

# **COPYRIGHT LIMITATIONS AND EXCEPTIONS FOR MUSEUMS: TYPOLOGY**

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## **Standing Committee on Copyright and Related Rights**

**Thirty-Eighth Session**  
**Geneva, April 1 to 5, 2019**

### **REVISED REPORT ON COPYRIGHT PRACTICES AND CHALLENGES OF MUSEUMS**

*prepared by Dr. Yaniv Benhamou*

## **AGENDA**

**I. THE TYPOLOGY**

**II. SELECTED TOPICS**

**III. ADDITIONAL CONSIDERATIONS FOR THE EXCEPTION(S)**

## **I. THE TYPOLOGY**

- **CONTEXT**

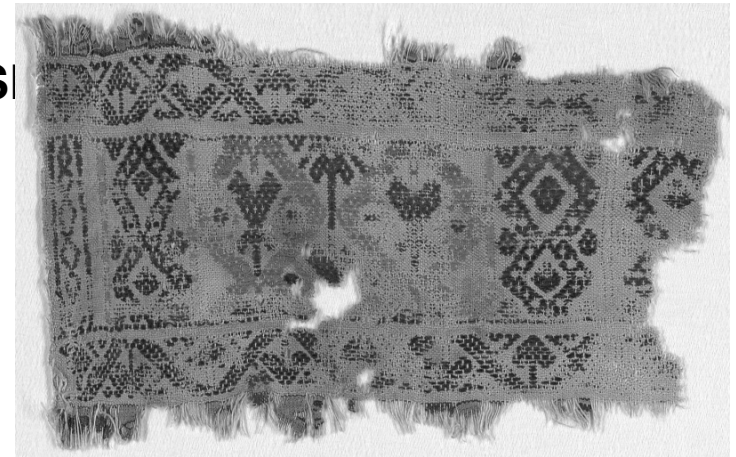
- 2018 WIPO Report on Copyright Practices and Challenges of Museums, 2 Nov. 2018 (SCCR/37/5)
- 2015 WIPO Study on Copyright Limitations and Exceptions for Museums by Jean-François Canat and Lucie Guibault (SCCR/30/2) (2015)
- 2008 and 2017 WIPO Study on Copyright Limitations and Exceptions for Libraries and Archives by Kenneth Crews (SCCR/35/6)

- **PURPOSE**

- Identifies main issues and differences among the copyright statutes

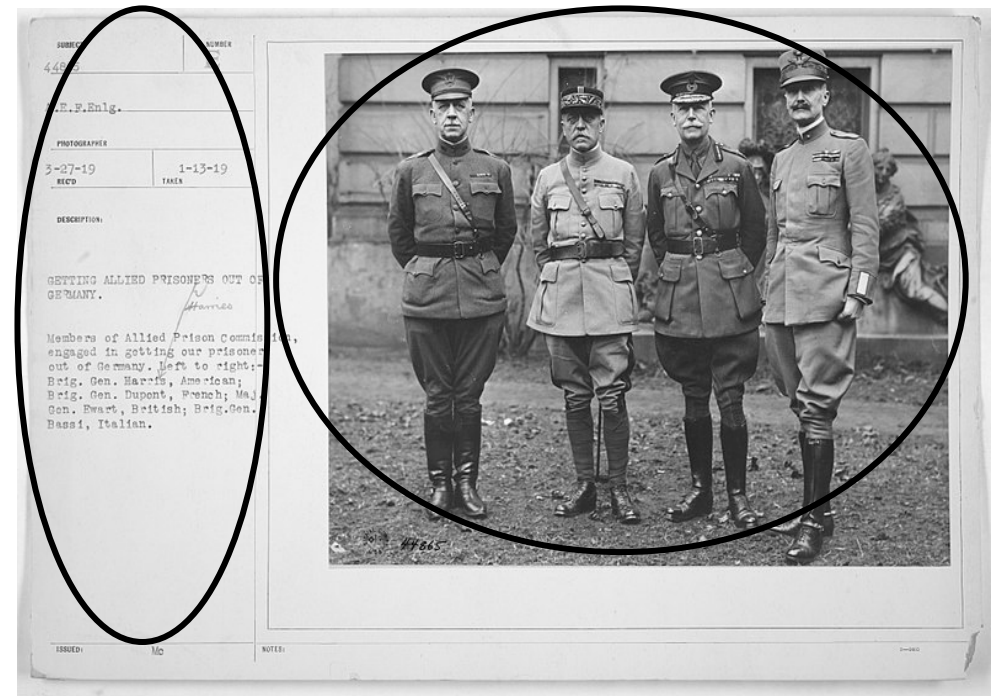
- **COPYRIGHT EXCEPTIONS TO THE BENEFIT OF MUSIC**

- **Copyrighted works**

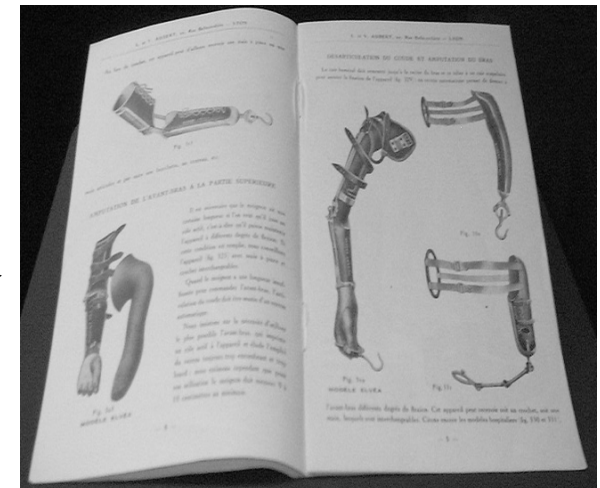
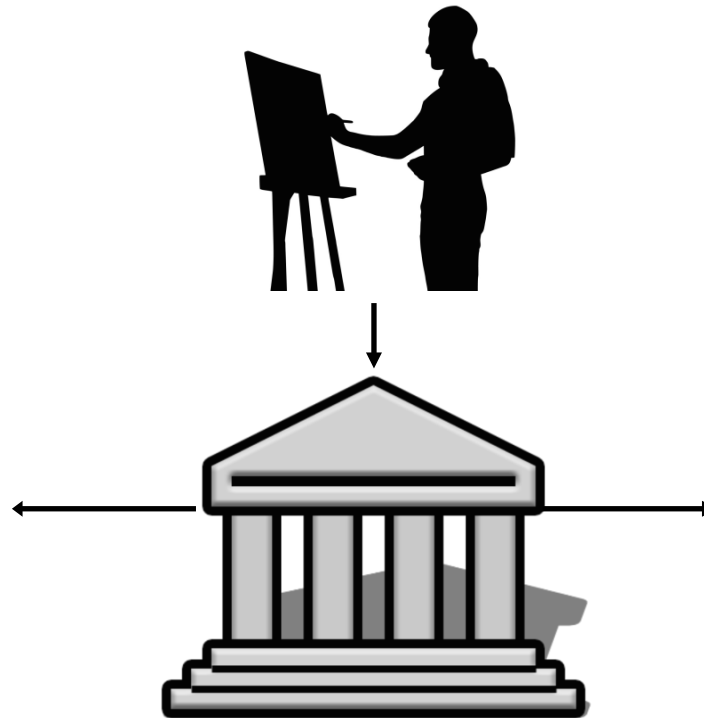


- **Public domain works**

- **Non copyrighted works**



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





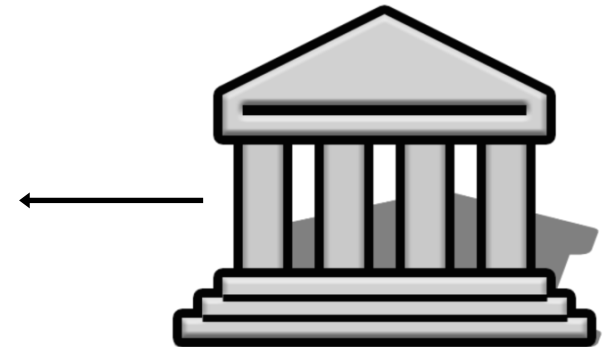
- **LIMITATIONS AND EXCEPTIONS**

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

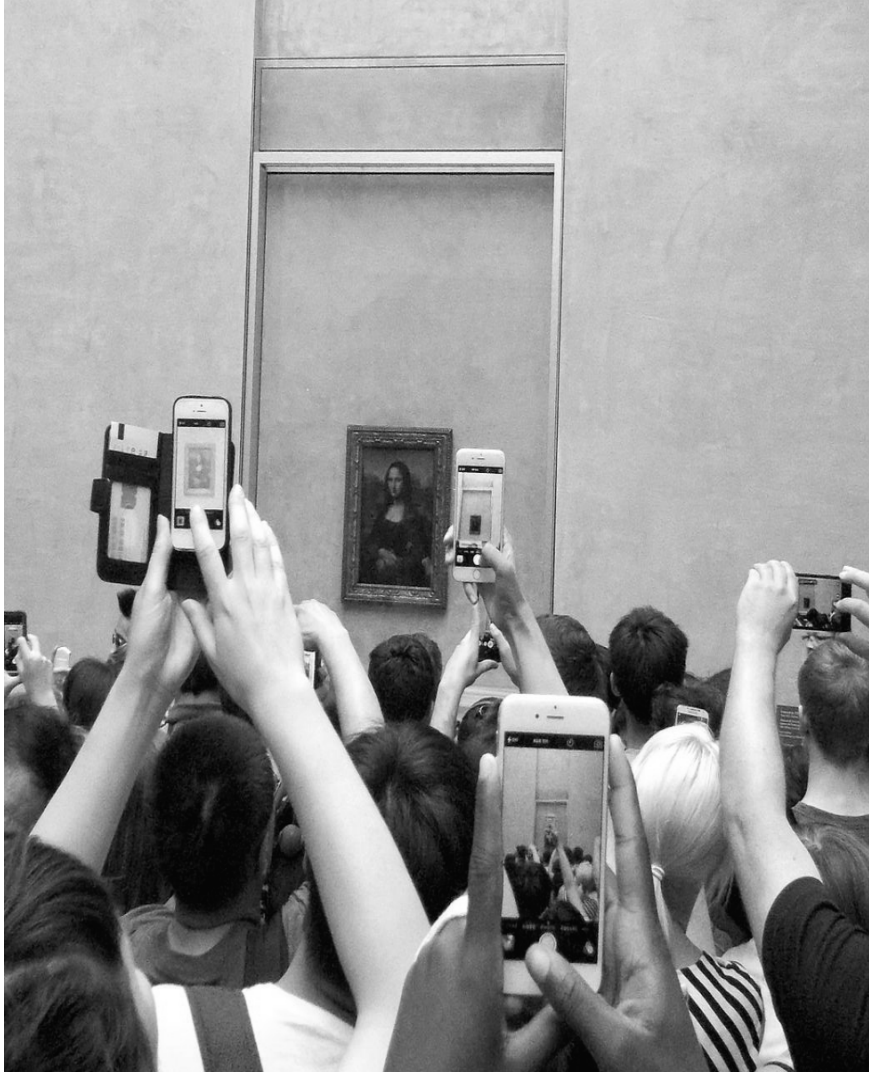
- **Preservation of works**

- **Exhibition of works**

- **Communication of works**



- In some case, there are however limitations and exceptions (L&Es) allowing the museum to use the works without authorization of the rightholder





<b>COLUMN 1</b>	<b>COLUMN 2</b>	<b>COLUMN 3</b>	<b>COLUMN 4</b>
<b>Category of Museum Function or services</b>	<b>Rights implicated</b>	<b>Rights implicated</b>	<b>Elements for ongoing considerations</b>

- **Preservation**
- **Replacement**
- **Archiving**
- **Making available on terminals**
- **Study & research**
- **Exhibition of physical works**
- **Exhibition of time-based media**
- **Photo-shooting**
- **Non-attributed works**
- **Exhibition catalogue**
- **Online exhibition**
- **Additional considerations for the exception(s)**

## **II. SELECTED TOPICS**



**Topic: Exhibition catalogue**

(*cf.* Typology p. 17)

**Definition:** Copyright exception authorizing museums to make uses of copyrighted works for catalogues

## EXHIBITION CATALOGUES

### Category of Museum Function or services

#### *Statutory Provision:*

Use for exhibition catalogues

#### *Museum services:*

- Produces and distributes exhibition catalogues

## EXHIBITION CATALOGUES

Category of Museum Function or services	Rights Implicated
<i>Statutory Provision:</i>  Use for exhibition catalogues  <i>Museum services:</i> <ul style="list-style-type: none"><li>• Produces and distributes exhibition catalogues</li></ul>	<i>Primary:</i>  Reproduction  Distribution  <i>Secondary:</i>  Making available /Communication to the public (if catalogue is available online)  Circumvention (if the original is secured by TPM).



## EXHIBITION CATALOGUES

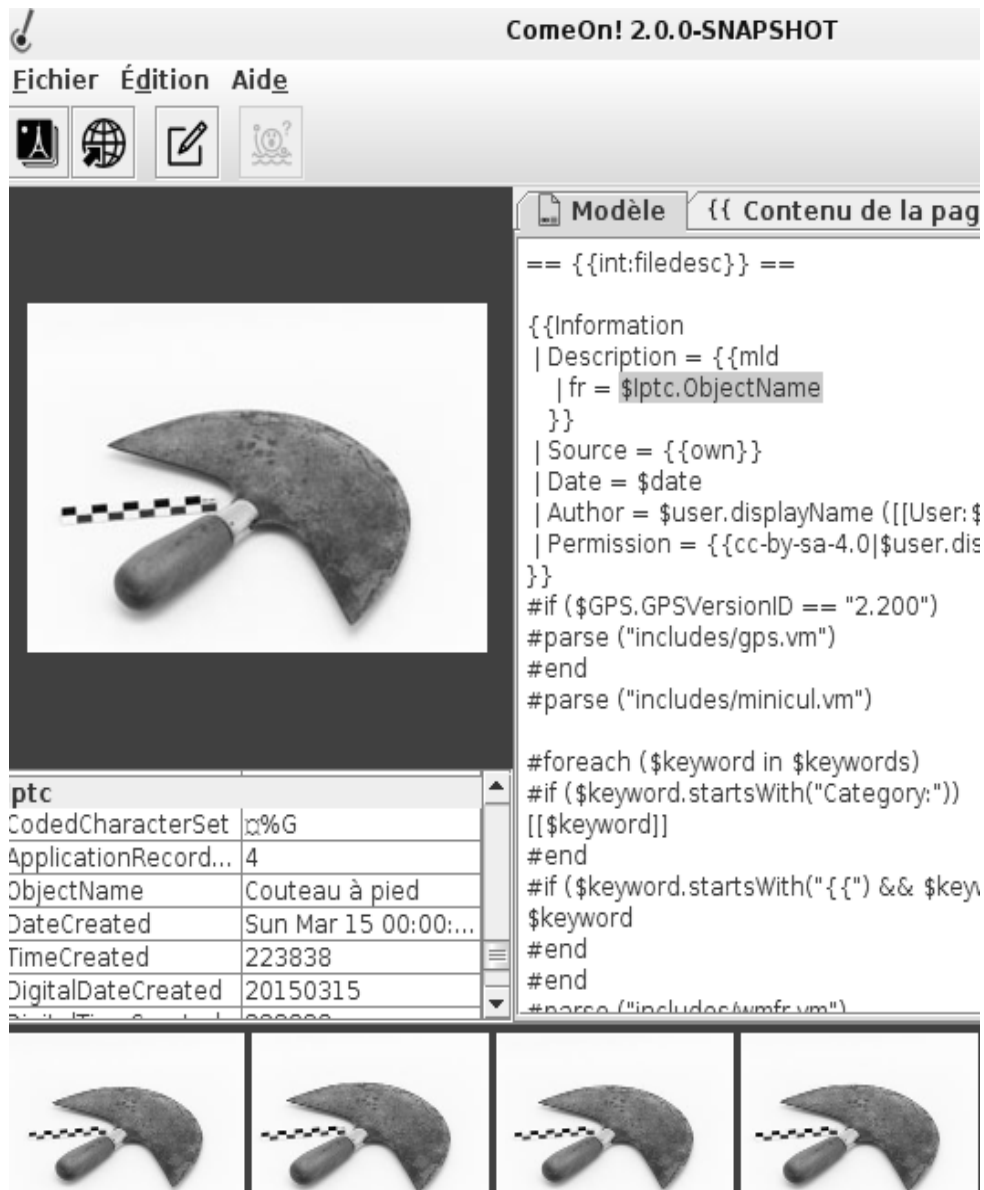
Category of Museum Function or services	Rights Implicated	Elements of Statutory Exceptions
<p><i>Statutory Provision:</i></p> <p>Use for exhibition catalogues</p> <p><i>Museum services:</i></p> <ul style="list-style-type: none"> <li>• Produces and distributes exhibition catalogues</li> </ul>	<p><i>Primary:</i></p> <p>Reproduction</p> <p>Distribution</p> <p><i>Secondary:</i></p> <p>Making available /Communication to the public (if catalogue is available online)</p> <p>Circumvention (if the original is secured by TPM).</p>	<p><i>Scope of Works:</i></p> <ul style="list-style-type: none"> <li>• Any works with no exclusion, or only some types of works if exclusion applies.</li> <li>• Published works.</li> </ul> <p><i>Condition of the Works:</i></p> <ul style="list-style-type: none"> <li>• Works exhibited or to be exhibited.</li> <li>• Works accessible to the public in the museum.</li> <li>• Works in the collection of the museum.</li> </ul> <p><i>Purpose of Use:</i></p> <ul style="list-style-type: none"> <li>• Promotion/advertisement of exhibition or event.</li> <li>• Non-commercial use.</li> <li>• Some jurisdictions require that catalogue must be edited by the museum.</li> </ul>

## EXHIBITION CATALOGUES

Category of Museum Function or services	Rights Implicated	Elements of Statutory Exceptions	Elements for Ongoing Consideration
<p><i>Statutory Provision:</i></p> <p>Use for exhibition catalogues</p> <p><i>Museum services:</i></p> <ul style="list-style-type: none"> <li>• Produces and distributes exhibition catalogues</li> </ul>	<p><i>Primary:</i></p> <p>Reproduction</p> <p>Distribution</p> <p><i>Secondary:</i></p> <p>Making available /Communication to the public (if catalogue is available online)</p> <p>Circumvention (if the original is secured by TPM).</p>	<p><i>Scope of Works:</i></p> <ul style="list-style-type: none"> <li>• Any works with no exclusion, or only some types of works if exclusion applies.</li> <li>• Published works.</li> </ul> <p><i>Condition of the Works:</i></p> <ul style="list-style-type: none"> <li>• Works exhibited or to be exhibited.</li> <li>• Works accessible to the public in the museum.</li> <li>• Works in the collection of the museum.</li> </ul> <p><i>Purpose of Use:</i></p> <ul style="list-style-type: none"> <li>• Promotion/advertisement of exhibition or event.</li> <li>• Non-commercial use.</li> <li>• Some jurisdictions require that catalogue must be edited by the museum.</li> </ul>	<ul style="list-style-type: none"> <li>• Application to digital technology (few jurisdictions prohibit online catalogue expressly, while others extends the exception to online catalogues).</li> <li>• Scope of the exception beyond cataloguing (e.g. advertisement of exhibitions in press and TV).</li> <li>• Nullity or unenforceability of contracts contradicting statutory exception.</li> </ul>

## EXHIBITION CATALOGUES

- HYPOTHETICAL STATUTE
- *[some, or photographic] **works** [forming part of a collection accessible to the public] may be **reproduced** in a **catalogue** issued by the **administrators of the collection** [by any means whatsoever] [to promote the collection]*



## Topic: Online Exhibition (cf. Typology p. 15)

**Definition:** Copyright exception authorizing museums to make collection and archival databases available to the public

## TOPIC: ONLINE EXHIBITION

### **Category of Museum Function or services**

#### *Statutory Provision:*

Making available archives  
of collections to the public  
online

#### *Museum services:*

Allows visitors to have  
access to and consult  
museum collections and/or  
archival database online  
(virtual exhibition).

## TOPIC: ONLINE EXHIBITION

Category of Museum Function or services	Rights Implicated
<i>Statutory Provision:</i>  Making available archives of collections to the public online	<i>Primary:</i>  Making available /Communication to the public.
<i>Museum services:</i>  Allows visitors to have access to and consult museum collections and/or archival database online (virtual exhibition).	<i>Secondary:</i>  Reproduction.  Circumvention (if the original is secured by TPM).

## TOPIC: ONLINE EXHIBITION

Category of Museum Function or services	Rights Implicated	Elements of Statutory Exceptions
<p><i>Statutory Provision:</i></p> <p>Making available archives of collections to the public online</p> <p><i>Museum services:</i></p> <p>Allows visitors to have access to and consult museum collections and/or archival database online (virtual exhibition).</p>	<p><i>Primary:</i></p> <p>Making available /Communication to the public.</p> <p><i>Secondary:</i></p> <p>Reproduction.</p> <p>Circumvention (if the original is secured by TPM).</p>	<p><i>Scope of Works:</i></p> <p>Any works with no exclusion, or only some types of works if exclusion applies.</p> <p><i>Condition of the Works:</i></p> <p>Works must be in the collections.</p> <p>Works accessible to the public.</p> <p><i>Conditions of Use:</i></p> <p>Non-commercial use.</p> <p>Authorship requirement (in few jurisdictions).</p> <p>Specific fragments of the work can be freely reproduced and displayed.</p>

## TOPIC: ONLINE EXHIBITION

Category of Museum Function or services	Rights Implicated	Elements of Statutory Exceptions	Elements for Ongoing Consideration
<p><i>Statutory Provision:</i></p> <p>Making available archives of collections to the public online</p> <p><i>Museum services:</i></p> <p>Allows visitors to have access to and consult museum collections and/or archival database online (virtual exhibition).</p>	<p><i>Primary:</i></p> <p>Making available /Communication to the public.</p> <p><i>Secondary:</i></p> <p>Reproduction.</p> <p>Circumvention (if the original is secured by TPM).</p>	<p><i>Scope of Works:</i></p> <p>Any works with no exclusion, or only some types of works if exclusion applies.</p> <p><i>Condition of the Works:</i></p> <p>Works must be in the collections.</p> <p>Works accessible to the public.</p> <p><i>Conditions of Use:</i></p> <p>Non-commercial use.</p> <p>Authorship requirement (in few jurisdictions).</p> <p>Specific fragments of the work can be freely reproduced and displayed.</p>	<ul style="list-style-type: none"> <li>• Application of open license (e.g. standardized licenses, such as Creative Commons or CC0)</li> <li>• Restriction of quality of copies (e.g. thumbnail or low resolution images only).</li> <li>• Restriction of scope of the type and amount of information contained in the database (e.g. only factual data not protected by copyright).</li> </ul>



## **ADDITIONAL CONSIDERATIONS FOR THE EXCEPTION(S)**

- **CATEGORY OF EXCEPTIONS**
- **CATEGORY OF BENEFICIARIES**
- **CONDITIONS OF USE**
  - Scope of works
  - Number of copies
  - Remuneration
  - Authorship requirements.
- **CROSS-BORDER USES AND ITS IMPACT (E.G. FOREIGN USERS)**
- **UNWAIVABLE NATURE**
- **IMPLICATIONS OF EXTENDED COLLECTIVE LICENSES (ECL)**
- **EXTENSION TO DIGITAL OR NEIGHBORING RIGHTS**
- **SAFE-HARBOR**
  - Limitation of liability of museums in lieu of exception
  - No liability for subsequent activity by users

## **ACKNOWLEDGMENT AND IMAGE RIGHTS**

### **• ACKNOWLEDGMENT**

- special thanks to the WIPO Secretariat, in particular Miyuki Monroig and Michele Evangelista, Geidy Lung, Michele Woods and Deputy Director General Sylvie Forbin for their support, and to Prof. Kenneth Crews for generously sharing insights, views and results to enrich our results.
- sincere thanks again to all interviewees and experts, and delegates for sharing information, and to Mr. Benoît Müller for having generously shared all his results from the preliminary analysis.

### **• IMAGE RIGHTS**

- SVG artist brushes art paint CC0 (slide 2), tourism map museum symbol, CC BY SA 3.0 (slide 2); Museum CC0 Public Domain (slides 2 & 13); Catalogue de prothèses L'Elvea, Lyon, imprimerie Léon Sézanne, 1914. Collection Musée Dauphinois, CC BY SA 4.0 (slides 3 & 12); Fragment (Egypt), 10th–12th century CC0 (slide 4); The U.S. National Archives, Carter White House Photographs Presidential, CC Public Domain Mark (slide 17); The U.S. National Archives, Carter White House Photographs Presidential, CC Public Domain Mark (slide 18); Valdoria, Penseur Musée Rodin Paris, C BY SA 3.0 (slide 12) ; Hannes Grobi, AWI, 2007, CC-BY-SA-2.5 (slide 13) ; Édouard Hue, Screenshot of Comeon metadata template, 2017 CC BY SA 4.0 (slide 18) ; Gioconda Louvre photographers, Bramfab, 2015 CC BY SA 4.0 (slide 19)

# **WIPO REPORT ON MUSEUMS COPYRIGHT PRACTICES AND CHALLENGES**

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

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