expressly refers to 'museum(s)'. In rare cases, like Austria, countries were added to list when there was reasonable ground to assume that a law that is deemed applicable to 'public collections' would also apply to museum collections. On the other hand, we have refrained from including countries in the list, like the United States and Sweden, where the laws expressly refer only to libraries and archives, without ever mentioning museums.

Overview of the national laws of the following countries:

Australia	Lesotho
Austria	Lithuania
Bangladesh	Luxembourg
Belgium	Macedonia, Republic of
Bosnia and Herzegovina	Malta
Bulgaria	Mongolia
Canada	Montenegro
Chile	Netherlands
China	Nigeria
Cyprus	Norway
Denmark	Pakistan
Estonia	Poland
Ethiopia	Portugal
Fiji	Romania
Finland	Serbia
France	Sierra Leone
Germany	Slovakia
Hungary	Slovenia
Iceland	Spain
India	Switzerland
Israel	Turkey
Italy	United Kingdom
Latvia	

AUSTRALIA

Sources:

1. Copyright Law of Australia, No. 63 (1968), as amended through No. 28 (2007), available at [http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/CF0F41E18CD27484CA257323002077E3/\\$file/Copyright1968.pdf](http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/CF0F41E18CD27484CA257323002077E3/$file/Copyright1968.pdf)
2. WIPO study 2008

Specific exceptions	
Reproduction for preservation purposes	<p>§ 10(1), § 10(4)</p> <p>Museums, all or part of whose collection is accessible to members of the public, fall under the definition of archives § 51A</p> <p>Officers in charge of archives, or persons acting on behalf of the officers can copy in any form :</p> <ul style="list-style-type: none"> — works in manuscript form held in the collection of the archive — original artistic works held in the collection of the archive — published works held in the collection of the archive — works held in the collection of the archive. <p>Purpose : for preservation, replacement or for administrative purposes.</p> <p>Administrative purposes means purposes directly related to the care or control of the collection.</p> <p>These copies may also be communicated to officers of archives online through a computer terminal on the premises.</p>
Use of works in exhibition catalogues	--
Making available for research or study on the premises of a museum	<p>§ 49 (5A) / 51A (3)</p> <p>Communication of Electronic Works: If an article contained in a periodical publication or other published work is acquired in electronic form as part of the archives collection, the officer in charge of the library or archives may make it available online within the premises of the library or archives in such a manner that users cannot, by using any equipment supplied by the archives make an electronic reproduction of the work or communicate it.</p>
Use of orphan works	--

General exceptions	
Reproduction for private purposes	<p>§ 49(1), § 49 (2)</p> <p>Research or Study (Published Works)</p> <p>Authorized officers of archives</p> <p>For research or study and supply to user, requested by the user in writing.</p> <p>For research or study and supply to a user at a remote location, upon request by a person to an authorized officer of the institution.</p>

	Whole or parts of articles contained in periodical publications held in the collection of the institution. Whole or parts of published works other than articles contained in periodical publications held in the collection of the institution. Only a single copy can be made ("a reproduction").
Reprographic reproduction	--
Use for educational and scientific research	§ 40, § 103C Fair dealing exception can apply to some uses of copyrighted works for specific purposes, including research and study

AUSTRIA

Source: Bundesgesetz über das Urheberrecht an Werken der Literatur und der Kunst und über verwandte Schutzrechte (Urheberrechtsgesetz), as last amended by BGBl. I, Nr. 11/2015, 25.01.2015
<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001848>

Specific exceptions	
Reproduction for preservation purposes	--
Use of works in exhibition catalogues	<p>§ 54(1) To reproduce, distribute, and make available to the public copies of works of Fine Arts in directories of the permanent collection of a publicly accessible institution (<i>öffentliche Sammlung</i>) in publication edited by the owner of the collection for visitors, to the extent necessary for the promotion of the visit of the collection; any other commercial use is excluded;</p> <p>§ 54(2) To reproduce, distribute, and make available to the public copies of works of fine arts in lists of item offered for sale or similar promotional literature, published to auction the works or otherwise offer them for public sale, to the extent necessary to promote the event ; but such advertising material by the editor should only be for free or at a cost not exceeding the price for making available to the public; any other commercial use is excluded;</p>
Making available for research or study	
Use of orphan works	<p>§ 56e An unpublished literary, dramatic, or musical work that is kept in a museum, or other institution to which the public has access. For research or private study. Provided that where the identity of the author of any such work, or in the case of a work of joint authorship of any of the authors, is known to the museum the provision of this clause shall apply only if such reproduction is made at a time more than sixty years from the date of the death of the author or, in the case of a work of joint authorship, the death of the author whose identity is known or, if the identity of more authors than one is known, from the death of such one of those authors who dies last. (Note: the basic term of copyright duration is life of author, plus 60 years.)</p>

General exceptions	
Reproduction for private purposes	<p>§ 42(1)-(8) § 42 (2) Any person may make single copies of a work on the other referred to in para. 1 carriers than for personal</p>

	<p>use for research purposes, to the extent justified by the non-commercial purpose</p> <p>§ 42 (4) Any natural person may make single copies of a work on other than those referred to in para. 1 carriers for personal use and not for direct or indirect commercial purposes.</p> <p>§ 42 (7) open to the public institutions that collect workpieces may make copies, on other than those referred to in para. 1 carriers but only if they so not for direct or indirect economic or commercial purposes (copying for personal use of collections), namely</p> <ol style="list-style-type: none"> 1. from own works each a reproduction; such a reproduction piece may take the amplified work under the same conditions as that issued (. § 16 para 2), given (§ 16a) and are used under § 56b; 2. Individual from published but not published or out of print copies; as long as the work is not published or sold out, such copies may be issued (§ 16 para. 2), are awarded in accordance with § 16a and used in accordance with § 56b.
<p>Reprographic reproduction</p>	<p>§ 42a</p> <p>On Order free single copies may be made for personal use of someone else. However, such reproduction is permitted:</p> <ol style="list-style-type: none"> 1. if the reproduction is made by means of reprographic or similar process; 2. if a work of literature or music is reproduced by copying; 3. if it is a reproduction according to § 42 para. 3.
<p>Use for educational and scientific research</p>	<p>§ 42 (6) Schools and universities may produce and distribute copies of works for the purpose of teaching and to the extent justified by the number required for a particular class or course (reproduction for private school use); this also applies to music. This is only permitted for non-commercial purposes. The right to reproduce for personal use in schools does not apply to works that are intended, by their nature and designation for school or educational purposes.</p> <p>§ 54(3)</p> <p>it is permissible to distribute for non-commercial purposes any published works of fine arts in its nature and designation to reproduce in accordance intended for school or educational purposes literary work merely to illustrate the content or in such a textbook for the purpose of art education of youth, and to make available to the public</p>

BANGLADESH

Sources:

1. WIPO study 2008
2. Copyright Act of Bangladesh, No. XXVIII (18 July 2000)

Specific exceptions	
Reproduction for preservation purposes	--
Use of works in exhibition catalogues	--
Making available for research or study	--
Use of orphan works	<p>§ 72(16) An unpublished literary, dramatic, or musical work that is kept in a museum, or other institution to which the public has access. For research or private study. Provided that where the identity of the author of any such work, or in the case of a work of joint authorship of any of the authors, is known to the museum the provision of this clause shall apply only if such reproduction is made at a time more than sixty years from the date of the death of the author or, in the case of a work of joint authorship, the death of the author whose identity is known or, if the identity of more authors than one is known, from the death of such one of those authors who dies last. (Note: the basic term of copyright duration is life of author, plus 60 years.)</p>

General exceptions	
Reproduction for private purposes	<p>§ 2(1) “Copy” means a reproduction in the form of words, picture, sounds, letters, written form or in the form of sound recordings, cinematograph film, graphic picture or in the material or non-material form, digital code (fixed or moving) or whether in two or three or surrealistic dimensions. § 72 The fair use of certain works for private study or private use including research is not an infringement.</p>
Reprographic reproduction	--
Use for educational and scientific research	--

BELGIUM

Sources:

1. Le Code de droit économique Livre XI «Propriété intellectuelle» http://www.sacd-scam.be/IMG/pdf/2014_10_30_BROCHURE_CODIFIATION_LOI_DROIT_D_AUTEUR.pdf
2. WIPO study 2014

Specific exceptions	
Reproduction for preservation purposes	<p>Article XI.190. (former Article 22 LDA) Museums can copy for the purpose of preservation of the cultural and scientific patrimony Must not pursue direct or indirect economic or commercial advantage. Lawfully published work. The number of copies is limited to the purpose. The copy must become part of the institution's collection. The rightsholder retains the right to remuneration The copying must not conflict with the normal exploitation of the work or prejudice the legitimate interests of the author.</p>
Use of works in exhibition catalogues	<p>Article XI.190. (16 °) (former Article 22 LDA) Lawfully published work reproduction and communication to the public for advertising the public exhibition or event of artistic works, to the extent necessary to promote the event in question, excluding any other commercial use;</p>
Making available for research or study on the premises	<p>Article XI.190. (8) (13) (former Article 22 LDA) Lawfully published work communication including making available to individuals, for purposes of research or private study, works that are not offered for sale or subject to conditions of license, and are part of collections of publicly accessible museums which are not for commercial advantage direct or indirect economic or by means of special terminals available in the premises of the museums; Article XI.191 (former Article 22bis LDA) With respect to databases, the communication made for purposes of illustration teaching or scientific research by recognized institutions or officially organized the purpose by the authorities and provided that such communication is justified by the non-profit objective, lies within the normal activities of the institution, be done solely by means of closed transmission networks of the establishment and does not affect the normal exploitation of the database, and unless this proves impossible, the source, including the author's name, or indicated;</p>
Use of orphan works	<p>Not yet transposed the OWD as of 24 November 2014 http://project-forward.eu/2014/12/02/the-devil-is-in-the-details-orphan-works-panel-at-the-ceg-meeting-24-november-2014/</p>

General exceptions	
Reproduction for private purposes	Article XI.190. (9 °) (former Article 22 LDA) Lawfully published work reproduction in any medium other than paper or similar support, works carried out in the family circle and reserved thereto;
Reprographic reproduction	Article XI.190. (5) (former Article 22 LDA) Lawfully published work fragmentary or reproduction of articles, works of plastic or graphic art or of short fragments of other works, except partitions, when the reproduction is performed on paper or similar support, by means of any photographic technique or by any other method producing a similar result in a strictly private purpose and without prejudice to the operation normal of the work;
Use for educational and scientific research	Article XI.190. (6) (7) (former Article 22 LDA) Lawfully published work Fragmentary or reproduction of articles, works of plastic or graphic art or of short fragments of other works, for purposes of illustration for teaching or scientific research, to the extent justified by the nonprofit continued and that does not prejudice the normal exploitation of the work, provided at unless this proves impossible, the source, including the author's name, is indicated. Reproduction : <ul style="list-style-type: none"> — on paper or on a medium similarly, using a photographic technique or any other method that produces a similar result; — in any other format

BOSNIA AND HERZEGOVINA

Sources:

1. Copyright and Related Rights Law of Bosnia and Herzegovina, No. 543/10 (2010), available at http://www.wipo.int/wipolex/en/text.jsp?file_id=227216
2. WIPO study 2014

Specific exceptions	
Reproduction for preservation purposes	<p>Article 46 (3) A disclosed work. Museums may reproduce a work freely on any media for their internal use if they do it from their own copy and if they do not intend on gaining direct or indirect economic advantage by such reproduction. Preservation is not explicitly mentioned Single copy only Article 40(1) to the extent of such use of the works is limited by the intended purpose and that it is in conformity with good practices.</p>
Use of works in exhibition catalogues	<p>Article 49 Disclosed works The organizers of public exhibitions or auctions of artistic or other works may freely use such works in connection with the promotion of such exhibitions or auctions to the extent necessary to achieve such purpose and provided that it is not done with the intention to gain direct economic advantage. The source and authorship must be indicated if they are indicated on the work used</p>
Making available for research or study on premises	--
Use of orphan works	--

General exceptions	
Reproduction for private purposes	<p>Article 46 Reproduction of a disclosed work shall be free if only one copy has been made and if the following conditions are met. A natural person may reproduce a work freely: a) on paper or similar medium, by means of photocopying or other photography technique making similar effect, b) on any other media, provided that he does it for private use, provided that the copies are not intended for or accessible by the public and provided that such reproduction is not aimed at gaining direct or indirect economic advantage.</p>
Reprographic reproduction	No special provision
Use for educational and scientific research	<p>Article 41 Without the transfer of the economic right of the author, and subject to the payment of equitable remuneration, it shall be allowed to reproduce in reading books,</p>

	<p>textbooks, workbooks and examination material the excerpts from the works and individual works of photography, fine art, architecture, applied art, industrial and graphic design and cartography if these are disclosed works.</p> <p>Article 45</p> <p>For the purposes of teaching, it shall be permitted to publicly perform disclosed works in the form of face-to-face teaching.</p> <p>In both cases the source and authorship must be indicated if they are indicated on the work used.</p>
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BULGARIA

Sources:

1. Law on Copyright and Neighboring Rights of Bulgaria, No. 56 (1993, as amended through SG 25, 25 March 2011), available at <http://www.wipo.int/wipolex/en/details.jsp?id=10463>
2. WIPO study 2014

Specific exceptions	
Reproduction for preservation purposes	Articles 23, 24 (1) 9 Already published works. Preservation of the works, unless serving for commercial purposes Any medium of the copy. Should not conflict with the normal exploitation of the work and does not prejudice the legitimate interests of the copyright holder.
Use of works in exhibition catalogues	--
Making available for research or study	Article 24 (1) 11 Without consent of the owner of the copyright and without payment of compensation shall be permissible granting access to individuals to works, located in collections of museums, under the condition, that it is done with scientific purposes and has no commercial character.
Use of orphan works	--

General exceptions	
Reproduction for private purposes	Article 25.(1) 2 Without consent of the owner of the copyright but upon payment of fair compensation shall be admissible reproduction of works, regardless of the carrier, by a natural person for personal use unless done with commercial purposes.
Reprographic reproduction	Article (1) 1 Without consent of the owner of the copyright but upon payment of fair compensation shall be admissible reproduction with non-commercial purposes of printed works, except note materials, on paper or other similar carrier by reprography or other technique, ensuring similar result.
Use for educational and scientific research	Article 24.(1) 3, 8, 9 Without consent of the owner of the copyright and without payment of compensation shall be permissible : <ul style="list-style-type: none"> — use of parts of published works or of not big number of works in other works in amount, necessary for analysis, commentary or other kind of scientific research; such use shall be permissible only for scientific and educational purposes, indicating the source and the name of the author, unless impossible; — public presentation and public performance of

	<p>published works in educational or other learning establishments, provided that no pecuniary revenues are received and no compensation is paid to the participants in the preparation and realization of the presentation or the performance;</p> <ul style="list-style-type: none">— reproduction of already published works by publicly accessible museums with educational purposes, unless serving for commercial purposes.
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CANADA

Sources:

1. Copyright Act of Canada, c. C-42 <http://laws-lois.justice.gc.ca/eng/acts/C-42/Index.html>
2. WIPO study 2014

Specific exceptions	
Reproduction for preservation purposes	<p>§ 30</p> <p>Museums, and persons acting with the authority of the institution, including museums that form part of educational institutions</p> <p>Works and other subject matter, whether published or unpublished, in the permanent collections</p> <p>One of the following conditions must be satisfied:</p> <p>(a) The original work must be rare, or it must be unpublished; and the original work must be deteriorating, damaged, or lost, or at risk of deterioration or becoming damaged or lost.</p> <p>(b) The original cannot be viewed, handled, or listened to because of its condition or because of the atmospheric conditions in which it must be kept; and the copy is for purposes of on site consultation.</p> <p>(c) The original is in an obsolete format or the technology required to use the original is unavailable; and the copy is made in an alternative format.</p> <p>(c) The institution, or person acting under its authority, considers that the original is currently in a format that is obsolete or is becoming obsolete, or that the technology required to use the original is unavailable or is becoming unavailable; and the copy is made in an alternative format.</p> <p>(d) The copy is for the purposes of internal record-keeping and cataloguing.</p> <p>(e) The copy is for insurance purposes or police investigations.</p> <p>(f) The copy is necessary for restoration.</p> <p>Alternative (a), (b), and (c) do not apply where an appropriate copy is commercially available in a medium and of a quality that is appropriate for the allowed purposes.</p>
Use of works in exhibition catalogues	--
Making available for research or study on premises	--
Use of orphan works	<p>§ 77</p> <p>If a copyright owner is not located after a reasonable search, a user may apply to the Copyright Board for a license to use the work.</p>

General exceptions	
Reproduction for private	§ 29

<p>purposes</p>	<p>Fair dealing exception. § 29.22 It is not an infringement of copyright for an individual to reproduce a work or other subject-matter or any substantial part of a work or other subject-matter if: (a) the copy of the work or other subject-matter from which the reproduction is made is not an infringing copy; (b) the individual legally obtained the copy of the work or other subject-matter from which the reproduction is made, other than by borrowing it or renting it, and owns or is authorized to use the medium or device on which it is reproduced; (c) the individual, in order to make the reproduction, did not circumvent, as defined in section 41, a technological protection measure, as defined in that section, or cause one to be circumvented; (d)the individual does not give the reproduction away; and (e) the reproduction is used only for the individual's private purposes A "medium or device" includes digital memory in which a work or subject-matter may be stored for the purpose of allowing the telecommunication of the work or other subject-matter through the Internet or other digital network. § 30.3 It is not an infringement for a museum or a person acting under its authority (including a museum that forms part of an educational institution) to do anything on behalf of any person that the person may do personally under Section 29 (related to fair dealing for the purpose of research or private study) or Section 29.1 (related to fair dealing for criticism or review).</p>
<p>Reprographic reproduction</p>	<p>§ 30.3 Reproduction machines Museum (including museum that forms part of an educational institution) does not infringe copyright when reprographic reproductions of works in printed form are made on a machine installed with approval on the premises for use by persons using the library or other organization, and affixed to the machine is a warning notice in the prescribed manner and location. This exemption applies only if the organization has an agreement with a collective licensing agency or other arrangement in accordance with details in the statute and regulations.</p>
<p>Use for educational and scientific research</p>	<p>§ 29 Fair dealing exception. Museums within Educational institutions § 30.4 Exceptions to infringement of copyright provided for under sections 29.4 to 30.3 and 45 also apply in respect of a museum that forms part of an educational institution. § 29.4</p>

	<p>Reproduction of a work or any other necessary act in order to display it for the purposes of education or training on its premises.</p> <p>Reproduction, translation or performance in public on the premises of the educational institution.</p> <p>Communication by telecommunication to the public situated on the premises of the educational institution of a work or other subject-matter as required for a test or examination.</p> <p>Except in the case of manual reproduction, above-mentioned exceptions do not apply if the work or other subject-matter is commercially available in a medium that is appropriate for the purposes referred to in the exceptions</p>
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CHILE

Sources:

1. Intellectual Property Law of Chile, Law No. 17.336 (as amended through Law No. 20435, 4 May 2010), available at http://www.wipo.int/wipolex/en/text.jsp?file_id=270205
2. WIPO study 2014

Specific exceptions	
Reproduction for preservation purposes	Article 71L Specific clause only for libraries and archives, museums are not mentioned; archives not defined in copyright act
Use of works in exhibition catalogues	--
Making available for research or study on premises	Article 71K Specific clause only for non-profit libraries and archive centres Article 71N The use of a work, including phonograms, within the family circle, in educational or charitable establishments, libraries, archive centers or museums, shall not be considered communication or public performance of the work, provided that such use is not for profit. In such cases, neither the authorization of the author or copyright holder or any payment shall be required.
Use of orphan works	Article 11. Belong to the common cultural heritage: (a) works whose term of protection has expired; (b) works by unknown authors, including songs, legends, dances and expression of folkloric heritage; Works of the common cultural heritage may be used by anyone, provided they respect the ownership and integrity of the work.

General exceptions	
Reproduction for private purposes	Article 71J – Museums not mentioned. Nonprofitmaking libraries and archives may, without having to seek the authorization of the author or copyright holder or make any form of payment, make copies of fragments of works that are found in their collections, at the request of a patron of the library or archive, solely for his personal use. The copies referred to in the foregoing subparagraph may only be made by the respective library or archive center.
Reprographic reproduction	--
Use for educational and scientific research	Article 71M (Museums not mentioned) It shall be lawful, without remunerating or seeking the authorization of the author, to reproduce and translate for educational purposes, within the framework of formal

	<p>education or with the consent of the Ministry of Education, small fragments of works or isolated works of a three-dimensional, photographic or figurative nature, excluding school textbooks and university manuals, where such acts are performed solely to illustrate educational activities, insofar as this is warranted and is not for profit, provided that the works in question have already been disclosed and include the name of the author and the source, except in cases where this is impossible.</p>
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CHINA

Sources:

1. WIPO study 2008
2. Copyright Law of the People's Republic of China (1990), as amended (2001 and 26 February 2010)
3. Regulations on the Protection of the Right of Communication via Information Network (2006), (as quoted in WIPO study)

Specific exceptions	
Reproduction for preservation purposes	<p>Article 22(8) Works. For display or preservation of a copy of the work. The other rights enjoyed by the copyright owner must not be prejudiced. Without permission from the copyright owner, without payment of remuneration to the copyright owner, unless otherwise noted below. The name of the author and title of the work should be mentioned. Article 10 (5) By printing, photocopying, lithographing, making a sound recording or video recording, duplicating a recording, or duplicating a photographic work, or by other means. Article 7 of Network Reg. Allows some preservation copying in digital formats.</p>
Use of works in exhibition catalogues	--
Making available for research or study on premises	<p>Article 7, 10 Network Reg. ; Published digital works from the collection or digital copies of works Technological measures must be taken to:</p> <ul style="list-style-type: none"> — prevent access to the works by people other than the permitted users; — to prevent material damage to the interests of the copyright owners by the users' duplication activities. <p>For public reading via the institution's network reading system within its premises. The institutions may not directly or indirectly gain economic interest, except where otherwise agreed by the parties concerned. The other rights enjoyed by the copyright owner must not be prejudiced. Remuneration is required.</p>
Use of orphan works	--
General exceptions	
Reproduction for private purposes	<p>Article 22 (1) A published work may be used without permission from, and without payment of remuneration to, the copyright owner, for purposes of the user's own personal study, research or appreciation.</p>

	The name of the author and the title of the work should be mentioned and the other rights enjoyed by the copyright owner should not be prejudiced.
Reprographic reproduction	--
Use for educational and scientific research	Article 22 (6) In the following cases, a work may be used without permission from, and without payment of remuneration to, the copyright owner, for translation, or reproduction in a small quantity of copies of a published work by teachers or scientific researchers for use in classroom teaching or scientific research, provided that the translation or the reproductions are not published for distribution. The name of the author and the title of the work should be mentioned and the other rights enjoyed by the copyright owner should not be prejudiced.

CYPRUS

Sources:

1. Ramona Livera Laws of Cyprus with Commentary, Chapter 73, 2014 Thomson Reuters, 3/2014
http://www.neocleous.com/assets/modules/neo/publications/1674/docs/WIPRR_Chapter_73_Cyprus.pdf?utm_source=Mondaq&utm_medium=syndication&utm_campaign=inter-article-link
2. The Copyright Law, Law Number 59/1976, as amended by Law Number 63/1977, Law Number 18(I)/1993, Law Number 54(I) of 1999, Law Number 12(I)/2001, Law Number 128(I)/2002, Law Number 128(I)/2004, Law Number 123(I) of 2006, Law Number 181(I) of 2007, and Law Number 207(I) of 2012; (as quoted in work of R. Livera – see above)
3. WIPO study 2008

Specific exceptions	
Reproduction for preservation purposes	No specific preservation exception, but a general exception for any use in public interest. Article 73 :7, 7. (2) (j) The intellectual property right does not include the right to control any use or presentation of a work made by museums, as may be prescribed, where such use is carried out in the public interest, no revenue is derived therefrom, and no admission fee is charged for the communication of the work so used to the public.
Use of works in exhibition catalogues	--
Making available for research or study	No specific exception, but any use in public interest according to Article 73 :7, 7. (2) (j).
Use of orphan works	

General exceptions	
Reproduction for private purposes	Article 73 :7, 7. (2) (a) The intellectual property right does not include the right to control of the bona fide performance of any of the aforementioned acts [SY: exclusive rights of the author Article 73 :7, 7. (1)], for the purposes of research for personal use, critical review or report on current events, under the condition that if this use is made in public, it is accompanied by the acknowledgement of the title and authorship of the work, with exception cases where the work was included in a broadcast. Article 73 :7, 7. (2) (o) The intellectual property right does not include the right to control the reproduction by any means that is carried out by a natural person for private use and for ends that are neither directly nor indirectly commercial, subject to the condition that the right-holders receive reasonable compensation that takes into account the application or non-application of technological measures in the specific work or other material.
Reprographic reproduction	Article 73 :7, 7. (2) (p)

	<p>The intellectual property right does not include the right to control the reproduction on paper or another material medium, with the use of any type of photographic technique, or with any other method that will bring about the same result, with the exception of sheet music, subject to the condition that the rightholder receive fair compensation.</p>
<p>Use for educational and scientific research</p>	<p>Article 73 :7, 7. (2) (r) The intellectual property right does not include the right to control any use for the purpose of illustration for teaching or scientific research, as long as the source is mentioned, including the author's name, unless it is determined that this is impossible and provided that it is justified by the non-commercial purpose to be achieved.</p>

DENMARK

Sources:

1. Consolidated Act on Copyright 2014 (Consolidated Act No. 1144 of October 23rd, 2014)
http://kum.dk/fileadmin/KUM/Documents/English%20website/Copyright/Act_on_Copyright_2014_Lovbekendtgoerelse_nr._1144__ophavsretsloven__2014__engelsk.pdf

Specific exceptions	
Reproduction for preservation purposes	<p>Preservation and Replacement § 16.</p> <p>(1) State-run museums and museums that have been approved in accordance with the Museums Act, may use and distribute copies of works in their activities in accordance with the provisions of subsections (2)-(6) if this is not done for commercial purposes. However, this does not apply for computer programs in digital form, with the exception of computer games.</p> <p>(2) The institutions may make copies for the purpose of back-up and preservation.</p>
Use of works in exhibition catalogues	<p>§ 24. (1)</p> <p>Works of art included in a collection, or exhibited, or offered for sale may be reproduced in catalogues of the collection. Such works of art may also be used in notices of exhibitions or sale, including in the form of communication to the public.</p>
Making available for research or study on premises	<p>§ 16a</p> <p>State-run museums and museums that have been approved in accordance with the Museums Act. Published works.</p> <p>For personal viewing or study by individuals by means of technical equipment on the premises of the institution.</p> <p>Copies that are made or deposited pursuant to the Act on Legal Deposit may only be made available at specific institutions named in the Statute. Those institutions permitted to make available deposited works may communicate and hand over legal deposited works that have been broadcast on radio and television, films and works published on electronic communication networks, for research purposes, if the work cannot be acquired through general trade. The copies may not be used in any other way.</p>
Use of orphan works	<p>§ 75 h. In order to achieve aims related to their public-interest missions the following organisations established in Denmark may use orphan works:</p> <p>(i) Publicly accessible libraries, educational establishments and museums.</p> <p>§ 75 l.-(1) In order to achieve aims related to their public-interest missions the organisations referred to in section 75 h are permitted to</p> <p>(i) make the orphan work available in such a way that the</p>

	public acquires access to it at an individually chosen place and time, cf. section 2(4) (i) and (ii) reproduce the orphan work for the purposes of digitisation, making available to the public, cf. (i), indexing, cataloguing, preservation or restoration
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General exceptions	
Reproduction for private purposes	<p>§ 12 (1)-(5) Anyone is entitled to make or have made, for private purposes, single copies of works which have been made public if this is not done for commercial purposes; certain works are excluded. Literary works are also excluded, if the technical equipment has been provided for commercial purposes.</p>
Reprographic reproduction	--
Use for educational and scientific research	<p>§13.–(1) For the purpose of educational activities copies may be made of published works and copies may be made by recording of works broadcast in radio and television provided the requirements regarding extended collective license according to section 50 have been met. The copies thus made may be used only in educational activities comprised by the agreement presumed in section 50. (2) and (3) Provision does not apply to cinematographic works which are part of the general cinema repertoire of feature films except where only brief excerpts of the work are shown in the telecast; and to computer programs in digital form. § 21.–(1) (ii) A published work, which is not a dramatic work or a cinematographic work, may be performed in public where the performance occurs in the case of divine services or educational activities.</p>

ESTONIA

Sources:

1. Copyright Act Passed 11 November 1992 RT 1992, 49, 615, entry into force 12 December 1992, last update 05.06.2013 (RT I, 14.06.2013, 3, entry into force 01.11.2013)
<http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X40022K10&keel=en&pg=1&ptyyp=RT&tyyp=X&query=autori%F5iguse>
2. Copyright Amendment Act 697 SE, State Gazette 29 October 2014
<http://www.riigikogu.ee/?op=ems&page=eelnou&eid=02b8f47e-8e65-4b26-bf29-8d0579502f4d&>

Specific exceptions	
Reproduction for preservation purposes	<p>§ 17. Notwithstanding §§ 13 – 15 of this Act, but provided that this does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author, it is permitted to use a work without the authorisation of its author and without payment of remuneration only in the cases directly prescribed in §§ 18 – 25 of this Act.</p> <p>§ 20. (1) A museum has the right to reproduce a work included in the collection thereof without the authorisation of its author and without payment of remuneration, in order to:</p> <ol style="list-style-type: none"> 1) replace a work which has been lost, destroyed or rendered unusable; 2) make a copy to ensure the preservation of the work; 3) replace a work which belonged to the permanent collection of another library, archives or museum if the work is lost, destroyed or rendered unusable; 4) digitise a collection for the purposes of preservation; <p>§ 20. (2) The provisions of clauses (1) 1) – 3) of this section apply in the case when acquisition of another copy of the work is impossible.</p> <p>§ 20. (5) The activities specified in this section shall not be carried out for commercial purposes.</p>
Use of works in exhibition catalogues	<p>§ 20. (3) A museum has the right to use a work included in the collection thereof without the authorisation of its author and without payment of remuneration for the purposes of an exhibition or the promotion of the collection to the extent justified by the purpose.</p> <p>§ 17, § 20. (5) The activities shall not be carried out for commercial purposes. Shall not conflict with a normal exploitation of the work and unreasonably prejudice the legitimate interests of the author.</p>
Making available for research or	§ 20. (4)

study	<p>A museum has the right, without the authorisation of the author and without payment of remuneration, on order from a natural person 1) to make available works in its collections on the spot through special equipment; § 20. (5) The activities shall not be carried out for commercial purposes.</p>
Use of orphan works	<p>§ 27 Two – Eight § 27 Six (1) The public authority and the memory of Estonian National Broadcasting is permitted to use an orphan work recognized and orphan works included in the collection of your data transmitted to the work or phonogram solely in the public interest and the rights of the holders of all identified the names given, in the following cases: 1) available to the public for cultural and educational purposes; 2) Reproduction of digitization, making available, indexing, cataloging, preservation or restoration. (2) of this section, the authority referred to in paragraph 1 may be allowed to use the course earn income from the digitization and making available orphan costs for the purpose of recovery.</p>

General exceptions	
Reproduction for private purposes	<p>§ 18. (1) A lawfully published work may be reproduced and translated by a natural person for the purposes of personal use without the authorisation of its author and without payment of remuneration on the condition that such activities are not carried out for commercial purposes. (2) The following shall not be reproduced for the purposes of personal use without the authorisation of the author and without payment of remuneration: 1) works of architecture and landscape architecture; 2) works of visual art of limited edition; 3) electronic databases; 4) computer programs, except the cases prescribed in §§ 24 and 25 of this Act; 5) notes in reprographic form. § 20. (1) 5) A museum has the right to reproduce a work included in the collection thereof without the authorisation of its author and without payment of remuneration, in order to make a copy for a natural person for the purposes specified in § 18 of this Act; § 20. (4) 2) A museum has the right, without the authorisation of the author and without payment of remuneration, on order</p>

	<p>from a natural person to lend works in its collections for individual on-the-spot use.</p> <p>§ 20. (5) The activities specified shall not be carried out for commercial purposes.</p> <p>§ 26. (1) Audiovisual works or sound recordings of such works may be reproduced for the private use (scientific research, studies, etc.) of the user without the authorisation of the author. The author as well as the performer of the work and the producer of phonograms have the right to obtain equitable remuneration for such use of the work or phonogram (§ 27).</p> <p>(2) Subsection (1) of this section does not apply to legal persons.</p> <p>§ 17. Activities should not conflict with a normal exploitation of the work and unreasonably prejudice the legitimate interests of the author.</p>
<p>Reprographic reproduction</p>	<p>No specific mentioning; where reproduction is allowed, reprographic reproduction is included.</p> <p>§ 27¹. (1) Remuneration for reprographic reproduction works</p> <p>Authors and publishers are entitled to receive equitable remuneration for the reprographic reproduction of their works in the cases specified in subsection 18 (1) and clause 19 3) of this Act.</p>
<p>Use for educational and scientific research</p>	<p>§ 19. The following is permitted without the authorisation of the author and without payment of remuneration if mention is made of the name of the author of the work, if it appears thereon, the name of the work and the source publication:</p> <p>2) the use of a lawfully published work for the purpose of illustration for teaching and scientific research to the extent justified by the purpose and on the condition that such use is not carried out for commercial purposes;</p> <p>3) the reproduction of a lawfully published work for the purpose of teaching or scientific research to the extent justified by the purpose in educational and research institutions whose activities are not carried out for commercial purposes.</p>

ETHIOPIA

Sources:

1. Copyright and Neighboring Rights Protection Proclamation of Ethiopia, No. 410/2004 (2004) <http://www.wipo.int/wipolex/en/details.jsp?id=5306>
2. WIPO study 2008

Specific exceptions	
Reproduction for preservation purposes	Article 12(3) A copy of work shall be made: a) to preserve and, if necessary to replace a copy or a copy which has been lost, destroyed or rendered unusable in the permanent collection of another similar library or archive, . b) where it is impossible to obtain a copy under reasonable conditions, and c) the act or reproduction is an isolated one occurring and if repeated on separate and unrelated occasions.
Use of works in exhibition catalogues	--
Making available for research or study	--
Use of orphan works	--

General exceptions	
Reproduction for private purposes	Article 9(1) The owner of copyright cannot forbid private reproduction of a published work in a single copy by a physical person exclusively for his own personal purposes. Excluded: a) a work of architecture in the form of a building or other construction; b) musical work in the form of notation; or of the original or a copy made and signed by the author of a work of fine art. c) the whole or a substantial part of a database in digital form; d) a computer program except as provided in; or e) copy which would conflict with or unreasonable harm the normal exploitation of the work or the legitimate interest of the author.
Reprographic reproduction	No specific rules
Use for educational and scientific research	Article 11. 1) the owner of copyright cannot forbid, without exceeding fair practice and the extent justified by the purpose, a reproduction of a published work or sound recording for the purpose of teaching. 2) A copy made in accordance with the preceding Sub-Article shall indicate, as far as practicable, the sources of the work or sound recording reproduced and the name of the author

FIJI

Sources:

1. Copyright Act of Fiji (2000), available at http://portal.unesco.org/culture/en/ev.php-URL_ID=27720&URL_DO=DO_TOPIC&URL_SECTION=201.html
2. WIPO study 2008

Specific exceptions	
Reproduction for preservation purposes	<p>§ 48 (a) Meaning of the term "archive" includes: (i) the National Archives of the Fiji Islands; (ii) any library, museum or other body approved by the Minister of Information to be a repository of archival material under section 3 of the Libraries (Deposit of Books) Act (Cap 109); (iii) any collection of documents (within the meaning of section 7 of the Public Records Act (Cap 108)) of historical significance or public interest that is in the custody of and maintained by a person or body, whether incorporated or unincorporated, that does not keep and maintain the collection for the purpose of deriving a profit;</p> <p>§ 52 Archivists of archives, or persons acting on their behalf. Literary, dramatic, or musical works, including any artistic work contained within the work and the typographical arrangement. The work may be copied only where it is not reasonably practicable to purchase a copy of the work to fulfill the allowed purpose. To preserve or replace an item by placing the copy in the permanent collection of archive in addition to or in place of the item. To replace in the permanent collection of another archive an item that has been lost, destroyed, or damaged.</p>
Use of works in exhibition catalogues	--
Making available for research or study	--
Use of orphan works	<p>§ 66 (1) A sound recording of a performance of a song may be made for the purpose of including the song in an archive maintained by a body prescribed by regulations under section 229 without infringing copyright in the words as a literary work or in the accompanying musical work, if the conditions in subsection (2) are complied with. (2) The conditions referred to in subsection (1) are that- (a) the words are unpublished and of unknown authorship at the time the recording is made; (b) the making of the recording does not infringe any other copyright; and (c) the making of the recording is not prohibited by any performer.</p>

	<p>(3) Copies of a sound recording made in reliance on subsection (1) and included in an archive maintained by a body prescribed by regulations made under this Act may, if the condition contained in subsection (4) is complied with, be made and supplied by the archivist without infringing copyright in the recording or the works included in it.</p> <p>(4) The condition referred to in subsection (3) is that no person is furnished with more than one copy of the same recording.</p>
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General exceptions	
<p>Reproduction for private purposes</p>	<p>§ 53</p> <p>(1) The archivist of an archive may, if the conditions contained in subsection (3) are complied with, copy for supply to any person a copy of an unpublished work in the archive, without infringing copyright in that work.</p> <p>(2) This section does not apply if the copyright owner has prohibited copying of the work and at the time the copy is made the archivist making it is, or ought to be aware of that fact.</p> <p>(3) The conditions referred to in subsection (1) are-</p> <p>(a) that no person is supplied on the same occasion with more than one copy of the same work;</p> <p>(b) that if a person to whom a copy is supplied is required to pay for the copy, the payment required is no higher than the cost of production of the copy together with a reasonable contribution to the general expenses of the library or archive; and</p> <p>(c) that there is no collective licence available of which the archive is or should be aware under which the copying can be done.</p>
<p>Reprographic reproduction</p>	<p>No specific provisions</p> <p>§ 3</p> <p>“Copying” means reproducing or recording the work in any material form and includes in relation to a literary, dramatic, musical, or artistic work - storing the work in any medium by any means; in relation to an artistic work - converting the work into a 3-dimensional form, or if it is in 3 dimensions, converting it into a 2-dimensional form; in relation to an audio visual work, television broadcast, or cable program - the making of a photograph of the whole or any substantial part of any image forming part of the audio visual work, broadcast, or cable program.</p> <p>§ 154 devoted to Licences for reprographic copying.</p>
<p>Use for educational and scientific research</p>	<p>Only for educational establishments; museums do not fall under the definition of such establishment.</p>

FINLAND

Sources:

1. Copyright Act (404/1961, amendments up to 307/2010 included)
2. Copyright Act Amendment Act 2014, **SDK 1408/2014 (published 31.12.2014)**
[http://www.finlex.fi/fi/laki/ajantasa/1961/19610404?search\[type\]=pika&search\[pika\]=te
kijänoikeus](http://www.finlex.fi/fi/laki/ajantasa/1961/19610404?search[type]=pika&search[pika]=te+kija%20noikeus)
3. Law on the use of orphan works: <http://www.finlex.fi/fi/laki/ajantasa/2013/20130764>

Specific exceptions	
Reproduction for preservation purposes	<p>Section 16</p> <p>A museum open to the public, to be determined in a Government Decree, may, unless the purpose is to produce direct or indirect financial gain, make copies of a work in its own collections:</p> <ol style="list-style-type: none"> 1. for the purpose of preserving material and safeguarding its preservation; 2. for the purpose of technically restoring and repairing material; 3. for the purpose of administering and organising collections and for other internal purposes required by the maintenance of the collection; 4. for the purpose of supplementing a deficient item or completing a work published in several parts if the necessary complement is not available through commercial distribution or communication.
Use of works in exhibition catalogues	<p>Section 25a</p> <p>(1) A work of art which is included in a collection or displayed or offered for sale, may be reproduced in pictorial form for the purpose of disseminating information about the exhibition or sale or for a catalogue produced by printing, photocopying or by other corresponding means.</p> <p>(2) A work of art which is included in a collection, displayed or offered for sale may be reproduced by the maintainer of the collection, the exhibitor or the vendor by virtue of extended collective licence, as provided in section 26, in cases other than those referred to in subsection 1, and the copies thus made may be used for communication to the public by means other than transmission on radio or television.</p> <p>The provisions of this subsection shall not apply to a work of art whose author has prohibited the reproduction or communication of the work.</p>
Making available for research or study	<p>Section 16a (2)</p> <p>A museum open to the public, to be determined in a Government Decree, may, unless the purpose is to produce direct or indirect financial gain, communicate a work made public that it has in its collections, to a member of the public for purposes of research or private study on a device reserved for communication to the public on the premises of the institution. This shall be subject to the provision that the communication can take</p>

	place without prejudice to the purchasing, licensing and other terms governing the use of the work and that the digital reproduction of the work other than reproduction required for use referred to in this subsection is prevented, and provided that the further communication of the work is prevented.
Use of orphan works	<p>Section 16d (14.10.2005/821)</p> <p>(1) An archive, and a library or a museum open to the public, to be determined in a Government Decree, may, by virtue of extended collective licence, as provided in section 26 [extended collective licensing]:</p> <ol style="list-style-type: none"> 1. make a copy of a work in its collections in cases other than those referred to in sections 16 and 16a–16c; 2. communicate a work in its collections to the public in cases other than those referred to in sections 16a–16c. <p>(2) The provisions of subsection 1 shall not apply to a work whose author has prohibited the reproduction or communication of the work.</p> <p>§ 16 f (11.8.2013 / 763)</p> <p>The use of orphan works in the Act (764/2013) reproductions and communication to the public of orphan works by:</p> <ol style="list-style-type: none"> 1) open to the public libraries, museums and educational organizations; 2) archives and film and sound archives; together with 3) public service television and radio companies.

General exceptions	
Reproduction for private purposes	<p>Section 12</p> <p>(1) Anyone may make single copies for his private use of a work that has been made public. The copies thus made may not be used for other purposes.</p> <p>(2) It is also permitted to have copies made by a third party for the private use of the party ordering the copies.</p> <p>(3) The provisions of subsection 2 shall not apply to the reproduction of musical works, cinematographic works, utility articles or sculptures, or the reproduction of any other work of art by artistic means.</p> <p>(4) The provisions of this section shall not apply to a computer-readable computer program, to the making of a computer-readable copy of a computer-readable database, or to the construction of a work of architecture.</p>
Reprographic reproduction	<p>Section 13</p> <p>A published work may be reproduced by photocopying or by corresponding means by virtue of extended collective licence as provided in section 26.</p>
Use for educational and scientific research	<p>Section 21</p> <p>(1) A published work may be publicly performed in</p>

	<p>connection with divine services and education.</p> <p>(3) The provisions of subsections 1 and 2 shall not apply to dramatic or cinematographic works.</p> <p>Section 14</p> <p>(1) A work made public may, by virtue of extended collective licence, as provided in section 26, be reproduced for use in educational activities or in scientific research and be used in this purpose for communication to the public by means other than transmitting on radio or television. The provisions of this subsection shall not apply to reproduction by photocopying or by corresponding means.</p> <p>(2) In educational activities, a work made public, performed by a teacher or a student, may be reproduced by direct recording of sound or image for temporary use in educational activities. A copy thus made may not be used for other purposes.</p> <p>(3) Parts of a literary work that has been made public or, when the work is not extensive, the whole work, may be incorporated into a test constituting part of the matriculation examination or into any other corresponding test.</p> <p>(4) The provisions of subsection 1 concerning works other than transmitted on radio or television shall not apply to a work whose author has prohibited the reproduction or communication of the work.</p>
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FRANCE

Sources:

1. Code of Intellectual Property of France (December 2014),
2. Law n° **2015-195**, February 20th, 2015
3. <http://www.assemblee-nationale.fr/14/ta/ta0462.asp>

Specific exceptions	
Reproduction for preservation purposes	Article L122-5(8°) When the work has been disclosed, the author may not prohibit the reproduction of a work and its representation made for conservation purposes, provided that it is not for economic or commercial advantage.
Use of works in catalogues for judicial sales	Article L122-5 (3°) d) When the work has been disclosed, the author may not prohibit, provided that clearly indicated the name of the author and the source, reproduction of all or part of graphic or plastic art for including in the catalogue of a judicial sale made in France for copies made available to the public prior to the sale for the sole purpose of describing the works of art offered for sale.
Making available for research or study	Article L122-5 (8 °) When the work has been disclosed, the author may not prohibit the reproduction of a work and its representation made to preserve the conditions of its consultation for research or private study by individuals, in the premises of the institution and dedicated terminals by museums, provided that it is not for economic or commercial advantage.
Use of orphan works	Article L113-10 The orphan work is a protected work and disclosed, the rights holder cannot be identified or found despite diligent research, proven and serious. Where a work has more than one author and one holder of the rightholders has been identified and found, it is not considered an orphan. Article L135-2 & following Museum may make reproductions of orphan works for digitization, making available, indexing, cataloging, reservation and restoration purposes and provide access to individuals at their initiative. Museum can collect receivables for 7 years, solely in the amount corresponding to the costs incurred for digitization and making available to the public. . Museum can only use OW for their cultural, educational and research missions
General exceptions	
Reproduction for private purposes	Article L122-5 (2 °) When the work has been disclosed, the author may not prohibit copies or reproductions made from a legal source and strictly reserved for the use the private and not

	<p>intended for public use, with the exception of copies of works art to be used for the same purpose for which the original work was created and copies of software other than the backup set in the conditions provided for in Section II of Article L. 122-6-1 and copies or reproductions of an electronic database;</p>
<p>Reprographic reproduction</p>	<p>Article L122-10 The publication of a work shall imply assignment of the right of reprographic reproduction to a society governed by Title II of Book III and approved for that purpose by the Minister responsible for culture. Societies approved may conclude an agreement with users with the right management purposes so transferred, subject to the stipulations authorizing copies for purposes of sale, rental, publicity or promotion, the consent of the author or his assigns. If no designation the author or his beneficiary on the date of the publication of the work, is one of the approved societies deemed the assignee of the right. Reprographic reproduction means the form of a copy on paper or an assimilated medium by a photographic technique having equivalent effect permitting direct reading. Notwithstanding anything to the contrary, the provisions of this Article shall apply to all protected works whatever the date of publication. Article L122-11 The agreements referred to in Article L. 122-10 may provide for lump sum remuneration in the cases defined in 1 ° to 3 ° of Article L. 131-4.</p>
<p>Use for educational and scientific research</p>	<p>Article L122-5 (3 °). When the work has been disclosed, the author may not prohibit, provided that the name of the author and the source are clearly indicated, e) The representation or reproduction of excerpts of works subject to the works designed to educational purposes and sheet music, for the sole purpose of illustration for teaching and research, including the development and dissemination of examination subjects or competitions in extra lessons to the exclusion of any activity fun and recreational, since this representation or reproduction that is intended, including through a digital workspace, a predominantly public pupils, students, teachers or researchers directly involved in the act education, training or research activity or that require this representation reproduction, it is not the subject of any publication or dissemination to third parties and to the public constituted, that the use of this representation or reproduction that give rise to any commercial operation and is offset by a negotiated fee on a basis flat without prejudice to the transfer of the right of reprographic reproduction referred to Article L. 122-10;</p>

GERMANY

Sources:

1. Act on Copyright and Related Rights (Copyright Act)
Full citation: Copyright Act of 9 September 1965 (Federal Law Gazette Part I, p. 1273), as last amended by Article 8 of the Act of 1 October 2013 (Federal Law Gazette Part I, p. 3714) http://www.gesetze-im-internet.de/englisch_urhg/englisch_urhg.html

Specific exceptions	
Reproduction for preservation purposes	Explicit provision only with respect to orphan works (Article 61, see below)
Use of works in exhibition catalogues	Article 58 (1) Reproduction, distribution and making available to the public of artistic works and photographic works which are exhibited in public or intended for public exhibition or public sale by the organiser shall be permitted for advertising purposes to the extent necessary for the promotion of the event. (2) It shall, further, be permissible to reproduce and distribute the works referred to in paragraph (1) in lists issued by museums in connection with an exhibition with respect to content and time, or to take inventory, and with which no independent gainful purpose is served.
Making available for research or study	Article 52b So far as there are no contractual provisions to the contrary, it shall be permissible to make published works available from the stocks of publicly accessible museums, which neither directly nor indirectly serve economic or commercial purposes, exclusively on the premises of the relevant institution at terminals dedicated to the purpose of research and for private study. In principle, reproduction of a work in excess of the number stocked by the institution shall not be made simultaneously available at such terminals. Equitable remuneration shall be paid in consideration of their being made available. The claim may only be asserted by a collecting society.
Use of orphan works	Article 61 (1) The reproduction and the making available to the public of orphan works shall be permissible pursuant to paragraphs (3) to (5). (2) Orphan works within the meaning of this Act shall be 1. works and other protected subject-matter in books, journals, newspapers, magazines or writings; 2. cinematographic works, as well as video recording mediums and video and audio recording mediums on which cinematographic works have been recorded; and 3. audio recording mediums in the collections (holdings) of publicly accessible libraries, educational institutions, museums, archives and film or audio heritage institutions, if the holdings have already been published, the rightholder of which could not

	<p>be identified or located despite a diligent search.</p> <p>(3) Where an item in the holdings has several rightholders, its content may also be reproduced and made available to the public if, despite a diligent search, it was not possible to identify or locate all the rightholders, but permission to use the item in the holdings has been obtained from one of the known rightholders.</p> <p>(4) Holdings which have not been published or broadcast may also be used by the institution referred to in paragraph (2) if they have already been made available to the public with the permission of the rightholder and, if it can be assumed in good faith that the rightholder would agree to the use in accordance with paragraph (1).</p> <p>(5) The reproduction and the making available to the public by the institutions referred to in paragraph (2) shall be permissible only if the institutions are acting to fulfil their tasks which are in the public interest, in particular if they preserve and restore holdings and make them accessible in their collections, if this serves cultural and educational purposes. The institutions may charge a fee for providing access to the orphan works which covers the costs of the digitalisation and the making available to the public.</p>
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General exceptions	
<p>Reproduction for private purposes</p>	<p>Article 53(1)-(2)</p> <ul style="list-style-type: none"> - It shall be permissible for a natural person to make single copies of a work for private use on any medium, insofar as they neither directly nor indirectly serve commercial purposes, as long as no obviously unlawfully-produced model or a model which has been unlawfully made available to the public is used for copying. A person authorised to make copies may also cause such copies to be made by another person if no payment is received therefore, or if it involves copies on paper or a similar medium which have been effected by the use of any kind of photomechanical technique or by some other process having similar effects. - It shall be permissible to make single copies of a work or to have these made: <ol style="list-style-type: none"> 1. for one's own scientific use if and to the extent that such reproduction is necessary for the purpose and it does not serve a commercial purpose, 2. for inclusion in a personal archive if and insofar as the reproduction is necessary for this purpose and one's own personal copy of the work is used as the model from which the copy is made, if the following conditions are met: <ul style="list-style-type: none"> - the reproduction is effected on paper or any similar medium by the use of any kind of photographic technique or by some other process

	<p>having similar effects, or</p> <ul style="list-style-type: none"> – exclusively analogue use takes place, or – the archive acting in the public interest and pursues no direct or indirect economic or commercial purpose. <p>3. for one's own personal information concerning current affairs, for other personal use a) in the case of small parts of a released work or individual articles being released in newspapers or periodicals, or b) in the case of a work which has been out of print for at least two years, if the work was broadcasted, if one the following conditions is met:</p> <ul style="list-style-type: none"> – the reproduction is effected on paper or any similar medium by the use of any kind of photographic technique or by some other process having similar effects, or – exclusively analogue use takes place.
<p>Reprographic reproduction</p>	<p>Not mentioned specifically, but see private use exception</p>
<p>Use for educational and scientific research</p>	<p>Article 52 (1) It shall be permissible to communicate to the public a published work if that communication serves a non-profit-making purpose for the organiser, if participants are admitted free of charge and, in the case of a lecture or performance of a work, if none of the performers (Article 73) is paid a special remuneration. Equitable remuneration shall be paid for the communication.</p> <p>Article 53 (3) It shall be permissible to make copies for personal use of small parts of a work, of small-scale works or of individual articles released in newspapers or periodicals or made available to the public</p> <ol style="list-style-type: none"> 1. for the purpose of illustration for teaching in schools, in non-commercial training and further training institutions, as well as vocational training institutions in quantities required for the persons receiving instruction, or 2. for state examinations and examinations in schools, higher education institutions, non-commercial training and further training institutions, as well as vocational training institutions in the required quantity, <p>or to have these copies made if and insofar as reproduction is necessary for this purpose.</p>

HUNGARY

Sources:

1. Act No. LXXVI of 1999 on copyright (consolidated text as of 01.01. 2007), http://www.wipo.int/wipolex/en/text.jsp?file_id=325838
2. Act CLIX of 2013, Article 16. See: 2013(172) Magyar Közlöny 73969-73972 (www.kozlonyok.hu/nkonline/MKPDF/hiteles/MK13172.pdf) (only in Hungarian)
3. WIPO Study 2008

Specific exceptions	
Reproduction for preservation purposes	<p>Article 35(4)</p> <p>Museums shall be allowed to make a copy of a work for internal institutional purposes – outside the scope of entrepreneurial activity – to the extent and in the way justified by such a purpose if it is not intended for earning or increasing income even in an indirect way and if the copy is</p> <p>b) made for archiving from an own copy of such an institution for scientific purpose or for public library supply,</p> <p>c) made of a minor part of a work made public or of an article published in a newspaper or periodical, or</p> <p>d) the copying is allowed by a separate law under certain conditions, in exceptional cases.</p> <p>Article 18</p> <p>Reproduction means the direct or indirect fixation of the work in any manner on a tangible carrier, whether definitively or temporarily, and the making of one or several copies of the fixation.</p>
Use of works in exhibition catalogues	--
Making available for research or study	<p>Article 38(5)</p> <p>In the absence of a contractual provision to the contrary, works forming part of the collection of museums may be, for the purpose of research or private study, freely displayed to individual members of the public on the screens of dedicated terminals on the premises of such establishments, and, in the interest of this, they may be in a way and on conditions as provided for in separate legislation communicated, including their making available, to such members of the public, provided that this is not for direct or indirect earning or increasing income.</p>
Use of orphan works	<p>According to Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works, Official Journal of the European Union, 27.10.2012, L299/5-12 - Article 41/A</p>

General exceptions	
Reproduction for private purposes	<p>Article 35</p> <p>(1) A copy of the work may be made by a natural person</p>

	<p>for private purposes if it is not intended for earning or increasing income even in an indirect way. [SY : software, databases, music sheets are specifically excluded]</p> <p>(2) A complete book as well as the whole of a periodical or daily may be copied even for private purpose only by handwriting or typing.</p> <p>(3) It shall not be considered as free use to have a work copied by someone else by means of a computer and/or on an electronic data carrier, even if it is done for private purposes.</p>
<p>Reprographic reproduction</p>	<p>Article 21</p> <p>(1) The authors of the works and the publishers thereof in the form of book, or in periodicals which are reproduced by photocopying or in like manner on paper or on like carrier (hereinafter jointly referred to as by reprography) shall be due to be paid fair and equitable remuneration on private-purpose copying.</p> <p>SY: no specific exception on reprography, but mentioned in Article 35 cited elsewhere.</p>
<p>Use for educational and scientific research</p>	<p>Article 35 (4) a)</p> <p>Museums shall be allowed to make a copy of a work for internal institutional purposes – outside the scope of entrepreneurial activity – to the extent and in the way justified by such a purpose if it is not intended for earning or increasing income even in an indirect way and if the copy is required for scientific research.</p>

ICELAND

Sources:

1. The Copyright Act of Iceland, No. 73 (1972, as amended through No. 93, 21 April 2010), available at: http://www.wipo.int/wipolex/en/text.jsp?file_id=332081
2. WIPO Study 2014

Specific exceptions	
Reproduction for preservation purposes	<p>Article 12 Public collections and museums, and institutions subject to the Act on Museums are permitted to make copies of:</p> <ol style="list-style-type: none"> 1. works for purposes of safekeeping and preservation; 2. works from which parts are missing, provided such parts constitute a minor proportion of a work in its entirety and provided they are unavailable in the open market and from the publisher; the permission granted by this provision shall only apply to reproduction of the parts of works missing from the copies held by the institution in question; 3. any works of which the institution in question is required by law to keep copies, provided such copies are unobtainable in the open market and from the publisher; 4. works the originals of which are too delicate for loaning, provided they are unobtainable in the open market and from the publisher. <p>Reproduction as provided for in the first paragraph is only permitted for use in the course of the collection' own activities and for non-financial purposes. Institutions are however permitted to loan copies reproduced in accordance with subparagraphs 2-4 of the first paragraph.</p> <p>Reproduction as provided for in the first paragraph is not permissible for computer programmes in digital form, except for computer games.</p> <p>Article 4 Exceptions are subject to a general provision that they shall not prejudice the rights of an author.</p> <p>Article 26 Creates an obligation to have the author's name and the source used on copies of the work, and it bars alteration of the work that would prejudice the author's reputation or character of the work.</p> <p>Article 2 "Reproduction": It shall be considered as reproduction when a work is fixed in one or more physical form.</p>
Use of works in exhibition catalogues	--
Making available for research or study	<p>Article 12a Public collections and museums, and institutions subject to the Act on Museums may grant individual persons access for purposes of research or education, by means of equipment suitable for the purpose, to published works</p>

	that are not subject to purchase or licence agreements, for use within the area of their activities.
Use of orphan works	--

General exceptions	
Reproduction for private purposes	Article 11 Individuals may make reproductions of published works exclusively for private use, providing that this is not done for commercial purposes. Such reproductions may not be used for any other purpose.
Reprographic reproduction	--
Use for educational and scientific research	Article 10a 4 Authors' exclusive rights under Article 3 (cf. Article 2), shall not apply to the making of reproductions (copies) that have no independent economic significance. Computer programs and databases are excluded. [SY : I assume reproductions with no economic significance includes education and scientific research] Article 21 1 A published work may be performed publicly for educational purposes. The author is entitled to remuneration if admission is charged especially for this performance. The provisions of this Article shall not apply to dramatic works or cinematographic works.

INDIA

Sources:

1. Copyright Act of India, No. 14 (1957), as amended through Act No. 49 (1999), available at <http://www.wipo.int/clea/en/fiche.jsp?uid=in007>
2. WIPO Study 2014

Specific exceptions	
Reproduction for preservation purposes	Only for libraries § 52(1) (n); § 52(2)
Use of works in exhibition catalogues	--
Making available for research or study	--
Use of orphan works	--

General exceptions	
Reproduction for private purposes	<p>§ 52. (1) (i) The following acts shall not constitute an infringement of copyright, namely:</p> <p>(a) a fair dealing with a literary, dramatic, musical or artistic work [not being a computer programme] for the purposes of private use, including research.</p>
Reprographic reproduction	--
Use for educational and scientific research	<p>§ 52. (1) (k) (iii) and (p) The following acts shall not constitute an infringement of copyright, namely</p> <ul style="list-style-type: none"> — the causing of a recording to be heard in public by utilising it, as part of the activities of a club, society or other organisation which is not established or conducted for profit; — the reproduction, for the purpose of research or private study or with a view to publication, of an unpublished literary, dramatic or musical work kept in a library, museum or other institution to which the public has access, provided that: where the identity of the author of any such work or, in the case of a work of joint authorship, of any of the authors is known to the museum or other institution, as the case may be, the provisions of this clause shall apply only if such reproduction is made at a time more than sixty years from the date of the death of the author or, in the case of a work of joint authorship, from the death of the author whose identity is known or, if the identity of more authors than one is known from the death of such of those authors who dies last.

ISRAEL

Source:

<http://www.wipo.int/edocs/lexdocs/laws/en/il/il033en.pdf>
Copyright Regulations (Libraries and Archives), 5769-2008 -
<http://www.wipo.int/wipolex/en/details.jsp?id=15244>

Specific exceptions	
Reproduction for preservation purposes	§ 30(a) Copying of a work, a copy of which is already in the permanent collection of a library or archive of the type of libraries or archives as prescribed by the Minister, is permitted for the following purposes, provided that it is not possible to purchase an additional copy of said work within a reasonable period of time and on reasonable terms: reserve copy, replacement copy,
Use of works in exhibition catalogues	--
Making available for research or study	--
Use of orphan works	--

General exceptions	
Reproduction for private purposes	§ 19(a) Fair use of a work is permitted for purposes such as: private study, research, criticism, review, journalistic reporting, quotation, or instruction and examination by an educational institution.
Reprographic reproduction	
Use for educational and scientific research	§ 19(a) Fair use of a work is permitted for purposes such as: private study, research, criticism, review, journalistic reporting, quotation, or instruction and examination by an educational institution.

ITALY

Sources:

1. Law for the Protection of Copyright and Neighboring Rights of Italy, No. 633 (1941), as amended through No. 68 (2003), available at http://portal.unesco.org/culture/en/ev.php-URL_ID=27690&URL_DO=DO_TOPIC&URL_SECTION=201.html
2. WIPO Study 2008

Specific exceptions	
Reproduction for preservation purposes	Article 68 2 The photocopying of works available in public museums for the services of the said institutions shall be permitted, if made without any either direct or indirect economic or commercial advantage.
Use of works in exhibition catalogues	--
Making available for research or study	Article 71 ter The communication or making available to individual members of the public is free if made for the purpose of research or private study by dedicated terminals on the premises of museums, limited to the works and other subject matter contained in their collections that are not subject to purchase or licensing terms.
Use of orphan works	--

General exceptions	
Reproduction for private purposes	Article 68 1. The reproduction of single works or of portions of works for the personal use of readers, when made by hand or by a means of reproduction unsuitable for marketing or disseminating the work in public, shall be permitted.
Reprographic reproduction	Article 68 3 and 5 With the exception of sheet music, the reproduction for personal use of intellectual works made by means of photocopying, xerocopying or like means shall be permitted limited to the 15% of each volume or issue of a magazine, excluding advertising pages. Above-mentioned reproductions of works available in public libraries, made inside the library, shall be permitted, within the limitations provided for above, on payment of a lump sum remuneration in favour of rightholders. The limitations shall not apply to works that are not present in publishing catalogues and that are rare, as they are hard to find through commercial channels.
Use for educational and scientific research	--

LATVIA

Sources: WIPO study 2014

http://www.wipo.int/wipolex/en/text.jsp?file_id=196720

Specific exceptions	
Reproduction for preservation purposes	<p>Section 23 (1) Works in the permanent collections. To replace a work from the permanent collection of any other library, archive, or museum, if such work has been damaged or has become unusable; without direct or indirect commercial purpose; it is not possible to obtain a copy in some other acceptable manner. Only such works that have been published in Latvia and are not available commercially are permitted to be reproduced in a digital format, unless an agreement with the author determines otherwise.</p>
Use of works in exhibition catalogues	-
Making available for research or study	<p>Section 23 (2) use for scientific research or for self-education purposes, to natural persons who have authorised access to computers specifically set up in the premises of the relevant library, archive or museum.</p>
Use of orphan works	-
General exceptions	
Reproduction for private purposes	<p>Section 25 (1) It is permitted to use images of works of architecture, photography, visual arts, design, as well as of applied arts, permanently displayed in public places, for personal use (and as information in news broadcasts or reports of current events, or include in works for noncommercial purposes).</p>
Reprographic reproduction	<p>Section 35 (1) Natural persons shall be permitted to reprographically reproduce published works, except for sheet music, for personal use without direct or indirect commercial purpose without the permission of the author. Persons who have in their ownership or possession the equipment intended for reprographic reproduction and who ensure the availability of such reproduction to natural persons for a fee or free of charge</p>

	shall be allowed to reprographically reproduce works for the benefit of and for the personal use of a natural person. Authors and publishers are entitled to receive a fair compensation for reprographic reproduction.
Use for educational and scientific research	Section 23(2) <u>Without consent</u> from the author, libraries, archives and <u>museums of the state</u> , local government or of other derived public persons shall be entitled, without a direct or indirect commercial purpose, to make available the works in their permanent collection, as well as copies thereof made in accordance with Paragraph one of this Section, upon request for the use for <u>scientific research or for self-education purposes</u> , to natural persons who have authorised access to computers specifically set up in the premises of the relevant library, archive or museum. Such service shall be ensured by the relevant library, archive or museum by using exclusively the intranet that has special protection

LESOTHO

Sources: WIPO study 2008
http://www.wipo.int/wipolex/en/text.jsp?file_id=209919

Specific exceptions	
Reproduction for preservation purposes	Nothing specific, only general for copying § 9(f) Public libraries, national archives and museums, non-commercial documentation centers, scientific institutions, and educational establishments. For the needs of the entity reproducing the work.
Use of works in exhibition catalogues	-
Making available for research or study	-
Use of orphan works	-

General exceptions	
Reproduction for private purposes	§ 9(a)(i) Reproduction of a work for personal and private use is permitted, whether or not that work has been lawfully published.
Reprographic reproduction	-
Use for educational and scientific research	§30(2) Licences shall be issued by the Ministry of Information and Broadcasting for the reproduction of duplicates of <u>phonograms</u> where such reproduction serves the exclusive purposes of education or scientific research.

LITHUANIA

Source: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=291051

Specific exceptions	
Reproduction for preservation purposes	Article 23 (1)(2) For preservation or replacement of a lost, destroyed, or rendered unusable copy from the collections of the institutions.
Use of works in exhibition catalogues	
Making available for research or study	Article 22 (3) Research or private study of the works kept in publicly accessible museums.
Use of orphan works	-

General exceptions	
Reproduction for private purposes	Article 20 Reproduction of works for personal use is permitted under certain circumstances.
Reprographic reproduction	Article 23(2) Except the work made available to the public over computer networks. Not for direct or indirect commercial advantage.
Use for educational and scientific research	Article 22 (1)(2) Reproduction for non-commercial educational, teaching and scientific research purposes.

LUXEMBOURG

Source: WIPO study 2008

http://www.wipo.int/wipolex/en/text.jsp?file_id=128654

Specific exceptions	
Reproduction for preservation purposes	Article 10(11) The reproduction of a work lawfully made available to the public, performed by a library, a film, a documentation center or other non-commercial scientific or cultural institution for the sole purpose of preserving the heritage and perform all work reasonably necessary to safeguard this work, provided they do not undermine the normal exploitation of such works and does no harm the legitimate interests of authors and the public communication of audiovisual works by these institutions in order to make known the cultural heritage, provided that this communication takes place in the institution and that the latter speaker is recognized by the Minister who has the cultural affairs, by Grand-Ducal Regulation.
Use of works in exhibition catalogues	
Making available for research or study	-
Use of orphan works	-
General exceptions	
Reproduction for private purposes	Article 10(4) reproduction of a work made for no consideration by the copyist and for his private use, not for use or a public communication, provided that such reproduction does not prejudice to the edition of the original work.
Reprographic reproduction	-
Use for educational and scientific research	Article 10(2) Reproduction and communication to the public of short fragments of works exclusively of illustration for teaching or scientific research to the extent justified by the non-commercial purpose and provided that such use is compatible with fair uses and that, unless this proves impossible, the source, including the author's name, is indicated.

MACEDONIA, REPUBLIC OF,

Source: http://www.wipo.int/wipolex/en/text.jsp?file_id=263877
WIPO study 2014

Specific exceptions	
Reproduction for preservation purposes	No specific fro preservation, only general: Article 52(1)(2) Use without remuneration: For the purpose of carrying out the activity of the institution. Without direct or indirect economic or commercial advantage. Without remuneration to the rights holder.
Use of works in exhibition catalogues	Article 52 (1)(12) Use of works in the field of fine and applied art, architecture, industrial design and photographic works exhibited at public exhibitions or at auctions, by the organizer, on posters or catalogues made with no commercial purposes, to the extent necessary for promotion of those events;
Making available for research or study	Article 52 (17) Public communication and making available of a copyright work for the purpose of research or private study in certain locations within the public scientific, cultural, educational and other establishments of similar nature, in case where a work is not subject to purchase, or its use is not subject to having an authorization, and where the work is contained in the collections/funds of these establishments.
Use of orphan works	-
General exceptions	
Reproduction for private purposes	Art 54 (2) Use with compensation: Reproduction on any medium, made by a natural person for private use, without direct or indirect commercial advantage.
Reprographic reproduction	-
Use for educational and scientific research	Article 52 (1)(4) Use of works for illustration for teaching or scientific research to the extent justified by the non-commercial purpose to be achieved, provided that the name of the author and the source is indicated, unless this turns out to be impossible;

MALTA

Source: WIPO study 2008
http://portal.unesco.org/culture/en/files/30277/11418375193mt_copyright_2003_en.pdf/mt_copyright_2003_en.pdf

Specific exceptions	
Reproduction for preservation purposes	-
Use of works in exhibition catalogues	Art.9 (1) (r) the reproduction, distribution or communication to the public of a work for the purpose of advertising the public exhibition or sale of artistic works, to the extent necessary to promote the event, excluding any other commercial use.
Making available for research or study	Article 9 (1) (v) For research or study by individual members of the public. -An audiovisual work, a database, or a literary work contained in the institution's collections - artistic works are excluded.
Use of orphan works	-
General exceptions	
Reproduction for private purposes	Article 9(1)(c) Reproduction is permitted where made by a natural person for private use for ends that are neither directly or indirectly commercial; fair compensation is required. Certain works are excluded.
Reprographic reproduction	-
Use for educational and scientific research	Article 9(1)(h) the reproduction, translation, distribution or communication to the public of a work for the sole purpose of illustration for teaching or scientific research only to the extent justified by the non-commercial purpose to be achieved, and as long as the source, including the author's name, is, unless this is impossible, indicated.

MONGOLIA

Sources: WIPO study 2014

Specific exceptions	
Reproduction for preservation purposes	Nothing specific for preservation Article 24.1.3: exception: To reproduce parts of works used in the archives, museums and libraries.
Use of works in exhibition catalogues	
Making available for research or study	
Use of orphan works	-
General exceptions	
Reproduction for private purposes	Article 24.1.8 To reproduce works for private use;
Reprographic reproduction	-
Use for educational and scientific research	-

MONTENEGRO

Source: WIPO study 2014

Specific exceptions	
Reproduction for preservation purposes	Nothing specific on preservation. Article 52(2) Copying allowed by: public archive, library, museum, or educational or scientific establishment under certain conditions. For internal use.
Use of works in exhibition catalogues	-
Making available for research or study	Article 60 Natural persons may use, for the purpose of research or personal study, copyright works contained in collections of archives and libraries, museums and educational or scientific establishments, through dedicated terminals on their premises, without acquirement of the corresponding economic right and without payment of a remuneration, provided the use of such works is not subject to purchase or licensing terms.
Use of orphan works	-
General exceptions	
Reproduction for private purposes	Article 52(1) Limited right to make copies for personal use.
Reprographic reproduction	-
Use for educational and scientific research	Article 46(1); Article 46(2); Article 51 Limited right to make copies, to communicate to the public, or perform a disclosed work for teaching.

THE NETHERLANDS

Source: http://wetten.overheid.nl/BWBR0001886/geldigheidsdatum_25-01-2015/

Specific exceptions	
Reproduction for preservation purposes	<p>Article 16n</p> <p>Reproduction by libraries, museums or archives accessible to the public whose purpose does not include the attainment of a direct or indirect economic or commercial benefit will not be regarded as an infringement of copyright in a literary, scientific or artistic work, provided that the sole purpose of the reproduction is:</p> <p>1°. the restoration of the specimen of the work;</p> <p>2°. retention of a reproduction of the work for the institution if the specimen is threatening to fall into disrepair;</p> <p>3°. to keep the work in a condition in which it can be consulted if there is no technology available to render it accessible</p>
Use of works in exhibition catalogues	<p>Article 23 Unless otherwise agreed, the owner, possessor or holder of a drawn, painted, built or sculpted work or a work of applied art shall be authorized to reproduce or publish that work so far as necessary for public exhibition or public sale of that work, all subject to the exclusion of any other commercial use.</p>
Making available for research or study	<p>Article 15h</p> <p>Unless otherwise agreed, the provision of access to a literary, scientific or artistic work forming part of the collections of libraries accessible to the public, and museums or archives which are not attempting to achieve a direct or indirect economic or commercial benefit, by means of a closed network through dedicated terminals in the buildings of those institutions for individual members of the public, for purposes of research or private study, will not constitute an infringement of copyright.</p>
Use of orphan works	<p>Article 16o</p> <p>Museum may make reproductions of and make available to the public works found to be orphan in the context of the exercise of a</p>

	<p>public duty, in particular the preservation and restoration of the works and the provision of cultural and educational access to works from the collection of the organizations mentioned in the article.</p>
<p>General exceptions</p>	
<p>Reproduction for private purposes</p>	<p>Article 16b Reproduction restricted to a few specimens intended exclusively for personal exercise, study or use by the natural person who has carried out the reproduction without any direct or indirect commercial motivation or has caused it to be carried out exclusively for his own benefit. In case of drawings, paintings, works of architecture and sculpture, lithographs, engravings the reproduction must differ considerably in size or process of manufacture from the original work Copies may not be handed over to third parties</p> <p>Article 16c to reproduce the work or any part thereof on an object that is intended to be performing a work, exhibit or display, provided the reproduction made without direct or indirect commercial purpose and only serves to private practice, study or use of the natural person making the reproduction and that the right holder receives compensation.</p>
<p>Reprographic reproduction</p>	<p>Article 16h A reprographic reproduction of an article in a daily or weekly newspaper or weekly or other periodical, or of a small part of a book and other works incorporated into such a work, provided that a payment is made for this reproduction</p>
<p>Use for educational and scientific research</p>	<p>Article 16 Reproduction or communication to the public of parts of works exclusively for use as illustrations for teaching purposes, so far as justified by the intended and non-commercial purpose will not be regarded as an infringement of copyright, provided source and name of author is indicated and that payment is made</p>

NIGERIA

Source: WIPO study 2008

Specific exceptions	
Reproduction for preservation purposes	-
Use of works in exhibition catalogues	-
Making available for research or study	Second Schedule (r) The reproduction for the purpose or research or private study of an unpublished literary or musical work kept in a library, museum or other institutions to which the public has access.
Use of orphan works	Nothing specific
General exceptions	
Reproduction for private purposes	Second Schedule (a) The fair dealing for purposes of research, private use, criticism or review, or the reporting of current events is not an infringement.
Reprographic reproduction	-
Use for educational and scientific research	Fourth Schedule Nigerian citizens or bodies incorporated in Nigeria can apply for a license to produce and publish a translation of or reproduce a published literary or dramatic work in printed or analogous form for purposes of <u>teaching</u> , <u>scholarship</u> , or <u>research</u> . Detailed conditions apply.

NORWAY

Source: <http://www.kopinor.no/en/copyright/copyright-act>

Specific exceptions	
Reproduction for preservation purposes	<p>§ 16</p> <p>The King may issue rules regarding the right of archives, libraries and museums and educational and research institutions to make copies of works for conservation and safety purposes and other special purposes. The provision does not apply to commercial use.</p> <p>§ 16a</p> <p>Archives, libraries and museums as described in section 16 first paragraph can make copies of published works in the collections and make such works available to the public if the conditions of the extended collective licence pursuant to section 36 first paragraph are fulfilled.</p>
Use of works in exhibition catalogues	<p>§ 24</p> <p>Works of art and photographic works which form part of a collection or which are exhibited or offered for sale may be depicted in catalogues of the collection and in announcements of the exhibition or sale. Catalogues can only be produced by printing, photocopying or similar methods.</p>
Making available for research or study	<p>§ 16</p> <p>The King may issue regulations on that archives, libraries, museums and educational institutions, using terminals on their own premises, can make works in the collections available to individual persons when this is done for the purpose of research or private study.</p>
Use of orphan works	-
General exceptions	
Reproduction for private purposes	<p>§ 12</p> <p>Provided this is not done for purposes of gain, single copies of a work that has been issued may be made for private use. Such copies may not be used for other purposes. The authors shall receive fair compensation through annual grants via the State Budget. The King may issue further regulations governing the distribution of the compensation.</p> <p>§ 23</p>

	Issued works of art and issued photographic works may be reproduced in connection with the text of a critical or scientific treatise which is not of a generally informative character, when this is done in accordance with proper usage and to the extent necessary to achieve the desired purpose.
Reprographic reproduction	-
Use for educational and scientific research	§ 20 Copies of issued works of art and of issued photographic works may be publicly exhibited in an educational context.

PAKISTAN

Source: WIPO study 2008
Copyright (Amendment) Act of Pakistan, 1992
http://www.wipo.int/wipolex/en/text.jsp?file_id=315222

Specific exceptions	
Reproduction for preservation purposes	--
Use of works in exhibition catalogues	--
Making available for research or study	--
Use of orphan works	<p>§ 72(16) An unpublished literary, dramatic, or musical work that is kept in a museum, or other institution to which the public has access. For research or private study. Provided that where the identity of the author of any such work, or in the case of a work of joint authorship of any of the authors, is known to the museum the provision of this clause shall apply only if such reproduction is made at a time more than sixty years from the date of the death of the author or, in the case of a work of joint authorship, the death of the author whose identity is known or, if the identity of more authors than one is known, from the death of such one of those authors who dies last. (Note: the basic term of copyright duration is life of author, plus 60 years.)</p>

General exceptions	
Reproduction for private purposes	<p>§ 2(1) “Copy” means a reproduction in the form of words, picture, sounds, letters, written form or in the form of sound recordings, cinematograph film, graphic picture or in the material or non-material form, digital code (fixed or moving) or whether in two or three or surrealistic dimensions. § 72 The fair use of certain works for private study or private use including research is not an infringement.</p>

POLAND

Source: Law No. 83 of February 4, 1994 on Copyright and Neighboring Rights (as last amended on October 21, 2010)
http://www.wipo.int/wipolex/en/text.jsp?file_id=129378

Specific exceptions	
Reproduction for preservation purposes	§ 28 on for libraries, archives and schools
Use of works in exhibition catalogues	§ 33(2) It shall be allowed to disseminate the works exhibited in commonly accessible public collections such as museums, galleries, and exhibition halls, though only in catalogues and printed publications for promotion of such works and also in press and television current event reports within the limits justified by information purposes; § 33³ For the purposes of advertising, a public exhibition or a public sale of works it shall be permitted to use copies of already disseminated works, within the scope justified by the promotion of an exhibition or sale, excluding any other commercial use.
Making available for research or study	
Use of orphan works	
General exceptions	
Reproduction for private purposes	§ 23 Already disseminated works for purposes of personal use personal use shall include use of single copies of works by a circle of people having personal relationships, and in particular any consanguinity, affinity or social relationship
Reprographic reproduction	-
Use for educational and scientific research	§ 27 Research and educational institutions shall be allowed, for teaching purposes or in order to conduct their own research, to use disseminated works in original and in translation, and to make copies of fragments of the disseminated work.

PORTUGAL

Source:

<http://www.gda.pt/wpcontent/uploads/2012/01/codigododireitodeautorcdadclei162008.pdf>

<http://www.wipo.int/wipolex/en/details.jsp?id=7793>

Specific exceptions	
Reproduction for preservation purposes	Article 75(e) reproduction is carried out by a public library, a public archive, a public museum, a non-commercial documentation center or scientific or educational institution, and that such reproduction and the corresponding number of copies are not intended to the public, are limited to the needs of the activities of these institutions and not seek to obtain economic or commercial direct or indirect benefit, including acts of reproduction necessary to the preservation and any work file;
Use of works in exhibition catalogues	Art.75 (l) The use of a work for the purpose of advertising the public exhibition or sale of artistic works, to the extent that this is necessary to promote the event, excluding any other commercial use;
Making available for research or study	Article 75 (o) The communication or making public provision for the purpose of research or private study, to individual members of the public by dedicated terminals on the effect on libraries facilities, museums, public archives and schools, protected works not subject to conditions purchase or licensing, and integrating their collections or property holdings.
Use of orphan works	-
General exceptions	
Reproduction for private purposes	
Reprographic reproduction	Art 75 (a) reproduction for private purposes only, in paper or any similar medium, effected by any kind of photographic technique or process with similar results, with the exception of scores, and reproduction in any medium made by a natural person for private use and without direct or indirect commercial purposes;
Use for educational and scientific research	Art 75 (f) The reproduction, distribution and public provision for education and education, parts of a published work, provided that is used only for the purpose of teaching in these establishments to the objectives of

	education in these establishments and not seek to obtain an advantage economic or commercial direct or indirect;
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ROMANIA

Source: WIPO study 2014
<http://www.wipo.int/wipolex/en/details.jsp?id=5195>

Specific exceptions	
Reproduction for preservation purposes	Article 33(1)(d); Art, 33(1) The reproduction of brief excerpts from works for information or research within the framework of libraries, museums, film archives, sound archives, archives of non-profit cultural or scientific public institutions; the complete reproduction of a copy of a work shall be allowed for the replacement of the sole copy in such an archive or library's permanent collection in the event of the destruction, serious deterioration or loss.
Use of works in exhibition catalogues	-
Making available for research or study	33(1)(d); Article 33(1) Must be within the framework of libraries, museums, film archives, sound archives, archives of non-profit cultural or scientific public institutions.
Use of orphan works	
General exceptions	
Reproduction for private purposes	Article 34(1) It shall not be a violation of copyright, for the purposes of this law, thereproduction of a work, without the author's consent for personal use or for use by a normal family circle, provided that the work has already been disclosed to the public, while the reproduction does not contravene to the normal use of the work or prejudice the author or the owner of the utilization rights.
Reprographic reproduction	-
Use for educational and scientific research	Article 33(1)(c); Article 33(1)(g); Article 33(2)(d) the representation and execution of a work as part of the activities of educational establishments for specific purposes; or of works for teaching or scientific research.

SERBIA

Source: WIPO study 2014
http://www.zis.gov.rs/upload/THE%20LAW%20ON%20COPYRIGHT%20AND%20RELATED%20RIGHTS-version%20in%20force%204.1.2013._.pdf

Specific exceptions	
Reproduction for preservation purposes	Article 45 It is allowed, without the permission of the author and without payment of the copyright remuneration to multiply works by public libraries, educational institutions, museums and archives, only for the own archive needs, if the work is copied from the copy in their possession and if by such copying these institutions have no intention to realize direct or indirect economic or commercial benefit.
Use of works in exhibition catalogues	Article 52 Displayed works may be reproduced in a suitable way and their copies thus made maybe marketed, for the purpose of making public exhibition catalogues or conducting public sales, without the authors' permission and without paying any remuneration.
Making available for research or study	-
Use of orphan works	-
General exceptions	
Reproduction for private purposes	Article 39 Authors' Right to Special Remuneration personal non commercial needs of the natural persons.
Reprographic reproduction	Article 39(5)
Use for educational and scientific research	Art 55. Statutory license. Without the permission of the author, and with the obligation of payment the remuneration for copyright, it is allowed, in the form of a manual intended for tuition, examination or scientific research.

SIERRA LEONE

Source: WIPO study 2014
<http://www.wipo.int/wipolex/en/details.jsp?id=14529>

Specific exceptions	
Reproduction for preservation purposes	§ 31(b) To replace a copy, if necessary, which has been lost, destroyed, or rendered unusable in the permanent collection of another similar library or archive.
Use of works in exhibition catalogues	Nothing specific
Making available for research or study	§ 31(a)(i) To satisfy the request of an individual. Study, scholarship, or private research.
Use of orphan works	-
General exceptions	
Reproduction for private purposes	31 (a)(ii) (?) Act of reproduction is an isolated case.
Reprographic reproduction	31 (b)(ii) The act of reprographic reproduction is an isolated case.
Use for educational and scientific research	30 (b) the reprographic reproduction for face-to-face teaching is justified if: (i)-The act of reproduction is isolated. (ii)- No collecting societies of which the institution should be aware.

SLOVAKIA

Source:

http://portal.unesco.org/culture/en/files/30267/11418315123sk_copyright_law_2003.pdf/sk_copyright_law_2003.pdf

http://ifrro.org/sites/default/files/2014-283_copyright_act_amendment_orphanooc_works.pdf

Specific exceptions	
Reproduction for preservation purposes	Section 31 (for library or archive) of any work from its own collections, provided the purpose of the making of a copy is replacement, archiving or preservation of the original of work or of a copy thereof for the cases of loss or destruction or damage, or where the permanent collection is being constituted.
Use of works in exhibition catalogues	Section 26 For advertising an exhibition of works of arts or an auction of works of arts, without the author's consent, a work may be used so that its copy is made and publicly distributed by its sale or by other forms of assignment of title, or by its communication to the public, namely in the extent necessary for such advertising.
Making available for research or study	
Use of orphan works	Section 31a An orphan work can be used without the author's consent by a library, archive, museum, school or legal depository pursuant to special regulations if only for education and cultural purposes and for the fulfilment of public interest missions
General exceptions	
Reproduction for private purposes	Section 24 A natural person may make a copy of a work released for his personal use and for, whether directly or indirectly, non commercial purposes without the author's consent; such use of the work does not result in obligation to pay remuneration to the author.
Reprographic reproduction	-
Use for educational and scientific research	Section 28 Use for the purpose of teaching No consent of the author is required to make a copy of a short part of a released work, to its public distribution by other forms of

	<p>assignment of title as by sale, or to communication to the public of a short part of a released work, if such use does not exceed the scope substantiated by teaching purposes at school and the purpose is not to acquire direct or indirect property benefit.</p> <p>Section 31 (1)(a) Library or Archive Work from its own collections, provided the purpose of the making of a copy is to satisfy the request of a natural person who will use that copy for the purpose of education or scientific research exclusively within the premises of library or archive</p>
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SLOVENIA

Source: WIPO study 2008

http://portal.unesco.org/culture/fr/files/40287/12629509833sl_copyright_2006.pdf/sl_copyright_2006.pdf

Specific exceptions	
Reproduction for preservation purposes	Not specifically preservation purposes, but indirectly: Article 50 Publicly accessible archives and libraries, museums and educational or scientific establishments shall be free to reproduce, on any medium, works from their own copies for internal use, provided that this is not done for direct or indirect economic advantage.
Use of works in exhibition catalogues	Article 54 The organiser of a public exhibition or sale of artistic works shall be free to use such works to the extent necessary to promote the event, provided that this is not done for direct or indirect economic advantage.
Making available for research or study	-
Use of orphan works	-
General exceptions	
Reproduction for private purposes	Article 50 A natural person shall be free to reproduce works: 1. on paper or any similar medium by the use of a photographic technique or by some other process having similar effects; and 2. on any other medium if this is done for <u>private use</u> , if the copies are not available to the public, and if this is not done for direct or indirect economic advantage.
Reprographic reproduction	-
Use for educational and scientific research	Legal licences Article 47 Without the assignment of a respective economic right, but on payment of equitable remuneration, it shall be lawful: To reproduce in readers and textbooks intended for teaching, parts of works, as well as single works of photography, fine arts, architecture, applied art, industrial design and cartography, provided these are already disclosed works of a number of authors;

SPAIN

Source: <https://www.boe.es/buscar/pdf/1996/BOE-A-1996-8930-consolidado.pdf>
BOE-A-2014-11404.pdf

Specific exceptions	
Reproduction for preservation purposes	<p>§ 37(1) Holders of copyright may not object to reproductions of works where they are made without intent of profit by museums, libraries, record libraries, film libraries, newspaper libraries or archives integrated into public ownership or cultural institutions or scientific and reproduction is effected solely for research or conservation.</p> <p>§ 37(2) Also, museums, archives, libraries, newspaper libraries, record or film libraries in public ownership or belonging to institutions of general cultural, scientific or educational nonprofit, or integrated in the Spanish educational system educational institutions, shall not require authorization of rights holders for the loans they make. Remuneration must be paid.</p>
Use of works in exhibition catalogues	
Making available for research or study on the premises	<p>§ 37(3) Works held in the institution's catalogue.</p>
Use of orphan works	<p>§ 37bis (4) Schools, museums, libraries and newspaper archives accessible to the public and public broadcasters, files, record and film libraries can make reproductions for the purposes of digitization, making available, indexing, cataloging, preservation or restoration, and make publicly available, in the manner prescribed in Article 20.2.i), the following orphan works, provided that such acts are performed for nonprofit purposes and in order to achieve mission-related public interest objectives, in particular conservation and restoration of works contained in their collections and facilitating access to it for cultural and educational purposes.</p>
General exceptions	
Reproduction for private purposes	<p>Article 31(2) Done by physical persons for private use on the basis of works which have been lawfully accessed, provided that the copying is not used for collective or gainful purposes.</p>
Reprographic reproduction	-
Use for educational and scientific research	§ 37(1)

SWITZERLAND

Source: WIPO study 2014

<http://www.wipo.int/edocs/lexdocs/laws/en/ch/ch229en.pdf>

Specific exceptions	
Reproduction for preservation purposes	Article 24(1bis) Public libraries, educational institutions, museums and archives accessible to the public may make those copies of the works required to secure and preserve their collections insofar as these copies are not made for financial or commercial gain.
Use of works in exhibition catalogues	Article 26 A work forming part of a collection accessible to the public may be reproduced in a catalogue issued by the administrators of the collection; the same rule applies to the publication of exhibition and auction catalogues.
Making available for research or study	-
Use of orphan works	Article 22b Limited rights to make copies of orphan works, applying only to phonograms or audiovisual fixations.
General exceptions	
Reproduction for private purposes	Article 19 (a) Any personal use of a work or use within a circle of persons closely connected to each other, such as relatives or friends. Article 19 (c) The copying of a work in enterprises, public administrations, institutions, commissions and similar bodies for internal information or documentation. Article 19 (3) (c) The following are not permitted outside the private sphere defined in paragraph 1: b. The copying of a work of art.
Reprographic reproduction	-
Use for educational and scientific research	Article 19 (b) Private use Any use of a work by a teacher and his class for educational purposes.

TURKEY

Source: WIPO study 2014
http://www.wipo.int/wipolex/en/text.jsp?file_id=246493

Specific exceptions	
Reproduction for preservation purposes	Nothing specific, General Exception Article 46 Public libraries, museums, and similar institutions. Author has not explicitly prohibited reproduction and publication.
Use of works in exhibition catalogues	Article 40 Works to be sold by auction may be exhibited to the public. Works exhibited in public premises or placed at an auction may be reproduced and distributed by way of catalogues, guides or similar printed matter published for such purposes by persons organizing the exhibition or auction.
Making available for research or study	
Use of orphan works	Article 46 (Property of public domain works) Works that have not yet been published or made public and whose author has not expressly prohibited reproduction and publication and which are preserved in public libraries, museums or similar institutions, shall belong to the public institution or organization in which they are kept, provided that the term of protection of economic rights has expired.
General exceptions	
Reproduction for private purposes	Article 38 It is permitted to reproduce all intellectual and artistic works for personal use without pursuing profit. However, such reproduction may not prejudice the legitimate interests of rightholders without good reason or conflict with the normal exploitation of the work.
Reprographic reproduction	-
Use for educational and scientific research	Article 34 Limited right to create selected or collected works, which are dedicated to educational purposes, by making quotations from published musical, literary, and scientific works and works of fine arts that are made public.

UNITED KINGDOM

Source: <http://www.legislation.gov.uk/ukpga/1988/48/contents#tcon>
<http://www.legislation.gov.uk/ukpga/2013/24/contents/enacted> (Article 77)

Specific exceptions	
Reproduction for preservation purposes	§ 42 Copying by librarians or archivists: replacement copies of works. An item in that institution's permanent collections.
Use of works in exhibition catalogues	§ 63 Advertisement of sale of artistic work. It is not an infringement of copyright in an artistic work to copy it, or to issue copies to the public, for the purpose of advertising the sale of the work. For this purpose "dealt with" means sold or let for hire, offered or exposed for sale or hire, exhibited in public
Making available for research or study	§ 29 -Research and private study. Fair dealing with a literary, dramatic, musical or artistic work for the purposes of research for a non-commercial purpose does not infringe any copyright in the work provided that it is accompanied by a sufficient acknowledgement. § 40B Must be lawfully acquired by the institution. This use must be in compliance with any purchase or licensing terms to which the work is subject.
Use of orphan works	§ 116A, § 116B, § 116C Extended collective licensing system covering the use of orphan works
General exceptions	
Reproduction for private purposes	§ 31A Making a single accessible copy for personal use.
Reprographic reproduction	§ 36 Reprographic copying by educational establishments of passages from published works.
Use for educational and scientific research	§32 Copyright in a literary, dramatic, musical or artistic work is not infringed by its being copied in the course of instruction or of preparation for instruction.