

WIPO REPORT ON MUSEUMS COPYRIGHT PRACTICES AND CHALLENGES

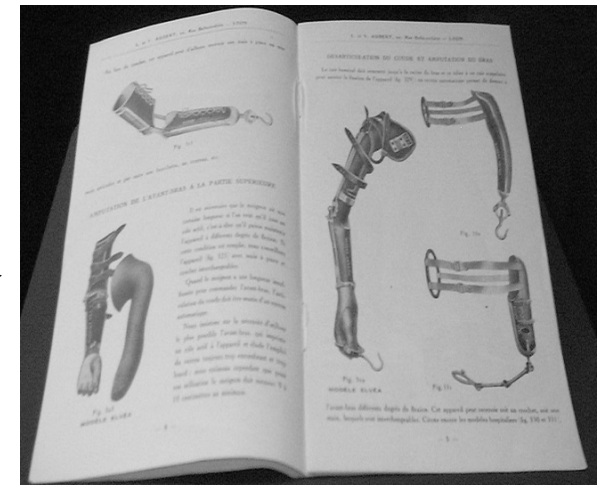
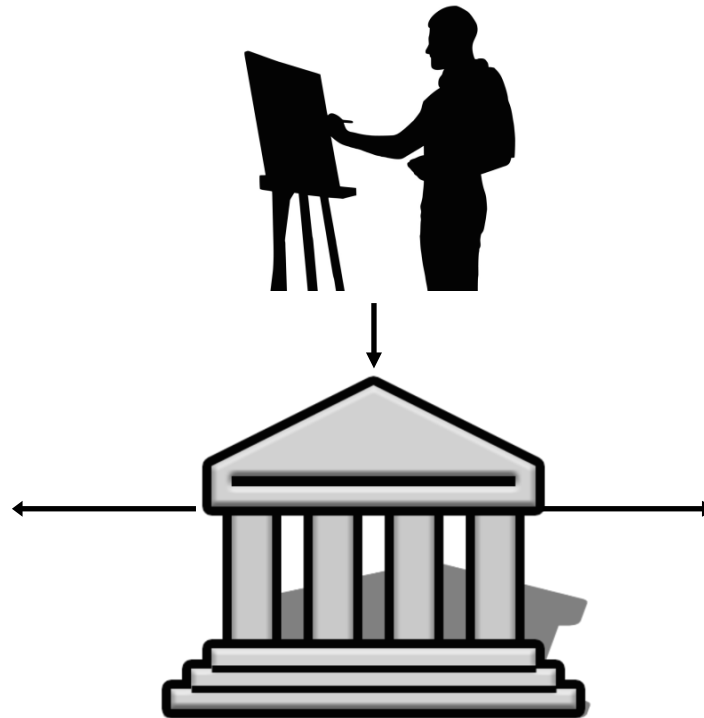
SCCR/37/6, November 29, 2018, WIPO

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INTRODUCTION

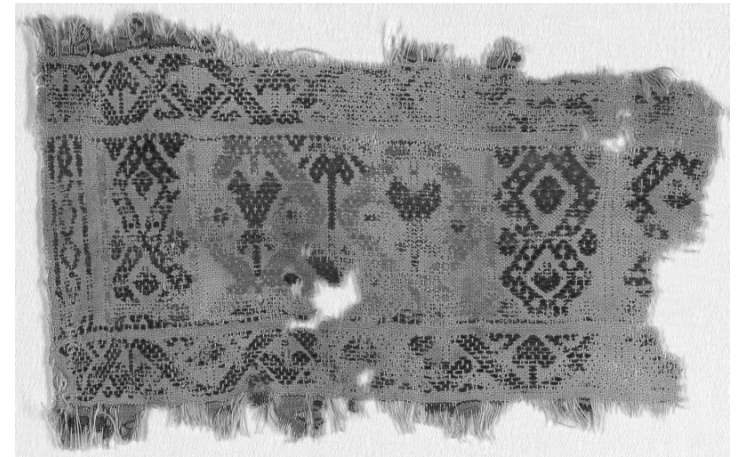
- **MUSEUMS HAVE TO CONSIDER COPYRIGHT WHEN PERFORMING THEIR MISSIONS**
- See 2007 ICOM Internal Rules and Regulations, art. 3 “A museum is a non-profit, permanent institution in the service of society and its development, open to the public, which **acquires, conserves, researches, communicates** and **exhibits** the tangible and intangible heritage of humanity and its environment for the purposes of **education, study** and **enjoyment**”.



INTRODUCTION

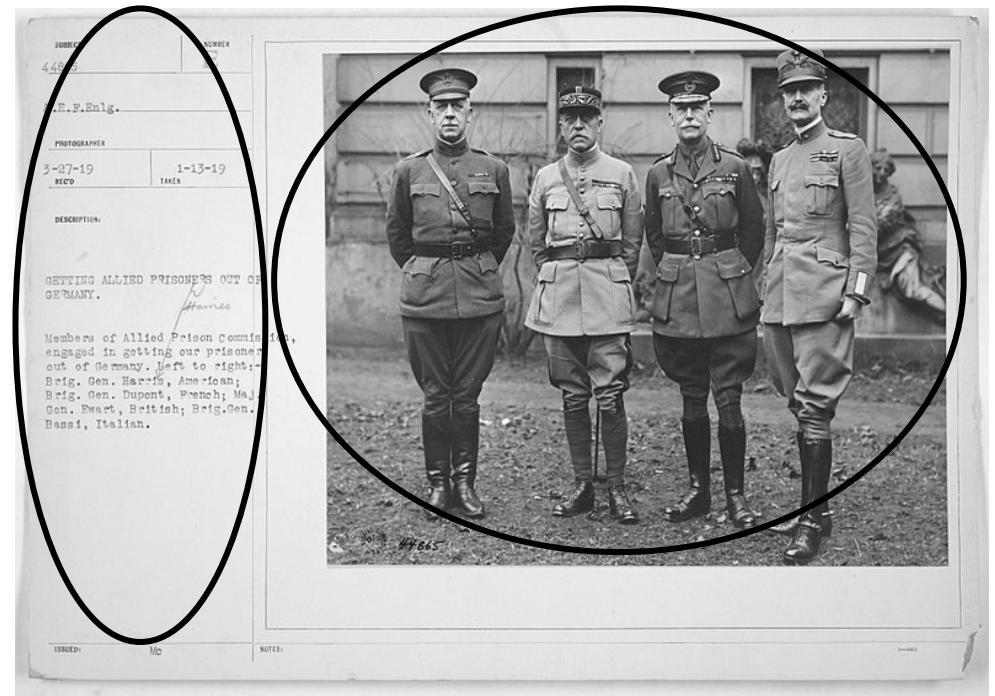
- **WORKS ACQUIRED OR POSSESSED BY MUSEUMS**

- **Copyrighted works**



- **Public domain works**

- **Non copyrighted works**



AGENDA

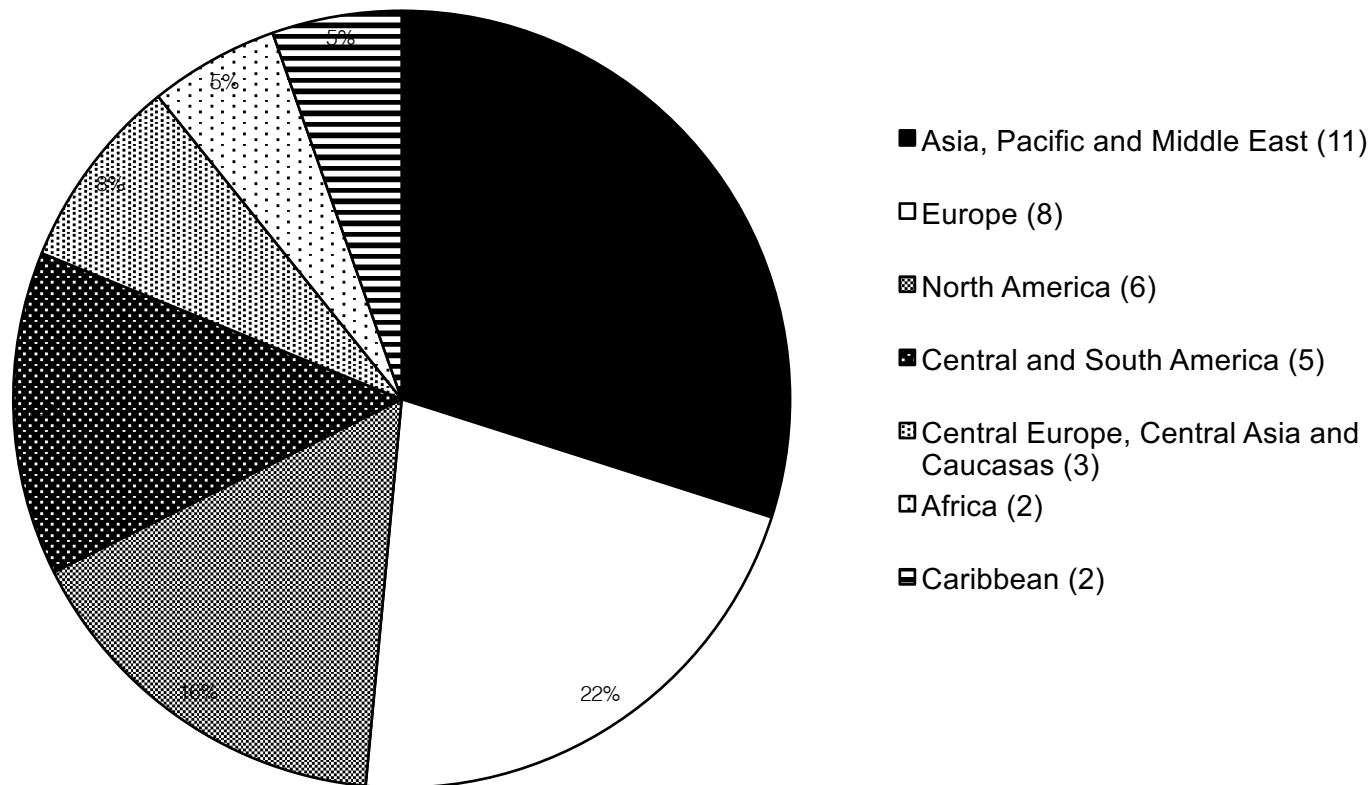
- I. METHODOLOGY (COPYRIGHT PRACTICES)**
- II. LEGAL FRAMEWORK (COPYRIGHT CHALLENGES)**
- III. TAKEAWAYS (EXECUTIVE SUMMARY)**

I. METHODOLOGY (COPYRIGHT PRACTICES)

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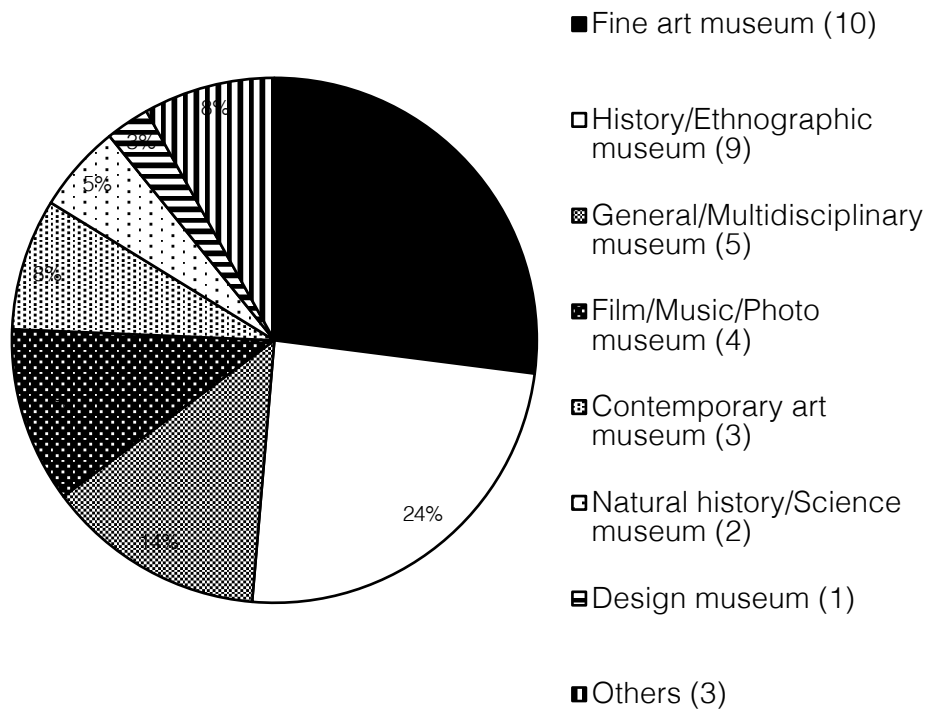
1. INTERVIEWS (37 MUSEUMS WORDLWIDE)

- INTERVIEWS (AND REPORT) SUBMITTED TO PEER REVIEWERS
- GEOGRAPHICAL LOCATION

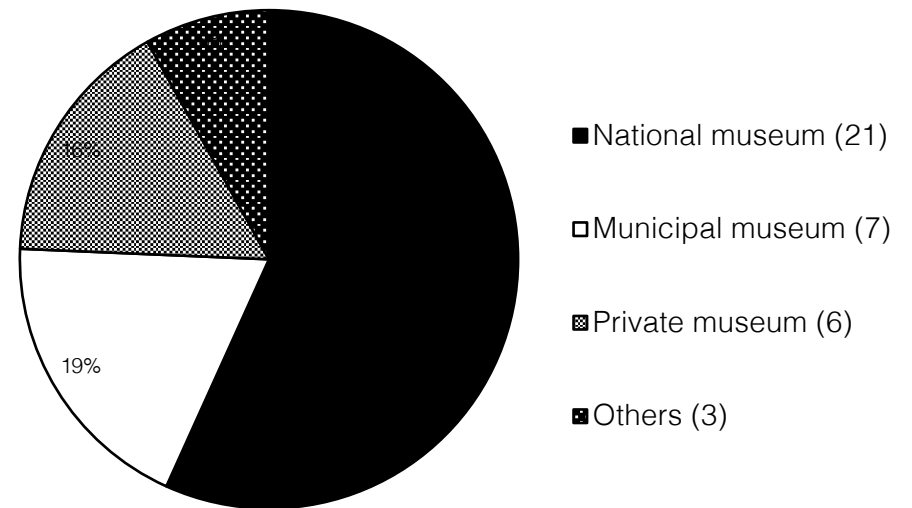


I. METHODOLOGY (COPYRIGHT PRACTICES)

• TYPE OF COLLECTIONS

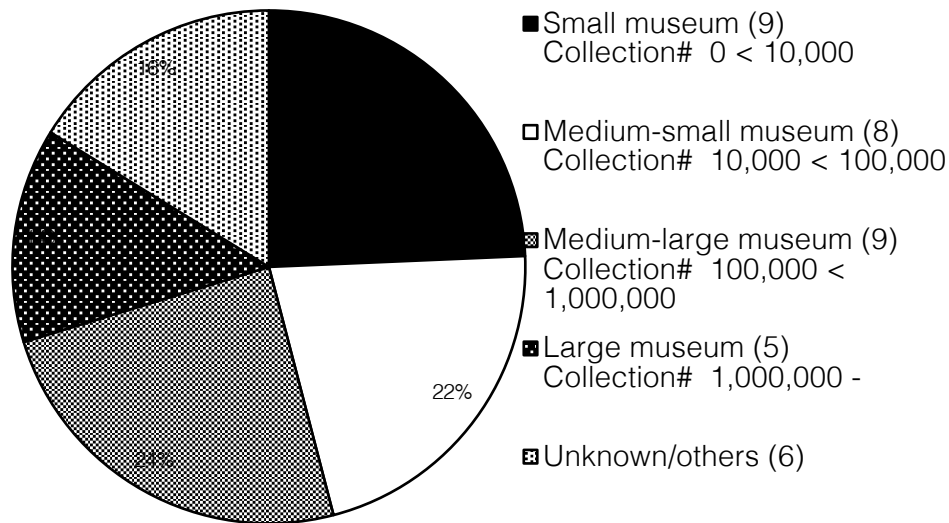


• TYPE OF ORGANIZATION

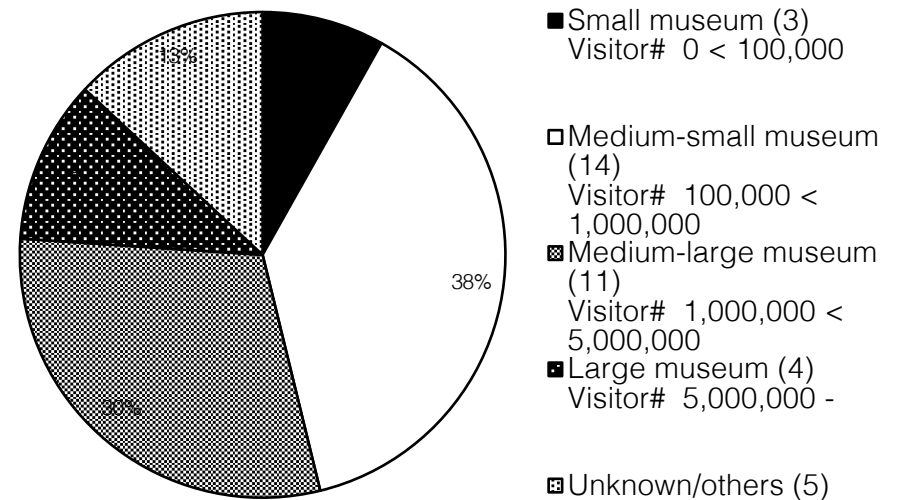


I. METHODOLOGY (COPYRIGHT PRACTICES)

• SIZE IN TERMS OF COLLECTIONS



• SIZE IN TERMS OF ANNUAL VISITORS



I. METHODOLOGY (COPYRIGHT PRACTICES)

2. QUESTIONNAIRE

ANNEX: Questionnaire for Interviewee Museums

This questionnaire served as a starting point for the interviews with museums. Based on open-ended questions and on the discussion with each museum, the interviewer might have chosen not use some questions, or might have chosen to ask further questions.

Copyright management by the museum

1. We note that your museum acquires works (purchases or lends) and/or holds exhibitions and/or publishes catalogues (and other kinds of digital and/or printed materials) and/or commercializes reproductions and/or sells merchandizing goods and/or organizes events (including conferences) and/or conducts research and collects information on specific topics (whether protected by a copyright or not) and/or is housed in a building of architecture [mention those that apply]. Is the museum the **copyright owner** or **licensee** on some of these works? If yes, do you exploit these rights, and if so, how?

II. LEGAL FRAMEWORK (COPYRIGHT CHALLENGES)

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1. PRELIMINARY REMARKS

- Legal framework
 - Multinational Treaties: Berne Convention 1886, WCT / WPPT 1996, Beijing Treaty on Audiovisual Performances 2012, Rome Convention 1961; TRIPS Agreement 1994
 - Regional / national laws (e.g. Swiss Copyright Act; Directive 2001/29/EC)
- Preexisting works
 - 2008 and 2017 WIPO Study on Copyright Limitations and Exceptions for Libraries and Archives by Kenneth Crews (SCCR/35/6)
 - 2015 WIPO Study on Copyright Limitations and Exceptions for Museums by Jean-François Canat and Lucie Guibault (SCCR/30/2) (2015)
 - Other international and national initiatives on museums and copyright

II. LEGAL FRAMEWORK (COPYRIGHT CHALLENGES)

- Economic rights (selection)

- Reproduction

- See art. 9 (1) Bern Convention: authors *“shall have the exclusive right of authorizing the reproduction of these works, in any manner or form”*

- Communication to the public

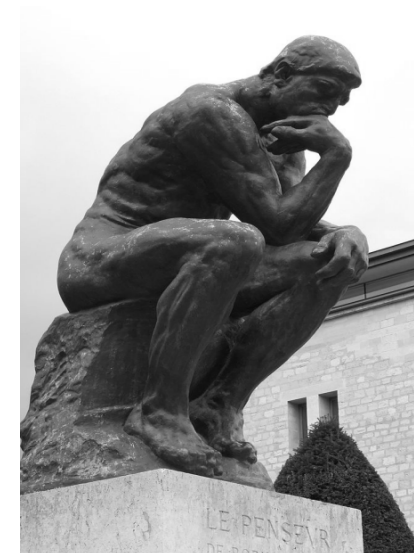
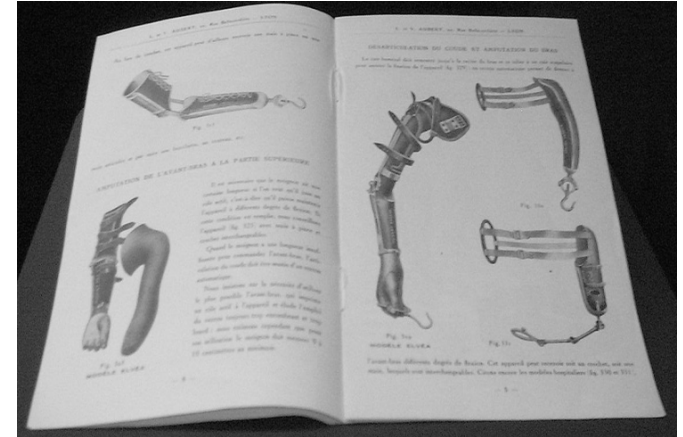
- See art. 8 WCT authors: *“shall enjoy the exclusive right of authorizing any communication to the public of their works, by wire or wireless means”*.

- Moral rights (selection)

- Authorship

- Integrity

- See art. 6bis even after the transfer of the said rights, the author shall have the right to claim (1) Bern Convention: *“Independently of the author's economic rights, and 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.”*



Cour de cassation of 25 October 2016

II. LEGAL FRAMEWORK (COPYRIGHT CHALLENGES)

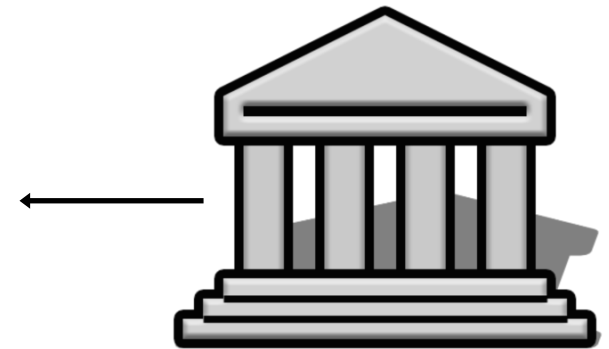
2. PERMISSION TO USE COPYRIGHTED WORKS

- When museums **do not own** the related copyrights, museums generally seek **assignments** or **licenses** from rights holders, either individually from the artists or his / her representative (family, third party or CMO)

- **Preservation of works**



- **Exhibition of works**



- **Communication of works**

II. LEGAL FRAMEWORK (COPYRIGHT CHALLENGES)

3. LIMITATIONS AND EXCEPTIONS

- In some case, there are however limitations and exceptions (L&Es) allowing the museum to use the works without authorization of the rightholder
- **Specific exceptions** (e.g. reproduction for preservation purposes, use of works in exhibition catalogues, of non-attributed works)
- **General exceptions** (e.g. use for educational, or private purposes and the setting up of a reprography regime)
- NB: Digitization has increased the use of works

III. TAKEAWAYS (EXECUTIVE SUMMARY)

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- **INFERENCES FROM THE 37 INTERVIEWS**
- **Lack of awareness** towards copyright in general (including licensing practices) and **exceptions** (not frequently well understood or used due to legal uncertainty)
- **Technologies exacerbate** this legal uncertainty, e.g. regarding scope of exceptions or ownership of digitized materials (mainly videos or photographs)

III. TAKEAWAYS (EXECUTIVE SUMMARY)

1. ACQUISITION OF WORKS AND OWNERSHIP OF COPYRIGHT

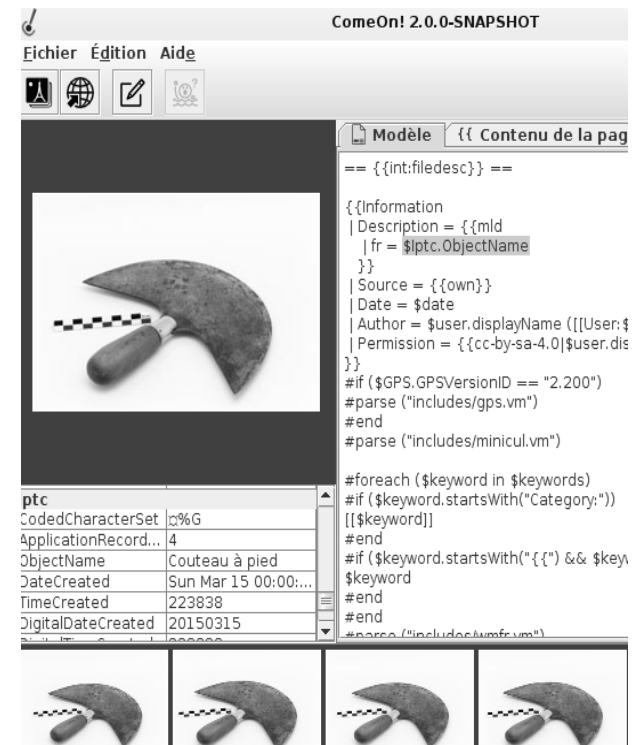
- **Copyright status: difficulties** for certain type of works (e.g. duration of protection of photo/video) and for **digital** copies
- **Licensing practices:** certain **difficulties** for **scope** and **duration** of the license for third party's materials
- **Online collections and archival databases**, mainly Creative Commons CC-BY NC for copyrighted works, and CC0 for factual and metadata ; **Ad hoc license** for commercial purposes and communication of high resolution images
- **Disputes** are reportedly **rare**



III. TAKEAWAYS (EXECUTIVE SUMMARY)

2. PRESERVATION

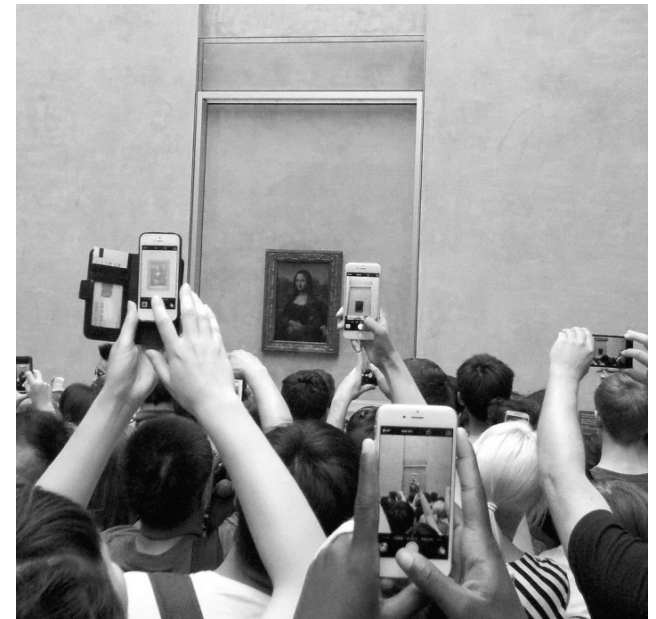
- **Replacement or restoration** of works (*e.g.* works which may deteriorate over-time) rarely conflicts with the artist
- Most interviewees **archive and document works**, mainly in the form of internal databases (this is also the case for interviewees in jurisdictions where there are no clear exceptions for preservation purposes)
- Significant **diversity** between the **type** and **amount** of information contained in the **databases**



III. TAKEAWAYS (EXECUTIVE SUMMARY)

3. EXHIBITION

- **No major issue for on-site display** of the original work (except for jurisdictions with an exclusive right to exhibit, & cross-border lending)
- **Photo-shooting** by visitors is permitted by **most interviewees**, without restriction for public domain works, limited to personal purposes for copyrighted works. Professional photography is however subject to the prior authorization of the museum



III. TAKEAWAYS (EXECUTIVE SUMMARY)

4. COMMUNICATION

- Copyrighted works enriching the exhibition raise **copyright considerations** (e.g. copies of the original work or other material enriching the exhibition).
- **Online** collections and archival databases **raise copyright considerations**, as the making available of digital reproductions of protected works amounts to a communication to the public.
 - Interviewees are **reluctant** to make use of exceptions when they exist due to the legal uncertainty; or
 - When copyrighted works are digitized, their access is often **restricted** (off-line to visitors, researchers and students, and on-line thumbnail or low resolution images).

III. TAKEAWAYS (EXECUTIVE SUMMARY)

4. COMMUNICATION

- **Publications of educational nature** (*e.g.* exhibition catalogues, educational materials) may raise copyright considerations, as clear exceptions or licensing solutions are not always available
- **Publications of promotional nature** (*e.g.* flyers and posters, museum websites and social media) are subject to the authorization of the rights holders in most jurisdictions
- **Publication for commercial uses** (*e.g.* merchandising goods, such as postcards and t-shirts) are subject to no identified specific exception

III. TAKEAWAYS (EXECUTIVE SUMMARY)

5. CONTEMPLATED SOLUTIONS

- **Licensing systems**, either *ad hoc* **individual licenses** with the rightholder (template taking into account cross-border transfer/lending) or **extended collective licenses (ECL)**
- **Norm-setting**, in particular exceptions under certain conditions (e.g. non-commercial purposes, formalities, free of charge, number of copies, prior research)
- **Standardization** and **best practices**
 - **Guidelines** to precise notions such as the “*promotional uses*” and “*diligent search*” as well as the application of exception to the digital environment (see Swiss Copyright Act Revised Draft)
 - **Standardization** for metadata and databases (see IPTC Photo Metadata Standard, or The Museum System TMS)

ACKNOWLEDGMENT AND IMAGE RIGHTS

• ACKNOWLEDGMENT

- sincere thanks to all interviewees and experts, and delegates for sharing information and challenges.
- special thanks to other museums and leading professionals for sharing their concerns in the course of informal discussions, in particular Ms. Rina E. Pantalony, Nancy Adelson and Tama O'Brien, to experts designated as peer reviewers, Prof. Stephen Urice, Ms. Lauryn Guttenplan, Ms. Marie-Anne Ferry-Fall, Mr. Massimo Sterpi, Ms. Angela Maria Perez and the Botero Museum IP team, Ms. Natalia Krestianinova and the Hermitage Museum legal team, Ms. Louisa Tan and Mr. Samuel Sidibe.
- to the community of the Berkman Klein Center at the Harvard University.
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• IMAGE RIGHTS

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