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SECTOR SKILLS ALLIANCES

Mu.SA: Museum Sector Alliance

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MOOC



MuSA
museum sector alliance

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SARAH DOMINIQUE ORLANDI

**CREANDO. IDEAS AND STRATEGIES FOR
CULTURE**



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Abstract:	<i>The publication of digital content requires a lot of attention and caution. We have to ask ourselves several questions: What kind of rules do I need to know to respect content copyright (eg. images or other formats) and privacy issues when publishing it? Are there laws for publication for educational, informative purposes? If I want to allow users to use, disclose or modify contents from my website which licenses should I insert? And if as a museum professional I want to release images under a free license, how can I do it? If I collect information from online users, do I have to apply for an authorization? Does my museum have a privacy policy? Every professional must ask these questions when collecting data or sharing digital content on a website, a database, social media or other online platforms. Understanding copyright and licenses is a complex issue but a very important topic in museums. In this module you will learn basic notions that can be useful, including terminology, useful links to learn more and practical exercises</i>
Keywords:	<i>Museums, Copyright, licenses, Images</i>



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Aim and objectives

The aim provides a brief explanation of the general contribution of the document. The objectives specialize the aim using more concrete terms. This element should not exceed 5 lines of text.

This unit offers an overview on the basic concepts about copyright and licenses. Understanding copyright and licenses is a complex issue but a very important topic in museums. In this module you will learn basic notions that can be useful, including terminology, useful links to learn more and practical exercises.

Learning outcomes

After studying this resource, you will be able to:

- *Gain basic notions on copyright and licenses*
- *Learn how to move on the web to reach the information related to copyright*
- *Identify in the web site if there are, and where are the terms of use and the policies*
- *examine the presence and type of information of the online captions of the images of the museum site*

Keywords

A set of keywords that provide the main terms used in the document. Note that for each of these terms, an explanation should be provided in the text and they could be summarized in the glossary. The first appearance of a term should be easily identifiable (i.e. using boldface). The list should not contain more than 10 terms; 6 is a good number.

Copyright, licenses, museums, publications, creative commons

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1. Introduction

The publication of digital content requires a lot of attention and caution. We have to ask ourselves several questions: What kind of rules do I need to know to respect content copyright (e.g. images or other formats) and privacy issues when publishing it? Are there laws for publication for educational, informative purposes? If I want to allow users to use, disclose or modify contents from my website which licenses should I insert? And if as a museum professional I want to release images under a free license, how can I do it? If I collect information from online users, do I have to apply for an authorization? Does my museum have a privacy policy? Every professional must ask these questions when collecting data or sharing digital content on a website, a database, social media or other online platforms.

This module is composed of only one unit and the assignment related to the 4 role profiles.

2. Copyright: all rights reserved, some rights reserved, public domain

2.1 It's easy to publish online, right?

When you have a clear idea on which cultural contents you wish to publish and what platforms you want to use, the process of releasing it on the Internet is easy and fast. But it's also easy to publish material while breaking national and international rules of copyright.

It is, therefore, very important for professionals in the culture sector in the digital age to be familiar with a few principles that protect us from mistakes and legal issues.

Publication, even if online, that violates intellectual property and copyright is an offense that can have serious consequences and the law does not take into consideration ignorance of the law itself, *Ignorantia legis non excusat*. "is a legal principle holding that a person who is unaware of a law may not

escape liability for violating that law merely because one was unaware of its content.”¹

We will present an overview and point out several key concepts and terminology on which you will have to reflect on, being a professional in the cultural sector that operates in online environment; Furthermore, you will need to go more in depth, stay informed and updated since it is an evolving subject matter.

In a 2015, a NEMO (Network of European Museum Organizations) report highlighted:

It is important for museums to be aware of the copyright status of works in their collection because it may have an impact on how that work may be used by the museum. [...] Museums often have a number of pieces in their collection that still “in copyright”, particularly where their collection includes contemporary art. (NEMO 2015 p.4).

Cultural Institutions need to turn to professionals for the verification of contract drafting or whatever actions they may incur when copyright aspects are entailed.

Copyright and intellectual property have national legislation, but books, movies and many creative products have always had an international distribution and there's an international convention from 1886 that offers supranational protection: the [Berne Convention for the Protection of Literary and Artistic Works](#). The Berne convention protects copyright, commercial and moral rights on artistic works.

For an author or artist to obtain such protection, there is no administrative procedure, no registration: it is automatic from the moment the work is manifest.² Therefore, “its author is automatically entitled to all copyrights in

¹ https://en.wikipedia.org/wiki/Ignorantia_juris_non_excusat

² Art. 5/ 2 “The enjoyment and the exercise of these rights shall not be subject to any formality and shall be independent of the existence of protection in the country of origin of the work.”

the work and to any derivative works, unless and until the author explicitly disclaims them or until the copyright expires”. ([Source Wikipedia](#)).

Intellectual property is specifically intended for creative and original work. What do we mean by literary and artistic work? The international Convention of reference lists many and several kinds of them:

The expression “literary and artistic works” shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramaticomusical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science. (Art 2 /1)

When does the Berne Convention consider copyright protection? The rights “to translate, to perform, to make adaptation, to communicate to the public the performance of such works, to make reproductions in any manner or form, to use the work as a basis for an audiovisual work, and the right to reproduce, distribute, perform in public or communicate to the public that audiovisual work” (Source Wikipedia)³.

Copyright coverage protects a wide range of actions commonly carried out in an museum. Every country has its own legislation, specifications and exceptions. The issue is very complex and national norms introduce many variables that professional experts must be well aware of. So, intellectual property is specific to original and creative work resulting from a personal elaboration, but then it has connected moral and commercial rights to consider. There are, in fact, at least three different levels:

³ See: The minimum standards of protection relate to the works and rights to be protected

- Author attribution, according to which the authorship must always be acknowledged in perpetuity;
- The moral right, in perpetuity, for which an author may stand against an improper use of the work “Independently 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 or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation” (*Berne Conv art 6-bis*);
- Commercial rights are conceptually connected to two different variables: time conditions and contract conditions. In some countries the copyright term ends after 50 years from the author’s death, in others, after 70 years.
- Even when the commercial rights have expired and fallen, the obligation to credit the author and preserve his work and reputation remains *sine die*. Furthermore, contracts may include other actors than the author him/herself, who gain earnings from that art works, for instance the publisher rights or the translator rights. NEMO “Survey on Museums and Copyright: Report (2015) specifies that:

There is also a distinction between rights which may reside in the original accessioned object, and any which will reside in the reproductions or digital images of that object. The digital copy or reproduction will include the rights of their creator: the photographer or the institution if the photographer has re-assigned their IPR (Intellectual property rights) to them (NEMO 2015 – p.4).⁴

3. All rights reserved

Cultural institutions may hold copyright of a work if stated so in a contract, for example when it has been purchased. But how can you publish a protected artwork if the institution is not the holder? Institutions may also request for the author to authorize them to communicate and publish his/her work. However,

4 [NEMO Survey on Museums and Copyright 2015.](#)



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if the author does license them and waives claims on the commercial rights, he/she doesn't give up the rights to attribution, and must always be credited, even if we publish on website or social media posts.

A desirable outcome for the future would be if the cultural institution had an easier way to cope with property rights: "Copyright legislation for museums should include allowing museums to make reasonable, non-commercial use of the work to support a range of museum operations. This includes not only the areas of education and research, but also documentation, inclusion on the museum's website and inclusion in exhibition catalogs or museum publications." ([NEMO 2015](#), p 7.)

It is very important to focus on these aspects when drafting contracts, and plan from the very beginning on including the authorizations for online promotion, communication and publication: "It would be good practice to negotiate the licenses with creators themselves whenever possible, and preferably at the point where a work is being acquired by a museum." ([NEMO 2015](#), p7.)

The complexity of the subject matter requires professional advice, ongoing in-depth study and continuous updating. It is always best to be cautious and ask for the client or institution to confirm that they have all written authorizations, waivers, and full clearance necessary before proceeding with online publication or dissemination.

There is a broad debate in progress aiming for museums and cultural institutions to obtain exceptions on copyright. For NEMO:

Copyright has to be simplified or made fit for modern technology and how people consume information. A harmonized, technology neutral, European licensing and copyright agreement for museums may be a solution to this. A number of exceptions for museums as learning institutions in service of society should be discussed. ([NEMO 2015](#) p8.)

The same concept was discussed in the [Charter for the Preservation of the Digital Heritage](#) (UNESCO, 2003): "The purpose of preserving the digital heritage is to ensure that it remains accessible to the public. Accordingly, access to digital heritage materials, especially those in the public domain, should be free of unreasonable restrictions".⁵

There are also news in the EU reform of copyright (2019) that seem to include an exception that would allow cultural institutions (libraries and museums) to make digital copies of the works, protected by copyright, that they have in their catalogs, but we'll have to wait and see how this will be interpreted and how single countries will adopt those guidelines.

4. The reuse of content: open licenses and public domain

Thanks to its easy-to-use tools, the web has given users a main role and has made them content creators. Thus, individuals may disseminate, elaborate, create and become part of the cultural narration. But for those contents to be used, modified and distributed they must be in [Public domain](#) (CC0) – that is when the copyright period for a work of art has expired or when the other has waived claims on it or when it has been openly licensed. For example, in 2017 the [Metropolitan Museum of Art](#) decided to release [468,832 photos of artistic works in CC0](#), triggering a strong focus on the issue.

An author or the copyright holder can decide to release the work with some rights reserved using open licenses. The most recognized ones are from the [Creative Commons Foundation](#) that was created in 2001 and has drafted the framework of the “**Creative Commons licenses that offer six different combinations of the author’s rights for artists, journalists, teachers, institutions and, in general, creators who wish to share their works on a large scale according to the model “Some rights reserved”⁵.**

Each license corresponds to the legal text that the copyright holder signs off by simply adding that license to the work itself.⁶ An author or a museum can decide to release their work with less restricted copyright regulations. The aspects on which said decisions can be made are, for instance: whether it can be exploited for commercial purposes or not (NC), whether it’s possible to derive a new work from the original (ND), or if the user of that content can be

⁵ <http://www.creativecommons.it/>

⁶ These contracts are continuously revised, that is why they have 3.0 or 4.0 on the side, according to the version of the license. The single contracts are available on the website.

obligated to share with the same license (SA Share alike) meaning the obligation to share my derivative works with the same license.

On the other hand, BY is never in discussion, the right of attribution: you can't disseminate or reuse material without giving credit to the author. The author him/herself uploads the material and chooses this license and may then label it on the material. The [Creative Commons Attribution-Share Alike 4.0](#) specifies that one may "Share and remix", but on condition of respecting the attribution right with appropriate credits, releasing it with the same license. No one is exempted from respecting the attribution rights in this case either.

In order for people to be able to do so (Share and remix) also with cultural content and reproductions, without violating any rights, a wide range projects were put together. For example, the [Europeana](#)⁷ is a EU platform launched on 2008 that has a few million contents in CC0 (public domain) and in open license. It's an important union project born from the invitation that some Country leaders addressed to President Barroso: "the letter recommended the creation of a virtual European library, to make Europe's cultural heritage accessible for all."⁸

[Wikimedia Foundation](#)⁹ projects have the most openly licensed contents. For example, every content of the [Wikipedia Encyclopedia](#) is released with license

⁷ At Europeana we work with thousands of European archives, libraries and museums to share cultural heritage for enjoyment, education and research. Europeana Collections provides access to over 50 million digitised items – books, music, artworks and more – with sophisticated search and filter tools to help you find what you're looking for. Our dedicated thematic collections on art, fashion, music, photography and World War I contain galleries, blogs and exhibitions to inform and inspire.

⁸ You can download the letter in French, the link is in 2005 of the timeline <https://ec.europa.eu/digital-single-market/en/news/timeline-digitisation-and-online-accessibility-cultural-heritage>

⁹ The nonprofit Wikimedia Foundation provides the essential infrastructure for free knowledge. We host Wikipedia, the free online encyclopedia, created, edited, and verified by volunteers around the world, as well as many other vital community projects. All of which is made possible thanks to donations from individuals like you. We welcome anyone who shares our vision to join us in collecting and sharing knowledge that fully represents human diversity.

CC BY SA (attribution and share alike with the same terms), meaning that to upload material it has to be with this license or of public domain.

In all of Wikimedia Foundation projects the respect of copyright regulations is very strict, reason why a lot of content is taken down! The Wikipedia portal states the [five founding pillars](#), *one of which is about reuse and copyright: Wikipedia is free content that anyone can use, edit, and distribute Since all editors freely license their work to the public, no editor owns an article and any contributions can and will be mercilessly edited and redistributed. Respect copyright laws, and never plagiarize from any sources. Borrowing non-free media is sometimes allowed as fair use, but strive to find free alternatives first.* Source: Wikipedia, Five pillars

Museums can also have an active role in explicating what licit use it allows for users. Museum websites, therefore, need to explain what use can be made of the content on their site: texts, images and, if present, videos. Which content can be shared and which is copyrighted? These instructions might be placed at the foot of the page, while general rules are stated in the text *Terms of use*. These texts are usually present in the footer of all websites and we advise you to read them. The research group ICOM Italia, for example, conceived a self monitoring graphic of web strategy. One of the 17 evaluation standards is precisely on this aspect: does the museum clearly express the reuse limitations and possibilities for the users?

5.2. LICENSES FOR THE REUSE OF CONTENT. User license and copyright for content in the “legal notes” section on the website.

1. There are no instructions, not even in the “legal notes” section on how to use content.
2. There is no content reuse police but there’s an explicit possibility to use the proposed content (social network buttons).
3. Instruction for using or reusing content are present but unclear. Users may save the content on the website.
4. [Creative Commons](#) Licenses are present. It is possible to save and reuse the proposed content.



The intrinsic possibility in the Internet to forward, modify and elaborate can be a great incentive for cultural participation, but the global process of content sharing and accessibility has to be compatible with the observance of law and the steps towards finding agreements and the right methods are many and very interesting.

For example, on the European Union website there is an interesting timeline: [Timeline of digitisation and online accessibility of cultural heritage](#) that guides us through every step since 2005 and helps us reconstructing the most important stage of this journey/ process of accessibility to the heritage at European level

5. List of references

Websites:

[Creative Commons](#)

[Europeana](#)

[Getty Search Gateway](#)

[Rijkstudio](#)

[Open GLAM](#)

[Wikipedia](#)

[Unesco](#)

[Nemo](#)

[MET](#)

<https://guides.library.stonybrook.edu/copyright/definitions>

6. Glossary

The glossary is taken from the [Stone Brook University](#)

Copyright



A form of protection provided by the laws of the United States for “original works of authorship” including literary, dramatic, musical, architectural, cartographic, choreographic, pantomimic, pictorial, graphic, sculptural, and audiovisual creations.

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Copyright Infringement

As a general matter, copyright infringement occurs when a copyrighted work is reproduced, distributed, performed, publicly displayed, or made into a derivative work without the permission of the copyright owner. (

Derivative Work

A work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted.

Intellectual Property

According to the **World Intellectual Property Organization** (WIPO), intellectual property “refers to creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce. Intellectual property is divided into two categories: Industrial property, which includes inventions (patents), trademarks, industrial designs, and geographic indications of source; and Copyrigh

The list of references was inspired by the following the [annual conference in open access.](#)

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Metropolitan Museum of Art (2017). *The Met Makes Its Images of Public-Domain Artworks Freely Available through New Open Access Policy*

NEMP (2015) [Survey Museums and Copyright](#)

Sanderhoff, M. (2017). [Open Access can never be bad news.](#)

More articles from Merete Sanderhoff: [Here](#)

Sanderson, R. (2017). *30,000 Getty Museum Images Published Online as IIF*

Stewart, J. (2017). [Guggenheim Museum releases over 200 modern art books online for free.](#)

