D2.2:
Digital copyrights framework

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Contents

1. Abstract

RICHES is at the forefront of re-thinking the intersections between cultural heritage, copyright and human (cultural) rights in the digitised era. The last two decades have witnessed significant changes to the ways in which our cultural heritage is created, used and disseminated. From the once linear, hierarchical and authoritative relationships between memory institutions and the receiver [user] of cultural heritage (CH), the digital era is forcing us to re-think every aspect of our cultural heritage ecosystem. From the meaning to the making of cultural heritage, from the legal frameworks to the roles of the Institutions, each element and each of the relationships between elements is under scrutiny. Within this, how should we re-think the Intellectual Property Rights (IPR) framework that supports our cultural heritage system in order to respond to the changing and challenging times?

The purpose of this deliverable is to investigate the relationships between cultural heritage, copyright and human (cultural) rights as they provide a platform for, and a framework within which, cultural heritage is created, re-created and re-used in the era of digitisation. This enquiry is set within and will inform the environment within which these changes are taking place and the role of CH in European social, political, legal and economic development. How the recommendations might play out in practice will be illustrated through the case studies within the RICHES project as they develop. As will be demonstrated, how we think about these legal environments within these contexts will help to shape the way in which the relationships between the stakeholders are developed and maintained, how CH is produced and consumed, developed, accessed and preserved in this digital world. Two case studies (Task T4.2 *Co-creation and Living Heritage for Social Cohesion* and Task 6.1*: Digital Libraries, Collections, Exhibitions and Users*) contextualised within the shift from analogue to digital, demonstrate how the legal framework recommended in this deliverable in relation to CH, copyright and human (cultural) rights are played out in practice.

As set out in this deliverable, a question – and a challenge – for the RICHES project, is as to whether the groups involved in the creation, selection and mediation of CH within the RICHES case studies could benefit from the cultural rights articulated in the UNESCO Conventions. The RICHES project gives the opportunity to think about the legal environments that help to shape the way in which the relationships between institutions and users of CH are developed and maintained, how CH is produced and consumed, accessed and preserved in this digital world. It highlights that relationships are changing and becoming more decentralised as digital technologies present increasing opportunities to individuals and communities. With increasing cultural democracy through access to computers and the internet: could the reasons for the open strategy to culture, as recommended by RICHES, be helpful to Turkey as it undergoes the reassessment of its authoritative 'closed' copyright policy? The argument for approaching CH and IP contextualised within a Human Rights approach, as advocated in this deliverable, may form the foundation for the challenges to cultural hegemony that lie ahead.

2. Background

Copyright laws developed in the analogue era are now causing challenges in the era of the digital and the RICHES project offers the opportunity to explore these challenges. This deliverable is important to the project as it proposes a legal framework for the digital economy in the move from analogue to digital and for the protection, promotion and development of CH into the future. It addresses the challenges that digital cultural practices pose to existing copyright law and argues for new perspectives on IP law appropriate for the digital age.

2.1 Role of this Deliverable in the Project

Copyright is relevant to each of the work-packages and copyright law is likely to be a factor in the dissemination and exploitation of many of the project's research outputs, especially within the digital economy. As outlined in the RICHES DOW "The existing IP framework in Europe, which is fixated with individual (or at the most joint) authorship, and with products rather than processes, becomes increasingly difficult to apply to new forms of CH. For example, Task 5.4 (Innovation and Experimentation in the Digital Economy) is concerned with new forms of CH through collaboration and digital technologies. These changes in how we engage, alter, communicate and participate in CH require appropriate IP laws for the digital economy. Working closely with the WPs, this Task will develop a new vision for copyright and exploitation strategies to be elaborated in WP7 as policy reports, recommendations and resources" (RICHES DOW: P7).

All of the work packages and tasks in the RICHES project are concerned with CH and digital technologies and therefore this deliverable highlights the importance of IP and acts to make the project cohesive. The deliverable will enable all participants in the RICHES project to reflect on the IP strategies and to make appropriate decisions regarding their copyright policy.

This deliverable which addresses IP issues in the move from analogue to digital is part of WP2 *Establishing the conceptual framework* which consists of two other interrelated tasks: the development of the taxonomy and building the Network of Common Interest. It develops a common framework of understanding for the RICHES project in relation to the law of copyright (and performer's rights and its importance for digital CH, cultural working practices that embrace co-creation as the norm and CH that is transformed from analogue to digital.

2.2. Approach

Desk based research was carried out into all aspects of current legislation regarding IP law and gaps were identified which highlighted the need for a new approach to IP laws and CH in the digital age. This deliverable argues for an 'open' copyright policy and a 'human rights' approach in accessing, preserving, communicating and participating in CH in a digital age. A questionnaire regarding IP law was circulated to all participants in the RICHES project to highlight the importance of IP law. Two case studies were chosen for this as examples of theory into practice and this involved collaboration with RICHES partners in WP4 and WP6.

2.3. Structure of the document

The first section of the deliverable is a legal exploration of what is meant by CH within international law. It then moves on to analyse cultural rights and the right to culture, distinguishing between the two. It addresses the role of CH in European social, political, legal and economic development. It concludes by highlighting key points in the development of an IPR strategy for RICHES from the discussion while at the same time acknowledging that there are constraining factors.

The second section of the deliverable consists of two case studies to demonstrate how the legal framework recommended in this deliverable in relation to CH, copyright and human (cultural) rights are played out in practice.

3. RICHES: Re-thinking Intellectual Property Relationships within the Cultural Heritage Sector

SECTION 1

> *Culture: 'however important it may be as an instrument of development – or as an obstacle to development – cannot be reduced to a subsidiary position as a mere promoter of – or an impediment to – economic growth. That is, culture is not a means to material progress: it is the end and aim of development seen as the flourishing of human existence in all its forms and as a whole.'* [1]

RICHES is at the forefront of re-thinking the intersections between cultural heritage, copyright and human (cultural) rights in the digitised era. The last two decades have witnessed significant changes to the ways in which our cultural heritage is created, used and disseminated. From the once linear, hierarchical and authoritiative relationships between memory institutions and the receiver [user] of cultural heritage (CH), the digital era is forcing us to re-think every aspect of our cultural heritage ecosystem. From the meaning to the making of cultural heritage, from the legal frameworks to the roles of the Institutions, each element and each of the relationships between elements is under scrutiny. Within this, how should we re-think the Intellectual Property Rights (IPR) framework that supports our cultural heritage system in order to respond to the changing and challenging times?

The purpose of this deliverable is to investigate the relationships between cultural heritage, copyright and human (cultural) rights as they provide a platform for, and a framework within which, cultural heritage is created, re-created and re-used in the era of digitisation. This enquiry is set within and will inform the environment within which these changes are taking place and the role of CH in European social, political, legal and economic development. How the recommendations might play out in practice will be illustrated through the case studies within the RICHES project as they develop. As will be demonstrated, how we think about these legal environments within these contexts will help to shape the way in which the relationships between the stakeholders are developed and maintained, how CH is produced and consumed, developed, accessed and preserved in this digital world.

There is a tension at the heart of the interfaces between cultural heritage, copyright and human (cultural rights) and copyright law, and it is this: if cultural heritage is looked at first through the lens of copyright law, then culture becomes commodified. In other words culture becomes bound up in notions of private property, ownership and control.

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[1] L Arizpe, 'The cultural politics of intangible cultural heritage', in *Safeguarding Intangible Cultural Heritage: Challenges and Approaches* Janet Blake ed. Institute of Art and Law: Wells 2007 p 32

If, on the other hand, culture is looked at first through the lens of human rights, so emphasis is placed on public goods, access and cultural communication. A key question for RICHES is whether the approach taken to the protection and promotion of CH should start from a copyright perspective, or whether the focus should first be on human rights.

Two preliminary points can be made:

Intellectual property rights in general and copyright in particular have become the predominant framework for regulating the generation, dissemination, and use of knowledge. In other words, CH artifacts are viewed through a copyright lens which propertises culture in the hands of the author. Immediate questions from this perspective include (a) whether the artifact is protected by copyright (such as a literary or artistic work, a work of architecture among many others); (b) whether the artifact is within the term of protection of copyright (50 years pma under the Berne Convention; 70 years pma within the EU); (c) what uses can be made of the work and whether the permission of the owner of the copyright is needed. It is in an approach that focuses on mostly individual authorship and on the products of that authorship. It is one that has an underlying economic theme asking how, and to what extent, CH contributes to the economy.

As noted, an alternative perspective, and one that is growing in significance, is to approach the question from a human (cultural) rights angle. This is an approach that is as much concerned with the process of something becoming part of our cultural heritage as with the product, and values information and knowledge as public goods; one which strives to recognise the collaborative nature of CH; and one that is rooted in community and identity. When such an approach is taken, copyright (and other IP rights) is important, but not as an end in itself; rather it becomes a means for the realisation of the goals of cultural rights and of the right to culture. The difference is well encapsulated in the following quote:

> *'Culture considered as a resource encompasses a wider range of values than the purely economic emphasis that culture conceived of as an asset tends to project. These values include social cohesion, community autonomy, political recognition, and concerns about inappropriate forms of cultural appropriation, misrepresentation, and loss of languages and local knowledge.'[2]*

The shift from analogue to digital and the two perspectives outlined above have implications for cultural institutions and professionals and have led to a contradiction. On the one hand, digital collections have been/are used as a source of income and are therefore considered an economic asset which can be used to fund future digitisation projects. Exploitation is based on copyright. As such they remain commodified. On the other hand the digitisation of images and objects in museums, for example, has allowed for the democratisation of cultural heritage and addressed the widening participation agenda as well as the right to culture. The human [cultural] rights

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[2] R Coombe, 'The Expanding Purview of Cultural Properties and Their Politics' Annual Review of Law and Social Science Vol. 5: 393-412 p 394

perspective which allows for participation and co-creation in the production and consumption of culture will have implications for heritage professionals who will have to relinquish or de-centre their authority to allow for collaboration to take place. This has led to questions of ownership, power and control of and over CH.

This deliverable takes the view that the starting point for the protection of CH within RICHES should be the Conventions and Treaties for the protection of cultural heritage, mostly developed by UNESCO. Where CH falls under the protection of the Conventions, States then have certain obligations to protect and promote cultural heritage. These obligations have to be taken into account by States when formulating policy in this area. This deliverable suggests that copyright law should be used as a tool to attain the human rights goals encapsulated within the Conventions.

It is acknowledged that pursuing this strategy is not without its challenges. There is currently much discussion around cultural rights and the right to culture in the Conventions that are among the least understood of the rights. Little is understood about what they are; their definition and scope; or their relationship with each other and with other human rights. On this last point, there is a literature that suggests that copyright is also a human right resulting in persistent questions over hierarchy of rights. There are also tensions around the universality of human rights and the relativism of culture and cultural rights, leading some to dismiss the legitimacy of cultural rights. The deliverable will confront the issues in relation to the 'right to culture' to be found in our general human rights framework, and explore how that general right interfaces with what some argue is the right to intellectual property and the key tension that arises as between access to culture as a public good and the privatisation of culture through copyright. It will conclude that none of these issues are insurmountable and that RICHES can, and should, use copyright as a creative tool to forge an appropriate IPR framework for the safeguarding of our co-created cultural heritage in the digital era.

This deliverable will first undertake a legal exploration of what is meant by CH within international law. It will move to analyse cultural rights and the right to culture, distinguishing between the two. It will highlight key points in the development of an IPR strategy for RICHES from the discussion while at the same time acknowledging that there are constraining factors.

3.1 Cultural Heritage – A Legal Exploration

There is no legal definition of cultural heritage. Rather the term is used in a number of international and regional legal instruments that carry their own particular meanings. Many emanate from the United Nations Educational, Scientific and Cultural Organisation (UNESCO), the United Nations body charged with safeguarding our cultural heritage. Within the UNESCO tradition, cultural heritage and its ilk are firmly based in human rights norms themselves deriving from general International Human Rights treaties which include the protection of culture mostly grounded in notions of cultural diversity and integrity.

While the idea of human rights goes back to mediaeval times, natural law and the Enlightenment and was developed by philosophers such as John Locke, and Francis Hutcheson in the seventeenth century, it was the horrors of the Second World War that gave the impetus to formalise the human rights system under the auspices of the United Nations (UN). While the UN system of human rights is directed towards crimes perpetrated on individuals, UNESCO initiatives were initially driven by the desire to deal with sources of cultural conflict between States, a reaction partly to the activities of the conqueror taking cultural artifacts from the conquered.[3]

While there is no single legal definition of cultural heritage, the meaning and content of the term, along with the related terms cultural property and common heritage of mankind, is highly contested and driven by a mostly politicised process within which its sense is debated and shaped.[4] From the destruction and looting that took place in the aftermath of the Second World War;[5] to the demolition of the Buddhas of Bamiyan;[6] to the treatment of indigenous peoples and their cultural identities;[7] to the increasing commodification of cultural works under the TRIPs agreement and bilateral treaties;[8] and to the recognition that valuable and diverse artforms will disappear if not actively supported, the discourse is driven by state interests, by the rhetoric and reality of notions of property, and by multifaceted alliances between shifting political and economic interests. These alliances constantly slide as between East/West, West/West, developed/developing, developed/developed and developing/developing nations interests, depending on the issue on the agenda. The discourse is at once

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[3] Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property 14 Nov 1970; Convention concerning the protection of the world cultural and natural heritage 17 November 1972. Before this the discourse developed after the Napoleonic Wars and the insistence of the British in the Vienna Treaty of 1815 to the return of moveable artefacts of cultural heritage thus linking territories, peoples and cultural objects. F Macmillan, (2013) 'The protection of cultural heritage', NILQ 64(3) p 356

[4] 1972 UNESCO Convention places the following duty on a contracting state: 'of ensuring the identification, protection, conversation; presentation and transmission to future generations of the cultural and natural heritage'. Article 4

[5] This led to the 1954 UNESCO Convention for the Protection of Cultural Property in the Event of Armed Conflict 249 UNTS 24

[6] For comment see Macmillan n 3 p355

[7] UN Declaration on the Rights of Indigenous Peoples, 2007

[8] Trade Related Agreement on Intellectual Property Rights 1994 (TRIPs) and its spread of IP norms and standards

broad, focusing on cultural diversity and integrity, and narrow focusing on specific cultural rights. It is intimately bound up in ideas of cultural and political identity, in individual and community norms, and in individual and collective rights.

These characteristics have led one commentator to opine: '*Too much is asked of heritage. In the same breath we commend national patrimony, regional and ethnic legacies and a global heritage shared and sheltered in common. We forget that these aims are usually incompatible.*'[9] That sentiment aside, the international human rights framework does contain important material relating to culture and to our cultural heritage and it is to a consideration of this that we now turn.

3.1.1 Culture specific conventions

As already stated there is no single definition of CH and since the earliest UNESCO Conventions, different descriptions have been used: cultural heritage; cultural property and the common heritage of mankind are the three main ones.[10] These are not interchangeable as such and each brings its own connotations. Allied to this is the need to bear in mind the different types of cultural heritage and their classification in the rhetoric of property. These range from the intangible (the dance; the folklore; the know how; the musical traditions); the tangible (the monument; the statue; the picture; the book) the heritable (the museums, libraries and archives; the trees in the rainforest) and the moveable (the painting, the sculpture, the photograph, the film). For RICHES, as examples, performances are intangible; books are tangible; physical landscapes are heritable; traditional skills are intangible while the output is tangible and moveable; stories are intangible.

The UNESCO Cultural Conventions cover these types of property in different ways. [11] Prior to 2000 the focus was on tangible objects and how policy could respond to the challenges faced in wartime,[12] the tendency of states to remove cultural artifacts from countries,[13] the growing need to protect world cultural and natural heritage,[14] and the need to protect underwater cultural heritage.[15] Each of these Conventions has its own definition of cultural property or heritage. The 1954 Convention dealing with the protection of cultural property in the event of armed conflict, for example, refers to 'cultural property' and to both movable and immovable property 'of great importance' such as monuments and works of art and to the buildings designed to preserve and exhibit cultural property such as museums and libraries. The 1970 Convention which

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[9] D. Thal *The Heritage Crusade and the Spoils of History* Viking 1977, p 227.

[10] In discussion on UNESCO routes the term 'cultural' is used to mean anything produced by man and not limited to cultural manifestations in the narrow sense exemplified by art, literature and architecture. Report on the Expert Meeting on Routes as a Part of our Cultural Heritage (Madrid, Spain, November 1994) WHC-94/CONF.003/INF.1

[11] Note also The Framework Convention on the Value of Cultural Heritage for Society (Faro Convention, 2005) currently ratified by Armenia, Bosnia and Herzegovina, Croatia, Georgia, Hungary, Latvia, Luxembourg, the Republic of Moldova, Montenegro, Norway, Portugal, Serbia, Slovakia, Slovenia, Ukraine and "the former Yugoslav Republic of Macedonia".

[12] Convention for the Protection of Cultural Property in the event of Armed Conflict 1954

[13] Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970

[14] Convention concerning the Protection of the World Cultural and Natural Heritage 1972

[15] Convention on the Protection of the Underwater Cultural Heritage 2001

aims to prevent the illicit import, export and transfer of ownership of cultural property also refers to the term 'cultural property' this time as property designated by each State as being of importance for inter alia literature or art and which belongs to defined categories including paintings, sculptures and rare manuscripts and archives including cinematographic archives. Both the 1972 Convention on the protection of world cultural and natural heritage and the 2001 Convention on underwater cultural heritage refer to cultural heritage rather than cultural property.[16] The former defines cultural heritage as certain monuments, groups of buildings and sites, while natural heritage is natural features and sites and geological and physiographical – all of which must be considered to be of outstanding universal value.[17] The latter defines cultural heritage as *'all traces of human existence having a cultural, historical or archaeological character which have been partially or totally under water, periodically or continuously, for at least 100 years'* and goes on to include such things as buildings; vessels and objects of prehistoric character.

By contrast to these efforts to protect largely tangible culture, the two main UNESCO Conventions negotiated in the 2000s deal with intangible cultural heritage. The 2003 Convention for the Safeguarding of the Intangible Cultural Heritage defines intangible cultural heritage as '*the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage.*'[18] The Convention goes on to state that this intangible cultural heritage is *'transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity*.' Key points arising from this definition are that heritage is transmitted from generation to generation thus situating heritage for these purposes as something more than transitory or created for the moment; the recognition that cultural heritage is recreated – so not static or fixed; the idea of cultural heritage being important for the construction and maintenance of identity; and the human rights language in referring to cultural diversity and human creativity.

The Convention for the protection and promotion of the diversity of cultural expressions 2005[19] refers not to cultural heritage but to the '*cultural heritage of humanity'* which it seeks to protect through recognising cultural diversity '*expressed, augmented and transmitted through the variety of cultural expressions, but also through diverse modes of artistic creation, production, dissemination, distribution and*

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[16] Michael Brown 'Heritage Trouble: Recent work on the protection of intangible cultural property', International Journal of Cultural Property (2005) 12:40-61. The shift from the expression cultural property to cultural heritage '*signals growing doubt about the Universality of Western notions of property and widespread recognition that culture cannot be reduced to an inventory of objects without marginalizing its most important features'*. p 41

[17] Articles 1 and 2

[18] 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage

[19] October 2005 in force March 2007 Burri, Mira, 'The UNESCO Convention on Cultural Diversity: An Appraisal Five Years after its Entry into Force' (February 25, 2013). NCCR Trade Regulation Working Paper No. 2013/1. Available at SSRN: http://ssrn.com/abstract=222392

enjoyment, whatever the means and technologies used.' As with the 2003 Convention, there is strong use of human rights language in reference to cultural values, and stress is laid on the importance of cultural identities. By contrast with the 2003 Convention, the 2005 Convention protects current artistic creativity and values, partly encompassed within definitions of cultural expressions,[20] cultural content[21] and cultural activities.[22]

For the purposes of RICHES, the three most important Conventions are the 1972 Convention for the Protection of the World Cultural and Natural Heritage; the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage; and the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions. Between them, these Conventions form a backdrop against which the RICHES project can seek to understand the context of change for both tangible and intangible heritage, and can rethink the role of CH in European social and economic development.

3.1.2 Cultural heritage in international law – the elements

So from the examination of the Conventions, what is meant by cultural heritage in international law? It has become clear that the international legal framework does not support one definition; rather there are multiple meanings depending on the context. It has been said that this lack of an agreed definition means that '*international cultural heritage law has developed with an uncertainty at its centre over the exact nature of its subject-matter and based on a set of principles which are not always coherent*'[23] which echoes Lowenthal's lament that too much is asked of cultural heritage.[24]   There are however elements pertaining to cultural heritage that are found repeatedly in the discussion above. These have been summarised thus:

> *Cultural heritage is some form of inheritance that a community or people considers worth safekeeping and handing down to future generations.*[25]

> *Cultural heritage is linked with group identity and is both a symbol of the cultural identity of a self-identified group (a nation or people) and an essential element in the construction of that group's identity*' [26]

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[20] *"Cultural expressions" are those expressions that result from the creativity of individuals, groups and societies, and that have cultural content.*
[21] *"Cultural content" refers to the symbolic meaning, artistic dimension and cultural values that originate from or express cultural identities.*
[22] *"Cultural activities, goods and services" refers to those activities, goods and services, which at the time they are considered as a specific attribute, use or purpose, embody or convey cultural expressions, irrespective of the commercial value they may have. Cultural activities may be an end in themselves, or they may contribute to the production of cultural goods and services.*
[23] Blake J, 'On defining cultural heritage' I.C.L.Q. 2000, 49(1), 61-85 p 85
[24] See note 9 above
[25] Macmillan sums this up as cultural heritage 'being those things (moveable and immoveable, tangible and intangible) that a community or people considers worth handing on to the future' 'Arts Festivals: Property, Heritage or More?' Forthcoming in K Bowrey & M Handler (eds), *Law and Creativity in the Age of the Entertainment Franchise* (Cambridge: Cambridge University Press, 2014)
[26] Blake J, 'On defining cultural heritage' I.C.L.Q. 2000, 49(1), 61-85 p 84

As has been said, where cultural heritage falls within the UNESCO Convention framework, States then have obligations rooted in human rights to protect and promote CH within their territories. While the enforcement of human rights obligations can be challenging in that there is no easy enforcement mechanism should the State fall short, it nonetheless provides an important yardstick by virtue of which States can be called to account for their actions or inactions.

While UNESCO has reflected on the place of digital technologies for the realisation of the right to culture,[27] it has not explicitly addressed the cultural digital agenda in the sense of how digitisation impacts on the CH criteria. So for the RICHES project the criteria for cultural heritage offered above are set within acts of digitisation: digitisation has become in many instances integral to the creation, use, re-use, dissemination of CH and/or relationships within the CH sector, and/or of CH that is chosen for safekeeping.

3.1.3 Selection and mediation of cultural heritage

The first criterion, that of CH being an inheritance that a community considers worth safekeeping, suggests that there is a continuous, iterative process of selection and mediation to determine what cultural heritage is, and by virtue of which decisions are made over what is worth preserving for the future.[28] Traditionally this occurs not only within the politicised process that governs the meaning of cultural heritage within the International Conventions discussed above,[29] but also in the process through which something is chosen to become a part of our cultural heritage, and in the allocation of resources that makes that selection happen. Museums, galleries, libraries and archives have customarily played the role of intermediary within the international and state mandated definitions of cultural heritage.

> *'…the identification of cultural heritage is based on an active choice as to which elements of this broader 'culture' are deemed worthy of preservation as an inheritance for the future. Through this, the significance of cultural heritage as symbolic of the culture and those aspects of it which a society (or group) views as valuable is recognised. It is this role of cultural heritage which lends it its powerful political dimension since the decision as to what is deemed worthy of protection and preservation is generally made by State authorities on national level and by intergovernmental organizations – comprising member states – on an international level'.*[30]

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[27] See n 45 below.

[28] *'…for tradition (our cultural heritage) is self-evidently a process of deliberate continuity, yet any tradition can be shown, by analysis, to be a selection and reselection of those significant revived and recovered elements of the past which represent not a necessary but a desired continuity'.* R Williams *Culture* (Fontana) Glasgow 1982) p 187

[29] *'… the identification of cultural heritage is in itself a political act given its symbolic relationship to culture and society in general'* Blake J, 'On defining cultural heritage' I.C.L.Q. 2000, 49(1), 61-85

[30] Blake J, 'On defining cultural heritage' I.C.L.Q. 2000, 49(1), 61-85 p 68

The identification and choice of what is deemed to be CH can be considered as hegemonic, political and authoritative and raises questions as to who makes these decisions? Who selects? Who judges? And on what criteria? This has led to forms of institutional, hierarchical knowledge which has been more highly valued than individual knowledge and a distance in the relationship between cultural institutions (heritage professionals) and the public (heritage users).

As the RICHES project is highlighting, relationships are changing and becoming more decentralised as digital technologies present increasing opportunities to individuals and communities not only to co-create, but also to choose what should be preserved.[31] This brings with it challenging questions over the process of selecting and mediating cultural heritage. As has been noted in relation to intangible cultural heritage, and relevant to virtual performances (see RICHES Task 6.2 *Virtual Performances*), the process of '*making, performing, documenting and archiving*' is collapsing, and '*who decides what is to be preserved and how such varied events might generate new taxonomies to secure their own future is not yet clear*'.[32] Even in this decentralised system resources are often needed for the act of mediation and selection in deciding what should be funded as, for instance, when library collections are chosen to be digitised (see RICHES Task 6.1 *Digital Libraries, Collections, Exhibitions and Users*). It also raises questions over the fact of decentralisation and what this then means for decisions regarding what is included in or excluded from our cultural heritage.[33]

As RICHES will explore, in the digital era new ways of thinking are needed about the processes of becoming part of our CH, who makes those choices and who then implements them (see RICHES WP3 *Understanding the context of change for tangible and intangible CH*, and RICHES WP4 *The role of CH in European social development*) and what impact this will have on the relationship between cultural institutions and the individual user. While there is nothing in the Conventions that would preclude re-thinking the process of how something becomes part of our cultural heritage the criteria within which CH should fall for the purposes of the UNESCO Conventions should be borne in mind.

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[31] Fisher, 'Theories of Intellectual Property', in *New Essays in the Legal and Political Theory of Property* (Cambridge University Press, 2001) at 193 "*An attractive society is one rich in 'communities of memory.' Persons' capacity to construct rewarding lives will be enhanced if they have access to a variety of 'constitutive' groups—in 'real' space and in 'virtual' space.*" ; Sunder, M "IP3", 59 Stan.L.Rev 257, 280–82 (2006) *"At the same time that identity politics has turned its attention to questions of development through the capacity to produce and participate in culture, the new technologies of the Internet Protocol make such cultural democracy more possible. In the Participation Age, people with access to a computer and relatively cheap but powerful digital hardware challenge the hegemony of traditional cultural authorities and create new cultural meanings from the bottom up".* p 321

[32] S. Whatley, 'Dance Identity, Authenticity and Issues of Interpretation with Specific Reference to the Choreography of Siobhan Davies' (2005) 23 *Dance Research* 87

[33] A Arantes, 'Cultural Diversity and the Politics of Difference', in *Safeguarding Intangible Cultural Heritage Challenges and Approaches* Janet Blake ed. Institute of Art and Law: Wells 2007 *"The objects chosen for official safeguarding tend to be those praised by cultural communities as their own treasures, as sacred, fragile and deeply rooted in the social structure. They are a well targeted by the safeguarding institutions and cultural policy makers, as they are highly cherished by the market of cultural commodities. Consequently it becomes extremely relevant to look critically at and evaluate the consequences of the interference that safeguarding activities produce in local life, as well as to understand how far they are desirable to and desired by the local community'.* p 91

3.1.4 Cultural Identity

Along with notions of selection and mediation, embedded within the meaning of cultural heritage is the question of cultural identity, a concept as legally 'slippery' as cultural heritage.[34] As the second criterion suggests, cultural identity can relate to individual, group or national identity with many nuanced meanings in between.

As with cultural heritage, the term is deeply imbued with political overtones. In 1993 Council of Europe Heads of State Vienna Declaration of the Council of Europe Summit[35] called for expression to be given *'in the legal field to the values that define our European identity'* thus linking *'the political aims of pluralist democracy and human rights, cultural heritage and its role in the construction of identity'*.[36]

Where cultural identity responds to calls for cultural rights, so human rights language supports rights in the hands of individuals.[37] Where group or national identities emerge, the language of human rights with its focus on the individual becomes more difficult to sustain and calls for collective rights emerge. These group and national identities have most often been identified in relation to minority groups. It is to these groups that the system of cultural rights within the human rights framework and UNESCO Conventions is mostly directed.

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[34] Ziegler, Katja S., 'Cultural Heritage and Human Rights'. *Alberico Gentili: La Salvaguardia Dei beni Culturali Bel Diritto Internazionale*, Giuffrè Milano, ed., 2007. Available at SSRN: http://ssrn.com/abstract=1002620 for a discussion on cultural heritage, cultural identity and human rights.

[35] Vienna 9 October 1993

[36] Blake J, 'On defining cultural heritage' I.C.L.Q. 2000, 49(1), 61-85 p 73. See also IVth European Conference of Ministers responsible for the cultural heritage Helsinki 30-31 May 1995 Docs MPC – 4(96)1 rev. To MPC-4 (96)15; The Cultural Heritage – an Economic and Social Challenge at p 5; Cultural Heritage – a key to the future (Strasbourg, 1996) Doc MPC-4(96)7 p 1.

[37] *The construction of Cultural identity is protected when cultural heritage is treated as an element within human rights* Blake J, 'On defining cultural heritage' I.C.L.Q. 2000, 49(1), 61-85 p 77

3.2 Cultural Rights

Cultural rights in general human rights instruments focus on respect for and protection of cultural diversity and integrity and are both broadly and narrowly based: broad in the sense of referring to general notions of cultural diversity; and narrow in the sense of prescribing specific cultural rights.[38] The International Covenant on Civil and Political Rights 1966[39] (ICCPR) contains the more specific right to freedom of expression which includes the right to seek, receive and impart information and ideas in any media of choice[40] and the right to enjoy culture for minorities.[41] Other cultural rights which add to the richness of the human rights framework in which cultural diversity and integrity are situated include the right to enjoy the arts; conservation, development and diffusion of culture; freedom of assembly and association and the principle of non-discrimination.

In relation to cultural rights and from a political perspective, concerns have been articulated that, as cultural rights movements have their basis in claims to identity and self-determination, so they provide a threat to state based sovereignty and cultural hegemony. The same argument is made in relation to the appeals of a variety of identities such as language, religion and ethnicity. Challenges also arise where rights are seen to be in conflict with other human rights – an area that has been particularly pertinent in relation to the rights of women.[42] This conflict between human rights also plays out in the universalist view of human rights versus the relativist notion of cultural rights. How can the system of indivisible, universal, human rights be reconciled with the relativist nature of cultural rights that demand respect and protection for a range of identities?[43]

[38] Asbjørn Eide, 'Cultural Rights as Individual Human Rights' in Asbjørn Eide, Catarina Krause and Allan Rosas (eds), *Economic, Social and Cultural Rights*, 2nd edn (New York: Springer, 2001), pp.289, 291. Cultural rights in the case law of the European court of human rights
http://www.echr.coe.int/Documents/Research_report_cultural_rights_ENG.pdf

[39] Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49

[40] Article 19 1. *Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.*

[41] ICCPR Article 27 *In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.*

[42] Okin, Susan Moller, 'Feminism, Women's Human Rights, and Cultural Differences', *Hypatia* Vol.13, No.2 (Spring 1998) pp. 32-52

[43] *'… asking whether a cultural right restricts other human rights in a fashion that is proportional to the sense of identity provided by the ICH to the community group or individual who value it as part of their cultural heritage is an appropriate balance between the recognition of universal human rights and recognizing a plurality of world-wide cultures'* T Kono and J Cornett: 'Analysis of the 2003 convention and the requirement of compatibility with human rights' in *Safeguarding Intangible Cultural Heritage: Challenges and Approaches* Janet Blake ed. Institute of Art and Law: Wells 2007 p 174; Cohen, Ronald, 'Human Rights and Cultural Relativism: The Need for a New Approach' American Anthropologist 91, no. 4

The legal literature on cultural rights has, to date, mostly focused on minority groups. Nowhere is this better illustrated than in an edition of human rights dialogue on cultural rights published in 2005. Here minorities considered included the rights of Slavic Muslim Pomaks.; the Yiaaku people in the Mukogodo forest of Kenya; Bolivia's indigenous Guarani; Aboriginal children in Australia; and Taiwan's Ami people among others.[44]

A question – and a challenge – for the RICHES project, is as to whether the groups involved in the creation, selection and mediation of CH within the RICHES case studies could benefit from the cultural rights articulated in the UNESCO Conventions. Can, for instance, a community of young people with an intercultural background (see RICHES Task 4.2 *Co-creation and Living Heritage for Social Cohesion*) constitute a minority group for the purpose of ICCPR Article 27? Frith who suggests that cultural identities are developed through participation in cultural activities might argue that they could:

> *'What I want to suggest…, is not that social groups agree on values which are then expressed in their cultural activities (the assumption of the homology models) but that they only get to know themselves as groups (as a particular organization of individual and social interests, of sameness and difference) through cultural activity, through aesthetic judgement.'*[45]

Other rights, as identified above, are more obviously suited to the digital cultural heritage sector – notably the right to freedom of expression which includes the right to seek, receive and impart information and ideas in any media of choice: digital technologies offer potential and are excellent facilitators of these rights.

In relation to CH and digital technologies, in 2012 the UN Human Rights Commission in a report on the right to enjoy the benefit of scientific progress and its applications recommended that:

> *(c) States ensure freedom of access to the Internet, promote open access to scientific knowledge and information on the Internet, and take measures to enhance access to computers and Internet connectivity, including by appropriate Internet governance that supports the right of everyone to have access to and use information and communication technologies in self-determined and empowering ways;*[46]

(1989): 1014-1017; Cook, John W., *Morality and Cultural Differences* (Oxford University Press, 2006); Donnelly, Jack, 'Cultural Relativism and Universal Human Rights' Human Rights Quarterly 6, no. 4 (1984): 400-419. Schmidt, Paul, 'Some Criticisms of Cultural Relativism', Journal of Philosophy 70 (1955): 780-791; Tilley, John J 'Cultural Relativism' Human Rights Quarterly 22, no. 2 (2000): 501-547.

[44] *Human Rights Dialogue on Cultural Rights* Series 2 Number 12 Spring 2005

[45] Frith S, 'Music and Identity' in Stuart Hall and Paul du Gay (eds.), *Questions of Cultural Identity* (London: Sage, 1996)

[46] Human Rights Council, Twentieth session, Agenda item 3 Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development. Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed The right to enjoy the benefits of scientific progress and its applications'

While the recommendation was directed towards rights to enjoy the benefit of scientific progress, which will be discussed below (the right to culture), the relevance to freedom of expression and the rights to receive and impart information are evident and relevant to a number of the tasks within RICHES (including those in WP4 *The Role of CH in European Social Development* and WP6 *Case Studies: Digital Libraries and Virtual Performances*).

In seeking to articulate the important elements that contribute to the realisation of cultural rights, one of our most eminent commentators argues that they are:

> '*a category of human rights that puts enhanced emphasis on moral rights, collective cultural identity, cultural integrity, cultural cooperation, cross cultural communications, and intercultural exchange.*'[47]

Add to these access to the Internet and to information on the internet and these criteria seem to support the objectives of the RICHES project with its focus on the construction of new cultural identities, new cultural working practices that embrace co-creation and collaboration as the norm; and where digitisation and digital technologies become central to those working practices.

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[47] R Coombe, 'The Expanding Purview of Cultural Properties and Their Politics' Annual Review of Law and Social Science Vol. 5: 393-412 p 394

3.3 The Right to Culture

Cultural rights, as discussed above, are only one element of the human rights cultural framework. The other element is what is often termed ' the right to culture' and is to be found in The Universal Declaration of Human Rights 1948[48] (UDHR) and in the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR). The UDHR Article 27 provides that '*Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits*'[49] and that '*Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author*'.[50] This idea of, on the one hand, rights to participate in culture and, on the other, rights to cultural artifacts is expanded on in the ICESCR Article 15 by virtue of which States must ensure that everyone has the right: *'(a) To take part in cultural life; (b) To enjoy the benefits of scientific progress and its applications; (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.*'[51]

There is a contradiction in these Articles that has vexed scholars almost for as long as the Conventions have been in place, and increasingly with the expansion in scope of intellectual property (IP) in recent years and the trend, since the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs), to link IP with trade. The question is as to how to reconcile the right to freely participate in and have access to cultural life, with the rights of authors to the protection of the moral and material interests arising from literary and artistic productions. As noted above, the pressure is as between access to culture on the one hand where information is regarded as a public good, and the increasing trend to privatise culture through the system of copyright on the other.

It is precisely this tension that is, or will, face partners in RICHES as memory Institutions seek to fulfill public policy goals of increasing access to culture, while at the same time 'controlling culture' through claims of copyright in the hope that revenue streams from exploitation of digitised artefacts will make up shortfalls in public funding.

3.3.1 The process of culture and the product of property

Coombe has said this of the tension as between the process of culture on the one hand where culture is regarded as a public good, and the objects of intellectual property on the other where culture is privatised and held as items of property:

> *Many scholars remain skeptical about the value and consequences of marrying the anthropological idea of culture with the legal concept of property, particularly to the extent that critical theorists now understand culture as having its locus in symbolic processes that are continually recreated in social practices imbricated in relations of power. Such an understanding sits uneasily with a vision of culture "as*

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[48] Adopted by the General Assembly of the UN 10 December 1948
[49] Article 27.1
[50] Article 27.2
[51] Article 15

> *a bounded entity, the properties of which can be 'inventoried'"* [52]*To the extent that heritage preservation and cultural property initiatives tend to assume an objectifying approach, they may fundamentally transform the symbolic processes they seek to protect by focusing too narrowly on objects, sites, and traditions to the detriment of the semiotic dimensions of culture* [53]

The heart of the issue is that knowledge, information and culture are seen on the one hand as public goods. As such, they should be accessible to all, to use, re-use and circulate, learn from, keep, discard, or do any number of other things with. Where however culture is owned – as when it becomes the subject of copyright – then the owner can control what happens to the property through exercising a series of exclusive rights. Culture, in the form of property, then becomes inaccessible – at least without the permission of the owner. This complex relationship between copyright and culture has been little explored in law[54] but has important ramifications for the existence and scope of the two.[55] As has been said *'… the power balance between the discourse of private property and that of public rights, … always rests on a knife-edge.*[56] The private property referred to here is intellectual property.

The UNESCO Conventions implicitly and explicitly recognise copyright and its importance in and to cultural heritage. For those Conventions dealing with tangible heritage, much of the very subject matter protected by the Conventions can be thought of in terms of copyright. In International Copyright Conventions, copyright protects literary and artistic works, works of architecture, and cinematographic works among others – all of which are explicitly mentioned in the UNESCO Conventions as protected subject matter.[57] The 1972 Convention is concerned with monuments and buildings as well as with natural heritage but says nothing in particular about IP rights. By contrast, both the 2003 and 2005 Conventions dealing with intangible cultural heritage refer to IP rights. In the 2003 Convention it is stated that nothing should interfere with States obligations in respect of intellectual property rights;[58] and in the 2005 Convention IP is noted in the Recitals as being important to '*those involved in cultural creativity*'. It is also notable that as part of the process of safeguarding cultural heritage, the 2003 Convention exhorts national states to establish

documentation centres[59] and at international level to draw up and publish a list of intangible cultural heritage;[60] and in the 2005 Convention States are directed to ensure the *preservation, protection, promotion and dissemination of cultural expressions and diversity*. Each of these acts forces the intangible to become tangible through fixation

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[52] Handler R. 2003. 'Cultural property and cultural theory'. J. Soc. Archaeol. 3:353–65 at 356

[53] Coombe n 46 at pp. 361–63

[54] Macmillan n 25 above.

[55] Madhavi Sunder, 'IP 3' (2006) 59 Stan. L. Rev. 257, 321. See also D Hunter, 'Culture War' (2005) 83 Tex. L. Rev. 1105, 1117, noting that in intellectual property circles the discourse is all about the ownership and control of culture.

[56] Macmillan n 25 above

[57] Berne Convention Article 1

[58] Article 3B

[59] Article 13 d iii. Note also the UNESCO Universal Copyright Convention 1952 – a Convention little referred to now, the most important International convention being the Berne Convention 1886.

[60] Article 16

of the intangible work in tangible form. While fixation is not a necessary precursor in all jurisdictions to the existence of copyright,[61] making the intangible tangible immediately converts heritage from a process into a product and raises questions over copyright authorship and ownership and rights to exploitation.[62] What might have been considered part of the cultural heritage of humanity as a process and performance in law becomes an item of cultural property. So there is in inherent tension within the UNESCO Conventions between the treatment of culture as unbounded while at the same time exhorting States to authorise acts that commodify the same subject matter. But while these references to copyright in the Conventions lay a framework for some thinking and raise some questions around the place of copyright in relation to CH, it is Article 27 UDHR and Article 15 ICESR where the real conflict lies.

Legal debate on the relationship between copyright and the right to culture can be traced back to 2003 when Laurence Helfer argued that human rights and intellectual property, two bodies of law that were once strangers, were becoming increasingly intimate bedfellows.[63] This argument was developed in response to the growing importance that was being given to IP on the international stage, most notably with the passing of the TRIPs Agreement which conceptualised IP in terms of trade and expanded the range of rights that attached to creative and other works. The tension was brought sharply into focus when a resolution was adopted by the UN sub-commission on the protection and promotion of human rights in 2004 noting that there were apparent conflicts between the IP regime embodied in the TRIPs agreement on the one hand, and international human rights law on the other,[64] and reminded Governments of the primacy of human rights law over economic policies.[65] Since that time the debate has continued apace around the balance that should exist in relation to Articles 27 and 15 between access to and ownership of culture.

In this debate there are those who contend that IP is itself a human right. While for some this means that there is no conflict between IP and human rights,[66] for others,

the worry is that an acceptance that IP is a human right – or at least some parts of IP may be grounded in human rights[67] – would result in an argument for an expansion of IP rights.

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[61] The Berne Convention leaves it open to States to decide whether fixation is needed for the existence of copyright protection for a work.

[62] Whether this ought to be the case or whether there should be space within cultural heritage for works to which private property rights are ascribed is another matter. Macmillan n 25 above. See also for example site for preserving endangered dance http://www.coreofculture.org/

[63] L Helfer, 'Human Rights and Intellectual Property: Conflict or Coexistence? 'Minnesota Journal of Law, Science & Technology, Vol. 5, p. 47, 2003

[64] Article 2 Intellectual Property Rights and Human Rights, adopted 17 Aug. 2000, Res. 2000/7, U.N. OHCHR, Sub-Comm'n on the Promotion and Protection of Hum. Rts., 25th mtg. (2000).

[65] Ibid article 3.

[66] E.S Nwauche, 'Human Rights-Relevant Considerations in Respect of IP and Competition Law,' 2 SCRIPT-ED 467, 468 (2005), available at http://www.law.ed.ac.uk/ahrc/script-ed/vol2-4/utopia.pdf

[67] A R. Chapman, 'Towards an Understanding of the Right to Enjoy the
Benefits of Scientific Progress and its Applications,' 8 J. HUM. RTS. 1, 19-20 (2009); P K. Yu, 'Reconceptualizing Intellectual Property Interests in a Human Rights Framework', 40 U. C. Davis L. Rev.1039 (2007); P K. Yu, 'Ten Common Questions About Intellectual Property and Human Rights', 23 GA. ST. U.L. Rev. 709, (2007)

[68]   Another line of thought is to the effect that while the current IP regime may be acceptable as a general matter, it should give way to the primacy of human rights in certain circumstances such as where public health and education are implicated. [69]   A different nuance from this perspective argues that while the IP regime might work for developed countries, developing countries should have increased limits and exceptions to support their economies.[70]

These diverging approaches to IP, human rights and the right to culture have been in existence even during the drafting of the UDHR Article 27. In seeking to move beyond the sometimes polarised approaches to this debate, and in seeking to develop a strategy for digital CH, RICHES aligns itself with two relatively recent approaches, both of which work towards the same end – that of using copyright as a tool to realise the right to culture. The first approach reconsiders the drafting history of Article 27; the second aligns itself with the Access to Knowledge movement (A2K).

3.3.2 Re-thinking the drafting history of Article 27 UDHR

In a recent paper examining the drafting history of Article 27 Plomer has highlighted a number of contradictions and paradoxes. Plomer's aim is to add to understanding how the right of access to science might be shaped by the rights of individuals over intellectual creations – in other words, the tension between Article 27(1) and 27(2). While Plomer's focus was on science, the arguments are equally as valid for the right to culture. Plomer notes that there was a paradoxical alignment of interests during the drafting of Article 27. South American countries backed France in seeking to include the rights of authors and inventors to the protection of their intellectual creations, while the US, the UK and former colonies opposed this right up to the end of the drafting process. Plomer has also noted that there were areas of convergence of philosophies and rationales which led to the adoption of Article 27(2). This convergence supported the protection of the creative abilities of individuals as fundamental human rights, but only when they were of a personal nature, attaching to, and claimable by, individuals. This lends support to Comment No 17 (2005) [71]– in

terms of which the Sub Commission states that the rights protected by ICESCR Article 15 are not coextensive with IP rights although IP rights can be deployed as tools to secure protection of the rights in Article 15. Most importantly, Plomer demonstrates that individual rights should not cut across the public good of facilitating access to knowledge,

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[68] K Raustiala, 'Commentary: Density and Conflict in International Intellectual Property Law', 40 U.C. DAVIs L. REv. 1021, 1037 (2007).

[69] Statement by the Comm. on Econ., Social &Cultural Rights to the U.N. Comm. on Econ., Soc. & Cultural Rights, Human Rights & Intellectual Property, U.N. Doc. No. E/C.12/2001/15, 1 12, (Nov. 26, 2001) *"The Committee wishes to emphasize that any intellectual property regime that makes it more difficult for a State party to comply with its core obligations in relation to health, food, education, especially, or any other right set out in the Covenant, is inconsistent with the legally binding obligations of the State party."*

[70] See above note 62.

[71] *The Right of Everyone to Benefit from the Protection of the Moral and Material Interests Resulting from Any Scientific, Literary or Artistic Production of which He or She is the Author* Article 15, paragraph 1 (c), of the Covenant, General Comment No.17 (2005), U.N. ESCOR, 35th Sess., U.N. Doc. E/C.12/GC/17 (2006); Right to Enjoy the Benefits of Scientific Progress and its Application

culture and science, whether for liberal, utilitarian or communitarian reasons.[72] IP laws should instead be deployed to the service of human rights.

Plomer's argument finds interesting parallels in the A2K approach that has permeated international IP law over the last decade. This movement developed in response to the expansion of IP rights under the auspices of the World Trade Organisation (WTO) and the World Intellectual Property Organisation (WIPO). Driven by many different actors including civil society activists and academics, initially focus was on access to medicines and on exposing the challenge that Western patents held for accessing medicines in developing countries. It moved more broadly to IP and development in the Department for International Development's (DFID) 2002 report by the Commission on Intellectual Property Rights, 'Integrating Intellectual Property Rights and Development Policy,[73] and has since expanded to provide a platform for arguments around access to knowledge more generally.[74]

Most relevant for RICHES are the legal and economic concerns around innovation and creativity where the focus is over high intellectual property standards mostly in developed countries and how they challenge the diffusion of new ideas, texts and technologies.[75] What the A2K movement is not is the opposite of intellectual property. In other words, the A2K call is not for dismantling the IP system, but for the use of the IP system in such a way as to align itself with the goals of the A2K movement. Used creatively IP can, for example, support open models to pursue the diffusion and dissemination of and access to knowledge. Such a strategy could be relevant for thinking around a number of the RICHES Tasks – for instance T6.1 *Digital Libraries, Collections, Exhibitions and Users*, and T6.2 *Virtual Performances*. This deliverable will also contribute to WP7 Strategies, Policies and Road-Mapping which is concerned with the impact of digital technologies on a changing society and the opportunities and problems for policy makers, with recommendations to overcome any barriers and exploit opportunities in the context of change.

3.4 Key Points for RICHES IPR Strategy:

1. The starting point for thinking about what CH is should be the criteria drawn from the UNESCO Conventions. CH within RICHES should fall within these parameters

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[72] Little support could be found for the view that IP rights are fundamental human rights – although laws should be deployed to the service of human rights.

[73] http://www.iprcommission.org/graphic/documents/final_report.htm

[74] *Access to knowledge in the age of intellectual property*, Gaelle Krikorian and Amy Kapczynski eds Zone Books: New York 2010

[75] ibid. For an economic perspective see R Towse (ed), Copyright in the Cultural Industries, Edward Elgar Publishing 2002; Towse, Ruth, *Copyright and Creativity: An Application of Cultural Economics.* Review of Economic Research on Copyright Issues, Vol. 3, No. 2, pp. 83-91, 2006. Available at SSRN: http://ssrn.com/abstract=1144327

supplemented by the requirement that digitisation should be relevant at some point in the creation, use, re/use dissemination and/or safeguarding of the CH.

2. Where cultural rights in Article 27 ICCPR are relevant to a WP or Task within RICHES notably the right to freedom of expression and the right to enjoy culture for minorities, in developing an IP strategy important prerequisites for fulfilling the rights include: moral rights, collective cultural identity, cultural integrity, cultural cooperation, cross cultural communications, intercultural exchange, access to the Internet; and to information on the internet.

3. IP should be used as a tool to support the right of '*everyone … freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefit*'.

Constraining Factors.

From the above it can be seen that the aim of this deliverable is to develop an IPR strategy for RICHES where the prime concern for participants in developing their Tasks should be to consider cultural rights and the right to culture, and how IP can contribute to those goals.

It is acknowledged that the researchers within RICHES will face constraints from a number of quarters.

a. The current policy and regulatory framework is replete with contradictory tensions making the environment a challenging one in which research takes place. For instance, current Commission requirements point to making open the fruits of research funded by the Commission. However national Institutions face policy requirements to at least contribute to budget deficits through exploitation of digital assets (for example pay per view for digital library assets).

b. Research takes place in an environment where there are increasing requirements around copyright, its ownership and exploitation whether driven by institutions, researchers, policy or funders. For instance in a collaborative project carried out between research institutions and the public sector there may be conflicting demands over ownership of any resulting IP. How, for instance, will ownership of the multi layers of IP be managed in Task 6.2 Virtual Performances?

c. Digitisation has fundamentally altered the way that research is carried out and greatly increased the variety of outputs from research and the copyright complexity. Research is increasingly carried out by interdisciplinary teams engaging partners from other jurisdictions and sectors of society including the public and commercial sectors and using complex tools owned by third parties. This results in a complex web of IP rights and obligations, often with few clear pathways to ownership and exploitation. This has implications for each of the WPs.

Historically these challenges have first been conceptualised through an IP lens. The challenge for RICHES – and their Institutions – is to think about the relevance of the criteria for CH, how that applies to the work being undertaken, and then determine how IP can be used to meet the right to culture and of relevant cultural rights including human rights.

The following section analyses two case studies (Task T4.2 *Co-creation and Living Heritage for Social Cohesion* and Task 6.1*: Digital Libraries, Collections, Exhibitions and Users*) contextualised within the shift from analogue to digital. These demonstrate how the legal framework recommended in this deliverable in relation to CH, copyright and human (cultural) rights are played out in practice.

SECTION 2: CASE STUDIES

4. CASE STUDY 1

Task T4.2 Co-creation and Living Heritage for Social Cohesion
(Task leader: WAAG. Other participants: RMV LEIDEN, UNEXE)

This case study is based on RICHES Work Package 4 which aims to identify practices, methodologies and structures that can be applied to CH with the assistance of digital technologies, and how they can contribute to social development in Europe. It involved the Stiching Waag Society, (WAAG) Amsterdam, The Nationaal Museum Van Wereldculturen (RMV) Leiden and the University of Exeter (UNEXE), UK. Task 4.2: *Co-creation and Living Heritage for Social Cohesion* explores how young people relate to heritage and heritage practices, through co-creation methods. The aim of this task is to identify novel directions for museums in order to contribute to social cohesion. The results of the task will contribute to our knowledge of what it means for a museum to relate to contemporary society, fostering recognition of identity, history and contemporary life of young people with multicultural backgrounds.

RMV and WAAG will organise and host three co-creation sessions with a diverse group of young people to undertake research on living heritage linked to its collections. The goal is for participants to overcome the condition of 'observers' and instead be active 'contributors' to RMV's practice and potentially be involved in the development of future heritage.

Who it involved

The sessions involve a community of young people with an intercultural background and who have a stated sense of exclusion from current CH institutions and practice. For the purpose of the task 'young' is defined as between 18 and 35, and diverse in terms of age, ethnicity, education, gender, urban/rural etc. and who are not necessarily museum-goers.

Outcomes

The outcome of the sessions aims to contribute to reflections on the processes of reversing the role between cultural institutions and society, where the audience is central and consumers become (co-)producers. The co-creation sessions will lead up to a proposed intervention/showcase in/with RMV Leiden, linked to its collections and potentially involving contemporary non-museum artifacts. The nature of the intervention is kept intentionally 'vague' beforehand as the concept needs to emerge from the sessions. Although the final outcomes are expected in 2015 there will be a showcase of the co-creation activity at the RICHES conference in Pisa, Italy in December 2014.

IP and Copyright

As with any project which involves collaboration or joint authorship and has a relatively open ended structure, the IP structure needs to leave room for things to emerge. It was decided not to define terms such as 'intervention' and 'outcomes' (products vs ideas and concepts) too much beforehand. Questions that arise are if, and when, new products are (co-)created, what needs to be protected? How the process can be kept open but also legally 'sound'? Who decides if what is produced should become part of our cultural

heritage? How are those decisions made and what processes are undertaken to implement them? For the purposes of this deliverable, the important question is as to what copyright issues are encountered? Will the works that are produced be for commercial, open, educational or other use? Should the work produced in the sessions be made available on an open or closed copyright strategy? An open strategy would be in line with the RICHES support of an approach to cultural heritage being rooted in the right to culture and to cultural rights.

Given the role of IP in these co-creation sessions, a series of questions were asked before, during and after the sessions.

Before the Sessions

A policy framework for IP and copyright was determined. Discussions involved the understanding and place of copyright in Task 4.2 with particular emphasis on co-creation and collaboration between the institution and the public and what copyright issues may be encountered, firstly when recording the process for research purposes; secondly when using recorded material for dissemination of (good) co-creation practices; and thirdly when using co-created materials in the intervention. This was important as it would have implications for the production of work as well as the dissemination and exploitation of co-created work.

When addressing issues involving IP law and copyright the team discussed the stages from the point of using existing work to the point of making the results available. This ranged from questions that included: what is the copyright status of the existing works that will be used in the co-creation sessions? If still in copyright, is there permission to use? If in copyright but there is no permission to use, has the risk been assessed? When considering re-use by third parties the questions included the sort of licence to be used to make the user generated content available.

Questions to consider:

If the co-creation sessions are designed to include diverse communities WAAG had to consider the type of works to be developed in the sessions. To what extent would that include (digital) cultural heritage? And to what extent does our copyright framework support the co-creation of digital cultural heritage developed by these diverse communities? How, if at all, does the law support the ownership and dissemination of co-created material including digital cultural heritage in this domain? How is the co-created CH to be managed? Will the co-creators have rights in the works? Or if not rights, will they benefit in some way? If so how?

In designing the co-creation sessions WAAG and UNEXE worked together to decide on a copyright policy, which also raised questions such as how the works produced in the sessions were to be attributed? Who would decide whose name would be associated with the works? To what extent would WAAG or RMV want to control the integrity of the

works produced? How would they go about doing this? How does that mesh with user generated or co-produced content? Are there things that aren't protected by copyright in the task that they considered to be valuable? In deciding on new or an alternative copyright (open or closed copyright) WAAG had to ensure that they were not already subject to certain existing terms and conditions relating to copyright.

Creative Commons Licence

In order to make the recorded material and co-created work from the sessions as freely available as possible for others to build upon after the sessions and into the future and to address the question of whether the co-creators will have rights in the work, it was decided to ask the contributors if they would be willing to use a Creative Commons (CC-BY) Attribution licence. The purpose of the CC strategy is to clearly spell out what can and can't be done with a work - and mostly to keep the works as open as possible. This licence lets others distribute, remix, tweak, and build upon work, even commercially, as long as they credit the owner/author for the original creation. The work is then free and available for use by the public under the terms of the CC-BY licence. The CC-BY licence is not an alternative to copyright but uses licence terms to say what uses can be made of the work.

The Consent Form

UNEXE designed a consent form for use by the participants outlining their contribution to the co-creation sessions, aspects of IP law and how it relates to them as co-creators (Appendix A) and this was translated into Dutch by WAAG. It acknowledged that not everyone would want to have their name associated with the works that they produced so participants were given a choice between a CC-BY licence with the authors (co-creator participants) attributed; and a CC-BY licence where it simply states that the work was co-created during a session at WAAG. The purpose of the consent form was to ask the participants if they would be willing to use a CC-BY licence - either where they are attributed as author, or where WAAG is attributed as author. It was intended as a request to the participant to use a CC-BY licence with their work.

In addition, two IP Toolkits were designed: one for the organisers of the sessions and one for the participants. This gave explanations of IP terms and described Creative Commons licences and provided a link for further information. This was to ensure that everyone was aware of the terminology used and the implications of copyright issues when co-creating cultural heritage. It would enable participants to understand the law around their own creations, to enter into informed discussions with third parties for use of their creations and have confidence in chosen exploitation strategies.

During the Session:

The co-creation sessions were planned for September/October/November 2014 on Saturdays, as most people were likely to have other obligations during the week. The first co-creation session took place in September 2014 at the premises of WAAG,

Amsterdam as it was decided not to start inside a museum as this would make it easier for all participants to think outside institutional structures. It was attended by twelve young people from the age of nineteen to late twenties; three staff from the Museum of World Cultures to think about how museums could be more relevant to young people; and two members of WAAG. The aim of the session was to share ideas and perspectives on heritage: what the participants felt was important to show in a museum collection, and which stories were important to them. The aim was to explore together what a museum – in which different cultures have a place – can offer to young people in the Netherlands. One aim was to develop an idea into an 'intervention' and then into museum practice although this was not a prefixed condition of the session and the participants were free to be open about their thoughts.

The second session was held on Saturday 25 October in RMV in Leiden. Thirteen young people (four of them were new) and five museum staff participated in the session.

During both sessions an introduction included an explanation of the consent forms. This explained that participation in the session was entirely voluntary and participants could withdraw at any point during the session or prior to publication of outputs if they so wished. They were informed that they would participate in the data collection stage of the study and that this would include using existing cultural artefacts from the museum to create new forms of heritage. They were also informed that the sessions would be filmed and that they would have the opportunity to see the recorded film prior to dissemination and they would have the choice whether or not to be included in the film. Participants were asked to read and sign a consent form and hand it in after the session (Appendix A).

After the Session:

After the first session there was an evaluation of the consent form. WAAG reported:

Most of the people didn't ask questions or make comments, they just read and signed, no issues, apart from one museum professional who was wary about publishing material online (no problem with using it for research and consortium purposes); I asked her to add this to the consent form, but she didn't (she'll probably get back to this when we ask them to view the material to be published) (Dick van Dijk (WAAG) Email 13/10/2014).

This may be because the museum professional was more aware of IP issues and may have encountered previous problems. When the participants view the materials to be published they too may well have questions about their own role in co-creation and the re-use by third parties.

In addressing the CC-BY licence they reported that "most people didn't choose between the two CC licenses, but some favoured 'my name' over 'anonymous' and some the other way around" (Dick van Dijk (WAAG) Email 13/10/2014).

When returning the signed consent forms some participants tore off the explanation text from the signed sheet and some handed all the sheets back to them. Digital copies were made of all signed sheets. In conclusion WAAG reported that overall the consent forms were clear and didn't raise any concerns from the participants during or after the session. Again, in the second session, no concerns were raised and importantly, no unnecessary concerns were raised by the text. WAAG, at one point, had been concerned that participants might feel intimidated by legal texts or would be blocked by the suggestion legal issues might come into play later on.

Conclusion

This case study has addressed issues of collaboration and co-creation of cultural heritage and the IP issues involved in this. By inviting the participants into a cultural institution to participate and collaborate allowed them to share their understanding of cultural heritage, what they value about it and how they think it should be accessed and re-used by third parties. It introduced aspects of IP law and copyright which enabled them to have knowledge and understanding of IP issues when collaborating or co-creating cultural heritage.

As co-creators of potentially new heritage practices and or 'new' cultural heritage the task highlighted the complexities of the right of an individual over intellectual creations, the rights of authors and inventors to the protection of their intellectual creations and protection of the creative abilities of individuals as fundamental human rights. The decision to use a Creative Commons (CC-BY) Attribution licence allowed the participants and the organisers to retain copyright of the work and to be attributed for it, but at the same time the work remains freely accessible and open to everyone without barriers.

The task not only gave the participants a new experience of cultural heritage but also a voice in a conversation and an opportunity to be involved in the co-creation of cultural heritage and to be attributed for their contribution. In doing so culture is understood as being intrinsic to human rights and exemplifies the RICHES IP Framework set out in this deliverable which advocates that IP should be used as a tool to support the right of *'everyone … freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefit'.*

5. CASE STUDY 2

Task 6.1 Digital Libraries, Collections, Exhibitions and Users

(Task Leader KYGM. Other participants: COVUNI, UK, Promoter SRL, Italy, and SPK Germany).

This second case study is based on RICHES Work Package 6 *Case Studies*, which aims to explore the status of digital heritage both for the case of CH mediated by memory institutions and for the case of non-mediated CH, such as the performing arts. In particular its objectives are to investigate in depth existing applications in the domain of digital libraries and digital exhibitions and to study the interaction of users with these applications. Re-using the content aggregated in the digital libraries, memory institutions

are experimenting with the creation of digital collections and digital exhibitions, where they show their most precious objects and complement the exhibited object, for example, with stories, contextualsing information and interactive features.

Surveys and interviews will be conducted to understand how users interact with, and have their needs met, by the digital services provided by German and Turkish institutions. A special focus of the research will be on the museums as places for education and learning. Desk research will include related projects and their approach to digital collections based on user perspectives. Learning and education in museums and libraries are also other important aspects of the research.

This case study is concerned with Task 6.1: *Digital Libraries, Collections, Exhibitions and Users*, led by Turkiye Cumhuriyeti Kultur ve Turizm Bakanligi (The Turkish Ministry of Culture and Tourism – General Directorate of Libraries and Publications) (KYGM) which is responsible for the libraries-related research of the RICHES project. This mainly focuses on cultural heritage within Europe and on the sociological aspects of library usage, including library users, their needs, the digitisation of works and the impact of this on users.

Task 6.1 is specifically concerned with the various forms of digital libraries and digital collections that have been developed and implemented by CH institutions over the past twenty years. The task aims to explore and systemise these achievements with a particular focus on the users in terms of needs, expectations and skills and the task will design research methods to enable them to understand how users interact with, and have their needs met, by the digital services provided by selected institutions.

The institution chosen for the task is the National Library (Milli Kütüphane), Ankara, Turkey, which was founded in 1946. It houses important Turkish national collections and is one of the richest and extensive holdings of over three million items including books, periodicals and manuscripts, paintings and cinema posters. Part of the collection has been digitised and the library website allows access to an online catalogue, database and e-books. It is a member of Europeana, Europe's digital library, archive and museum which supports digital innovation in the heritage sector. Europeana is a digital portal that works with over two thousand cultural institutions across Europe and provides online access to digitised collections. It offers an immense wealth of cultural material with the opportunity to be accessed and shared with a view to the democratisation of culture and knowledge. The National Library is also a member of the Conference of European National Librarians (CENL).

IP and Copyright

As with all RICHES Work Packages task leaders have the opportunity to consider the relevance of IP to CH and how it can be used to meet the right to culture and of relevant cultural rights outlined in the RICHES IP strategy. In terms of IP law for Task 6.1 questions to be considered include: How is the copyright in the contextualised integrated digital

collections to be managed? Who will own the rights? Will the works be limited to educational use? Or will other uses be permitted? Will new creations using existing collections be encouraged? What will be the place of copyright in that?

Turkish IP Law: An Overview

Turkey has signed up to the UDHR and has ratified the ICCPR and the ICESCR. Turkey is a member of the Berne Convention 1886, the WIPO Copyright Treaty 1996 and the TRIPs Agreement. 1994. In Turkey the Intellectual Property Rights and Copyright Law was legislated on 5 December 1951 and amended subsequently to reflect the requirements of obligations undertaken in international treaties. There is currently a reassessment regarding this law and its regulations about digital and non-digital sources. At present the Turkish Ministry of Culture and Tourism owns the rights to all its publications whether digital or non-digital and therefore employs a 'closed' copyright policy. This applies to all uses of works including commercial use, educational use and personal use. An exception to this is for libraries in respect of which there is a legal deposit duty. There are also special provisions for individuals with visual impairments. Libraries are also allowed to reproduce digital works for free usage in the library.

The policy for the Ministry to own copyright in its publications is explained by the fact they would have to pay the owner copyright fees. Works dated over seventy years are considered anonymous and no copyright is paid by the Ministry but this is not passed on to the visitor. To access digital sources, a paid membership system is applied and visitors have to pay a 'service fee' and this fee policy is applied in many directorates of the ministry not only in the National Library. This is not a copyright fee and there is non-profit policy on this service. At present, this closed copyright will apply to new

creations as there is not a specific law or policy concerning digital collections in Turkey (Email: Bahadir Aydinonat, KYGM, 31/10/2014).

In relation to Task 6.1 this case study is concerned with how Turkish copyright laws will affect the digitisation of collections and address the needs and expectations of users in the National Library in Ankara. In response to the question of how the copyright in the contextualised integrated digital collections would be managed the response from the Task leader stated:

> *Library users need to be a member to use the digital collections. By becoming a member users are allowed to browse the collections and see watermarked thumbnails of the digitized materials. But in order to download these digitized materials they need to pay-per-page (Email from Bahadir Aydinonat, KYGM, 31/07/2014)*

Users therefore have to go through two formal processes in order to access material: first they have to become a member which is free. Only when they become a member they

can access small thumbnail and watermarked material and then when they want to download them they need to pay-per-view and this system applies to all uses including commercial, educational and personal use. Although one of the main concerns of the Task is on education and learning the pay-per-view system will still apply. Even though the Ministry do not have to pay copyright fees for material that is over seventy years it appears that the user will not benefit from free access to work that is out of copyright protection. The purpose of charging the fees is to cover the costs of digitisation and to pay for future digital projects. (Email from Bahadir Aydinonat, KYGM, 5/11/2014). Although the National Library has signed up to Europeana, its contribution is limited as explained by the task leader, "it only shares the bibliographic records and small sized thumbnails. If you want to download you'll be directed to our servers and our policy" (Email Bahadir Aydinonat, KYGM, 5/11/2014).

The 2011 Comité des Sages report '*A New Renaissance*' [76]aimed to ensure wide access to and use of digitised public domain material and recommended "*To make it accessible to the greatest number of people without distinction or barrier*" (Comité des Sages 2011: 5) and that cultural institutions should "*make public domain material digitised with public funding as widely available as possible for access and re-use*" (Comité des Sages 2011: 9). The National Library's use of watermarks on the digitised material contadicts the Comite des Sages report who recommended that "*the use of intrusive watermarks or other means that limit the use of the material should be avoided*" (Comité des Sage 2011:9).

Turkey, however, is not a member of the European Union and therefore it has to be acknowledged that different countries have different approaches to CH, IP law and human rights and this case study exposes the difference between the universalist view of human rights and the relativist notion of cultural rights.

Right to Culture?

The National Library, by restricting access to culture does not comply with the 'right to culture' as discussed in this deliverable which recommends that " *Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits*'[77] (The Universal Declaration of Human Rights 1948[78] (UDHR) Article 27). Neither does it comply with the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR) Article 15 which reports that *"States*

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[76] European Commission Report of the 'Comité des Sages' Reflection Group on Bringing Europe's Cultural Heritage Online, Elisabeth Niggermann, Jacques De Decker and Maurice Lévy 2011.
[77] Article 27.1
[78] Adopted by the General Assembly of the UN 10 December 1948

must ensure that everyone has the right: '(a) To take part in cultural life; (b) To enjoy the benefits of scientific progress and its applications"

We have however noted that one of the constraining factors in following a human rights approach to culture relates to the need to support institutions and their endeavours. Here, the income from the pay-per-view system is used to support future digitisation projects. While on the one hand this runs counter to the 'open' approach supported by RICHES, on the other hand it is hoped that it will result in more digitisation programmes being carried out and ultimately greater accessibility of Turkey's CH.

Conclusion

This second case study highlights the tension set out in this deliverable that CH institutions face as they seek to fulfil public policy goals of increasing access to culture, while at the same time 'controlling culture' through claims of copyright, ownership and rights to exploitation of digitised artefacts and balancing that with the need to raise finance. In addition it raises awareness of the difficulty in implementing theory into praxis and the complex relationship between copyright and culture.

As with Case Study 1 the main question for RICHES Task 6.1 was to consider whether there would be an 'open' or 'closed' copyright policy. This case study highlights the constraints of developing an IPR strategy where the prime concern for participants in developing their tasks was to consider cultural rights and the right to culture and how IP could contribute to those goals.

The National Library has demonstrated the restrictions in using a 'closed' access policy in changing and challenging times. In having a 'closed' copyright policy the National Library remains a traditional, authoritative cultural institution albeit that the motivating factors have much to do with supporting future digitisation projects. That besides, CH, in the National Library, as a subject of copyright, becomes a form of 'controlled culture' by exercising a series of exclusive rights over it. The 'closed' copyright policy driven by the need for income prevents the digitised material from being widely available for access and re-use and restricts or excludes users of limited financial means of accessing their cultural heritage. CH, as a form of property, becomes inaccessible for some. Even though Task 6.1 will focus on education and learning this will come under the closed copyright policy of the National Library in Turkey.

This highlights the debate between access to culture on the one hand and the privatisation of culture on the other through the ownership and control of culture by CH institutions. In addition it raises the question as to how to reconcile the right of users to freely participate in, and have access to, culture with institutional hegemony in the control and protection of cultural products and cultural policy driven by economic factors.

6. Discussion/Conclusion(s)

These two case studies, contextualised within the shift from analogue to digital, demonstrate how the legal framework recommended in this deliverable in relation to CH, copyright and human (cultural) rights are played out in practice. Further, they demonstrate how developments in digital technology have impacted on CH institutions from new practices, new products and new audiences – on many levels, social, cultural, political and economic.

The two case studies highlight two different perspectives and expose the tensions at the interfaces between cultural heritage, copyright, the right to culture and human (cultural rights) and expose the diverging approaches to IP, cultural rights and the right to culture.

As set out in this deliverable, a question – and a challenge – for the RICHES project, is as to whether the groups involved in the creation, selection and mediation of CH within the

RICHES case studies could benefit from the cultural rights articulated in the UNESCO Conventions.

The first case study approached cultural heritage through the lens of human rights with emphasis on public goods, access and communication. It was as concerned with the process of something becoming part of our cultural heritage as with the product, and valued information and knowledge as public good; one that strives to recognise the collaborative nature of CH; and one that is rooted in community and identity. Copyright was still considered important but not as an end in itself; rather it became the means for the realisation of the goals of cultural rights and of the right to culture.

In contrast, the second case study approached cultural heritage through the traditional hegemonic lens of copyright law and the commodification of culture, private property, ownership and control. Culture was considered as an economic asset even though it was non-profit making. In retaining the rights to digital material exemplified the notion of copyright as the predominant framework for regulating the generation, dissemination, and use of knowledge. As previously stated, within these changing and challenging times, there is currently a reassessment of copyright policy for digital and non-digital works in Turkey.

The RICHES project gives the opportunity to think about the legal environments that help to shape the way in which the relationships between institutions and users of CH are developed and maintained, how CH is produced and consumed, accessed and preserved in this digital world. It highlights that relationships are changing and becoming more decentralised as digital technologies present increasing opportunities to individuals and communities. With increasing cultural democracy through access to computers and the internet: could the reasons for the open strategy to culture, as recommended by RICHES, be helpful to Turkey as it undergoes the reassessment of its authoritative 'closed' copyright policy? The argument for approaching CH and IP contextualised within a Human Rights approach, as advocated in this deliverable, may form the foundation for the challenges to cultural hegemony that lie ahead.

7. Appendix A

Permission for use of material for research

RICHES- co-creation and living heritage for social cohesion

What is the purpose of this research?

The purpose of our study is to investigate the relationship between personal experiences of heritage and heritage institutions. We do this through co-creation methods, focused on media (production and broadcast) and museums (collections and presentations). A diverse group of young people from different backgrounds is involved in this study. The results will help to find new directions for museums and their contributions to social cohesion.

Why should I participate?

You are asked to participate by someone from your network. This person believes that you can make a valuable contribution to this research. Participation in the research is entirely voluntary. If you change your mind about your participation, you can at any time- during the investigation and before the publication of the results-retreat by contacting the team via the email address on this form. There are no consequences if you decide that you no longer wish to participate in the study.

What will I have to do exactly?

You will participate in the data collection phase of this study. This means participation in a small number of co-creation sessions with other participants and representatives of Waag Society and the Museum of World Cultures. These co-creation sessions or workshops are captured on video. You will have the opportunity to see the material used before we publish. You can choose not to be included in the video report.

In addition to co-creation sessions you may be asked to participate in short interviews with the project team and/or a focus group session. Also any interviews and focus group discussions that you take part in will be available for transcription, analysis and publication. You may also, if necessary, be asked to fill in questionnaires in the course of the research project. Before any publication you can decide if you want your contribution to be anonymous.

What are the possible disadvantages and risks of participation?

A possible disadvantage is the time that we ask of you.

What are the possible benefits of participation?

You will have the opportunity to reflect on a contemporary role for heritage and be involved in thinking about new forms of accessibility and use of cultural heritage.

One goal of the study is influencing and creating policies and procedures within museums and elsewhere in the cultural heritage sector in Europe. Your participation will contribute to this aim.

What if something goes wrong?

If you're concerned about the nature of the research, you can at any time contact the research team. There is a counsellor at Waag Society when you want to talk to someone who is not directly involved in the project. If you decide to withdraw all of your data will be destroyed and will not be used in the research.

To what extent will my contribution be anonymous?

We aim for our research to be as transparent and relevant as possible and as such the study participants, along with their work in the co-creation sessions, will be available

for you to see. We give you access to the results before publication to ensure that you are satisfied with the way you and your input are presented. Only the research team has access to the raw data collected in the project. All consent forms are stored in a separate, secure location (closed), separate from the raw data itself. The raw data is preserved until the end of the project period (1 June 2016), afterwards they are destroyed.

What happens to the results of the study?

The results, including all relevant passages from co-creation sessions, any interviews and focus group discussions, will be processed and published in the form of a report (text and image, offline and online). A selection of results, including images, will be presented at public events (conferences etc.). The results can also be presented on scientific forums and/or processed for publication in peer-reviewed scientific journals. The study will form part of a European policy report for the RICHES project.

What about the copyrights on the works that are created during the co-creation sessions and resulting production?

During co-creation sessions you will make use of existing material (objects, magazines, online media etc) some of which are part of the public domain, and some of which are protected by copyright (because the author is still alive or died less than 70 years ago). New copyright originates in the objects, photographs, texts and other pieces of work that you produce during the co-creation sessions. Sometimes you will have copyright to this.

Waag Society and the Museum of World Cultures want access to these works as free as possible for others to build on after the co-creation sessions and in the future.

To make this possible, we propose to connect these works to a CC-BY license. A CC-BY license is a so-called Creative Commons license (for more information see www.creativecommons.nl) that a user of the work allows it to be used in other ways as long as they mention the author's name. In this way it is clear that you, as the author or co-author of work created during the co-creation sessions, be recognised as author of the work. Anyone who uses your work in this way must mention your name when they reuse the work (for more information on the CC-BY license that governs attribution see http://creativecommons.nl/uitleg/).

If you'd prefer not to associate your name as the author of a work WAAG Society can be named as a co-author of the work under a CC-BY licence and any use or re-use of the work should acknowledge this as: 'co-created at Waag Society on 27 September 2014'.

If you have any questions about this copyright policy please feel free to contact the research team.

Who organizes and funds the research?

This study is organized by Waag Society in cooperation with RICHES (www.riches-project.eu) funded from the Seventh Framework Programme of the European Union for research, technological development and demonstration activities under grant agreement nr. 612789.

Contact for more information

For more information about the research, please contact Dick van Dyke of Waag Society, on telephone number 020 5579898 or email dick@waag.org.

Consent Form

Datum: ---------------------

Plaats: ----------------------

Participant:----------------

I have read the attached fact sheet on research *RICHES-co-creation and living heritage for social cohesion* and understood by below, I authorize to participate in the research.

I understand that I have the right to withdraw from the research, without due cause, at any time during the study.

I understand that I have the right to view or hear the processed material in which I participated prior to its dissemination and publication and that I have the right to be exempted from external publication.

I agree with the use of the CC-BY license for my work:

- as (co-) author

- anonymous, with reference ' co-created at WAAG on 27 September 2014 '

(delete as appropriate)

Handtekening: ---

Volledige naam: ---

Signature Research Team:--