

5 Reasons Why...

Cultural heritage institutions need a preservation and internal reproduction exception

In 2011, *New Renaissance*, the report of the Expert Group on bringing Europe's cultural heritage online¹, recognised that **preserving materials and ensuring they are accessible for future generations is just as important for digital materials as it is for physical ones**. Libraries and Cultural Heritage Institutions (CHI) have a unique role in making this happen.

To achieve this, they need a clear exception that allows for the reproduction of works they hold, for preservation and other internal purposes. This should not discriminate according to format, or prejudice any further use of works, as covered elsewhere in European law. In the European Year of Cultural Heritage, this will make a major contribution to the work of the institutions serving to safeguard Europe's culture for the future.

On the need for a digitisation exception, libraries and archives support the following amendments: IMCO Amendment 52, ITRE Amendment 40, JURI AM 31, 222, 654, 219, 228, 655, 209, 217, 220, 230, 232, 236 and 641

Here's why:

1

The future discovery and accessibility of Europe's cultural heritage – as well as the proper operation of libraries – is not just about preservation: the work of our institutions involves a range of activities for which reproduction is necessary.

In addition to the processes involved in preventing or pre-empting the loss of works – digitisation, migration between formats, emulation of works in formats which can no longer be read, and restoration – libraries and cultural heritage institutions also frequently need to make copies for **insurance** purposes (insurance companies usually demand all possible details of a work), **indexing** (where reproductions make it possible to index visual art), **cataloguing** (to ensure works remain discoverable in future), and while a work is being **loaned** out to another institution (in case of loss or damage) .

2

Preservation of born-digital remains inconsistent across the EU²: Laws across the EU on taking preservation copies of born-digital works – both electronic publications and websites – are inconsistent. With so much relevant discussion, debate and expression taking place online today, if libraries cannot preserve this, they cannot do their jobs.

Rules for web-harvesting – an essential technique if we are to maintain a snapshot of today's world for the future – are not in place everywhere, and do not always extend to all publications. This means that many works – in particular from media sources – risk being lost in future. Besides, since the Internet knows no borders, those preservation activities require coordinated collection policies internationally, which be facilitated by an EU wide exception.

¹ <https://publications.europa.eu/en/publication-detail/-/publication/79a38a23-e7d9-4452-b9b0-1f84502e68c5> (consulted 26.01.2018).

² https://www.ifla.org/files/assets/clm/publications/13_-_2015_an_international_survey_of_born_digital_legal_deposit_policies_and_practices.pdf (consulted 30.01.2018).

3

Content hosted on third party servers cannot be excluded: we have gone from a world of books on shelves to files in the cloud, accessible only by subscription. In the digital environment, it is increasingly senseless to limit a preservation copying exception to works held within a library.

European Universities spend € 1 billion of taxpayers' money a year on subscription content without any possibility of preserving it. Although some countries have implemented national licences allowing for preservation³, even there not all content published is included. Elsewhere, libraries have been forced to sign away archiving rights.

4

Long-term loans must be included: most cultural heritage institutions host works deposited for an indefinite period of time. Such works – classed as being on long-term loan – are under the protection of libraries. In order to carry out their duties, libraries must be able to apply the same rules as to works 'permanently' in their collections.

The Museum of Fine Arts of Valenciennes (France) hosts works deposited from the State since 1827. Those works are not the property of the city, but of the State. However, the Museum, as the custodian of the work has the responsibility to preserve the works – no-one else will. This is frequently the case for in-copyright works too.

5

Preservation networks help libraries achieve their goals: Only the biggest cultural heritage institutions have the financial and technical capacity to carry out digitisation projects. With this in mind, most institutions work in networks to deliver preservation programmes, including across borders. They should enjoy legal certainty in doing so.

Libraries working in the EUCOR campus, working across Germany, France and Switzerland, currently struggle to work together to preserve content, because of unharmonized legislation. This limits the achievement of European objectives for territorial cooperation.

An exception reflecting the reality of the needs and collections of cultural heritage institutions is vital if the aim of the Directive is to allow them to achieve their objectives in the digital age. For that purpose, the exception should:

- Cover all public interest reproductions by libraries, without prejudice to further uses
- Ensure all works to which libraries have access – including those on long-term loan, and those held on third-party servers – are covered
- Clarify that libraries and cultural heritage institutions can form preservation networks across borders
- Underline that a preservation and other public interest reproduction exception cannot be overridden by licence terms

³ For example, France, with provision for university and public libraries <https://punktokomo.abes.fr/2014/02/25/politique-de-signalement-des-licences-nationales-istex/> (Consulted 30 January 2018).