

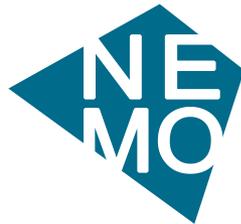


Network of European  
Museum Organisations

# NEMO Working and Expert Group on IPR



Badische Landesbibliothek, Schulungsraum  
Pascal Ennaert and Andrea Wallace



Network of European  
Museum Organisations

9.30h Welcome

9.35h Introduction on today's theme 'the reuse of museum content and copyright'

10.05h Andrea Wallace: Display At Your Own Risk

10.55h Break

11.05h A possible solution: the Layered Licensing Matrix from the Flemish Art Collection

11.35h Information on the legislative work within the European Institutions

# Welcome

## Participants

- Borbély Katalin, Museum of Fine Arts, Budapest, Hungary
- Culibrk, Mirjana, Badisches Landesmuseum, Karlsruhe Germany
- Eberhardt Ursula, Staatliche Kunsthalle, Baden-Baden, Germany
- Gnyp Anna, Badisches Landesmuseum, Karlsruhe, Germany
- Gutsche Anne-Sophie, NEMO, Germany
- Hagedorn-Saupe Monika, Institut für Museumsforschung, Germany
- Hanssens Ellen, Department of Culture, Flemish Government, Belgium
- Leguit Amber, Netherlands Museums Association, Netherlands
- Mészáros Balázs, Hungarian Museum Association, Hungary
- Moretto Marta, Università degli Studi di Bologna, Italy
- Plaza Beatriz, University of the Basque, Country UPV/EHU, Spain
- Siefert Katharina, Badisches Landesmuseum, Karlsruhe, Germany
- Pascal Ennaert, Flemish Art Collection, Belgium
- Andrea Wallace, University of Glasgow, United Kingdom

# Introduction on the theme

- Reuse of digitized museum content: a real ‘beast of burden’
  - In museums often there is no knowledge of copyright and contract law
  - Reuse of museum content most of the time isn’t a policy issue, museums **seem** to don’t care at all.
  - On museum websites there is hardly a clear indication of the reuse conditions, there is no clear communication to the public
  - The public most of the time isn’t aware of possible copyright or licensing issues

# Introduction on the theme

- Legislation
  - Copyright laws
  - PSI-directive
- Reuse policy in your museums

# Legislation: Copyright

- Copyright, an intellectual property right
  - Three different kinds of intellectual property rights
    - **Creativity** (individual capital) which implies rights to benefit from one's free expression: **copyright**
    - **Invention** (instructional capital) which implies rights to benefit from having created some more efficient device or process: **patent**
    - **Reputation** (social capital) which implies rights not to have one's name or specific distinguishing tagline or ethic sullied by imitators or rivals: **moral rights**, trademark, ...

# Legislation: Copyright?

- Copyright?
  - Grants the creator of an original work **exclusive rights for use and distribution**
  - Usually **for a limited time** (in the EU: the author's life plus **70 years after the death of the creator**)
  - Never absolute: there are **several limitations and exceptions** (*most important exceptions for museums: 'education', 'research' and 'promotion' ... but exceptions can vary from country to country!*)
  - The rights include **not only copies or reproductions**, but also control over derivative works, distribution, the right to sell or cede these rights to others, public performance, transmission by radio or video, moral rights, import and export
  - **Standardized through international copyright agreements, but still varies by country**

# Legislation: Copyright?

- Out of copyright = **Public domain**
  - All creative works from which **the author** (writer, painter, sculptor, animator, director (films), ... **has died more than 70 years ago** ...
  - Everyone can reproduce or use this creative works, anyway they want and for any purpose (commercial exploitation included)
- The author is not known: **orphan works**
- Micky Mouse: a real threat:
  - Multinationals and other lobbyists are permantly advocating a longer term.



# NEMO-survey Copyright and Museums Results

the Language doc



Network of European  
Museum Organisations

vlaamsekunstcollectie

KUNSTHISTORISCHE MUSEA ANTWERPEN BRUGGE GENT



# NEMO position paper museums and copyright

- Time to restore the balance (between growth and trade on the one side and culture and learning on the other side)
  - What museums are doing in the analogue world (research, education, exhibitions, ...) should, by all means, also be possible in the virtual world.
  - Copyright protection is already way to long and should certainly not be prolonged anymore!
  - Collecting societies should be better controlled and work more transparent
  - The Orphan Works Directive should be revisited to its feasibility.

# C4C-network: advocating for a better copyright legislation



# Legislation: PSI-directive (translated into National Legislation)

- Definitions:
  - PSI = Public Sector Information
  - Public Sector = All Public bodies
    - Not included: Educational and research establishments, cultural institutions such as theatres, broadcasting corporations, music halls, cinema's, ...
    - **Included: Libraries, Archives and Museums**

# Legislation: PSI-directive

- Definitions:
  - Information =
    - All content (data, texts, pictures) that is the property of public institutions (museums included)
    - The Directive **does not apply** to:
      - data not publicly accessible under access to information regimes (eg. Archive laws, Privacy laws, National security, ...)
      - information protected by third party intellectual property rights

# Legislation: PSI-directive

- Public bodies (museums included) are obliged to:
  - be **transparent on conditions** for re-use;
  - **avoid any form of discrimination** between re-users;
  - make no distinction between commercial and non-commercial re-use;
  - **accept independent supervision** (on a national level);
  - make their documents available in a **machine-readable format**, together with their metadata **where possible and appropriate**.

# Legislation: PSI-directive

- What does this mean for museums (and archives and libraries) (1) ?
  - Cultural institutions must make their material available in machine readable format together with their metadata **where possible and appropriate;**
  - Museums have to respect the rules on non-discrimination;
  - The reversed burden of proof also applies to museums;
  - **Cultural institutions benefit from** a specific transitional period for eliminating exclusive agreements.

# Legislation: PSI-directive

- What does this mean for museums (2)?
  - The **obligation to make accessible material available for re-use**:
    - applies to libraries, museums and archives only insofar as the accessible documents are in the **public domain**;
    - **does not apply to copyright-protected material** of the cultural institutions brought within the scope.
  - The rules on **charging at marginal costs** and on exceptional charging above this level **do not apply to** libraries, museums and archives (**exception**). Libraries, museums and archives are **able to charge more than marginal costs, but with justification**.

# Reuse policy in your museum

- Museums claim to be knowledge institutions. Their mission is to share knowledge and to stimulate reuse.
- Is that really true?

# Reuse policy in your museum

- 5 models
  - Absolutism: The chief conservator is the incarnation of the museums knowledge. No content leaves the institution without his approval. His/her truth is the only truth.
  - Enlightened absolutism: The chief conservator and the other museum conservators form a close fraternity, so close that it is very hard to join. New content is welcomed ... when it fits the ideas of the fraternity.
  - A young democracy: The museum conservators want to bring content to the public as much as possible. Only problem: they don't know how to do it, so they keep on publishing exhibition catalogues and museum websites. Copyright is a way to strengthen the income ... of the conservators.
  - Parliamentary democracy: Most of the museum content is open for reuse and discussion.
  - Participatory democracy: Not only all museum content is open for reuse and discussion, the public is encouraged to bring in new content or ideas. Crowdsourcing is the new believe.

Reuse policy in your museum

What could be the  
benefits of an open  
content museum?

Display at your own risk

<http://displayatyourownrisk.org>

Break

A possible solution:  
the Layered Licensing Matrix from  
the Flemish Art Collection

**flemishartcollection**  
MUSEUMS OF FINE ARTS ANTWERP BRUGES GHENT

# Layered licensing matrix

- What
  - **A matrix of content, users rights and licences**
    - To indicate which content from the registration systems and the image libraries can be (re)used by the public
    - To indicate to the public and visitors of digitized content platforms (websites) what are the conditions to (re)use the content
  - **The matrix gives an answer to the following questions:**
    - Which content is available for (re)use?
    - Under which conditions?
    - For what kind of reuse?
  - (Flemish Art Collection = 3 fine arts museums) Preferably one consensus matrix for all participating museums => legal certainty for the public
  - **Clear and simple** = user friendly

# External triggers

- Juridical: PSI-directive implemented in Belgian and Flemish law
- Belgian Federal and Flemish action plans on open data which we are friendly asked **to comply with**
- Growing insight
  - Increasingly renowned heritage institutions are giving free their content (also images) : eg. Holland: Rijksmuseum, Van Gogh Museum, ...
    - Economical rationale: derived products in the museum shops
    - The more content is given free, the more people know the institution and the collection, the more people want to visit the museum

# Internal triggers

- Practical: the need for a clear indication of rights and obligations for our several internet platforms
  - An umbrella website for all participating museums
  - Thematic websites on Burgundian Art, Baroque, Modernism, James Ensor, George Minne
  - Aggregator for Europeana, Wikidata, ...
  - Datahub under construction

# Method

- Study of current and international examples and license models
- Consultation of the partner museums and other important actors
  - Lukas, art in Flanders: image library for Flemish collections
  - Packed: expertise centre for digitisation in the cultural heritage field

# Status

- Between dream and deed, laws and practicalities remain:
  - Technical implication in the datahub, image library or website (registration systems in the Flemish Art Collection: Adlib, TMS and Collective Access)
  - Basic registration work (eg. Registration of the date of death of the previous owner)
  - The demands of the entitled organisations: Lukas, art in Flanders
  - Strategic insights: loyalty to the publisher of the printed publications

# Layered Licensing Matrix

- **A matrix of content, users rights and licences**
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**LAYERED LICENSING MATRIX FLEMISH ART COLLECTION 2016**

IMAGES					CONTENT FIELDS REGISTRATION SYSTEMS (ADLIB, TMS, COLLECTIVE ACCESS, ...)				CONTENT OUTSIDE THE REGISTRATION SYSTEMS				
IMAGES THE MUSEUM OR LUKAS, ART IN FLANDERS IS THE RIGHTS HOLDER					FIELDS WITHIN THE REGISTRATION SYSTEM (the museum can always decide not to give free specific records (collection pieces) (e.g. Loans in the collection, recent acquisitions that are not communicated or registered yet, ...)				TEXTS OUTSIDE THE REGISTRATION SYSTEMS, IF THE MUSEUM IS THE RIGHTS HOLDER		Texts outside the registration systems where the museum is NOT the rights holder		
images of art works in public domain		images of in copyright art works			E	data basic registration fields		data descriptive fields (if they were written by the museum staff)	data descriptive fields (written by external collaborators)	data info about conservation status, insurance values, property history and purchase value	texts for digital publications through the internet	texts for printed publications	L
A	B	C	D	F		G	H	I	J	K			
Low resolution: width: maximum 1920 pixels wide; use of the sRGB color profile; JPEG or PNG; licence and source imbedded in metadata, persistent identifier imbedded in metadata	High resolution: width: all images with a resolution of more than 1920 pixels wide; reuse of the AdobeRGB or ecIRGB color profile; JPEG2000; licence and source imbedded in the metadata, persistent identifier imbedded in the metadata	Low resolution: width: maximum 1920 pixels wide; use of the sRGB color profile; JPEG or PNG; licence and source imbedded in metadata, persistent identifier imbedded in metadata	High resolution: width: all images with a resolution of more than 1920 pixels wide; reuse of the AdobeRGB or ecIRGB color profile; JPEG2000; licence and source imbedded in the metadata, persistent identifier imbedded in the metadata		identification data: institutions name, object number, object name, creator, title, dating, place of manufacturing, material, size (value and unit), stand (if open for the public), date of birth and death of the author, persistente ID, school/style, keywords, techniques, iconography; copyright, exhibitions, research givings (title, name research institutions, ...)	Descriptive data: fysical description, labels, descriptions of already released research projects, ...	Descriptive data: texts released research projects, ...	privacy or security sensitive information, in copyright data of which the copyright is held outside the museum, conservation situation and history, conservation recommendations and demands, acquisition history (method, purchase number, ...),					
CC0 with good practice guidelines for the reuse community	CC-BY-NC with good practice guidelines for the reuse community, image is delivered against the transaction costs	© copyright through collecting society, image is delivered on demand	© copyright through collecting society, image is delivered against the transaction costs	No free reuse	CC0	CC-BY	CC-BY-NC	No free reuse	CC-BY-NC	No free reuse	No free reuse		
 PUBLIC DOMAIN	 CC BY NC	 All Rights Reserved	 All Rights Reserved	reference in the datahub, will not be divulgated	 PUBLIC DOMAIN	 CC BY	 CC BY NC	will be in adlib-API or in Catmandu, will not be divulgated through the datahub	 CC BY NC	not in the datahub, will not be divulgated	not in the datahub, will not be divulgated		
	"name museum", www.lukasweb.be - Art in Flanders vzw	"name museum" © "collecting society" www.lukasweb.be - Art in Flanders vzw, photo "name photographer"	"name museum" © "collecting society" www.lukasweb.be - Art in Flanders vzw, photo "name photographer"			"name museum" + "name author if known"	"name museum" + "name author if known"		"name museum" + "name author (if known)"				



With each museum is discussed which records can (not) be divulgated and which fields from the registration systems (Adlib/TMS) will be given free

# Layered licencing matrix: which content

- 3 different kinds of content we consider to divulgate for reuse
  - **Pictures** (at this moment limited to pictures of artworks in the collection of the museums)
    - Is the museum rightsholder of the pictures?
    - *public domain works vs. in copyright works*
    - High resolution vs low resolution
  - **Data** in the registration systems
    - Identification data
    - Descriptive data: prose and arthistorical documentation
    - Data with privacy-sensitive or security-sensitive information
  - **Texts** (from websites and printed publications)
    - Is the museum owner of the copyrights?
    - Are the texts used for digital or printed publications?

# Layered licensing matrix: which licenses?

- Data en texts
  - international license model for the reuse of content: **Creative Commons**
- Pictures
  - We translated the licenses of **Lukas, art in Flanders**, to creative commons

typelicensies		
	(BY)	Naamsvermelding (BY)
	(NC)	NietCommercieel (NC)
	(SA)	GelijkDelen (SA)
	(ND)	GeenAfgeleideWerken (ND)
creative commons licenties		
	(BY)	Naamsvermelding (BY)
	(BY-SA)	Naamsvermelding-GelijkDelen (BY-SA)
	(BY-NC)	Naamsvermelding-NietCommercieel (BY-NC)
	(BY-NC-SA)	Naamsvermelding-NietCommercieel-GelijkDelen (BY-NC-SA)
	(BY-ND)	Naamsvermelding-GeenAfgeleideWerken (BY-ND)
	(BY-NC-ND)	Naamsvermelding-NietCommercieel-GeenAfgeleideWerken (BY-NC-ND)
public domain		
	CC0	CC0

# Layered licensing matrix: which licenses?

- Privacy-sensitive information:
    - What? The name of a donator or a seller (when a private person), the way an artwork was acquired (as a tax payment, as a payment for inheritance rights, ...) and the conditions that were mentioned hereby, ...
    - The Flemish Art Collection only wants to give privacy-sensitive information free when the donator or the seller is death for already 20 years.
    - When the donator or the seller has made known that he or she wants to stay anonymous, this will be respected. The name will never be given free through digitized channels.
    - Problem 1: the registration systems aren't ready for this kind of information
    - Problem 2: the registration systems haven't been properly filled in on this issues
    - Problem 3: technically very hard to implement and impossible on a short term notice
- => fields with possible privacy-sensitive information will, on a short term, not be given free at all ...

# Layered licensing matrix: which licenses?

- Security-sensitive information
  - What: (*eg. Storage place of an artwork in the depot, insurance value, transport date for loans, ...*)
  - This kind of information will not be communicated or given free for (re)use
- Privacy- and security-sensitive information
  - The Flemish Art Collection is thinking about a second datahub for internal use only

# Layered licensing matrix: which different kinds of (re)use?

- Kinds of (re)use? Education, study, research, commercial or non-commercial, analogue or digital publications, use in exhibitions, in theatres, through television, ...
- We explicitly are not mentioning the different kinds of (re)use in the matrix. All kinds of (re)use are **dealt** with the same way.
- The licenses are formulated by the kind of content, regardless the kind of (re)use.
- 1 exception: pictures: also large pictures are given free for educational or research purposes ...

# And...

- The mentioned licenses are consensus licenses. Museums can always opt to use a license with less restrictions.
  - The lesser the restrictions, the better!
  - But ... To large differences hinder technical implementation and clearness for the public!

# LAYERED LICENSING MATRIX FLEMISH ART COLLECTION 2016

IMAGES				
IMAGES THE MUSEUM OR LUKAS, ART IN FLANDERS IS THE RIGHTS HOLDER				Images of which the museum or Lukas, Art in Flanders is NOT the rights holder
images of art works in public domain		images of in copyright art works		
A	B	C	D	E
<p><b>Low resolution:</b> width: maximum 1920 pixels wide; use of the sRGB color profile; JPEG or PNG; license and source imbedded in metada, persistent identifier imbedded in metadata</p>	<p><b>High resolution: width:</b> all images with a resolution of more than 1920 pixels wide; reuse of the AdobeRGB or ecIRGB color profile; JPEG2000; licence and source imbedded in the metadata, persistent identifier imbedded in the metadata</p>	<p><b>Low resolution:</b> width: maximum 1920 pixels wide; use of the sRGB color profile; JPEG or PNG; license and source imbedded in metada, persistent identifier imbedded in metadata</p>	<p><b>High resolution: width:</b> all images with a resolution of more than 1920 pixels wide; reuse of the AdobeRGB or ecIRGB color profile; JPEG2000; licence and source imbedded in the metadata, persistent identifier imbedded in the metadata</p>	
CC0 with good practice guidelines for the reuse community	CC-BY-NC with good practice guidelines for the reuse community, image is delivered against the transaction costs	© copyright through collecting society, image is delivered on demand	© copyright through collecting society, image is delivered against the transaction costs	No free reuse
 PUBLIC DOMAIN	 BY NC	 All Rights Reserved	 All Rights Reserved	reference in the data-hub, will not be divulgated
	"name museum", www.lukasweb.be - Art in Flanders vzw	"name museum" © "collecting society" www.lukasweb.be - Art in Flanders vzw, photo "name photographer"	"name museum" © "collecting society" www.lukasweb.be - Art in Flanders vzw, photo "name photographer"	

## CONTENT FIELDS REGISTRATION SYSTEMS (ADLIB, TMS, COLLECTIVE ACCESS, ...)

FIELDS WITHIN THE REGISTRATION SYSTEM (the museum can always decide not to give free specific records (collection pieces) (e.g. Loans in the collection, recent acquisitions that are not communicated or registered yet, ...))

data basic registration fiels	data descriptive fields (if they were written by the museum staff)	data descriptive fields (written by external collaborators)	data info about conservation status, insurance values, property history and purchase value
F	G	H	I
<p>identification data: institutions name, object number, object name, creator, title, dating, place of manufacturing, material, size (value and unit), stand (if open for the public), date of birth and death of the author, persistente ID, school/style, keywords, techniques, iconography; copyright, exhibitions, research givings (title, name research institutions, ...)</p>	<p>Descriptive data: fysical description, labels, descriptions of allready released research projects, ...</p>	<p>Descriptive data: texts released research projects, ...</p>	<p>privacy or security sensitive information, in copyright data of which the copyright is held outside the museum, conservation situation and history, conservation recommendations and demands, acquisition history (method, purchase number, ...),</p>
CC0	CC-BY	CC-BY-NC	No free reuse
 PUBLIC DOMAIN	 CC BY	 CC BY NC	<p>will be in adlib-API or in Catmandu, will not be divulgated through the datahub</p>
	"name museum" + "name author if known"	"name museum" + "name author if known"	

CONTENT OUTSIDE THE REGISTRATION SYSTEMS		
TEXTS OUTSIDE THE REGISTRATION SYSTEMS, IF THE MUSEUM IS THE RIGHTS HOLDER		Texts outside the registration systems where the museum is NOT the rights holder
texts for digital publications through the internet	texts for printed publications	
J	K	L
CC-BY-NC	No free reuse	No free reuse
	not in the datahub, will not be divulgated	not in the datahub, will not be divulgated
"name museum" + "name author (if known)"		

# Layered licensing matrix

- Questions?
- Remarks?

# **Information on the Copyright reform in the European Commission**

# Promise European Commission

- To modernise copyright
- To make an introduction of cross border portability of online services

# NEMO position paper on museums and copyright

- Time to restore the balance (between growth and trade on the one side and culture and learning on the other side)
  - What museums are doing in the analogue world (research, education, exhibitions, ...) should, by all means, also be possible in the virtual world.
  - The term of copyright protection (70 years after death of the author) is already way to long and should certainly not be prolonged anymore
  - Collecting societies should be better controlled and work more transparent
  - The Orphan Works Directive should be revisited to its feasibility

# C4C position

- Copyright should stimulate creativity, innovation and knowledge, it should serve consumers and support creators

# The European Commission's proposal for a directive on 'Copyright in the Digital Market' and other documents:

- Documents on
  - **Copyrights in the Digital Single Market**
  - Rules on the exercise of copyright and related rights applicable to certain **online transmissions of broadcasting organisations and retransmissions of television and radio programmes**
  - Cross-border exchange between the Union and third countries of accessible format copies of certain works and other subject-matter protected by copyright and related rights for the benefit of **persons who are blind, visually impaired or otherwise print disabled**
  - Permitted uses of works and other subject-matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired and amending Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society

# Evaluation of the Copyright reform

- **Not addressing the promised objectives:**
  - a well-functioning marketplace for copyright is more important than creating a **well-functioning legal framework that address the concerns of citizens and end-users**, and enables a **digital single market**
  - disregard of citizens' voices, no focus on users and creators:
    - The EC has shrugged off the input to the consultation on the role of the publishers in the copyright value chain: it introduced an ancillary copyright lasting 20 years
    - The EC has shrugged off the input to the consultation on the 'panorama exception' and ignored freedom of panorama
    - No exception for remote access to library catalogues
    - No flexible norm (faire use exception)

# Evaluation of the Copyright reform

- Protection of old business models (publishers, broadcasters, collecting societies) => a real threat to the internet, to the rights of citizens and to freedom of information
  - **RoboCopyright** : the EU compels intermediaries hosting user-uploaded content to implement content filtering technologies (algorithms) and handing over the content policing to the right holders.
  - **Ancillary copyright for publishers**: an internet tax for links and previews on news publications (already active in Spain and Germany), retroactive for 20 years!
    - Arguments used:
      - with this new money journalistic quality will improve <-> no incentives for traditional players to adapt to new digital realities

# Evaluation of the Copyright reform

- **New neighbouring rights (so called fair compensation for uses under exceptions)**
- More transparency and appropriate remuneration for creators
  - problem:
    - there is no acknowledgement that creators often do not get a fair deal from their publishing house in the first place,
    - there is no recognition of the real value gap
- **Update of the exception on preservation of culture heritage**
  - Member states are allowed to grant –at certain conditions- publicly accessible libraries (and museums?) the right to digitise the works contained in their collections
  - **Only for objects permanently in the collection**
  - The exception probably will be mandatory

# Evaluation of the Copyright reform

- **Collective agreements for digitisation and dissemination of out of commerce works** by cultural heritage institutions
  - You will have to pay for this collective agreements
- A mandatory **exception for use of works in digital and cross-border teaching activities**
- A mandatory **exception on text and data mining**
  - Probably limited to research organisations
  - Academic publishers can introduce measures to protect the security and integrity of their network (block access for the public)

# Timetable for the Copyright reform

- Council of the European Union
  - First sessions of the Council Working Party on Intellectual Property (Copyright) through October and November
- European parliament: discussions in divers committees
  - Legal Affairs (JURI) Committee
  - Industry, Research and Energy (ITRE) Committee
  - Internal Market and Consumer Protection (IMCO) Committee
  - Culture and Education (CULT) Committee

# NEMO position paper on museums and copyright

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