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# Cultural Heritage Accessibility in the Digital Era and the Greek Legal Framework

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## Abstract

New technologies provide great opportunities for cultural heritage to become more widely accessible and for cultural experience to be more meaningful. The COVID-19 pandemic has highlighted the strengths and vulnerabilities of the cultural heritage sector and the need to accelerate its digital transformation to make the most of the opportunities it provides. The Commission Recommendation on the digitisation and online accessibility of cultural material and digital preservation (2011/711/EU) concluded that there is an urgent need to protect and preserve European cultural heritage, and, in particular, endangered cultural heritage is still present. However, the diversity of legal approaches to cultural heritage by the Member States discourages the creation of a common European data space for cultural heritage as the European Commission recently proclaimed. In Greece, there have been significant efforts in recent decades to digitise and digitally preserve cultural heritage goods. However, the attention was not drawn upon the accessibility and reuse of the digitized cultural heritage content. According to the relevant regulatory framework the existing rules on the use of digital technologies for the reproduction, use and preservation of cultural heritage content is obviously outdated. According to the paragraphs 4 and 5 of article 46 of the Greek Code for the protection of antiquities and cultural heritage in general (Law 4858/2021), a previous permission granted by the Ministry of Culture is required for the production, reproduction and dissemination to the public of impressions, copies or depictions of monuments belonging to the Public Sector, or immovable monuments that are located within archaeological sites and historical places or are isolated, or movable monuments that are kept in museums or public collections, in any way and by any means whatsoever, including Information Communication Technologies. Such permission is granted to natural or legal persons for a fee paid to the Hellenic Organization of Cultural Resources Development (HOCRED) upon the decision of the Minister of Culture, while the decision also specifies the temporal validity of the permission, the terms on which the permission is granted and the fee that must be paid. The production, reproduction and use of the aforementioned goods for other purposes, such as artistic, educational or scientific purposes, is again allowed for a fee paid to HOCRED, however, the fee can be

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Extended author information available on the last page of the article

waived upon the decision of the Minister of Culture. This Paper will examine the existing Greek legal framework and will attempt to propose an appropriate framework that will ensure open access to the digitized cultural heritage assets, enhance the recovery and transformation of the cultural heritage sector and support cultural heritage institutions in becoming more empowered and more resilient in the future.

**Keywords** Greek cultural heritage law · Digitisation · Access · Reuse · Digital cultural content · Cultural heritage

A revolutionary shift in the ways cultural heritage material can be accessed and reused by everyone has been observed in the last two decades. The ever-growing Information and Communication Technology (ICT) sector has been enriched with advanced digital technologies, including 3D technology, artificial intelligence, machine learning, augmented and virtual reality, which have been gradually introduced into all processes of cultural institutions over the last decade. At the same time, the COVID-19 pandemic has made it imperative to accelerate the digital transformation of cultural institutions in order to meet the ever-increasing public demand for access to digital services. In addition, the public's persistent interest for more engaging digital experiences and quality content pushed the reflection on how to further promote European cultural heritage in the digital space and to strengthen access structures to digital cultural content. A manifestation of European Commission's strong willingness to support the cultural heritage sector to make best use of their digital assets, in order to procure the full benefits of the digital transition, is the launch of a Collaborative Cloud for Europe's cultural heritage. This cloud will be developed under Horizon Europe, the EU research and innovation programme (2021–2027) [1].

Despite the undeniable benefits that digitization of cultural heritage may procure, the European regulatory framework on the way in which digital-digitized and born-digital-cultural heritage should be accessed and reused is not harmonized. Various national legislations present significant differences in protection, access and reuse of cultural heritage. Several states, such as Greece, seem very cautious when facing this technological transformation. While traditionally adhering to a statist protectionist approach to physical cultural heritage,<sup>1</sup> they tend, elliptically, sometimes awkwardly, to extend this into the digital environment. The impact of such legislative shortcomings or omissions is even more significant keeping in mind the technological revolution offering at the same time a transborder enjoyment of culture and an unprecedented potential for innovation due to cross-sectoral cooperation and alignment. At issue here is the potential social and financial implications related to

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<sup>1</sup> Historically, the legal framework of antiquities was strongly connected with the State and the formation and fostering of national identity in Greece. Even within the first Greek national legislation on antiquities in 1834, article 61 explicitly sets out that “all antiquities within Greece, as works of the ancestors of the Hellenic people, shall be regarded as national property of all Hellenes in general.” See Refs [2, 3].

the further use and exploitation of both digital-born and digital surrogate heritage [4] and the effective control of it.

This paper examines the existing regulation on the use of digital technologies for the reproduction, use and preservation of cultural heritage content in Greece. As it attempts to place the Greek case in the context of the European landscape and the broader debate about ownership of culture in the digital realm, a brief presentation of the European institutional framework for the digitisation of cultural heritage will be first made.

## 1 The Role of the European Commission for a Digital European Cultural Heritage

In Europe, the digitisation of cultural collections was seen as a crucial step towards establishing a European data space for cultural heritage and thus strengthening the European cultural identity in the international environment. The interest in creating user-friendly access structures in the Information Society is reflected by the actions of the European Commission's 5th Framework Programme for research, technological development and demonstration activities for the period 1998–2002 [5]. At the same time, during the same period, the eEurope 2002 initiative aimed to create an integrated action plan for eEurope that would promote the creation of quality digital content and ensure equal access to digital content. One of the main objectives of the action was to enhance the creation of digital content for global networks and to promote linguistic diversity through the creation of structures for accessing digital content [6]. One of the first research projects implemented for this purpose was Digital Culture (DigiCult, 2002–2004) [7].

The European institutional framework for the digitisation of cultural heritage has been progressively established via three Recommendations of the European Commission that have been drawn up to date (2006, 2011, 2021). Firstly, Recommendation 2006/585/EC on the digitisation and online accessibility of cultural material and digital preservation focuses on encouraging the digitisation of the collections of cultural heritage organisations to enable the use of digitised material for entertainment, research and employment, as well as its use in other sectors such as tourism and education [8]. Recommendation 2006/585/EC focuses on the mass digitisation of cultural collections, the creation of common standards for digitised content, the harmonisation of rules governing the distribution of digital material between Member States and promotion to create a common European access point to digital cultural content. The inconsistency in its implementation by Member States as reflected in progress reports in 2008 and 2010, the launch of Europeana in 2008, the publication of the New Renaissance report by the *Comité des Sages* in 2011 [9] and the Directive of the European Parliament and of the Council on orphan works of 24 May 2011 were the main factors that lead to the need to update Recommendation 2006/585/EC.

Secondly, Recommendation 2011/711/EU on the digitisation and online accessibility of cultural material and digital preservation [10] is an outgrowth of the New Renaissance report, as it incorporates the *Comité des Sages* recommendations

to help Member States reap the benefits of digitisation and digital preservation of cultural content. Particular reference is made to digitisation and access to public domain material, that is to ensure that public domain content remains in the public domain after digitization<sup>2</sup>. With regards to the digitisation of Intellectual Property protected cultural material, the implementation of the provisions on orphan works and the strengthening of licensing mechanisms for the digitisation and access to out-of-print works are highlighted. The Recommendation also makes particular reference to the availability of digitised material on Europeana and provides for any public funding for digitisation projects to be conditional on the availability of digitised material on Europeana. In addition, the Recommendation encourages the establishment or strengthening of national content aggregators and the use of common digitisation standards to be defined by Europeana. Finally, it is proposed to make public domain digitised material freely available through Europeana by 2015.

In conclusion, while Recommendation 2006/585/EC focused on the mass digitisation of cultural material, Recommendation 2011/711/EU focused on strengthening access structures to cultural material, in particular through the further development of Europeana. The specific reference to access digitised public domain content and orphan works also promotes the right to participate in cultural life and cultural diversity, ideas which are reflected in the New Renaissance report and systematically organised in Recommendation 2011/711/EU.

Thirdly, Recommendation 2021/1970 of 10 November 2021 aims to lay the foundations for the creation of a common European cultural heritage data space [11], which is part of the broader Digital Single Market strategy objectives. Its objectives are to accelerate the digitisation and preservation efforts of Member States and to boost the reuse of Europe's digitised cultural heritage assets. The Recommendation invites Member States to set up digital strategies for cultural heritage, take advantage of advanced technologies, and set targets for the digitisation of cultural heritage at risk, highly visited monuments and sites and under-digitised cultural heritage by 2030, as well as intermediate targets by 2025. Well-defined mandates for national and regional aggregators, focusing on interoperability, will pave the way for a common European Data Space for Cultural Heritage. Some of the benefits of this initiative, as set out in Recommendation 2021/1970, include the creation of high-quality digital cultural content, enhancing the reliability and usability of access structures to European cultural heritage assets, strengthening cooperation and partnerships in the context of digital data management, promoting the reuse of content and stimulating creativity.

Member States are invited to contribute to the common European cultural heritage data space through the adoption of advanced digitisation processes. In particular, the Recommendation focuses on 3D digitisation, which is considered necessary for the preservation and restoration of cultural assets, as well as for creating more attractive (e.g. access to archaeological sites and closed monuments) and inclusive experiences (e.g. creating tactile exhibits for the visually impaired). In this context,

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<sup>2</sup> In this context, it is recommended that the use of watermarks or other visual means of protecting public domain content be limited.

specific targets are set, such as the 3D digitisation of all heritage assets at risk and 50% of the most visited monuments, buildings and heritage sites in each Member State by 2030.

To facilitate digital transformation, Chapter II of the Recommendation refers to the existing Copyright framework, which Member States are invited to make more systematic use of. Cultural heritage institutions have encountered different copyright-related obstacles when digitising and sharing cultural heritage, such as the costs associated with clearing rights, lack of sufficient copyright expertise among cultural heritage professionals, limitations to cross border cooperation between institutions. Specific measures have therefore been taken at the EU level to address such challenges. For instance, Directive (EU) 2019/790 on copyright and related rights in the digital single market lays down various provisions modernising the copyright framework that governs how cultural heritage institutions operate in the digital environment [12]. One of the most important changes introduced by the Directive is a clear framework for the digitisation and dissemination of out-of-commerce works that cultural heritage institutions have in their collections. Moreover, the Directive introduces harmonised and mandatory exceptions for making preservation copies by cultural heritage institutions and for text and data mining for scientific research. Finally, the Directive attempts to clarify the status of works of visual art in the public domain with the objective to increase legal certainty. In particular, the new copyright rules will facilitate a core public interest mission of cultural heritage institutions by enhancing the preservation and availability of cultural heritage and by significantly facilitating the use of works that are no longer commercially available for the benefit of European culture and of all citizens. Member States must therefore ensure an effective implementation and application of EU copyright legislation so that cultural heritage institutions can fully benefit from the copyright framework, as updated in particular by Directive (EU) 2019/790. Finally, Member States are required to ensure that data resulting from public sector funded digitisation projects are aligned with the FAIR principles for research data management [13].

In conclusion, Recommendation 2021/1970 aims to update digitisation processes in the light of advanced digital technologies, to accelerate the digital transformation of cultural institutions by integrating these technologies and enhancing the digital skills of those working in the sector, and to adopt procedures, practices and policies for the creation of a common European cultural heritage data space. In this framework, the European Union took the initiative of creating a “European Collaborative Cloud for Cultural Heritage” [1], which is a digital infrastructure that will connect cultural heritage institutions and professionals across the EU contributing in this way to the vision and objectives of the Commission.

## 2 The Greek Institutional Framework on Cultural Heritage

In Greece, significant efforts have been made in recent decades to digitise and digitally preserve cultural heritage assets. Since 2016, the Greek Ministry of Culture officially has been stating that “the great potential residing in the affiliation of heritage with digital technologies and the ensuing need for the effective use of the latter

in the protection, management, promotion and dissemination of the cultural capital, is at the center of the policies and the strategic planning of the Hellenic Ministry of Culture and Sports” [14]. The Ministry’s strategy and planning in the domain of digital cultural curation revolved around three main axes, that is (a) the creation and continuous enrichment of national and European repositories of digital cultural content, (b) the long-term and sustainable conservation and management of digital cultural assets and (c) the uninterrupted availability and accessibility of digital cultural assets through the implementation of up-to-date and constantly renewed technologies. The Hellenic Ministry of Culture and Sports has been participating since 1996 in various European research programmes. Moreover, a variety of national projects confirms the Ministry’s willingness to fulfill the axes as mentioned above.<sup>3</sup>

At the same time though, there seems to be some concern regarding the protection of cultural goods and their history from derogatory treatment. In the context of an international conference held in Brighton, England in 2016, on the theme of digital archaeological heritage, organised by the European Archaeological Consilium, Dr. Korka, Director of Antiquities and Cultural Heritage of the Hellenic Ministry of Culture and Sports stated that “the variability of uses and users of the digital cultural capital, combined with the speed and ease of propagation and reproduction and amplified by the inherent difficulties of monitoring and regulation of the vast world of the Internet and the Social Media, create additional challenges in preserving the integrity and identity of the digital cultural content. It can easily be cut off from its meaningful context, which is necessary for its interpretation and understanding” [15: 97].

More recently in 2021, Greece established a national digitization strategy, the “Digital Transformation Bible” that outlines the objectives, the guiding principles, the strategic axes of intervention, the architectural design of the systems, the governance model and various interventions implementing the digital transformation of the Greek society and economy for the period 2020–2025 [15]. All the issues relating to cultural heritage are directly managed by the Ministry of Culture. On the Ministry’s official website it is declared that “in the field of culture, the country’s lag in the creation of digital applications for archaeological sites and museums will be covered by the development of digital models of cultural production and distribution, as well as innovative digital services, such as the display of exhibits using virtual reality technologies, while a number of actions are presented for the enrichment of digital content” [16].

It is worth noting that according to the Digital Transformation Bible, one of the general objectives, in which the digital transformation of culture to be organized, relates to the licensing of digital content and its exploitation as open data. The

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<sup>3</sup> The main national projects that could be referred here as examples of the digital cultural heritage strategy are the Catalogue of the Listed Archaeological Sites and Monuments of Greece, compiled and published since 1999, the first National Archive of Monuments Information System (‘POLEMÓN’ 1995–1997 and 2006–2008), designed to meet the needs of the various units and services of the Hellenic Ministry of Culture providing an integrated set of tools for Monuments and Collections Management, the ‘POLYDEUKIS’ platform (1999–2000) for producing a thesaurus of terms related to cultural heritage and (d) an ongoing nationwide digitization campaign. See Korka, Elena [14]: 97.



adoption of modern and flexible practices for cultural content licensing is considered to be significant. It is strongly recommended that “digital surrogates be available as public open data, as this will increase their dissemination and impact, returning to the provider-creator and the country a multiplicity of benefits, both directly and indirectly” and that “public domain works in analogue form should remain freely available in digital form and the digitisation of such works should lead to increased public access rather than new restrictions” [17]. These recommendations strongly depict the overall objectives and principles enshrined in the Open Data Directive 2019/1024 on open data and the re-use of public sector information and in article 14 of the Digital Single Market Directive 2019/790 on copyright and related rights. The Open Data Directive sets out as its main objective to maximise the re-use of public data, including public cultural data, to further stimulate digital innovation in products and services, and thus to expand social and economic benefits within the European Union” [18], in an effort to pursue and intensify harmonization of national rules and practices on the re-use of public material, data and information.<sup>4</sup> The Copyright Digital Single Market Directive attempts to safeguard public domain on the field of visual works by providing article 14, requiring that no neighbouring rights should exist for non-original photographs or non-original digital copies of works of visual arts in the public domain.<sup>5</sup>

During the Council of Europe Steering Committee for Culture, Heritage and Landscape (CDCCP’s) tenth thematic session on Archaeology and Digital Technologies that took place on the 8th of December 2021, various member states exchanged their best practices, with particular reference to the European Convention on the Protection of the Archaeological Heritage (revised, Valletta, 1992) [19]. Two main digital tools of the Hellenic Ministry of Culture and Sports for the implementation of the Valetta Convention were presented; firstly, the archaeological cadaster, a platform that enables the complete supervision, protection and management of the cultural environment by all the Services involved, at the central and regional level and at the same time, informs all interested citizens, professionals, and public bodies about Greece’s cultural heritage and the restrictions that may exist under the current legislation in areas of archaeological interest [20]. A second digital tool presented referred to the digital collections of moveable monuments [21]. It’s a platform

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<sup>4</sup> See Recitals 15, 20 and especially Recital 49 of the Open Data Directive: Where an exclusive right relates to digitisation of cultural resources, a certain period of exclusivity might be necessary in order to give the private partner the possibility to recoup its investment. That period should, however, be limited to as short a time as possible in order to comply with the principle that public domain material should stay in the public domain once it is digitised. The period of an exclusive right to digitise cultural resources should in general not exceed 10 years. See also Recitals 16–19 of the Directive 2013/37/EU of the European Parliament and of the Council, which amended Directive 2003/98/EC. It should be noticed that only libraries, including university libraries, museums and archives are included into the scope of the Open Data Directive whereas other types of cultural institutions such as the organisations relating to ‘performing arts’ and the public broadcasting organisations are excluded from the material scope.

<sup>5</sup> Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC. <https://eur-lex.europa.eu/eli/dir/2019/790/oj>. Accessed June 14.



initially planned for effectively recording, documenting, administering, curating, and monitoring and protecting the State's collections of moveable monuments—exhibited in museums or held in storage—against wear, loss and theft [15: 98]. Today, this platform includes around 700,000 movables from museums and archaeological storerooms, the product of almost two centuries of fieldwork in Greece. It also gives access to over 67,000 digital cultural assets which have been made available in both the national aggregator and Europeana. The users can access and reuse the relevant cultural material by using the creative commons license by-nc 4.0 [22], an active legal tool that can only be applied under the authorization of the copyright owner. In other words, the Minister of Culture claims not only the rights as they are derived from the relevant Greek Cultural Heritage Law but also the copyright of the images of the digitized cultural material.

As a general observation, while digitisation is being systematically achieved, the promotion of digital resources and the care taken to ensure their long-term access and usefulness, their digital curation, are lagging behind. Digital curation encompasses a set of activities aiming first at the production of high quality, dependable digital assets; second, their organization, archiving and long-term preservation; and third, the generation of added value from digital assets by means of resource-based knowledge elicitation [23]. The third component encompasses the functions aimed at developing value-added services and new uses of digital resources, so that digital objects become universally accessible, both as physical entities and as symbolic objects open to new interpretations [24]. The third component is the one that in our opinion encounters difficulties in the present context. Online access to the digital collections is primarily focused on the management and documentation of digital objects in the National Inventory of Monuments, conforming to article 4 of the Cultural Heritage Code<sup>6</sup> whereas accessibility, reuse, interaction and participation are only incidental. Whereas article 4 para 2 of the Cultural Heritage Code provides that the specific conditions for the exercise of the right of access to cultural data for research or other purposes will be laid down by specific Presidential Decree, no such Presidential Decree has been issued so far.

Finally, it should be noted that there is no clear interconnection of the collections with the national aggregator and Europeana, at least when visiting the Ministry of Culture official webpage nor well defined reference to the policy on copyright management regarding any reuse of the digitised cultural material.

### 3 The Greek Legal Landscape on Cultural Heritage

Traditionally heritage as public property owned by the state was reiterated in the Archaeological Law no. 5351/1932. The antiquities were considered as inalienable goods exempting them from trade or transactions for the benefit of the public [25].

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<sup>6</sup> According to article 4 para 1 of the Greek Cultural Heritage Code for the protection of antiquities and cultural heritage in general (Law no 48588/2021) the monuments shall be recorded, documented and registered in the National Inventory of Monuments which shall be kept at the Ministry of Culture.

The formation and fostering of national identity in Greece is closely related to the broad State-centric legal protection of all types of elements of the country's cultural heritage [26]. State ownership and its obligation to preserve heritage for the public benefit is reinstated also in the Greek Constitution. Conformingly to article 24 par. 1 of the Constitution, "The protection of the natural and cultural environment constitutes a duty of the State and everyone's right". People have the right to preserve cultural goods and also the right to enjoy cultural freedom [27].

Article 24 of the Greek Constitution does not directly address the notion of digital access to cultural environment. Its wording, however, in our opinion, in conjunction with Article 16 para 1 of the Greek Constitution, according to which "art and science, research and teaching are free; their development and promotion is an obligation of the State", does not exclude it. This seems to be the direction in which both legal scholars [28, 29] and case law seem to be moving.

The provision of article 24 itself does not define what the natural and cultural environment consists of. This 'omission' on behalf of the legislator serves to broaden the concept of the environment so that the protection enjoyed by the environment -both natural and cultural- might be broader and more comprehensive. By the decision of the Council of State no 3682/1986, the right to protect the natural and cultural environment in Article 24 was classified as a mixed right of use and participation. In other words, it was ruled that Article 24 establishes a right of a mixed nature that has an individual, social and political dimension [30].

In execution of the constitutional requirement of paragraph 6 of Article 24<sup>7</sup>, Law no 3028/2002 (A' 153) was issued, which established the specific framework for the protection of the country's cultural heritage, from ancient times to the present day, in order to preserve historical memory for the sake of present and future generations and to enhance the cultural environment.

According to the explanatory memorandum of the law, the fundamental principles underlying the protection of cultural heritage that it aims to protect include facilitating citizens' access to the elements of cultural heritage. In particular, in p. 4 of the aforementioned report, it is stated that "the concept of protection of cultural heritage has been redefined by incorporating modern concepts. These include awareness-raising, education and entertainment of citizens through acquaintance with the country's cultural assets. To this end, provisions have been included in the draft law to facilitate citizens' communication with the elements that make up cultural heritage. In this way, the citizen's right of access to cultural goods is guaranteed on terms of equality and subject to the absolutely necessary restrictions on their conservation and preservation" [31]. With the provisions of Law no. 3028/2002 a special right of citizens to free access to and communication with the elements of cultural heritage is established, which is part of the broader right to enjoy the cultural environment, as enshrined in Article 24 para. 1 and 6 of the Constitution. Therefore, the issue of access to cultural goods takes on a political dimension which focuses on the concept

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<sup>7</sup> Article 24 para 6 of the Hellenic Constitution states that "Monuments, traditional areas and traditional elements are protected by the State. A law will define the property restrictions necessary for the realization of this protection, as well as the manner and type of compensation for owners".

of cultural democracy, the active and widest possible participation of individuals and society in the creation of cultural goods, in decision-making concerning our cultural life and in the dissemination and enjoyment of culture [32].

The systematization of the current regulatory framework for the protection of antiquities and cultural heritage came with the codification of the legislation for the protection of antiquities and cultural heritage in general.<sup>8</sup> Article 3 of the Greek Cultural Heritage Code defines the content of the protection of national cultural heritage as, among other things, the facilitation of public access and communication with it and its promotion and integration into modern social life. The comprehensive protection of monuments is therefore achieved when they are brought out of isolation and integrated into citizens' lives as an organic part of their everyday life, given that direct contact with cultural goods educates, stimulates knowledge of the past and develops society [33].

In addition, the Greek legislator systematizes the responsibilities of the administration regarding access to and use of cultural property. According to Article 46 of the Cultural Heritage Code entitled "Access and use of monuments and sites", the terms and conditions of access and use are regulated according to the type of use of the site or monument and the persons who come into contact with the object of protection. Thus, there is a distinction between the context of a simple visit to that of use for the holding of events, while increased rights of access in relation to the general public are granted to special experts in movable cultural goods or "monuments,"—to use the terminology employed<sup>9</sup> [34]—located in public museums and storage areas under the supervision of the competent department of the Ministry of Culture for the purpose of photographing or filming, studying or publishing them. Regarding the use for cultural or other events, these may take place at the sites provided that a technical risk assessment is carried out, the monument is not unduly stressed and that events are compatible with their status as monuments or protected areas. An administrative license from the Minister of Culture, after consultation of the Council<sup>10</sup>, and payment of a special fee is obtained in any case, except for events of a non-profit nature (the license is still needed).

Finally, Greek law makes it possible, under certain conditions, for the public to have access even to movable or immovable monuments whose owners or holders are

<sup>8</sup> Law no. 4858/2021, Government Gazette (FEK) A' 220/19.11.2021.

<sup>9</sup> The Greek term is "mnimeia", a term referring to memory. According to article 2, subpara. (b), by "monuments" are meant cultural objects which constitute material evidence and belong to the country's cultural heritage, whose special protection is called for. Monuments are divided into ancient and modern (or "recent," in the official translation) (i.e., those later than 1830), and also into immovable and movable. The distinction of cultural property into several categories is of practical importance in that it leads to different levels of protection. Indeed, taking into account the chronological period to which cultural property belongs, the Greek legislator distinguishes between: (i) ancient monuments or antiquities, movable and immovable; (ii) modern monuments, movable and immovable, and presents differences in the regime according to this type of distinction, both as regards the nature and the level of the protection granted and as regards their ownership regime. See Refs. [2, 34].

<sup>10</sup> The Council includes officials of the Ministry and academics or other experts assigned almost exclusively by the Minister. There are two different councils, the Central Archaeological Council and the Central Council for Modern Monuments.

private individuals, as well as to private collections. More specifically, in the case of ancient immovable goods, according to article 9 par. 3 in the event that the competent administrative service has decided to preserve the ancient cultural good, its owner may be required to allow access to it under conditions decided by the Ministry of Culture after consulting the council. Furthermore, article 11 par. 2 applies for immovable cultural goods, according to which, following an opinion of the council, the property must be made accessible to visitors at the request of the private individual, while for movable goods, Articles 29 par. 2, 30 par. 3 and 31 par. 9 of the law apply, according to which all holders of ancient movable cultural goods are obliged to make them available for a reasonable period of time for exhibition at home or abroad.

#### **4 The Greek Legal Framework on Digital Cultural Heritage Availability**

Due to social developments, the issue of access to cultural goods remains relevant today. Globalisation is redrawing territories, abolishing borders and calling into question 'cultural state sovereignty' in an era of constant acceleration and digitisation of processes, elements that make access to cultural goods faster and easier in a new virtual dimension. It is an undeniable fact that new technologies offer increased access and association with cultural goods to a wider audience.

As a result, the democratisation of culture is enhanced and more cohesive communities are formed. In light of the above, the increased availability of digital surrogates is beneficial, and digital technology is frequently portrayed as a means of democratizing culture [35]. However, there seem to be also -legitimate?- questions and concerns about providing open access to images of digitized cultural heritage material, what that might mean for the State and how the material may potentially be used in an inappropriate manner. Taken out of its context, such items may be used to convey messages contrary to the intended, possibly in conflict with the Greek policy of the cultural institutions housing the collections. The recent cover of German Focus Magazine doctoring the statue "Venus of Milo" raising her middle finger to Europe entitled as "Cheaters in the European family" in reference to the recession-hit country or the use of the image of the Parthenon in an advertisement of a British stockbroker company that portrayed the Parthenon as a ruin are some of the most characteristic examples to specify this concern.<sup>11</sup>

The national legislator is trying to exercise or at least retain control over licensing the cultural goods' images, to maintain power over use. The effort of the nation state to control not just the materiality of the antiquities, but also their symbolic dimension by setting conditions for their reproduction and imposing terms on how such reproductions are to be disseminated, published and used is clearly identified [36]. This consideration was confirmed recently on the occasion of the transposition of the

<sup>11</sup> <https://www.tovima.gr/2010/03/02/culture/i-megaloprepis-thermastra-tis-elladas/> and <https://greekreporter.com/2011/12/16/german-focus-magazine-%ce%b5explains-insulting-venus-de-milo-cover/>.

Digital Single Market Directive 2019/790 into Greek national law. Greece adopted changes to its Copyright Act, transposing all the provisions of the Digital Single Market directive by law on 24 November 2022.<sup>12</sup> The public domain provision (article 14) has been implemented *ad verbatim* into the Greek Copyright Act. New article 31A of Law 2121/1993 states that “when the term of protection of a work of visual arts has expired, any material resulting from the reproduction of such work shall not be protected by copyright or related rights, unless the material resulting from such reproduction is original in the sense that it is the personal intellectual creation of its author”. According to the explanatory memorandum of the new law, “the purpose of the provision under assessment is to address, by introducing a new Article 31A, para 1 in Law no. 2121/1993, the issue of faithful reproductions of works of visual arts that have fallen into the public domain, in order to contribute to the promotion of culture and to the access to cultural heritage. (...) The regulation contributes to achieve legal certainty and to the cross-border dissemination of works of visual arts” [37].

There is, however, a second paragraph in Article 31A that explanatory memorandum doesn't mention at all. According to para 2, article 31A shall apply without prejudice to the provisions of Law no. 4858/2021, that is the Greek Cultural Heritage Code. In other words, article 14 has been implemented in the Greek Copyright Act but the limitations provided in the Cultural Heritage Code, especially those under article 46 of the Code, remain and have been expressly safeguarded in the implementation. Since article 14 of the DSM Directive might be considered as the first provision dealing with the issue of the public domain, it would be opportune for Member States “to rethink the way cultural contents are enjoyed in a digital environment and investigate new forms of organization and new business models for the cultural sector of the internal market” [38]. However, this is clearly a missed opportunity at least for the Greek legislator to tackle the political desire on a national and European level to maximise cultural heritage accessibility, particularly in the digital era, and to enhance the cross-border dissemination of works of visual arts by amending the obviously outdated existing regulatory framework on granting permission to access, reproduce and disseminate the reproductions of cultural heritage goods images.

The willingness of the nation state to broadly control the materiality and the intellectual interpretation of the antiquities, could also be observed with regards to the implementation of the Open Data Directive into national law.<sup>13</sup> Under

<sup>12</sup> Law no. 4996/2022 on establishment of rules on the exercise of copyright and related rights applicable to certain online broadcasts of broadcasting organisations and retransmissions of television and radio programmes, maintaining a high level of protection of copyright and related rights in the digital single market and the right of public lending and reproduction of additional copies by non-profit libraries or archives. Amendment of law no. 2121/1993 and law no. 4481/2017—Transposition of Directives (EU) 2019/789, (EU) 2019/790 and 2006/115/EC (FEK A' 218/24.11.2022).

<sup>13</sup> Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information entered into force on 16 July 2019. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019L1024>. Accessed June 14. It is a continuation of the Directive on the re-use of public sector information ('PSI Directive' 2003/98/EC, amended by 2013/37/EU).

article 61 para 3 of Greek law no. 4727/2020 on Digital Governance (Integration in Greek Law of Directive (EU) 2016/2102 and Directive (EU) 2019/1024)—Electronic Communications (Integration in Greek Law of Directive (EU) 2018/1972) and other provisions (ΦΕΚ Α' 184/23.09.2020), documents for which libraries, including university libraries, museums and archives, hold the intellectual property rights or which they are in the public domain, either because they were never protected by copyright or because copyright has expired, shall be reusable for commercial or non-commercial purposes in accordance with the conditions set out in the law.

However, according to article 4(d) of Law 4727/2020 it is expressly stated that the provisions on the re-use of public sector information do not apply to documents to which access is denied pursuant to the relative provisions of Administrative Procedure Code, “as well as pursuant to any other relevant provision, and in particular for reasons relating to: (...) (δγ) the protection of cultural heritage from theft, looting, vandalism, clandestine excavation, antiquities looting, and generally avoiding *exposure to danger* of movable and immovable monuments and sites protected under Cultural Heritage Law. There is a clear lack of clarity in national law as to the conditions under which the movable and immovable monuments and sites protected by Cultural Heritage law may be “exposed” at risk. There is no specific framework or rules at national level setting out the specific framework of prohibition of re-use of such documents, nor any guidance from the Ministry of culture. This may lead to far reaching interpretation approaches on the definition of danger exposure clearly restricting the general scope and principles enshrined in the EU directive.

The most significant, direct manifestation of State’s attempt to control the availability of cultural heritage digital surrogates is found in the Cultural Heritage Code and in particular in article 46 paragraphs 4 and 5. When one attempts to apply these provisions in a world that is technologically constantly evolving, a series of failures emerge.

According to article 46 paragraphs 4 and 5 of the Greek Cultural Heritage Code, a previous permission granted by the Ministry of Culture is required for the production, reproduction and dissemination to the public of impressions, copies or depictions of cultural goods belonging to the State. Such permission is granted to physical or legal persons for a fee paid to the Hellenic Organization of Cultural Resources Development (HOCRED) upon a joint decision of the Ministers of Finance and Culture. The latter also specifies the temporal validity of the permission, the terms on which the permission is granted, the method of calculation and the amount of fee that must be paid, the cases of exemption and deduction, as well as any other relevant matter.

The production, reproduction and use of the aforementioned goods for other purposes, such as artistic, educational or scientific purposes, is again allowed for a fee paid to HOCRED, however, the fee can be waived upon decision of the Minister of Culture. These processes are mostly off-line and require a decision making process per application by the competent Council (the Central Archaeological Council and the Central Council for Modern Monuments) which is incredibly time consuming,

imposes high transaction costs and it is not transparent with regards to its decision making.<sup>14</sup>

More detailed, the specific conditions and terms for the digital reproduction and dissemination to the public of depictions of cultural goods are provided in par. 4A, 4B and 4D of the Greek Cultural Heritage Code.

According to article 4A, the production of depictions of monuments requires prior authorisation in the following cases: (a) when it concerns a monument, the nature or state of preservation, exhibition, preservation, conservation or restoration of which requires access under special terms, conditions or circumstances to be determined by the competent service; (b) when it will be carried out: (ba) using equipment that is complex or bulky or requires special installation and operating conditions; (bb) by laser scanning, photogrammetric methods or related technologies to create a three-dimensional model; or (bc) as part of a process requiring special production conditions affecting safety, security, custody, operating hours, public accessibility or other exceptional conditions.

Article 4B states that in all cases that the production or reproduction for public dissemination of depictions of monuments intended for profit, a prior permission must be obtained.

The legislature also provides a specific article where a number of definitions for the concepts of “monument” and “monument depiction” is included for the more accurate application of the licensing procedure of article 46 paragraphs 4 and 5. Conformingly to article 4 D, monuments are understood to be the immovable monuments belonging to the Greek State and located in archaeological sites or historical sites or are isolated monuments, as well as movable monuments belonging to the Greek State and located in museums or collections of the Ministry of Culture or are in the legal possession of natural or legal persons, according to article 23. Furthermore, the depiction of a monument shall be understood as the faithful fixation of the existing image of the monument, in whole or in part, in any way and by any means on a material carrier (indicatively on printed matter or objects) or on an immaterial carrier (indicatively audiovisual material, electronic publications, internet, digital applications). A fixation that takes as its starting point the existing image of the monument but goes beyond it in a creative, additive, abstract or in any other way, such as through scientific interpretation, artistic creation or imaginative inspiration of the creator, is subject to prior authorisation only when it falls within the cases referred to in par. 4A.

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<sup>14</sup> A characteristic example of the costly decision making process followed by the Greek Ministry of Culture might be the ministerial decision no 126463/2011 (FEK B' 3046/30.12.2011) which specifies the fees for photography—filming and use of audiovisual works and images of archaeological sites, historical sites, monuments, museum exhibitions and collections. The Decision firstly distinguishes certain monuments, archaeological sites and museums which it considers to be of exceptional importance and sets higher fees, twice as high as those for other sites. For these sites, for instance, for filming purposes, with professional equipment, in archaeological sites, monuments and museums, for cultural, scientific, informative and educational purposes, 200 euros per day and per filming site are paid. For the professional use of any other cinematographic or audiovisual work involving the use of professional equipment, an advance of EUR 1600 per day and per location shall be paid. For the use of illustrations on cards, posters and magnets, EUR 300 per photograph for a period of two years.



From this labyrinthine licensing framework as described above thereof two initial thoughts can be drawn. First, the complex issue of the "creative" transgression of the fixation of an existing cultural good image which falls within the scope of licensing only when the cases described in article 4A are met. Who will decide on the interpretation of this "transgression"? In other words, how can the administration allow or prohibit any reproduction and dissemination of monument images while avoiding ideological-political beliefs, aesthetic evaluations or scientific opinions? In these circumstances, the risk of preventing the creative reuse of the past for artistic, research and scientific purposes is emergent and significant.

Secondly, one of the most significant issues related to the concept of economic or commercial purpose, which is of great importance for the exemption from the payment of fees. The problem is that the production, reproduction and use of images of monuments for artistic, educational or scientific purposes may have an indirect economic purpose in many cases, such as, for example, the creation of a painting depicting a monument and intended for sale, or the production of a documentary with such images for showing in cinemas or on television, or the publication of an artistic or scientific book with photographs or drawings of monuments [21: 245]. Does the reproduction, in the form of a drawing, of a tower in a booklet distributed free of charge as part of an advertising campaign have a commercial purpose?<sup>15</sup> Does a theatre which survives on public funding have a commercial purpose? [39].

Careful application of these provisions is imperative in order to avoid overly strict and borderline constitutional solutions and to avoid unduly restriction of the exercise of the fundamental freedoms of expression, art and science. Given that there is no harm to the materiality of the good, to whom does the authority to interpret a cultural good's image belong?

#### 4.1 Case Studies

Three cases of uses for research, artistic and scientific purposes and one case for commercial purposes will be examined to comprehend the ineffectiveness of the existing legal framework which clearly creates legal uncertainty for the citizens.

The first case is that of a postgraduate student, working on her master's thesis which includes a digital storytelling activity using augmented reality. This action requires the implication of some exhibits from the collection of the Corfu Museum of Asian Art. According to the methodology, the student, and by extension the user of the application, interacts with specific software which does not even reproduce the exhibit's image but by using a QR code refers to a story, a video, an image distinct, unconnected and unrelated to the museum's exhibits. The fact that the use by a very small number of users (up to ten) of the specific exhibits of the Corfu Museum of Asian Art, a museum under the supervision of Greek Ministry of Culture, for the non-profit purpose of conducting a postgraduate research and writing a thesis, does

<sup>15</sup> Court of Appeals of Paris, 31 March 2000, *CCE*, mai 2000:19, the Paris Court of Appeal held that the reproduction, in the form of a design, of a tower in a booklet distributed free of charge did not constitute an exploitation of a commercial nature.

not seem to be a matter of Cultural Heritage Law, as it is inferred that this specific case is exempt from the licensing procedure of article 46; the student and the application's user is not realizing a faithful fixation of the cultural goods existing image but goes beyond in a creative way. Additionally, this case of the postgraduate student does not fall into any of the cases referred to in para. 4A of article 46. Therefore, no licensing by the Ministry of Culture is formally required for this type of use. But how will every student, every teacher and professor be able to make this kind of assessment? And what if in the event that in the future the use changes, i.e. the student seeks to publish a book containing her thesis, does this fall under the cases of use for commercial purposes and therefore requires a license?

The second case comes from the field of contemporary artistic creation. In recent years, artists have been increasingly using photogrammetry as an alternative to custom-made or ready-made 3D models, usually welcoming the technological limitations (or working around them) in order to either use its products as intermediate stages for analogue sculptural production (as mere references or 3D-printed artefacts), or as elements for the composition of digital videos and interactive or virtual narratives.<sup>16</sup> Petros Moris' artwork 'Future Bestiary' perfectly reflects this artistic practice of using the image of pre-existing culturally significant works of art and re-contextualizing them. The primary material of 'Future Bestiary' is a series of photogrammetric documentations, rendered within the video as three-dimensional digital forms. The original subjects of these forms come from the funerary sculptures of Kerameikos. In the video, these perpetually rotating digital surfaces, which emerged by means of the photogrammetric process, become the 'canvas' for the inclusion of visual elements recovered online. These elements find their way onto the 3D reconstructions via an 'intrusive' style, simulating immaterial graffiti, tattoos, talismans or other graphic typologies. In this way, the digital reconstructions of the ancient forms become a system of mnemonic ethereal bodies, onto which the fantasies and mythologies that concern realities of the present and speculations of the future are inscribed [41:132] (Fig. 1).

How does article 46 deal with this issue? In other words, could an hypothesis for increased cultural heritage preservation along with that of cultural heritage accessibility for artistic purposes be envisaged? Moris' artwork is certainly a work of transcendental creativity, it's an artistic creation that transgresses creatively the existing cultural heritage goods' image. However, it falls within the scope of the cases described in par. 4A of article 46 as the artwork is carried out using "laser scanning, photogrammetric methods or related technologies to create a three-dimensional model". But what is the purpose of this control in artistic re-use given that there is no harm to the materiality of good?

The third case comes from the world of scientific research. The Interactive Arts Laboratory of the Department of Audio & Visual Arts of the Ionian University in collaboration with the Ephorate of Antiquities of Corfu presented the "Digital Navigation Guide using Augmented Reality and Holograms", an innovative

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<sup>16</sup> Examples of artists and filmographers utilizing photogrammetry include Morehshin Allahyari, Timur Si-Qin, Hito Steyerl, Clement Valla and Liam Young among many others. See Ref. [41].

**Fig. 1** Petros Moris, Future Bes-tiary (Sphinx II), 2018—Digital video animation loop



project funded by the European Union and the Operational Programme "Ionian Islands 2014–2020" [40]. The project developed a complete interactive navigation guide for the Old Town of Corfu, intended to be used both by the visitors and the locals to provide useful and reliable information, accompanied by high quality audiovisual material, revealing more than 80 sites (points of interest) within the monument of the Old Town of Corfu that are modelled in the form of high-quality holograms. The mediated narrative combined with the use of new technological tools, such as modelling and projection of the content with holographic pyramids, contribute significantly to the visitor's acquaintance with the content of the monument and to their ability of exploring hidden aspects which are often invisible even when the visitor is standing next to the point of interest.

According to article 46, permission was granted by the competent Ephorate of Antiquities of Corfu to photograph and film the sites of archaeological interest mentioned in the content of the licensing decision strictly for the purposes of the research project, exempting the University from paying the relevant fees. Significantly, the said licensing decision states that the photographic and audiovisual material will have no commercial use and will not be licensed to third parties. Moreover, all the produced material should be deposited at the Ephorate so that they could approve which material is "compatible" with cultural heritage law and conforms to the scope of antiquities' protection—such as the promotion of the monuments—and which material is not. In addition, for any other use of all or part of the relevant material, including uploading on the internet or disseminating to any kind of digital media, the University will have to re-apply so that a new license to be granted. Last but not least, it was added to the licensing decision that for the aerial photography of some of the sites (points of interest) the consent of other public bodies is required such as the Civil Aviation Authority, the Municipality of Corfu, the Holy Metropolis of Corfu, the Catholic Archbishopric of Corfu, the Central Board of Jewish Communities, the Service of Modern Monuments and Technical Works of Epirus, the Museum of Asian Art, the Ionian

Bank's Banknote Museum, the Dionysios Solomos Museum, the Philharmonic Society of Corfu...

The fourth case is related to the use of Parthenon Marbles' image for advertisement purposes. The graphic design company responsible for the graphic design of the Coca Cola advertising campaign had informed by email the competent Ephorate of Antiquities of Athens that they are in the process of designing, on behalf of Coca Cola, a collection series of their products, dedicated to the city of Athens, which would circulate for a limited period of time and in selected points of sale (catering stores, tourist shops). Since that composition would include, *inter alia*, a drawing of the Parthenon, the graphic design company enclosed an indicative draft and asked the Ephorate whether there was any legal restriction that they should take into account in order to inform their client before proceeding with the completion of the designing composition in question. The Athens Ephorate of Antiquities formally replied that no license was required for the free design representation of the Parthenon that was included in the composition.

Article 46 par. 4 of the Archaeological Law 3028/2002, in force at that time, required prior permission by the Ministry of Culture against a fee payable to the Archaeological Resources Fund, for the use of "depictions of monuments", which did not include the sketches-compositions, the free design representations of cultural goods. Following the Ephorate's official approval, Coca-Cola put on the market the collecting series of products with the design composition in question.

Six months later, a new ministerial decision was published requiring the prior permission of the Ministry of Culture not only for the depictions of monuments but also for other kind of "representations" such as designs or sketches.

The Council of the State in its judgement no. 227/2019 stated that the new ministerial decision as mentioned above provides for a licensing procedure for "representations of monuments" extends the legislative provision of article 46 paragraph 4 of the national legislation to a different act than that of "monument depiction", which the law intended to subject to authorisation and for which it authorised the Minister to lay down the terms, conditions, bodies and procedure [42]. The Council of State judgement also outlined that the lack of a specific and coherent conceptual definition of the "monument depiction" notion leads to misinterpretations and affects both the image of the public administration and legal certainty. Therefore, for reasons of safeguarding the public interest, it is strongly urged that the public administration ensures, by legislative initiative, clarification of the meaning and scope of the "monument depiction" term as already mentioned in the Cultural Heritage Law, taking into account both the feasibility of the regulation, on the one hand, and the new and constantly evolving technologies, on the other hand, as well as the current legislation on the free development of the arts and on the protection of intellectual property rights.

Following the decision of the Council of State, a revised ministerial decision in 2020 partially revoked the contested one in the part that refers to "representation of monuments". The terms "representations", and "digital representations" were deleted from the text of the ministerial decision.

This is not the first time that Coca-Cola has used Parthenon marbles for advertising purposes.<sup>17</sup> The company published a full-page advertisement in the *Corriere de la Serra*, depicting the “offending” image, only to withdraw it quickly after the strong reactions from the Greek community and the Greek Minister of Culture. Cola-Cola representatives sent a letter humbly apologising to Greece.

But what are the limits of the protection and exclusive rights of the Greek State to the monuments and how can freedom of artistic expression be ensured? How much are the monuments affected by the use of their digital image? Is the Parthenon really being degraded? Do we need to take a step back from the materiality of the asset, which clearly needs to be protected in the most effective way and adopt a more open policy on the interpretation of digital images?

“The transformation of the Parthenon into a symbol par excellence, i.e. its distancing in relation to a specific functional immediacy, is the process that allows its ideological exploitation to be unleashed without any limit”, Professor Filippidis aptly commented [43].

## 5 Instead of Conclusion—Towards the Adoption of an Open Access System

Unprecedented opportunities brought on by emergent technologies transform the cultural heritage sector. Europe is in the process of creating a European Collaborative Cloud for Cultural Heritage, aiming at empowering people and businesses to enjoy and make the most of this heritage. One of the main European policy objectives is a people-centred perspective that places cultural heritage and the cultural and creative industries at the very heart of the European economy and its sustainable development [44]. Within this framework, the most effective use of the very complex legal provisions concerning digital accessibility and reuse of cultural heritage material is essential.

In view of all these evolutions, the Greek legislator seems reluctant to adapt its digital cultural heritage management strategy towards a more open model. The State seems to bear a moral obligation to control how works are used to protect culture and its history from misappropriation. Despite recent efforts such as the online dissemination of 67,000 digital cultural assets’ images in both the national aggregator and Europeana, an insinuating stewardship tension and fear over the loss of control regarding the uses of the digital objects is still observed [45]. One might reasonably argue that digitizing cultural heritage content on the one hand and restricting or prohibiting its reuse on the other hand, will inevitably lead to a failure, and limit the access to digital culture.

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<sup>17</sup> The company of the world’s most popular soft drink has used advertisements in which the Eiffel Tower in Paris, the Empire State Building in New York or the Pisa Tower in Italy are depicted as bottles of the soft drink.

The four case studies examined empirically—postgraduate student’s essay, Petros Moris’ artwork, Corfu University holograms research programme and the Coca cola case—demonstrated the questionable effectiveness of the existing regulatory framework to granting permission of access, reproduction and dissemination of the reproductions of cultural heritage images. The process is bureaucratic with a huge cost both operational and substantive in terms of promotion and access to cultural heritage. Furthermore, it creates legal uncertainty for citizens as no one can assess with certainty whether they are subject to the licensing procedure or not. The limitations and prohibitions imposed by the Greek Cultural Heritage Law are too many, too complex, too unclear. Even the cases hypothetically exempted from the licensing framework of Article 46 for artistic, scientific or creative purposes might be subject to prior authorization when they fall within the cases referred to in par. 4A or when they are intended for commercial purposes. Finally, the process is outdated stressing the need to redefine current heritage management models and to move away from a case-by case licensing scheme.

A reasonable response to address the clash between existing regulation on digital access and reuse of cultural heritage and the realisation of the wider societal value digitisation is expected to bring, will be to adopt an open access system. Within such a system, all physical and natural persons will be encouraged to reuse the high-resolution and high-quality delivered digital material on a user-friendly service platform, for any kind of purpose, limiting from the start the accessibility only to the images representing a specific number of symbols of Greek cultural heritage of exceptional importance and only for commercial purposes. Therefore, certain restrictions of reuse might be imposed, in the case of monuments of outstanding importance already provided for in the ministerial decision no 126463/2011 which specifies the fees for photography—filming and use of audiovisual works and images of archaeological sites, historical sites, monuments, museum exhibitions and collections.<sup>18</sup> In this case an authorisation might be required when the image is used in the context of commercial purposes.

This alternative management model balancing interests of all stakeholders can already be found within the French Cultural Heritage Legislation. According to article L621-42 of the French Cultural Heritage Code, “the use, on any medium, for commercial purposes of the image of the immovable cultural goods constituting the national estates (“domaines nationaux”) is subject to the prior authorisation of the manager of the relevant part of the national estate. This authorisation may take the form of a unilateral act or a contract, with or without financial conditions. The authorisation above mentioned is not required when the image is used in the context

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<sup>18</sup> Ministerial decision no. 126463/2011 (FEK B’ 3046/30.12.2011) firstly distinguishes certain monuments, archaeological sites and museums which it considers to be of exceptional importance and then sets higher fees, twice as high as those for other sites. The monuments of great importance are the following: Acropolis of Athens, Ancient Agora of Athens, Sounion, Vergina, Delphi, Ancient Olympia, Epidaurus (Asclepius and Old Epidaurus), Mycenae, Messene, Mystras, Corinth, Knossos, Phaistos, Palace of M. Magistros Palace (Rhodes), Lindos, Delos, Spinalonga, National Archaeological Museum, Byzantine and Christian Museum, Archaeological Museum of Thessaloniki, Museum of Byzantine Culture, Archaeological Museum of Heraklion.

of public service missions or for cultural, artistic, educational, teaching, research, informational and news illustration purposes”. Today, sixteen monuments are beneficiaries of this *sui generis* right on the cultural good’s image, because only the goods qualified as “national estates” can claim it.<sup>19</sup>

The French Constitutional Council ruled that the mechanism provided in article L621-42 is in conformity with the French Constitution. In its decision n° 2017–687 the Court stated that “in adopting the contested provisions, the legislature intended to protect the image of national estates in order to prevent damage to the goods’ identity maintaining an exceptional connection to the Nation’s history and possessed, at least in part, by the State. The legislator also intended to allow the economic valorization of the heritage constituted by these national estates. The legislator thus pursued objectives of general interest” [46].

Despite the fact that there are little to no publicly available data generated by the Greek Ministry of Culture with regards to the extent to which revenues through commercial licensing of cultural heritage images are significant allowing to support public service missions as well as with regards to the costs associated with the generation of such revenue, such as monitoring mechanisms, personnel and other administrative costs,<sup>20</sup> restricting access in an absolute and generic way seems inappropriate. Board enforcement mechanisms controlling the use and reuse of cultural heritage images will most likely constitute an unjustified and disproportionate infringement of the citizens constitutionally protected right to participate in cultural life. We should finally abandon this paternalistic attitude that only the State has the authority and the capacity of properly interpreting the works that belong to Greek Cultural heritage. Kenneth Hamma, Executive Director for digital Policy of J. Paul Getty Trust, perfectly explained this point:

“But the net effect of experience with commercial and creative reuses of an image can best be demonstrated by looking to the *Mona Lisa*. When viewing the *Mona Lisa* at the Louvre, do we laugh at Leonardo da Vinci’s famous painting because others have made a long career of spinning off wall paper, cookie jars, cigar bands, and so on, that use the reproduced image of the *Mona Lisa*? Do we fail to react to the mysterious *Mona Lisa* smile in the paint-

<sup>19</sup> According to article L621-34, the national estates are real estate complexes with an exceptional link to the history of the Nation and which are at least partly owned by the State. These properties are intended to be preserved and restored by the State while respecting their historical, artistic, landscape and ecological character. Decree n° 2022–906 of June 17, 2022 completing the list of article R. 621–98 of the French Cultural Heritage Code and delimiting the perimeter of national estates. See article LR621-98 containing the 16 national estates here: [https://www.legifrance.gouv.fr/codes/article\\_lc/LEGIART000045937703/2022-11-22%60%60](https://www.legifrance.gouv.fr/codes/article_lc/LEGIART000045937703/2022-11-22%60%60). Accessed March 21.

<sup>20</sup> It is interesting to mention that in Resolution No. 50/2022/G by the Italian Court of Auditors regarding “Information technology expenses with special regard to the digitization of Italian cultural heritage”, the costs associated with implementing the fee system often exceed the revenue generated by these fees. See Creative Commons Italy Chapter Statement on the negative impact of the Italian Ministry of Culture’s Decree No. 161 of April 11, 2023 on research and circulation of Italian cultural heritage images, <https://creativecommons.it/chapterIT/index.php/1529/>.



ing because we've seen her smile so often and so ubiquitously in other contexts?" [47].

In overall, maximising access to digital cultural data with appropriate reference to institutions and creators at near-zero transaction costs rather than broad access prohibitions and further encouraging cooperation with communities are fundamental issues. We need to protect the key role of public domain for cultural heritage that is at stake, either for the excessive application of exclusive rights or because the use of cultural heritage resources is constrained or even nullified based on other legal grounds, such as cultural heritage law and data protection [48]. Openness, transparency of decision making processes, partnership, consensus, broader coordination and cooperation of all relevant and involved stakeholders for a holistic approach to a national strategy for cultural heritage in the digital age is an one-way street [49].

The dynamic movement of openness in access and reuse of the digital cultural heritage observed (for instance major institutions such as the Metropolitan Museum of Art Metropolitan Museum of Art in New York, the Smithsonian, but also in Europe with the recent platform of the French Ministry of Culture and the pioneering Dutch Rijksmuseum) demonstrates that there is great momentum in the field, aiming at a wider dissemination of knowledge and creative reuse by communities and people. We need to increase the access and enjoyment of cultural goods online and at the same time to ensure a fair balance of fundamental rights and interests at stake in the cultural heritage sector. To date, all the existing empirical studies have demonstrated that the fears of misappropriation and/or misuse of the images have not been realized [50–53]. In light of the above, any potential legislative solution should be a result of collaborative open dialogue between regulators and all stakeholders to create standards that will not only encourage public outreach and participation, but will also preserve ethically or politically sensitive information, satisfy other objectives of general interest and at the same time allow for a more flexible approach towards new disruptions by technology.

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