



Network of European
Museum Organisations

Survey on Museums and Copyright

Report

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CONTENT

1. A survey on museums and copyrights: Why and what?	4
2. Survey Summary and Recommendations	6
3. Responding museums	6
4. Museums and copyrights licences	14
4. a. Copyright clauses in staff contracts	14
4. b. Copyright status of the museum collections	17
4. c. Copyright licenses for reuse: negotiated directly with the rights holders	20
4. d. Copyright licenses for reuse: negotiated via collecting societies.. ..	24
4. e. Museums and orphan works	31
4. f. Museums and digital assets.....	34
5. Museums practice and copyright	42
6. Museums and copyright reform	44
7. Annexes.....	51

1. A survey on museums and copyrights: Why and what?

We have moved beyond the “digital shift”. “Digital” is now reality. However, cultural heritage organisations still face many problems when trying to make their assets accessible to the public in a digital world. One of the obstacles – arguably the main obstacle – is that the copyright status and the cost of clearing any rights in each work or collection of works, have to be clarified in order to make full use of cultural heritage collections. In order to do this, a clear (digital) rights management is necessary.

In general, Intellectual Property Rights (IPR) legislation across Europe is unclear and differs from State to State. Consequently, cultural heritage institutions are not able to provide the level of public access to their collections that they would wish. There are many reasons for this. Clearing rights requires a lot of resources: human resources, financial resources, time resources and a lot of expertise. Sometimes determining what copyright exists in a work and tracing the rights holders is simply impossible, especially when the assets are older, there is insufficient documentation or it is unclear who created a work.

If action is not taken soon, an essential part of cultural heritage will stay invisible and inaccessible, particularly digitally.

HOW IS EUROPE APPROACHING COPYRIGHT?

Governments around Europe are re-thinking their approach to copyright. The legislative copyright framework, at both national and EU level, is undergoing review. The Juncker Commission is preparing the Digital Single Market Strategy, including a review of copyright legislative framework, will report in late 2015.

It is vital to consult all stakeholders during the process of copyright review. These stakeholders include rights holders, their representatives and re-users of content, but also cultural heritage collections, such as museums. This will ensure fairer copyright legislation across Europe.

Museums use their collections for education purposes, as well as training and research. Museums preserve and display our shared cultural heritage, which are used by people to explore their own cultural identity and learn more about the world around them. However, these same collections are also the basis of creative entrepreneurship, are used to inspire creativity and provide the basis for innovation which contribute to Europe’s creative and knowledge economy.

MUSEUMS AND COPYRIGHT

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. It is necessary to know the copyright status of a work if a museum wishes to display the object, licence an image of the work for commercial re-use or include in an exhibition catalogue. Museums often have a number of pieces in their collection that still “in copyright”, particularly where their collection includes contemporary art. 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 to them.

A NEMO SURVEY ON MUSEUMS AND COPYRIGHTS

NEMO is the representative body for the European museum community. Members are representatives of national museums associations and other similar bodies. NEMO represents associations in more than 36 countries in the EU and beyond; and those associations represent over 30,000 museums across Europe.

The Network has continuously engaged in European discussions relating to the digitisation and online accessibility of cultural heritage. With partners such as Europeana and Michael Culture, NEMO has responded to numerous consultations, including Directive 2001/29/EC of the European Parliament, the Council’s enquiry on the harmonisation

of certain aspects of copyright and related rights in the information society (March 2015)¹, and the Directive 2003/98/EC on the re-use of public sector information (PSI Directive, April 2013).

The aim of NEMO's current work on copyright is to secure a copyright agreement that allows museums to maximise the opportunity for museums to place their collections on public display. Copyright is complex, differs from country to country, and museums need to consider the technical, financial, commercial and administrative implications. Copyright legislation largely pre-dates the rapid technological change of the 21st century, and many museums feel themselves to be hindered in their tasks and activities by copyright legislation.

NEMO has repeatedly been made aware of examples of how copyright legislation restricts museums' activities. Therefore, the network decided to launch a survey of European museums and this was carried out by its Intellectual Property Rights Working Party. The Flemish Art Collection (*Vlaamse Kunstcollectie, vzw*) a NEMO-associated member and leader of the Intellectual Property Rights Working Group, along with The Language Doc, prepared and managed the distribution of the survey. The Flemish Art Collection created a focus group with various expert museum representatives as well as IPR experts in affiliated organisations². This focus group devised the list of questions and worked with NEMO to draft the distillation of the survey responses.

Primarily, this survey sought to give an overview of "real life" museum practice and examples of IPR-related problems. NEMO wants to use this as evidence to illustrate concerns, questions and problems related to IPR that museums encounter in their daily activities.

The survey also sought to capture legal and technical challenges in the survey, and these would be used to produce recommendations for how copyright regimes across Europe may be altered to assist museums with ensuring greatest public access to their collections.³

¹ <http://www.ne-mo.org/news/article/browse/5/nemo/open-letter-to-the-working-group-on-intellectual-property-rights-and-copyright-reform/356.html>

² Focus Group NEMO Survey: Pascal Ennaert (Vlaamse Kunstcollectie, Flemish Art Collection), Robert Fulton (The Language Doc), Jeroen Walterus (FARO), Rony Vissers (Packed), Paul Keller (Kennisland), Ester Fabriek (Museumvereniging)

³ The NEMO survey ran for 41 days, from 15 April through 25 May of 2015. Museum respondents were recruited by NEMO's network of national museum organisations throughout Europe. Of the 144 surveys with responses, the focus group advised to only process those that were completely filled in. Of the 144 surveys, there were thus 86 remaining for processing (59,7% of the total). In this report, only the answers from these 86 surveys that were fully filled in are represented. Although only a limited part of the European museum participated, they still represent, by way of various sizes and diversity of typology, an indicative (though not representative) situation of museums in the year 2015..

2. Survey Conclusions and Recommendations

The survey responses illustrate a number of clear themes and common concerns amongst museums. They give an overview of both the present situation museums find themselves confronted with when dealing with IPR, and the concerns and problems resulting from this situation.⁴

SURVEY CONCLUSIONS

A need to raise awareness of the influences that copyright legislation has on the tasks and activities of museums. The NEMO survey shows that many of the museums' core activities have copyright implications. Copyright legislation has to be better adapted to the purposes of heritage institutions, if those institutions are to be able to allow greater public access to their collections.⁵

On the other hand, museums need to develop and pool – possibly via regional and national umbrella organisations - greater staff awareness, knowledge and expertise about the management of copyright across museum functions. Museums cannot always afford to hire professional external expertise in order to solve copyright-related problems.

Copyright licenses available to cultural heritage organisations are not adjusted to modern requirements and technical standards; in addition tariffs are frequently found to be unreasonable. Managing copyright is a considerable cost and administrative undertaking for museums. The NEMO survey shows that licenses are often not in line with modern digital and technical standards. Policy makers need to address unreasonable conditions placed on museums, who serve the public, by collecting societies⁶ and rights holders.⁷

Serious challenges caused by copyright legislation for museums who wish to publish details of 20th and 21st century works online. Copyright legislation can be an enormous hindrance for a museum who wishes to place details of their collections online, particularly where that collection includes in copyright works. This is due to resource-intensive procedure necessary to clear the rights and the affordability of copyright licenses issued by rights holders' representatives, such as collecting societies, required to publish images of a work of art online.⁸

Collecting societies and rights holder either raise the cost of licences further or refuse to grant licences if a work is to be included initiatives that allow commercial reuse, such as Google Art Institute and Europeana.

Adjust legal requirements to meet the requirements of the digital age and the reasonable capacity of museums.

Copyright legislation differs from country to country. The drafting of legislation has frequently occurred without the input of the cultural heritage sector. There is a need for expertise hubs, via regional or national umbrella museum organisations, that provide relevant information from Governments to the museums when needed.

The EU Orphan Works Directive⁹ needs to be revisited to consider whether the requirements of museums are feasible. It puts a heavy burden on the museums to conduct a diligent search for every work that has unknown creator(s) or rights holder(s).

⁴ It is important to define some general aspects of IPR related aspects that are connected to the museum work.

1. There is a difference between clearing rights for works of art that are acquired by the museum now and the retrospective clearance of rights for works of art that originally did not include a license for digital reproduction in the original agreement.
2. There are many different purposes a work of art can be re-used for. We will limit the study to the most common forms of reuse in connection to museums: re-use by the museum itself for core museum activities such as for educational or research purposes; re-use the museum for commercial purposes (for example merchandising); and re-use by third parties for either non-commercial or commercial purposes.

⁵ Examples include: the rights to photos that photographers take on assignment for the museum are frequently insufficiently clear; many museums – especially small museums - are confronted with problems with staff or contractors because there is no explicit copyright clause in their contracts; specific IPR concepts and (inter)national regulations are unclear, even for the personnel that are responsible for copyright issues within the museum; negligence - nearly one-third of the museums said that they have not negotiated licenses with neither authors nor collective-management organisations.

⁶ The report uses the term "collecting society". However, there are various denominations for these organisations. The NEMO questionnaire has used the term "collective management organisation". Other parties use the term "collective rights organisation"

⁷ For example, the conditions that are suggested for the online use of copyright material are found to be unreasonable and not in agreement with the standard prices levied for educational institutions (which may include museums); and in times of budget cuts museums also choose to manage copyright in a way which makes most efficient use of available resources.

⁸ This hindrance is even less understandable given the non-commercial character of most museum online publications and displays.

⁹ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32012L0028> (27.7.15)

Limiting the term of copyright

Museums generally do not support the extension of the term of copyright in works of art because this would add to the costs incurred by museums and reduce public access. Some museums asked for a shorter term of copyright in works of art.

Social Media Copyright Policy and Museums

Another concern is the copyright policy of social media organisations. Most social media organisations claim the copyright for pictures shared via their platforms. This causes numerous problems for museums as they manage the requirements of various rights holders in a work and/or the image of the work.

Films and videos are too complex to handle with respect to copyright

Museums generally face difficulties in clearing rights for audio visual works. This is due to the fact that the rights held in audio visual works are very complex (as they can include unknown creators, multiple contributors, and unclear assignment of rights). A generic solution is needed in order to make audio visual heritage available to the public.

Museums find it easier to negotiate copyright agreements directly with creators than with their heirs or with collecting societies.

The study shows that museums find it easier and less costly to negotiate copyright agreements with creators, particularly where these are about non-commercial reuse by the museum. Both collecting societies and heirs of the creators' works often impose stricter demands with regards to copyright, meaning the museums incur greater financial, time and staff costs.¹⁰

It would be good practice to negotiate the licences with creators themselves whenever possible, and preferably at the point where a work is being acquired by a museum. Collecting societies need to guarantee transparency, especially with regards to how they set their prices, and they should not be able to overrule agreements made between the creator and the museum.

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 catalogues or museum publications.

¹⁰ Although it was not explicitly asked, there are indications in the open answers that creators generally are more amenable than their heirs. The study finds that only when dealing with online-publications authors find it more difficult than collecting societies to grant licenses to museums.

RECOMMENDATIONS

“Copyright reform with respect to cultural heritage is not about expropriation of right holders – it is about ending a situation of copyright fraud, presumptions and fictive writing up of rights.”¹¹

Mass digitisation of museum collections is required to ensure maximum access to collections for the public. Although mass digitization projects are both staff and financial resource intensive, the cost of ascertaining the copyright status of each work and then clearing the rights of those which are in copyright adds a considerably to the cost of a mass digitisation project. Only a legislative solution – which will allow cultural heritage organizations to be exempt from seeking permission of rights holders for a non-commercial mass digitization project – will ultimately reduce these additional costs.

A solution has to be fair to both rights holders and the cultural heritage organizations. Therefore, NEMO recommends that:

- Museums and heritage institutions should be part of the discussion with Governments when they seek to alter copyright legislation.
- A legislative solution should be sought to allow museums to provide the opportunity for greater public access to their collections.
- Funding should be made available for both the training of museum staff in copyright awareness and for building capacity in museums to manage copyright within the institution.
- 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.
- The existing exceptions benefitting cultural heritage institutions should be updated to enable online access to out of commerce works in the collection.
- Appropriate legislation is necessary to facilitate digitisation, to make museum collection websites accessible and to promote image databases for reuse. Permission for data mining, core meta-data and hyperlinks for non-commercial purposes should not be the subject of licenses granted by rights holders and/or collecting societies.
- Licenses should generally include both an agreement for analogue and digital use. It is important to differentiate between the re-use for commercial and non-commercial purposes.
- The EU Orphan Works Directive should be revisited for its feasibility.

NEMO is happy to engage in discussions with all stakeholders, particularly with the European institutions, about how to ensure that European cultural heritage will be visible and accessible in the future for society.

¹¹Quote from Dr Paul Klimpel’ article “The future of Europe’s cultural heritage”, see https://ec.europa.eu/commission/2014-2019/ansip/blog/guest-blog-dr-paul-klimpel-lawyer-and-cultural-heritage-activist_en

3. Responding museums

The majority of the respondents to the survey work at one a European museum. A limited number of respondents work for museum umbrella organisations (eg. the Flemish Art Collection and Norwegian Museum Association) or governing bodies that have explicit authority over the museums (eg. Office of Museum Affairs of the Free State of Saxony in Germany, Department of State Museums of the Ministry of Culture in Spain). Those umbrella organisations responded to the survey representing the views of the museums they are working for.

Table 1 shows in which European countries the responding museums are based. Some countries returned more respondents than others, and the following accounted for approximately two-thirds of the total number of fully completed surveys: Belgium (15 respondents), Slovakia (13 respondents), the Netherlands and Germany (both 9 respondents), the Czech Republic (7 respondents) and Lithuania (6 respondents).

Table 2 provides an overview of the type of museum represented by the respondents. As such, nearly all categories of museums are represented in the survey. The museums that identified themselves as general museums, art museums (22%), historical (13%) or contemporary art museums (8%) are most represented.

In addition to differences in museum types, we also see a great diversity with respect to the type of collections that the institutions house. Table 3 shows that the number of museums with only museum objects is limited. Nearly 60% also house archives and archival objects in addition to accessioned objects. 56% say that they have a library collection and 44% have an audio-visual collection.

The sizes of the museums, as determined by the number of collection pieces and number of staff, are also diverse. Table 4 provides an overview of the number of staff that work in the responding museums. Nearly half of the responding museums (49%) have fewer than 30 employees. A quarter (25%) of the responding museums has more than 100 employees. The numbers indicate that the survey was largely answered by the bigger museums in Europe.

Slightly more than half of the responding museums (53%) have someone on staff designated as being responsible for copyright in the museum (table 5), although only 22% of those responsible are legal experts or experts in copyright (table 6). The latter cases are primarily found in museums with 50 employees or more.

In 20% of cases, the member of staff responsible for copyright is the General Director. It is not surprising that this common in small museums with fewer than ten employees. It is only in 11% of cases that the responsible person is a legal expert. Furthermore, administrative staff (9%) or conservators and curators (9%) perform this function. Only 4% of the persons responsible for copyright are Managing Directors. Other possible roles mentioned were: Registrar (nearly 22%), Licensing or Publishing Officer (nearly 9%) and Head of PR and Communications (4%).





















Table 7 shows that 67% of the respondents of the survey hardly or never call upon an external copyright expert. 27% do so occasionally. Only 6% regularly or always call upon an external expert. It appears that it is primarily the larger museums (those with 50+ employees) that regularly seek external expertise.

A third of the museums indicate that they consult an umbrella organisation where they provide information about copyright matters. Again, it seems that it is the larger museums that more frequently approach such organisations. In general, three groups of umbrella organisations were indicated:

1. Cities authorities and other governing bodies (eg. the City Governments of Antwerp, Oberhausen and Lyon, the European Parliament, the Copyright Division of the Latvian Government's Museums Department, the Copyright Division of the Ministry of Culture of the Republic of Lithuania, *Centrum pre autorské prava* in Slovakia, etc)
2. Expert organisations (eg. Partnership for Copyright and Society and the User's Group of Copyright and Cultural Heritage, both in Belgium, Museums Copyright Group in the UK, etc)
3. National or other museum umbrella organisations (eg. Contemporary Art Heritage Flanders, the Flemish Art Collection and Lukas Art (all in Flanders Belgium), *Organisationen af Danske Museer* in Denmark, the *Stiftung Preußischer Kulturbesitz* and the *Deutscher Museumsbund* in Germany, the *Museumvereniging* in the Netherlands, the Czech Association of Museums and Galleries, ICOM).

A limited number of museums consult both an umbrella organisation and a collective licensing organisation, such as Pictoright in the Netherlands, for copyright related requests.

Table 1. In which country is your museum established?

Answer	Total	% of answers	%
Austria	2		2
Belgium	15		17
Bosnia and Herzegovina	0		0
Czech Republic	7		8
Denmark	3		3
Estonia	0		0
Finland	2		2
France	1		1
Germany	9		10
Greece	1		1
Iceland	0		0
Ireland	0		0
Italy	1		1
Latvia	4		5
Lithuania	6		7
Netherlands	9		10
Norway	3		3
Poland	1		1
Romania	0		0
Slovakia	13		15
Slovenia	4		5
Spain	1		1
Sweden	2		2
United Kingdom	1		1
Other, please specify	1		1

Total number respondents: 86
Skipped question: 0

0%















20%

40%

60%

80%






Table 2. Which of the following types best describes your museum?

Answer	Total	% of answers	%
General/multidisciplinary/interdisciplinary museum	19		22
Fine art museum	11		13
Contemporary art museum	7		8
Photo or film museum	1		1
Natural history or natural science museum	6		7
Science and technology museum	1		1
History museum	6		7
Cultural history museum	6		7
Antiquities museum	0		0
Archaeological museum	2		2
Ethnographic museum	3		3
City museum	5		6
Commemorative museum	0		0
Maritime museum	1		1
Fashion museum	0		0
Design museum	1		1
Other, please specify	17		20

Total number respondents: 86 0% 20% 40% 60% 80%

Skipped question: 0










Table 3. What constitutes the museum collection? (multiple answers are possible)

Answer	Total	% of answers	%
Museum objects	79		92
Archival pieces and archives	50		58
Library collections	48		56
Audio-visual collections	38		44
Other, please specify	10		12

Total number respondents: 86 0% 20% 40% 60% 80%

Skipped question: 0

Table 4. How many personnel does the museum have (approximately)?

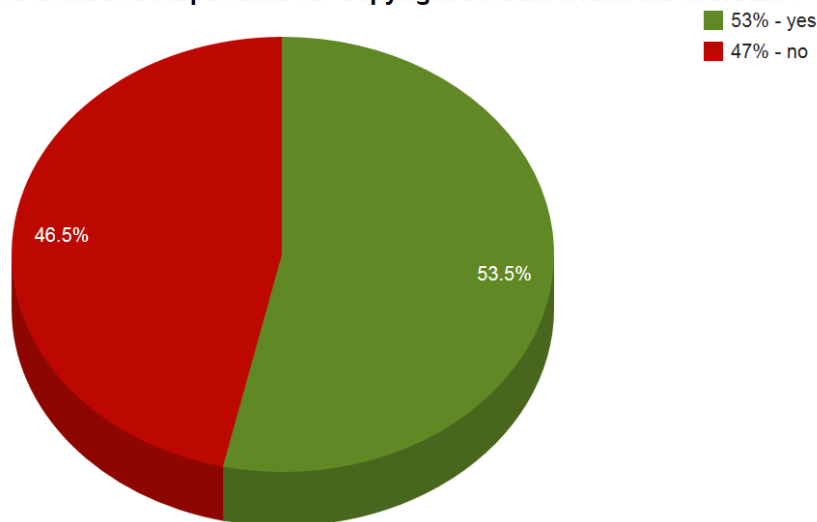
Answer	Total	% of answers	%
1-10	17		20
11-20	14		16
21-30	11		13
31-40	8		9
41-50	5		6
51-75	7		8
76-100	2		2
101-150	7		8
+150	15		17

Total number respondents: 86
 Skipped question: 0

0%
20%
40%
60%
80%



Table 5. Is there someone responsible for copyright on staff within the museum?

10. Is there someone responsible for copyright on staff within the museum?



n=86






Table 6. Is the responsible for copyright a juridical or copyright expert?

Answer	Total	% of answers	%
yes	10		22
no	36		78

Total number respondents: 46
Skipped question: 40

0% 20% 40% 60% 80%

Table 7. How often does your museum put a call out for an external copyright expert?

Answer	Total	% of answers	%
never	20		23
seldom	38		44
now and then	23		27
frequently	4		5
always	1		1

Total number of respondents: 86
Skipped question: 0

0% 20% 40% 60% 80%

4. Museums and copyrights licences

4. a. Copyright clauses in staff contracts














Of the responding museums, 43% have a **copyright clause in staff contracts** or the contracts of freelance staff. The clause determines that the employee transfers certain intellectual property rights to the institution that employs them. Such clauses appear more frequently in the contracts of those employed by larger museums (50+ employees), than in those employed by smaller museums.

If such an intellectual property rights clause is applied, it covers contracts for nearly half of the different categories of employees. In around 50% of cases, the clause applies to photographers and/or multi-media representatives, and in 30% of the cases to scientific personnel. In addition, curators (22%), database, website and applications developers (22%) and educational colleagues (16%) have such clauses in their contract. (Table 8).

When we asked to **what sort of content** the intellectual property rights clause applied (Table 9), in nearly 50% of cases the clause applied to photographs. Contributions to printed (38%) or digital publications (32%) are also subject to this clause. Educational (22%) and scientific publications (24%) were also frequently mentioned. Recorded content, films and other audio-visual materials are also subject to such a clause (15%).











When working with external authors, museums generally aim for a transfer of copyright to the institution. If this request is not granted by the author, an exclusive licence to publish is permitted. These agreements are however mostly very specific and demand an individual case approach.

Table 8. Copyright clause in the staff contracts: for which category of personnel? (multiple answers are possible)

Answer	Total	% of answers	%
Not defined, all categories	18		49
Conservators	4		11
Curators	8		22
Registrars	2		5
Educational colleagues	6		16
Communications personnel	2		5
Scientific personnel	11		30
ICT personnel/data conservators	3		8
Database, website and applications developers	8		22
Copywriters	1		3
Administrative personnel	2		5
Photographers and/or multi-media representatives	19		51
Other, please specify	2		5

Total number respondents: 37
Skipped question: 49

Table 9. Copyright clause in the staff contracts: To which sort of content does the copyright clause apply? (multiple answers are possible)

Answers	Total	% of answers	%
Not defined/every sort of content	19		51
Registration of the collection	3		8
Educational publications	8		22
Printed publications	14		38
Digital publications	12		32
Scientific publications	9		24
Database management systems	5		14
Content Management Systems (website management systems)	7		19
Photos	18		49
Other, please specify	3		8

Total number respondents: 37
Skipped question: 49

0%

20%

40%













60%

80%

4. b. Copyright status of the museum collections

The copyright status of the collections of the responding museums was diverse. These were split between collections which were in the public domain (table 10), in copyright works (table 11), and works where the copyright status was unclear (table 12). It is worth noting that 20% of the respondents did not know whether works in their collections are in the public domain, are in copyright or have unclear copyright status.

Table 10. What is the presumed portion of collection pieces (museum objects) in the museum collection that is free of copyrights and thus belongs to the public domain?

Answer	Total	% of answers	%
I don't know	21		24
less than 10%	14		16
10%	3		3
20%	2		2
30%	7		8
40%	3		3
50%	4		5
60%	10		12
70%	12		14
80%	3		3
90%	4		5
100%	3		3

Total number respondents: 86
Skipped question: 0
















Table 11. What is the presumed portion of the museum pieces (museum objects) in the museum collection to which copyright applies?

Answer	Total	% of answers	%
I don't know	16		19
less than 10%	11		13
10%	2		2
20%	10		12
30%	10		12
40%	3		3
50%	5		6
60%	7		8
70%	4		5
80%	5		6
90%	7		8
100%	6		7

Total number respondents: 86
Skipped question: 0














Table 12. What is the presumed portion of the museum pieces (museum objects) in the museum collection of which the copyright status is unclear?

Answer	Total	% of respondents	%
I don't know	19		22
less than 10%	31		36
10%	17		20
20%	9		10
30%	1		1
40%	2		2
50%	0		0
60%	0		0
70%	1		1
80%	1		1
90%	1		1
100%	4		5

Total number respondents: 86
Skipped question: 0

0%
20%
40%
60%
80%

4. c. Copyright licenses for reuse: negotiated directly with the rights holders

62% of the museum respondents have signed copyright licenses for reuse that have been negotiated directly with the creators. 'Reuse' is understood as the reproduction of a work for the purpose of registration, public display (online, in printed publications, in exhibitions, for example) research, educational projects, and across other museum functions.¹² It is important to differentiate between clearing rights for works of art that are acquired by the museum in the present and the retrospective clearance of rights for works of art that originally did not include a digital rights agreement.

In more than half of the cases, only 10% of the collection is covered with licenses. Only in 18% of the cases more than half of the collection pieces are object of a specific license negotiated between the museum and the author (table 13). This is primarily the case for contemporary art museums and the larger museums that have concluded a copyright agreement for large parts of the collections directly with creators.¹³

Of the museums that have negotiated licenses with the creators, two-thirds of the museums used a uniform license type as the basis of the negotiations. This practice is most frequently found at general museums, art museums, and photography and film museums.

It is noteworthy that nearly half of the museums cannot say which creative commons license the negotiated licences with creators are the nearest comparison. This might indicate that either staff are not familiar with creative commons licenses, or they are not experienced with the scope and content of these licenses. Of the respondents, it is clear that in most cases the licenses were signed included specific agreement about non-commercial use of a work. Smaller museums usually fall back upon a stricter creative commons licenses (Table 14), whereas creators may agree to only require attribution when a work is re-used by the museum for a non-commercial purpose.

The survey provides some evidence of the museum functions covered by licences negotiated directly with creators. Such licenses were nearly always used for reproduction in printed or digital publications (83%). These licences were also used for other non-commercial activities, such as publicity actions (57%), display or exhibitions (43%), third-party digital publications and web channels (60%), and scientific (54%) and educational (57%) activities (Table 15).

Table 16 illustrates the circumstances when a museum may negotiate use of a work directly with the creator. Museums undertake these negotiations when a new work is acquisitioned (71% of the cases). 60% request such licenses on an *ad hoc* basis, particularly when a project starts which could include a work in which the creator is the rights holder. Only 23% negotiate agreements with creators which cover numerous work and numerous activities. 68% of the museum respondents said that creators seldom or never refused to enter into such agreements. Only 12% of the respondents suggest that the authors have problems with the licenses proposed by the museums (Table 17).

When asked for the reasons why authors refuse such licenses, various answers were given. Some authors are concerned about the integrity of their work, particularly its use by a third party or its online use. In addition, collecting societies sometimes hinder authors to directly negotiate licences with museums, if they are represented by them. Heirs of rights holders have the tendency to turn immediately to collecting societies when dealing with licenses, with financial management often cited as a reason for this.












Creators may seek to make amendments to agreements to include that they need to give approval before their work is used in print, in a publication or is reused in another way. Amendments may also be sought by the creator to ensure they are attributed if a work is re-used, to limit any commercial re-use, prohibit online use or to request online re-use is only possible if the work is either a low resolution or watermarked.

The time period for which the direct licenses with creators are valid varies. 80% of the respondents say that licenses have no time limit. 51% say that the authors provide temporary licenses in the function of a specific project or exhibition (Table 18).

¹² Collecting societies repeatedly have opposed direct agreements between authors that they represent and museums.

¹³ This is among other due to the fact that art museums generally have fewer items in their collections than other types of museums (eg Natural History Museums).








Table 13. What is the portion of all of these collection pieces to which copyrights apply, of which a copyright license for reuse is signed after negotiation with the author(s)?

Answer	Total	% of answers	%
I don't know	11		21
less than 10%	27		51
10%	2		4
20%	0		0
30%	3		6
40%	1		2
50%	2		4
60%	2		4
70%	1		2
80%	1		2
90%	2		4
100%	1		2

Total number respondents: 53 0% 20% 40% 60% 80%

Skipped question: 33














Table 14. With which creative commons licenses can the content of these uniform license types be compared? (use the link to understand better the creative commons licenses) (multiple answers are possible)

Answer	Total	% of answers	%
I don't know	16		46
CC BY: Attribution	3		9
CC BY-SA: Attribution-ShareAlike	5		14
CC BY-ND: Attribution-NoDerivs	3		9
CC BY-NC: Attribution-NonCommercial	4		11
CC BY-NC-SA: Attribution-NonCommercial-ShareAlike	5		14
CC BY-NC-ND: Attribution-NonCommercial-NoDerivs	10		29

Total number respondents: 35 0% 20% 40% 60% 80%

Skipped question: 51




Table 15. For which sort of activities are the copyright licenses with the authors generally used? (multiple answers are possible)

Answer	Total	% of answers	%
Scientific activities	19		54
Educational activities	20		57
Activities focused on conservation and restoration	13		37
Activities focused on registration	13		37
Activities for the public, including printed publications	29		83
Activities for the public, including digital publications and web channels of the museum	29		83
Activities for the public, including third-party digital publications and web channels	21		60
Dissemination of the collection via Europeana	10		29
The presentation of reuse availability via Europeana	8		23
Scenography of exhibitions	15		43
Publicity activities	20		57
Various commercial activities	8		23
Other, please specify	3		9

Total number respondents: 35 0% 20% 40% 60% 80%

Skipped question: 51






Table 16. When are these copyright license types negotiated with the authors? (multiple answers possible)

Answer	Total	% of answers	%
With the acquisition of the collections' piece	25		71
In a generic motion to arrange the copyrights of as many as possible collections' pieces.	8		23
Ad hoc by the realisation of a project in which the collections' piece is involved.	21		60
Other, please specify	0		0

Total number respondents: 35 0% 20% 40% 60% 80%







Skipped question: 51

Table 17. How often do the authors deny the museum a copyright license for a requested reuse?

Answer	Total	% of answers	%
No idea	7		20
never	4		11
seldom	20		57
now and then	3		9
frequently	0		0
always	1		3

Total number respondents: 35 0% 20% 40% 60% 80%
Skipped question: 51

Table 18. What is the term of these copyright licenses with the authors? (multiple answers are possible)

Answer	Total	% of answers	%
Limited time (max. 1 year)	0		0
Temporary, in the function of a specific project or exhibition	18		51
Unlimited term (permanent)	28		80
Dependent upon the collections' piece	6		17
Dependent upon the author	10		29
Dependent upon the form of reuse	10		29
Other, please specify	1		3

Total answers respondents: 35 0% 20% 40% 60% 80%
Skipped question: 51

4. d. Copyright licenses for reuse: negotiated via collecting societies

Only 28% of the respondents said that they have a license for reuse with collecting societies. That is significantly lower than licenses directly negotiated with creators (62%). Fine arts museums represent the biggest group because many works in their collections are in copyright.

It is necessary to differentiate between commercial and non-commercial reuse for the museum's purposes (collection website, database for external use), and also commercial and non-commercial re-use by third-parties. In addition, we have to be aware of the fact that museums both have to negotiate licenses for works of art being acquired now and retrospective licences (where digital re-use was not negotiated at the point of acquisition).

Of the respondents that have negotiated re-use licenses with collecting societies, more than half of them apply such licenses to less than 10% of the collection. (Table 19)

Again, more than half of the respondents (58%) with such licenses negotiated with collecting societies say that they do not know which Creative Commons licenses are comparable to them. However, of those who did know, the majority negotiated licences similar to a standard Creative Commons license which does not permit re-use by a third party (and agree to attributing the work if re-used, that it is re-used on a non-commercial basis and there are no derivatives of the work) (Table 20).

The types of activities for which the licenses were negotiated with collecting societies are very similar to the type of activities for which licenses were agreed upon directly with the creators. A reason for a higher number of licenses negotiated directly with creators rather than collecting societies might be museum preference. It is also possible that the stricter preconditions or the limited negotiation scope of the collecting societies are a reason. Licences for public activities with printed publications (54%) or publications via the Internet (58%) also are the ones negotiated most frequently here. (Table 21).

The context in which the licenses with collecting societies were negotiated differs significantly from those negotiated with the authors directly. In contrast to licenses with the authors, the licenses with collecting societies were concluded less frequently with the acquisition of a collection piece (21% as opposed to 71% made directly with the authors). However, licenses negotiated with collecting societies were more likely to be standard licences covering multiple works (42% as opposed to 23% of licenses negotiated directly with the creators). (Table 22).

The terms of licenses negotiated with the collecting societies are more likely to be for a limited period of time (21%) and only for certain forms of re-use than licenses negotiated directly with creators, who tend to allow more often multiple forms of re-use for unlimited periods of time. Similarly, the number of licenses negotiated with collecting societies for an unlimited period of time (42%) is much lower than the number of licenses negotiated with creators on similar terms (80%). (Tables 18 and 23).

Fewer than half of the museum respondents (42%) said that collecting societies would negotiate on terms and fees, whilst the remainder said that the fee is non-negotiable. Collecting societies, according to the respondents, find it difficult to come to specific arrangements with respect to digital publicity material used to promote events or exhibitions.

The survey also asked about the conditions that were imposed by collecting societies (table 25). 38% of respondents find that the conditions are generally reasonable, rather than 12% who generally find the conditions unreasonable. Conditions considered unreasonable include limits on the number of pixels and the limiting the resolution of images used online so that they appear very small and of a poor quality. Such conditions hinder the inclusion of in-copyright works in online records.¹⁴

¹⁴ One respondent said that the Internet, by way of this *de facto* exclusion of copyrighted work, renders an incomplete image of collective collections of public collections. Entire 20th and 21st-century collections are unavailable via the Internet for the general public.

29% of the respondents find that pricing is unreasonable and only 12% find pricing to be reasonable. Not one of the respondents found that the license conditions sufficiently matched the requirements of modern technology or was fit-for-purpose for digital use. 25% of the respondents find conditions imposed by collecting societies outdated. 29% of the respondents find that the conditions imposed do not harm the day-to-day activities of the museum. However, 17% find that the conditions do inhibit day-to-day activities. A similar proportion of respondents (25%/21%) find the conditions to be clear as to be ambiguous. 25% of respondents believe the conditions conform to the national and/or European legislation, whereas 12% believe that the conditions are in conflict or are stricter than the national and/or European legislation.

33% of the respondents said that they have at least once had a request for re-use refused by a collecting society, although 46% say that this happens seldom or never (Table 26). Respondents said some rights-holders entered into exclusive arrangements with a third party, including for commercial purposes, and therefore would refuse a request from a museum on that basis.

Only 42% of the respondents say that license agreements with collecting societies are signed. 21% say that this happens whereas 8% of respondents say that this seldom happens (Table 27). The price museums pay for a variety of copyright licenses varies from €0 to €150.000 per annum. Licenses for digital re-use are likely to be negotiated separately.

Only 8% of the respondents have encountered problems with licences that had to be negotiated cross-border (Table 28). Whenever problems do arise they are usually caused by the need for significant museum staff time to agree the licence, a more complicated search to find the rights holder, or a problem that is unique to that case. Different national legislation leads to misunderstandings and problems. In addition, it is sometimes difficult for museums themselves to be certain as to who own the rights in works in their collections.

Nearly a third (32%) of the respondents say that they have negotiated licenses with neither creators nor with collecting societies. Just under 21% of the respondents say that they have negotiated licenses with creators as well as with collecting societies. The largest group, nearly 40% of the respondents, report that they have negotiated licenses with creators directly but not with collecting societies. Only a small group (7%) of the correspondents state that they have not negotiated licenses with creators directly but have done so with collecting societies.

These results lead to the assumption that nearly one-third of the museums have not concluded a single copyright licence. Moreover, it is noteworthy that the museums appear to prefer to negotiate licences directly with creators than with collecting societies. A reason for this is certainly that licenses agreed with creators directly are generally less costly than licenses agreed with collecting societies and heirs, because the authors themselves see the benefits of having their work in a museum collection, and it being displayed by the museum and ensure greatest public access to it. Authors are generally regarded as more flexible and less demanding (with regard to licences' terms and forms of re-use) than collective management organisations.

Table 19. What is the portion of the collections' pieces to which copyrights apply, of which copyright licenses for reuse are made in agreement with collective-management organisations?

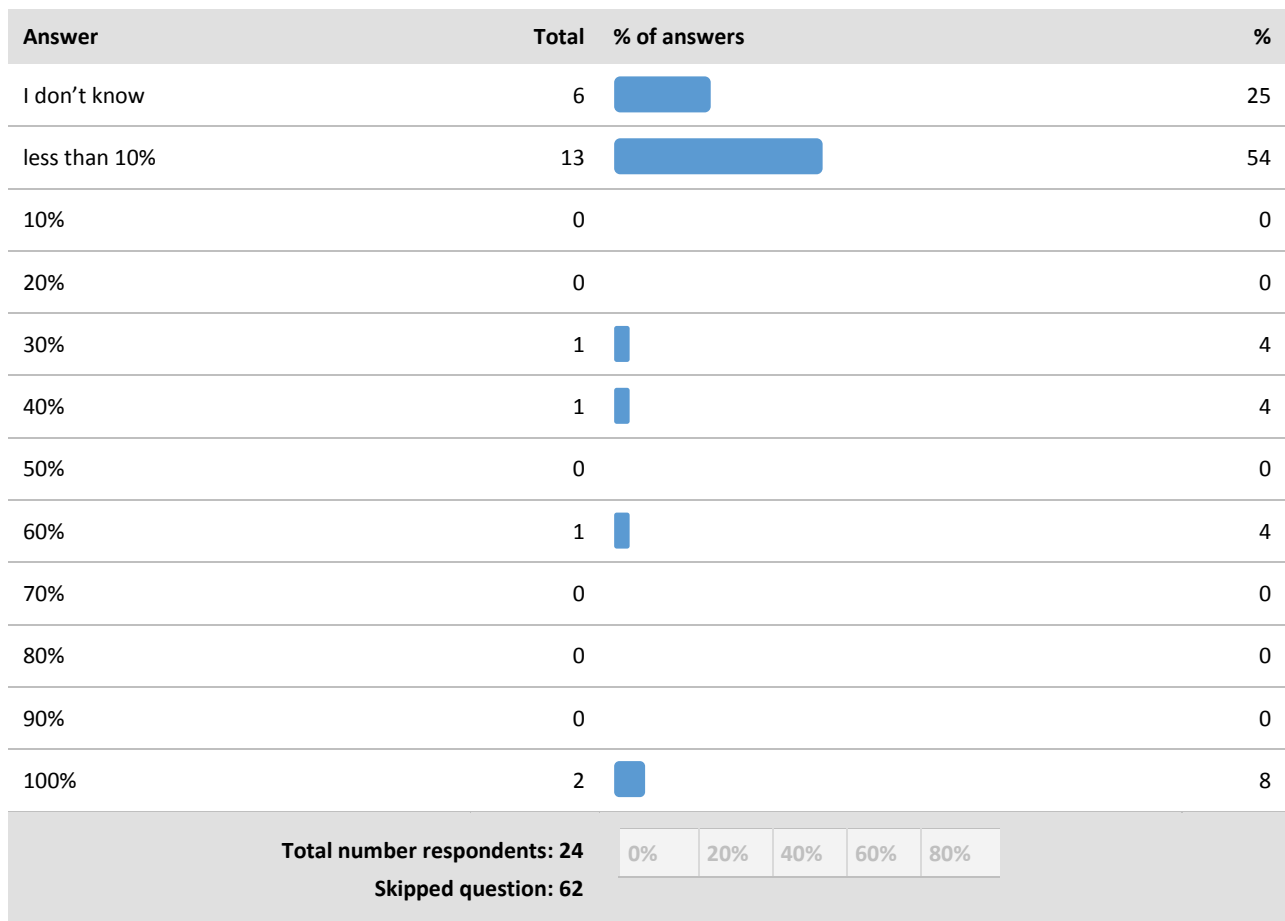


Table 20. With which creative commons licenses can the content of these copyright licenses in agreement with collecting societies be compared? (use the link to understand more about the creative commons licenses) (multiple answers are possible)

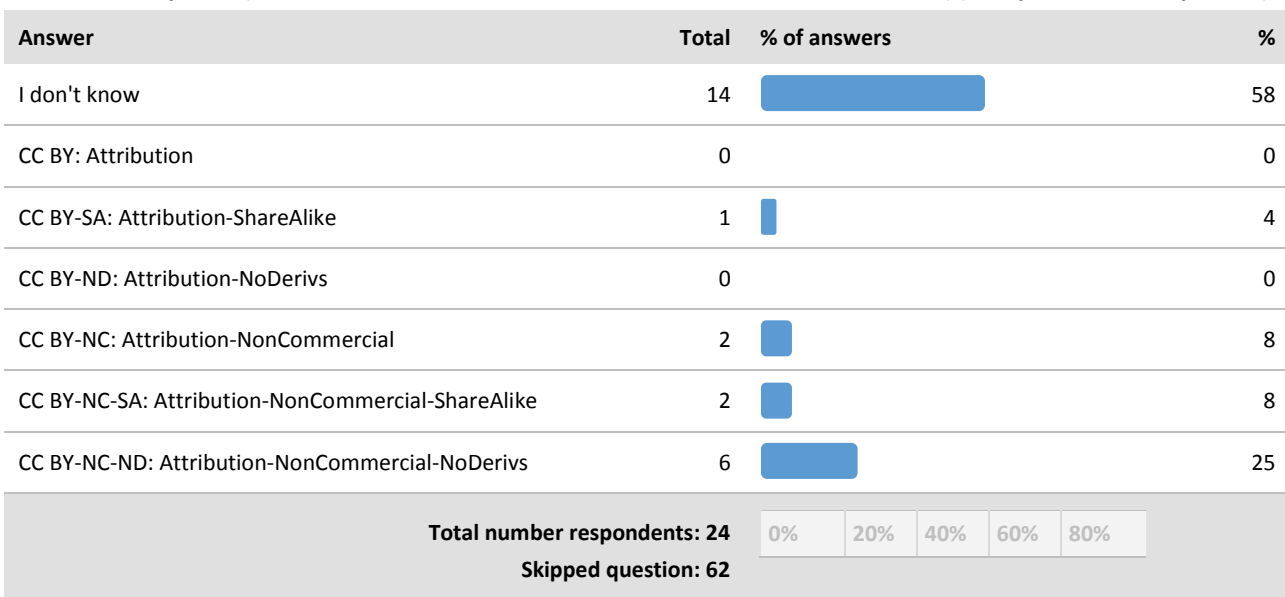


Table 21. For what sort of activities are the copyright licenses made with collecting societies generally used? (multiple answers are possible)















Answer	Total	% of answers	%
Scientific activities	13		54
Educational activities	8		33
Activities focused on conservation and restoration	2		8
Activities focused on registration	4		17
Activities for the public, including printed publications	13		54
Activities for the public, including digital publications and web channels of the museum	14		58
Activities for the public, including third-party digital publications and web channels	6		25
Dissemination of the collection via Europeana	7		29
The presentation of reuse availability via Europeana	2		8
Scenography of exhibitions	8		33
Publicity activities	9		38
Various commercial activities	4		17
Other, please specify	1		4
Total number respondents: 24			
Skipped question: 62			

Table 22. When are these types of copyright licenses with collecting societies negotiated? (multiple answers are possible)











Answer	Total	% of answers	%
With the acquisition of the collections' piece	5		21
In a generic motion to arrange the copyrights of as many as possible collections' pieces	10		42
Ad hoc by the realisation of a project in which the collections' piece is involved	15		62
Total number respondents: 24			
Skipped question: 62			



Table 23. What is the term of these copyright licenses with collective-management organisations? (multiple answers are possible)

Answer	Total	% of answers	%
Limited time (max. 1 year)	5		21
Temporary, in the function of a specific project or exhibition	11		46
Unlimited term (permanent)	10		42
Dependent upon the collections' piece	1		4
Dependent upon the author	1		4
Dependent upon the form of reuse	8		33
Other, please specify	0		0

Total number respondents: 24 0% 20% 40% 60% 80%

Skipped question: 62













Table 24. Are the copyright licenses with the collecting societies negotiable?

Answer	Total	% of answers	%
yes	10		42
no	14		58

Total number respondents: 24 0% 20% 40% 60% 80%

Skipped questions: 62

Table 25. How do you find the conditions that the collecting societies impose in the copyright licenses? (multiple answers are possible)

Answer	Total	% of answers	%
no opinion	4		17
the conditions are generally reasonable	9		38
the conditions are generally unreasonable	3		12
the pricing is reasonable	5		21
the pricing is unreasonable	7		29
the conditions generally offer space for the contemporary zeitgeist and modern technologies	0		0
the conditions are generally not at all up to date	6		25
the conditions generally do not impede the normal operations of the museum	7		29
the conditions generally do impede the normal operations of the museum	4		17
the conditions are generally clear/not ambiguous	6		25
the conditions are generally unclear/ambiguous	5		21
the conditions generally seem to me to conform to the national and/or European legislation	6		25
the conditions generally seem to me to be in conflict or are stricter than the national and/or European legislation	3		12

Total number correspondents: 24

Skipped question: 62

0%





20%

40%

60%





80%

Table 26. How often do collecting societies deny the museum a copyright license for a requested reuse?

Answer	Total	% of answers	%
No idea	5		21
never	6		25
seldom	5		21
now and then	8		33
frequently	0		0
always	0		0



Total number respondents 24 0% 20% 40% 60% 80%
Skipped questions: 62

Table 27. Are these copyright licenses by collecting societies also officially signed?

Anser	Total	% of answers	%
No idea	7		29
never	0		0
seldom	2		8
now and then	5		21
frequently	0		0
always	10		42

Total number respondents: 24 0% 20% 40% 60% 80%
Skipped questions: 62

Table 28. Does the museum ever have problems because the copyright licenses must be negotiated crossborder?

Answer	Total	% of answers	%
yes	7		8
no	79		92

Total number respondents: 86 0% 20% 40% 60% 80%
Skipped question: 0

4. e. Museums and orphan works

29% of the museum respondents say that they are not familiar with the concept of orphan works and the implications for the museum.¹⁵ It is not surprising that the same respondents (30%) do not know what “diligent search” means. 49% of the respondents cannot give an estimate of what percentage of the collection can be categorised as orphan works.

31% of the respondents say that only 10% or less of their collection is comprised of orphan works. An additional 5% say that fewer than 20% of the works in the collection are orphan works. 8% say that 30% of the works in their collection are orphan works (Table 29).¹⁶

43% of the respondents say that a diligent search is carried out when someone wants to reuse an orphan work. 27% explicitly say that a search is not carried out at all (Table 30). The reason for this is probably to be found in Table 31: only 8% say that a diligent search frequently or always leads to the identification of the rights holder(s). 57% say that it occasionally leads to identification. 35% they say that the diligent search seldom or never leads to the identification of the rights holder(s). In general, the chance of success is regarded too small compared to the time, staff and financial resources required.

Two other reasons for not carrying out a diligent search were offered: firstly, that orphan works are usually not re-used, or if they are they are usually re-used for research purposes (and never for commercial purposes); and secondly, that the rules are too complicated.

¹⁵ The EU Orphan Works Directive might not have been implemented yet in national legislation in all EU Members States. This could be another reason why respondents are not familiar with the concept.

¹⁶ This however depends hugely on the type of museum, since museums with a large photographic collection usually claim over 50% of their collection to be orphan works.

Table 29. What is the portion of the collections' pieces (museum objects) in your collection that falls under the rubric of 'orphan works'?

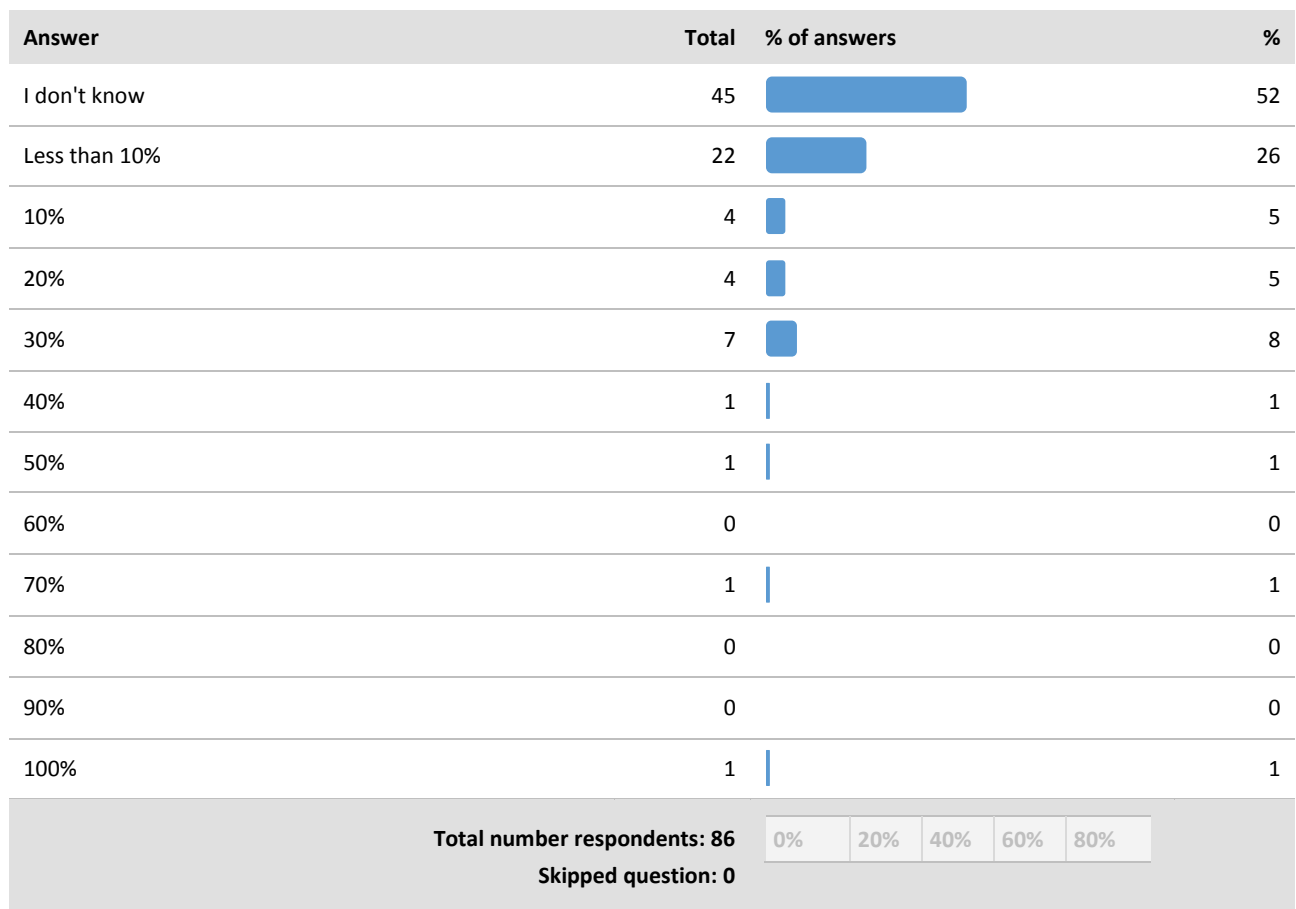


Table 30. Does the museum incorporate a diligent search whenever the orphan works are wanted to be (re)used?

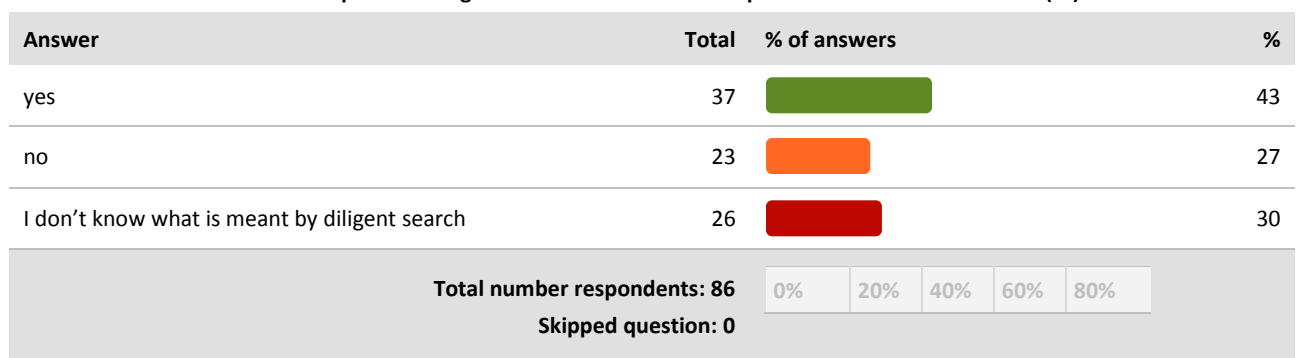







Table 31. If yes, in how many of the cases does this diligent search effectively lead to the identification of an author(s)?

Answer	Total	% of answers	%
never	4		11
seldom	9		24
now and then	21		57
frequently	2		5
always	1		3

Total number respondents: 37
Skipped question: 49

0%

20%

40%

60%

80%

4. f. Museums and digital assets

When asked about the percentage of the collection for which the museum has a digitised version of a work or object, answers are quite varied. Only 10% have digitised over 90% of their collection. Half of respondents stated that less than a third of the collection is digitised (Table 32). The survey suggests that art museums are more likely to have digitised the majority of their collection, as most of them have at least more than half of their collection digitised.¹⁷

Nearly 20% of the respondents do not know if the rights in the digitised images of their collection items were transferred to the museum. 28% explicitly say that they are sure that that is not the case. Only 36% of the respondents have a written agreement, 30% say that they only have a verbal agreement with those contracted to create the digital images.

For 7% of respondents, the image can only be used for preservation purposes. 20% of respondents have a license that allows all forms of reuse, including commercial reuse. 16% of respondents say that they possess a license that is only valid for non-commercial use. 8% state that the license for re-use of the digital images allows only for a specific or temporary use (Table 33).

17% of museums say that those who have generated the digital image sometimes raise objections against a specific use (mostly the commercial use) of the image. Some photographers only agree to a very specific use (primarily to the scientific reuse). Those who created the image often insist on the attribution of the image (or it is a national legal requirement).

92% of respondents say that their museum has a collections database for internal use (including registration and scientific research). 69% of the respondents with a collections database for internal use say they have digitised the majority of their collection and it is included in this database (Table 34). Only 5% of the respondents with a collections database for internal use say that the museum has paid for a licence to use a work in this way.

Although the majority of respondents have a collections database for internal use, 28% make their collections database available to the public via information kiosks¹⁸. No respondent represents a museum that limits the works available via these kiosks to works in the public domain (Table 36).

58% of the respondents with such kiosks say that the museum possesses the necessary licenses for such use. One-third of respondents with such kiosks say that in their country it is not necessary to secure a licence for this purpose. Only 4% of the respondents with such kiosks cite the cost of the license as a reason for the lack of such a license. 17% say that there are no standard licenses available which would cover this purpose (Table 37).

Only 3% of respondents say that their collections database is completely accessible to the public via the museum's website. 15% say that this is the case for the majority of the collection. 52% say that there are specific parts of the collection absent from the online version of the collections database. 25% of museums say that no element of their collections database is available online (Table 38).

Copyright complications are a reason why specific parts of the collection are absent from the online version of the collections database. 7% say that such forms of reuse fall under an exception to copyright rules in their country. 21% of the respondents say that this is not a priority for their museum. Only 7% say that the cost of securing the necessary licenses is a reason for not publishing a complete online collections database. 19% say that the creators or the collecting societies either will or do not make a license available for this (Table 39).

The two main reasons why elements of the collection may be absent from the online collections database are that the object has not been digitised or it is an orphan work. 21% of respondents say that creators or collecting societies demand unreasonable conditions that make online inclusion very difficult. The following are repeatedly mentioned:

¹⁷ This is due to the fact that art museums generally have fewer items in their collections, so they have a manageable number of works to be digitized.

¹⁸ The survey referred to the term „terminals“.

- the cost for the license is too high, particularly given that the license must be renewed and paid on an annual basis;
- there are unreasonable requirements for the resolution of the images and the maximum number of pixels;
- whenever Google or other commercial organisations are involved, collecting societies refuse licenses;
- the additional workload required to identify orphan works is not feasible for the museums.

Although 70% of respondents make their collection either partially or completely available online, only 28% of museum respondents say that they possess an image database (online or offline) available for third parties for the purpose of reuse.

Table 42 shows the purpose and scope of the image databases open to third parties: 36% of databases include all public domain works available for any sort of reuse for free (including commercial); 27% have an image database that also makes in copyright works available; 9% of respondents with databases of public domain works and 18% of respondents with databases of in copyright works make these databases available for re-use for a charge. For the works in public domain, 23% of respondents state that these works are only available for non-commercial use. 18% of works that are in public domain are available for scientific or educational reuse. 41% of museums with an image database state that images of works in copyright are available only for scientific or education purposes.

57% of those that have an image database report that specific copyright problems are the reason why parts of that database are not made available to third parties. Of that, 24% say that the licenses are too expensive, and 35% say that creators and the collecting societies do not make licenses available (Table 43).

Table 32. Of what per cent of the collections' pieces in the collection does your museum have a digital copy/photo?

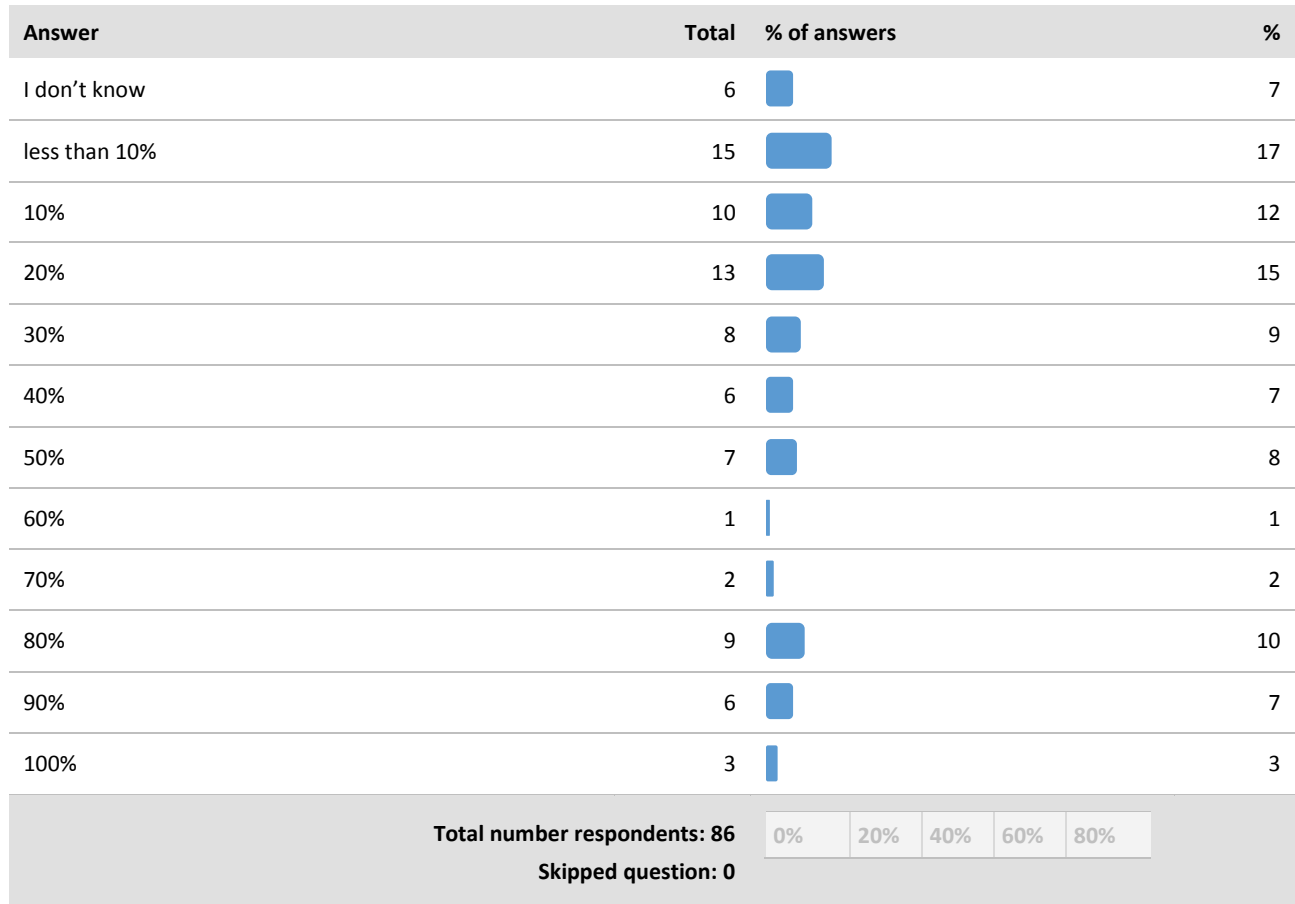


Table 33. Has the author of this digital copy/photo (often a photographer) transferred his or her copyrights to the museum via a license? (multiple answers are possible)

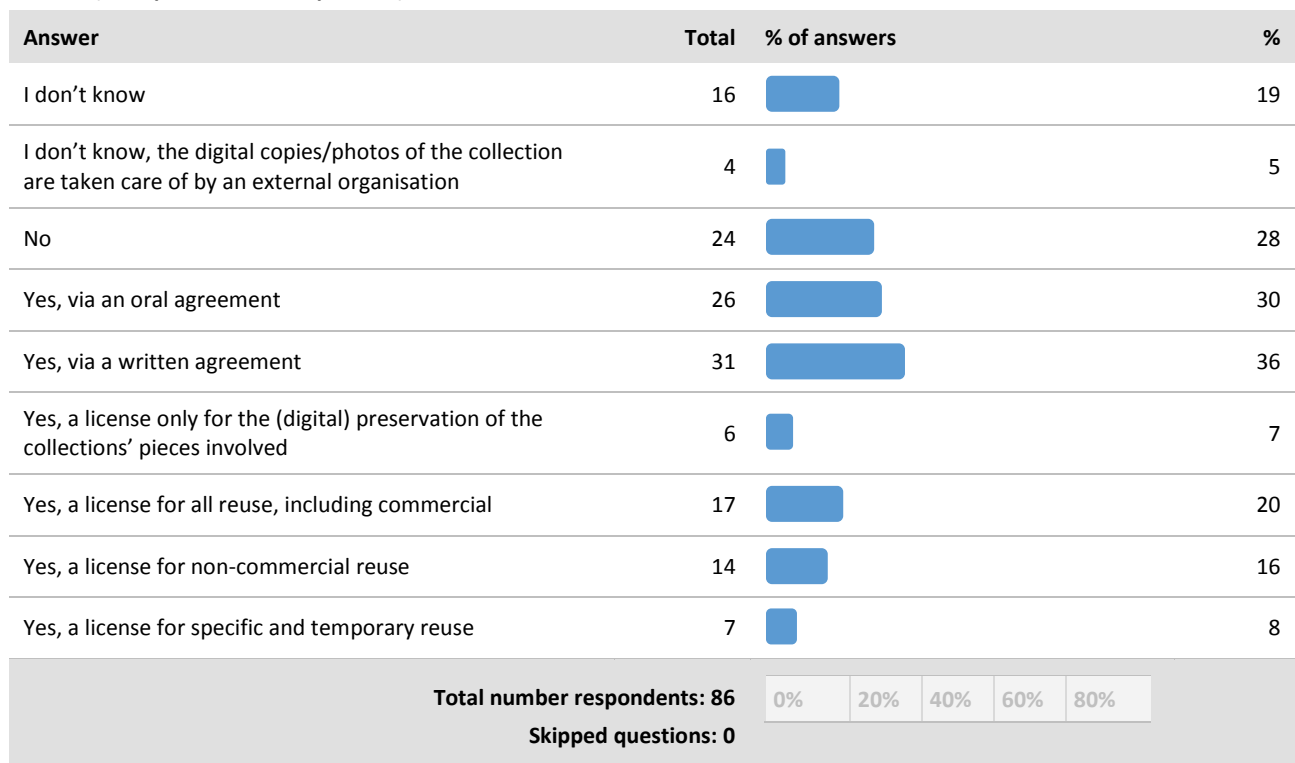









Table 34. Are all collections' pieces registered on this collections' database, along with a copy/photo/image?

Answer	Total	% of answers	%
Yes, completely	4		5
Yes, for the most part	29		37
Yes, but specific portions of the collection are lacking	21		27
No	25		32




Total number respondents: 79 0% 20% 40% 60% 80%
Question skipped: 7

Table 35. If yes, does the museum pay for a copyright license for the copies/photos of the collections' pieces in the collections' database for internal use?

Answer	Total	% of answers	%
yes	3		5
no	37		61
no, this form of use falls under an exception to copyright in my country	21		34







Total number respondents: 61 0% 20% 40% 60% 80%
Skipped question: 25

Table 36. If yes, given for what type of reference/which works? (multiple answers are possible)

Answer	Total	% of answers	%
For every form of reference	12		50
Only for research and educational purposes	8		33
Yes, only works in the public domain	0		0
Yes, both works within and without the public domain	8		33





Total number respondents: 24 0% 20% 40% 60% 80%
Skipped question: 62

Table 37. If specific parts of the collection are not divulged by such terminals, are there copyright-specific problems that are the cause of this?

Answer	Total	% of respondents	%
No, these forms of reuse fall under an exception to copyright in my country	8		33
No, the museum does not give any priority to such terminals	2		8
Yes, too expensive	1		4
Yes, because no licenses are available by the author or the collecting societies	4		17
Yes, because of an ambiguity of who controls the rights	3		12
Other, please specify	6		25

Total number respondents: 24 0% 20% 40% 60% 80%
Skipped question: 62

Table 38. Are (parts of) the collections' database made available to the public via a website?

Answer	Total	% of answers	%
yes, completely	3		3
yes, for the most part	13		15
yes, but specific portions of the collections are lacking	45		52
no	25		29

Total number of respondents: 86 0% 20% 40% 60% 80%
Question skipped: 0

Table 39. If specific parts of the collection are not divulged on the museums' website, are there copyright-specific problems that are the cause of this?








Answer	Total	% of answers	%
No, these forms or reuse fall under an exception to copyright in my country	4		7
No, the museum does not give any priority to such a website	12		21
Yes, too expensive	4		7
Yes, because no licenses are available by the author or the collecting societies	11		19
Yes, because of an ambiguity of who controls the rights	9		16
Other, please specify	18		31
Total number respondents: 58			
Skipped question: 28			

Table 40. Do the authors or the management organisations place unreasonable conditions on the copyright licenses for this collection presentation on the museums' website that make it difficult for you?




Answer	Total	% of answers	%
yes	13		21
no	48		79
Total number respondents: 61			
Skipped question: 25			

Table 41. Does the museum possess an image bank (whether online or not) which third parties can access for reuse?
















Answer	Total	% of answers	%
yes	24		28
no	62		72
Total number respondents: 86			
Skipped question: 0			



Table 42. If yes, indicate for what reasons. (multiple answers are possible)


Answer	Total	% of answers	%
Only for collections' pieces from the public domain, for any type of reuse (including commercial)	8		36
Only for collections' pieces from the public domain, for any type of reuse (including commercial), provided there is payment	2		9
Only for the collections' pieces from the public domain, only for non-commercial reuse	5		23
Only for the collections' pieces from the public domain, only for non-commercial reuse, provided there is payment	0		0
Only for the collections' pieces from the public domain, only for research or educational purposes or use	4		18
Only for the collections' pieces from the public domain, only for research or educational purposes or use, provided there is payment	1		5
Also for collections' pieces to which copyrights apply, for any type of reuse (including commercial)	6		27
Also for collections' pieces to which copyrights apply, for any type of reuse (including commercial), provided there is payment	4		18
Also for collections' pieces to which copyrights apply, only for non-commercial reuse	7		32
Also for collections' pieces to which copyrights apply, only for non-commercial reuse, provided there is payment	4		18
Also for collections' pieces to which copyrights apply, only for research or educational purposes or use	9		41
Also for collections' pieces to which copyrights apply, only for research or educational purposes or use, provided there is payment	3		14
Other, please specify	4		18

Total number respondents: 22 

Skipped question: 64






Table 43. If specific parts of the collection are not made available for reuse, are there copyright-specific problems that are the cause of this?

Answer	Total	% of answers	%
yes	13		57
no	10		43

Total number respondents: 23 


Skipped question: 63

Table 44. If yes, which problems?

Answer	Totaal	% of answers	%
No, these forms or reuse fall under an exception to copyright in my country	0		0
No, the museum does not give any priority to such an image database	3		18
Yes, too expensive	4		24
Yes, because no licenses are available by the author or the collecting societies	6		35
Yes, because of an ambiguity of who controls the rights	2		12
Yes, for other reasons (please specify)	2		12

Total number respondents: 17

Skipped question: 69



5. Museums practice and copyright

In this section of the survey¹⁹, the respondents were asked whether museum core tasks were ever hindered because of copyright complications.

On the question of whether the museum ever stopped or did not initiate digitisation activities because of copyright, 10% of respondents answered yes. Examples that were provided cited the cost of the licenses, the complexity of arranging copyright agreements, the lack of personnel for the various tasks that have to be carried out in connection with it, vetoes from rights owners, and the lack of an internal policy for copyright.

10% of respondents confirmed that the museum has had problems with its database management systems because of reasons specifically related to copyright. Many of registration systems are not open to add new and necessary functions that reflect the different uses of works by a museum. A number of respondents said that they keep the resolution of images in the database systems very low (even if they have a better resolution available) to comply with the conditions of agreements with creators and collecting societies.

Only 7% of the respondents said that they ever stopped research activities or did not start them because of copyright reasons. Where they did, it was because of the financial implications of clearing rights or where the rights ownership was unclear.

Additional costs were mentioned by 10% of respondents who said that they stopped or did not begin educational activities due to copyright reasons, especially in connection to online publication of.

6% of respondents have put an exhibition on hold because of copyright concerns. Most of the examples mentioned financial problems as reason for placing an exhibition on hold.

Similarly, 7% experienced copyright problems with the display of an exhibition. In many cases, the showing of a film – particularly older ones - proved expensive and time-consuming when having to clear the rights for it.

13% of respondents frequently had problems with publicity campaigns for exhibitions, including the financial cost of using works for this purpose. Another museum said that it tries to think proactively and avoid using works as the lead campaign images which are likely to where they expect copyright problems for campaign images for an exhibition. As such, a number of artists were explicitly avoided because the use of their work would mean an additional workload or cost (e.g. Picasso and Feininger).

The number of museums that have been confronted with copyright issues when producing publications is higher. For printed publications, 14% say that they have encountered problems. With regard to digital publications (generally published online), 26% of respondents had encountered problems. With regard to printed publications, affordability is cited as the most common problem, particularly when it relates to images of contemporary and modern art works.

With digital publications, affordability is an even more explicit problem, of which the annual nature of fees required to reproduce images of works of art online or in publications is a contributory factor. Museums tend to avoid including in copyright works in newsletters or online because of the staff and financial costs of clearing the copyright to do so. The costs and staff time required to clear the rights in collections of contemporary and modern art for the purposes of allowing online public access is a significant concern for those who responded to the survey. As a result, a number of significant collections are not available to view online. A further cause for concern is the complexity of clearing rights in audio visual works, particularly for use online.

13% of respondents raised the challenges and problems connected to the use of social media. Often the licenses that social media firms apply do not conform to the licenses museums have negotiated with rights holders, since they normally permit unconditioned re-use. Certain artists explicitly prohibit the reuse of their works on social media. Some conditions imposed by artists or collecting societies – such as remuneration for each re-use via social media – are very

¹⁹ The section includes the open questions 78-103 of the survey. The open answers are not displayed in the report, but can be consulted upon request.

difficult to comply with and present a problem for museums who wish to encourage users to engage with the museum via social media.

Museums state that a huge problem is the lack of digital and legal expertise amongst museum staff, particularly where that relates to copyright. 17% of the museums said they have been confronted with such problems. Museum staff is infrequently aware of the specifics of copyright legislation and how they may be able to use a work or object in their collection. Often the museum has no intellectual property rights clause in staff contracts. Problems can occur where museums have neither assigned nor negotiated intellectual property rights with contracted and freelance staff, including with those responsible for creating digital images of objects and works in the collection.

26% of respondents say that they have been confronted with copyright problems in other ways. Among other things mentioned are: the uncertainty as to whether a collecting society is legitimately able to represent a rights holder; the uncertainty of which author is represented by which collecting society; the challenges of tracing heirs of deceased creators; legal ambiguities as to what legislation applies which museums and which aspect of their operation; the distinction made between commercial and non-commercial use of in copyright works in the collections; challenge of publishing content online, particularly back issues of newspapers; making digital content available in usable formats; the lack of accurate and accessible information about copyright; the complexities of establishing rights ownership in audio visual works; the practicalities of a thorough diligent search; terms of copyright which are too long (at least 70 years after the death of the creator); and discrepancies between agreements made with creators and then subsequently challenged by their heirs.

The survey suggests that art museums appear to experience more problems than museums with other types of collections. This is because a greater proportion of their collection is likely to be in copyright.

6. Museums and copyright reform

In the last part of the survey various proposals for copyright reform were proposed and views sought from the heritage sector.

Period for application of copyright: 72% of the respondents find the present term of copyright (70 years after the death of the creator) to be long enough (Table 45).

63% of museums favoured shortening this to 50 years after the death of the creator (Table 46). 46% favoured a drastic reduction in the term of copyright to a maximum of 20 years after the death of the creator (Table 47). 51% argue for a term of 20 years after the death of the creator but with the option that creators could extend this by registering their work on a dedicated database. Such regulation could offer a way of avoiding the orphaning of works.

79% agree that there is a need for harmonisation of copyright legislation within Europe, and that copyright exceptions for museums must be applied across Europe.

91% of museums agree that copyright legislation needs to make it easier for museums to digitise their collections and make them available online for non-commercial reuse, and that regulations should be adjusted so that they are fit-for-purpose and allow for technological changes (Table 50).

Data mining is the process to extract information from a dataset and to transform it into an accessible format and thus be something that can be more easily used by a wider audience. 51% of respondents state that the exclusion of data mining within the licensing of databases should be forbidden (Table 51).

57% of the respondents agree with the suggestion that providing a hyperlink to a work or object which is in copyright but in the museum's collection, should not be subject to authorisation by the rights holder (Table 52).

65% of the respondents felt that including an in copyright work from a museum collection on the museum's website, displaying a temporary reproduction of an in copyright work on a screen and in the cache memory of the user's computer, should never be subject to the authorisation of the rights holder (Table 53).

Although nearly all museums actively engage with the heritage and art markets, 49% of the respondents agreed that the payment of a sale fee to the creator should also include a non-exclusive license for the reuse/reproduction of that collection piece (Table 54).

71% of the respondents support the idea of an 'open norm' or 'fair use' copyright exception (Table 55).

50% of the respondents agree that conditions placed on museums by the EU Orphan Works' Directive are not feasible in practice.

89% of the respondents agree with the suggestion that collecting societies should be more transparent about their members, prices and licenses. There are many complaints about how collecting societies can be obstructive to the owners of the works and that their procedures are burdensome (Table 57). 66% find that licenses negotiated with collecting societies should not over-ride agreements made with the creators directly (Table 58).

Table 45. There must be limits on extending copyright, 70 years after the death of the author is long enough.






Answer	Total	% of answers	%
no opinion	7		8
completely not in agreement	4		5
do not agree	13		15
agree	32		37
completely agree	30		35
Total number respondents: 86		<div style="display: flex; justify-content: space-between; width: 100%;"> 0% 20% 40% 60% 80% </div>	
Skipped question: 0			

Table 46. There must be limits on extending copyright, moreover, a shortening of duration to 50 years.






Answer	Total	% of answers	%
no opinion	14		16
completely not in agreement	2		2
do not agree	16		19
agree	34		40
completely agree	20		23
Total number respondents: 86		<div style="display: flex; justify-content: space-between; width: 100%;"> 0% 20% 40% 60% 80% </div>	
Skipped question: 0			

Table 47. There must be limits on extending copyright, the proposal is to shorten this period and to bring it in line with patents, that is, 20 years.






Answer	Total	% of answers	%
no opinion	18		21
completely not in agreement	6		7
do not agree	23		27
agree	22		26
completely agree	17		20
Total number respondents: 86		<div style="display: flex; justify-content: space-between; width: 100%;"> 0% 20% 40% 60% 80% </div>	
Question skipped: 0			

Table 48. The duration of the copyright should be shortened to 20 years. In that case, it could also be organised to lengthen this period (maybe even up to the current period of 70 years after the author's death) on the condition that the copyright holder has his/her work registered after this period of 20 years. Should this registration not take place, then the author indicates that he/she does not require any further protection and anybody can freely use the work in question. Such a registration would then also at the same time immediately offer a solution for the problem of orphan works, because copyright holders would no longer remain unknown and untraceable.

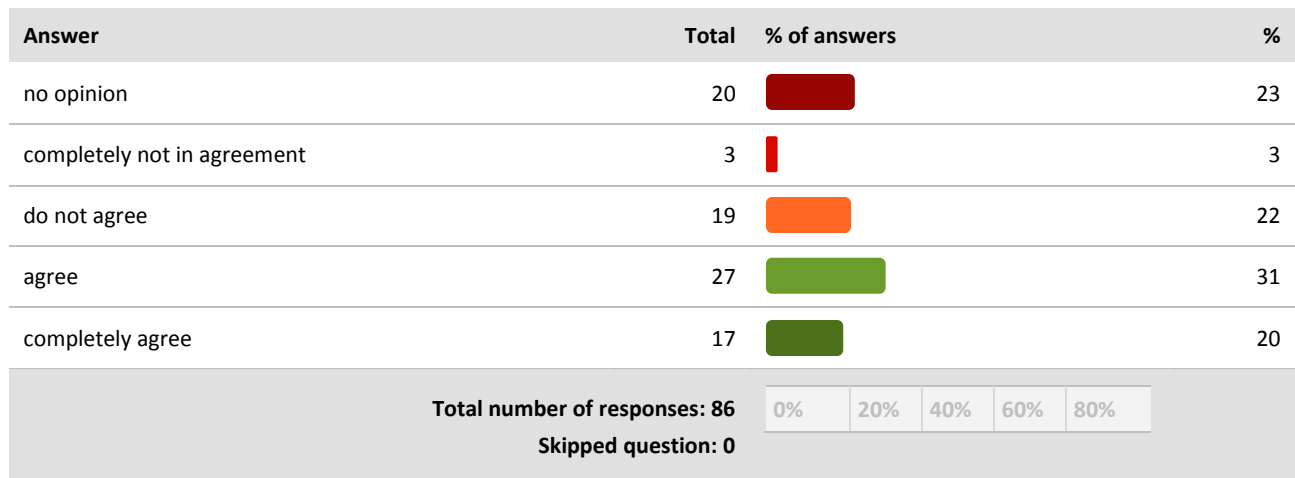


Table 49. Increased harmonisation of copyright laws within Europe is necessary. The exceptions benefitting museums ought to be made mandatory across Europe. There can be no erosion of legal exceptions (neither technically (e.g. technical protection measures against copying), nor contractually (with licenses)).

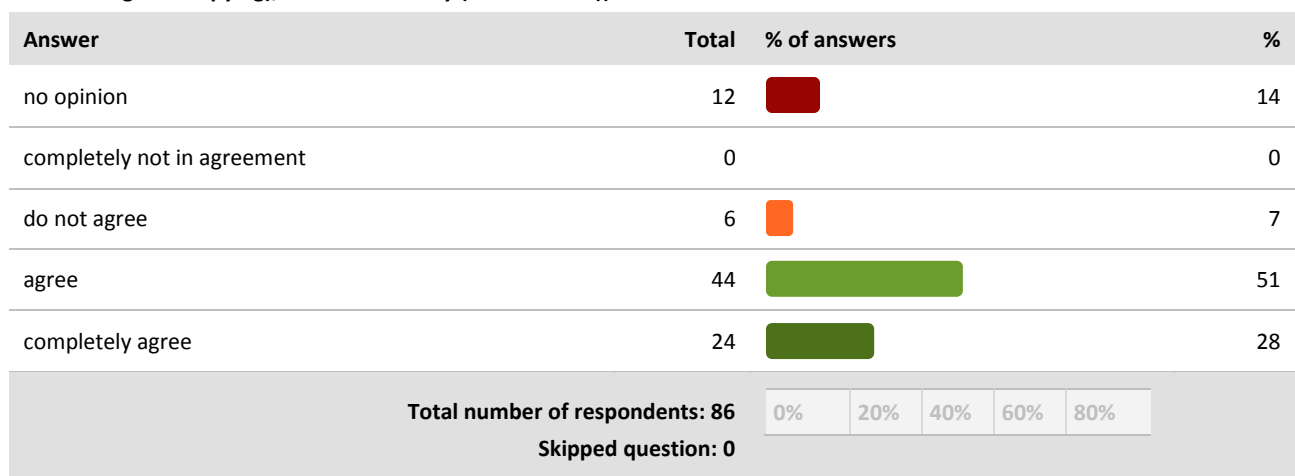


Table 50. There must be room for digitising of our cultural heritage. Modernised rules should be into line with today’s reality. Copyright rules need to provide more room and greater certainty for Europe’s museums in order to make collections available online, in an acceptable condition (pixels, depth, ...) for non-commercial purposes and not only within the closed network of the organisation itself.

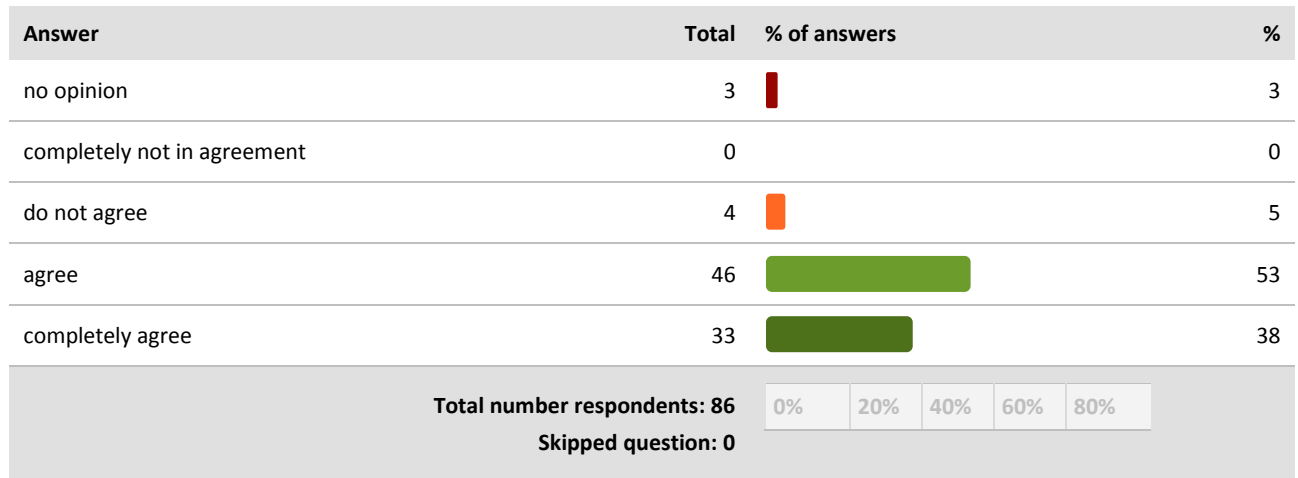


Table 51. Excluding data mining from on-line museum databases should be prohibited within the database licensing.

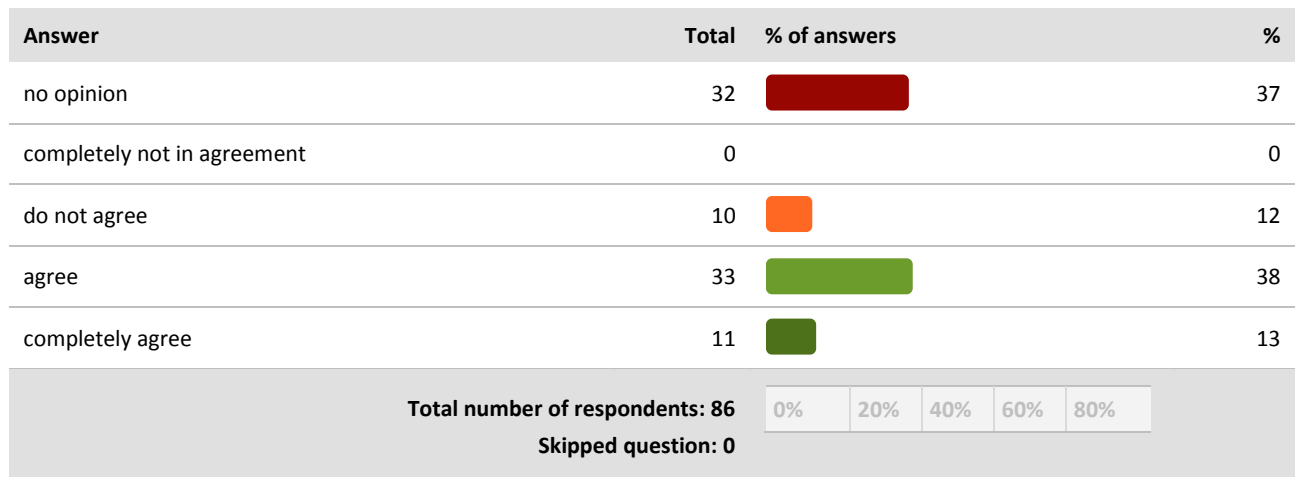












Table 52. The provision of a hyperlink leading to a work or other subject matter protected under copyright in the collection of a museum should never be subject to the authorisation of the rights holder.

Answer	Total	% of answers	%
no opinion	25		29
completely not in agreement	1		1
do not agree	11		13
agree	34		40
completely agree	15		17

Total number respondents: 86
 Skipped question: 0

0%
20%
40%
60%
80%






Table 53. The viewing of a webpage of a museum, where this implies the temporary reproduction of a work or other subject matter protected under copyright on the screen and in the cache memory of the user's computer, should never be subject to the authorisation of the right holder.

Answer	Total	% of answers	%
no opinion	16		19
completely not in agreement	1		1
do not agree	13		15
agree	37		43
completely agree	19		22

Total number respondents: 86
 Skipped question: 0

0%
20%
40%
60%
80%

Table 54. When purchasing unique collection works, payment of any re-sale fee must be linked with a non-exclusive license for re-use.

Answer	Total	% of answers	%
no opinion	39		45
completely not in agreement	1		1
do not agree	4		5
agree	32		37
completely agree	10		12

Total number respondents: 86
 Skipped question: 0

0%
20%
40%
60%
80%

Table 55. There is need for a ‘Fair Use’ or ‘Open Norm’ exception: It means that a work may be used on the condition that that use is fair (reasonable) with regard to the copyright holders. In order to classify use as ‘fair’, analysis must be made of following aspects by the judge: (i) purpose and nature of use, including the question whether use is commercial or educational and not-for-profit, (ii) nature of copyrighted material, (iii) size and scope of copied section in relation to the copyrighted work in its entirety and (iv) the effect any use may cause on the potential market or value of the copyrighted material.






Answer	Total	% of answers	%
no opinion	19		22
completely not in agreement	1		1
do not agree	5		6
agree	44		51
completely agree	17		20
Total number respondents: 86		<input type="checkbox"/> 0% <input type="checkbox"/> 20% <input type="checkbox"/> 40% <input type="checkbox"/> 60% <input type="checkbox"/> 80%	
Skipped question: 0			

Table 56. The conditions within the orphan works’ directive are practically unattainable.






Answer	Total	% of answers	%
no opinion	38		44
completely not in agreement	1		1
do not agree	4		5
agree	31		36
completely agree	12		14
Total number respondents: 86		<input type="checkbox"/> 0% <input type="checkbox"/> 20% <input type="checkbox"/> 40% <input type="checkbox"/> 60% <input type="checkbox"/> 80%	
Skipped question: 0			

Table 57. Collective management organisations should provide transparency about members, prices and licenses.








Answer	Total	% of answers	%
no opinion	10		12
completely not in agreement	0		0
do not agree	0		0
agree	47		55
completely agree	29		34
Total number respondents: 86		<input type="checkbox"/> 0% <input type="checkbox"/> 20% <input type="checkbox"/> 40% <input type="checkbox"/> 60% <input type="checkbox"/> 80%	
Skipped question: 0			

Table 58. The licensing from collecting societies should always be subordinate to the licensing directly agreed upon with the rights' holders.

Answer	Total	% of numbers	%
no opinion	27		31
completely not in agreement	0		0
do not agree	3		3
agree	34		40
completely agree	22		26

Total number respondents: 86 0% 20% 40% 60% 80%

Skipped question: 0

Annexes

Annex 1: NEMO survey on museums and copyright