

PRESERVATION OF CULTURAL HERITAGE (ARTICLE 6 CDSMD)

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Our roadmap

Why a new exception for preservation by CHI?



Article 6 CDSMD: lights and shadows



Assessing national implementations



Article 6 CDSMD and AI



What's missing? The road ahead

WHY A NEW EXCEPTION FOR PRESERVATION BY CHIs?

The background



Pre-CDSMD: the state of the art

Scattered provisions in some MSs before InfoSoc Directive (2001), not specifically devoted to preservation

- **Article 5(2)(c) InfoSoc** – “in respect of specific acts of reproduction made by publicly accessible libraries, educational establishments or museums, or by archives, which are not for direct or indirect economic or commercial advantage”
- **(Indirectly) Article 5(3)(n) InfoSoc** - “use by communication or making available, for the purpose of research or private study, to individual members of the public by dedicated terminals on the premises of establishments referred to in paragraph 2(c) of works and other subject-matter not subject to purchase or licensing terms which are contained in their collections

Art.5(2)(c) InfoSoc: a fragmented implementation

Beneficiaries

- Open lists based on preservation functions performed (EE, FI, GR, IE, LV, NL, PT, RO, SK, AT)
- Closed lists, geolocalized, often only if recognized/authorized by law (BE, LT, SI, IT, PL, SE)

Works covered

- Most MSs do not make distinctions – verbatim implementations
- Others introduce further L/Es for preservation, targeting specific works (AT, DL, FI, IE, LT, LV, GR, IT), sometimes adding that should be lost, damaged or no longer usable/available (IE, FI, LT, CZ, EE, DE, LV)
- Quantitative limits (fixed or limited to purpose) in AT, CZ, GR, IE, LT, PL, BG, BE, NED, RO, SK
- Specific exclusions (software, videogames, unpublished works etc) in BG, DK, RO, LT, SE

Permitted uses

- Some MSs go beyond reproduction, covering distribution (DK), adaptation (IE), transfer (GR), lending and/or communication to limited public (FI, FR, LV, IE, PT, AT, SE), cataloguing and other uses (DE)
- Problem: digital copies (covered only in AT, SI, SZ, DK, IE)

Some help from the CJEU



C-117/13 Technische Universität Darmstadt c Ulmer

- To preserve its CH preservation/access function, scope of Article 5(3)(n) InfoSoc should be extended to cover also reproduction to digitize collections
- Also if rightholder offers license covering digital copies!

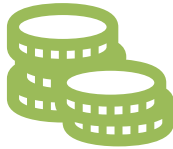
What was missing? The CDSMD Impact Assessment



CHIs reported facing narrow, unclear, rigid exceptions

Legal uncertainty and chilling effects at national level

Often not covering digital preservation, preservation of digital-born works, collaborative endeavors necessary due to high costs



Fragmentation of national provisions

Legal uncertainty in cross-border activities

Obstacle vs sharing of dedicated infrastructure → cost duplication, no economy of scale

Several, different national limitations creating different conditions for national CHIs



Disproportionate transaction costs to obtain RH's authorization if L/E not applicable

Licensing option instead of exception would be ineffective, as limited economic interest for RH



ART 6 CSDMD: LIGHTS AND SHADOWS

A landmark intervention?

Article 6 CDSMD

- Mandatory nature, not overridable by contract, COMPLEMENTING existing national L/Es
- Exception to
 - All copyright/sui generis database rights (Articles 5(a) and 7(1) Database)
 - General reproduction right (Article 2 InfoSoc)
 - Software reproduction right (Article 4(1)(a) Software II)
 - Press publisher's right (Article 15 CDSMD)
- “in order to allow cultural heritage institutions to make copies of any works or other subject matter that are **permanently in their collections, in any format or medium, for purposes of preservation** of such works or other subject matter and **to the extent necessary** for such preservation”
- NO compensation allowed

**Some
specifications
from the
Preamble**

R13 – publicly accessible library or museum regardless of type of works they hold; archive or film or audio heritage institutions; also national libraries and archives, educational establishments, research organisations and public broadcasting organisations

R26 - national fragmentation hampers cross-border cooperation, sharing of means, creation of networks, efficient use of resources

R27 – goals e.g. address tech obsolescence, degradation of originals; no limits in number and extent justified by purposes; tech-neutral as to tools, means, format; at any point of life of work; other purposes subject to license

R28 – possibility to rely on other CHIs or third parties

R29 – permanently in collection = transfer of ownership, license, legal deposit or permanent custody arrangements



Lights

Streamlines national differences in implementations Article 5(2) InfoSoc

Cristallizes *Ulmer* in mandatory provisions

Incentivizes development of interoperability standards and common infrastructures

Eliminates licensing transaction costs

Facilitates cooperation and reliance on external expertise



Shadows

Definition of beneficiaries not aligned to other Directives (e.g. Orphan Works, InfoSoc)

Unclear how to delegate to third parties

Uncertainties linked to definition of “preservation” and harsh purpose-limitation

Missing coordination with pre-existing L/Es and related national fragmentation



ASSESSING NATIONAL IMPLEMENTATIONS

Taking stock...

A real harmonization?

Different degrees of specifications as to:

- **Beneficiaries**
 - Generic reference to CHI (HR, CY, EE, FR, GR, HU, IT, LT, MT, NED, PL, PT, RO)
 - Verbatim from EU list (AT, BE, BG, CZ, DE, DK, FI, FR, LUX, SE, SI), sometimes omitting public broadcasting organizations
 - Libraries and archives to be prescribed by Ministry in IE, esp. for format shifting, and in FI
- **Extension to third parties** explicitly mentioned in few MSs (AT, DE, ES, GR, LT)
- **Rights** – only reproduction in all MSs but
 - AT: also for exhibition and lending; DK: also distribution and lending
- **Further limitations**
 - AT: no software; DK, EE: only if acquisition of another copy is impossible; RO: rightholders may limit number of copies; ES: appropriate conservation tools; HU: apparently no databases; IE: no database and PPR



ALL Member States
implemented it (4 without
amendments)

Only 3 Member States
coordinated it with
existing provisions

A real harmonization? (ii)

Different degrees of specifications as to:

- **Works and uses**
 - Generic reference to works permanently in collections in **most MSs**
 - Reference to other works either in same provision (**BE, BG, DK, FR, CY**) or usually scattered in others
 - Any form and medium (**AT, BE, CY, DK, EE, ES, IT, LT, MT, PL, PT, RO**)
 - **BE**: “cultural and scientific heritage”, **HR**: specifies notion of “permanently” as in EU; **DK**: does not require “permanent”; **HU**: also scientific research
 - Extended to related rights only in approx. **2/3 of MSs**
- **Non-overrideability by contract** in same provision in **AT, BG, DE, DK, HR, EE, FR, GR, HU, IE, IT, LT, MT, PT, RO, SE, SI**
 - In **BE, LUX** all L/E, in **NED** some
 - Not expressed in **ES, FR, PL**

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Persisting problems and gaps

- Beneficiaries still not fully harmonized
- In several MSs, implementation linked to existing provisions → path dependence on additional limitations (works, conditions, quantity)
- Unclear how to cooperate with third parties
 - Not mentioned in several MSs; in any case, process not specified
 - Obstacles raised by non-commercial purpose, specified in several MSs
- Despite reference to Art 6(4) InfoSoc, CHIs complains about hurdles created by TPMs
 - Esp. for digital-born or already digitized works acquired under umbrella licenses and subject to limitations

Persisting problems and gaps

- Puzzling coordination with OWD and Article 8 CDSMD (OOCW)
 - Article 6 CDSMD in line with Art 5(2)(c) InfoSoc → limited to reproduction, no making available beyond patrons (Art 5(3)(n) InfoSoc)
 - Consequence: similar functions, different outcome (preservation vs preservation + making available)
- Article 6 CSDM as a “backward” rather than “forward” looking provision → preservation, no external access/sharing/reuse
- No help in bridging existing gaps for implementation of CHDS
 - ODD: data-sharing remains limited to CH assets in public domain, or whose initial IP owner is CHI
 - DGA still excludes data held by public service broadcasters, cultural and educational establishment



ARTICLE 6 CSDMD AND ARTIFICIAL INTELLIGENCE

New frontiers

What can AI do for CH preservation (inter alia)?

1. Digitization & Archiving

- High-resolution scanning; 3D reconstructions (sites, objects)
- Automated cataloging and metadata tagging
- Long-term digital preservation of fragile materials

2. Restoration & Reconstruction

- AI-assisted image restoration for damaged artworks; colorization of historical photographs and films
- Reconstruction of missing architectural elements; virtual recreation of destroyed heritage sites

3. Conservation monitoring

- Detecting cracks, erosion, humidity, or structural risks
- Predictive maintenance for monuments and museum

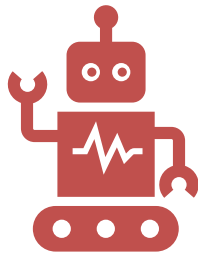
4. Language & Knowledge Preservation

- Translating ancient or endangered languages
- OCR (optical character recognition) for old manuscripts; AI transcription of handwritten historical texts
- Speech preservation of oral traditions and dialects

5. Museum & Visitor Experience

- AI-powered virtual tours, digital museums, personalised guides, AR overlays at sites
- Interactive chatbots

What's covered by Art.6 CDSMD



AI-enabled digitisation and restoration

Image enhancement, colour reconstructing,
3D reconstruction

OCR/HTR (optical or handwritten text
recognition)

Denosing and metadata enrichment

Damage detection and predictive
conservation



AI-generated digital twins and immersive preservation

BUT! Preservation copies covered...
...public dissemination or immersive reuse
not automatically

Persisting doubts

Synthetic reconstructions exceeding conservation

- Are they covered by Article 6?
- What if they amount to derivative works?

Interplay with Articles 3-4

- Do training foundation or gen-AI model developments constitute «preservation»?
- Or the two bodies of exceptions should be read independently?

Rights in and status of

- Synthetic heritage representations created by gen-AI
- AI-generated reconstructions, restorations and representations

Making available rights for AI-enhanced heritage materials

A photograph of a paved road with a yellow center line, receding into a dense green forest. The road is framed by a white, hand-drawn style border. The text is centered over the road.

WHAT'S MISSING? THE ROAD AHEAD

Lost opportunities

By the EU legislator

- Moving beyond traditional in-house preservation to tackle access, sharing, reuse
- Tackle risks of short-circuit with pre-existing national L/E
- Bridge the gap between current data/copyright legislation and CHDS
- Clarify the link between Articles 3-4 and 6 CDSMD

By Member States (on top of EU ones)

- Ensure no restrictions on beneficiaries, tools, media, formats or partners
- Streamline existing preservation exceptions; avoid transposing their limitations to Art 6
- Introduce open-ended list of activities included under “preservation purposes” to increase legal certainty (*e.g. web-harvesting, internal uses, materials taken from third-party servers on open-lend etc*)
- Clarify TPMs removal processes



Missing puzzle pieces

- From preservation to access and reuse
- Tackle persisting national fragmentations and flaws
- Bolster AI for CH with clearer and balanced legal framework
- Remove outstanding obstacles to full public-private cooperation
- Intervene on current regime complex (ODD-DGA-CDSMD) to deploy fully functioning CHDS

Thank you for your attention!

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