



01

THINK PAPERS COLLECTION / 01

## Copyright and Cultural Heritage: Developing a Vision for the Future

*This Think Paper raises questions about the relationship between European cultural heritage and copyright in the light of the fundamental and disruptive changes brought about by new and emerging digital technologies and which promise profound transformation in the future. It advocates that a human rights approach should be taken to the use and re-use of our cultural heritage and that copyright should be used as a tool to support cultural rights.*

THINK  
PAPERS

*This Think Paper is one of a collection of Think Papers issued by RICHES in order to stimulate further debate on the issues arising from the research.*

*Research undertaken by the RICHES project covers a range of subject areas including digital libraries, virtual performance, crafts, fashion, technologies and spaces.*

*All images courtesy of the British Library Flickr collection, except the last one: CC BY-SA, Wikimedia Commons, Peter Zelizňák.*

#### Contact People

**Neil Forbes**, Coventry University, project coordinator:  
n.forbes@coventry.ac.uk

**Antonella Fresca**, Promoter SRL, communication manager:  
fresca@promoter.it

#### Web

resources.riches-project.eu  
www.riches-project.eu  
www.digitalmeetsculture.net/riches

#### Social

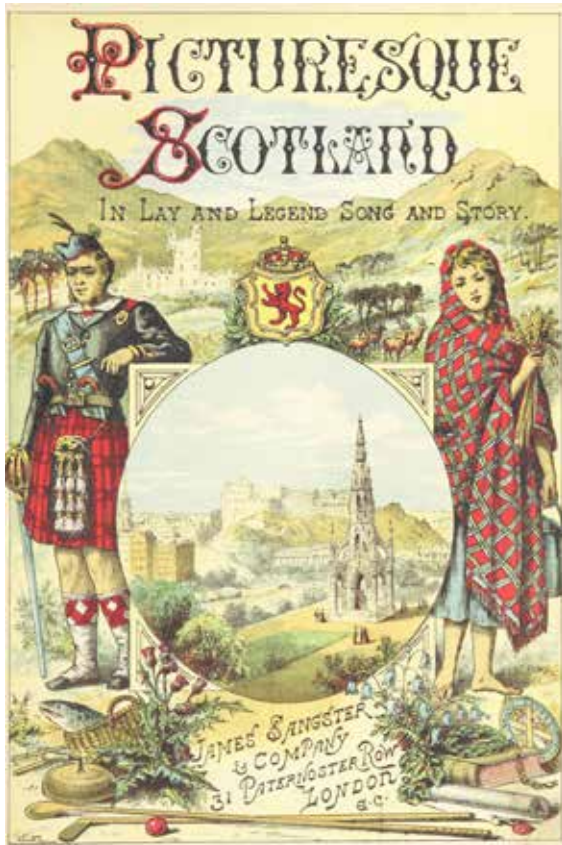
Twitter: #richesEU  
YouTube: youtube.com/user/richesEU



#### Official Media Partner

DIGITAL  CULTURE  
www.digitalmeetsculture.net

# Copyright and Cultural Heritage: Developing a Vision for the Future



What is cultural heritage? Should access to cultural heritage be considered a human right? What are cultural rights? If cultural heritage is co-created should all authors have equal rights? Should digitised images be free for all to use in any way they wish? Should cultural heritage institutions charge for access to their digitised collections? When can a user be confident that a copyright protected work can be used without permission? How can you tell when a copyright work is an orphan work?

This Think Paper raises questions about the relationship between European cultural heritage and copyright in the light of the fundamental and disruptive changes brought about by new and emerging digital technologies, changes which are taking place at an accelerating pace and which promise profound transformation in the future.

Key questions outlined above have been highlighted during the course of the research in RICHES. What, then, is the right copyright strategy that would address these challenges?

What copyright approach will support the optimum environment for policy-makers, museums, libraries archives and galleries, heritage professionals, audiences, performers, users, craftspeople and investors and the varied range of interests that they have in cultural heritage? And what strategy will prove resilient enough to support and provide vision for the sector, not just in the here and now, but into the medium and longer-term future?

The current copyright framework, first developed in the 18th century, was firmly rooted in the protection of the written word – specifically books. While the law has developed over the years in response to technological development, the advent of digitisation has really stretched those laws, almost to breaking point. But that does not mean to say that copyright is irrelevant. What it does mean is that it is incumbent on us to rethink how we might use the law to the advantage of the cultural heritage sector, recognising that cultural heritage is now less about objects in museums and more about new participatory cultural practices that draw to a greater or lesser extent on remembered and recovered pasts and in so doing enable participants to form new identities, unmediated by traditional institutions. Within this changed and continually changing environment a coherent copyright strategy should seek to provide a touchstone for making principled decisions; decisions that reflect and respect the rights and interests of creators, of users and of the public. It should seek to draw the sector together and provide a vision of where it should go over the coming decades, recognising that ‘cultural heritage’ is in a state of flux and that emergent practices are changing its boundaries.



## So what are the options for a cultural heritage copyright strategy?

- We could align ourselves with some intellectual property thinkers and suggest that copyright should be abolished. This would be in keeping with some economists who consider that copyright law no longer fills its purpose of encouraging innovation, but rather it does the opposite, it hampers innovation. But this is not a realistic suggestion and tends only to be proposed in order to provoke debate.
- We could take the copyright framework as it exists and apply it to each scenario as it arises. Copyright law after all has its own in-built rationales – that of the encouragement of innovation and reflection of the personality of the author. Simply applying copyright rules should therefore reflect these ideals. But such an approach without more avoids the reality of the challenges of applying copyright law in practice and ignores the fact that copyright law is constantly changing. Factual situations are rarely identical and the boundaries of the law tend to be opaque. When, for instance, can an institution be sure that a work is an orphan? Or when can a user be confident that a use of a copyright protected work falls under one of the permitted purposes and thus permission of the copyright owner is not needed to re-use the work?
- We could lobby for reform and seek to persuade policy-makers that a specially contoured copyright framework should be developed for the cultural heritage sector, one that balances the rights and interests of copyright owners with the new engaged ‘cultural heritage’ practices and processes favoured by the younger generations and through which they seek to create new identities. While this may be utopia, it is unworkable. As noted above, the current copyright framework emerged in the 18th century and has been refined ever since. The creation of a new framework is unlikely to proceed any faster and the cultural heritage sector will look completely different 300 years from now.
- We could do some lateral thinking and move from the copyright framework to the human rights framework. In so doing, we could seek to persuade policy makers and memory institutions to consider cultural heritage as a resource (via the human rights framework) before considering it an asset (via the intellectual property framework). Heritage does, after all, belong to ‘the people’. The starting point would be to ask how the rights to culture and cultural rights in the human rights framework could be fulfilled when developing the law or institutional strategies and then find ways in which copyright can support that approach.

It is this last strategy that has been proposed by RICHES. It is acknowledged that this method is not without its challenges and aligning the two regimes will not give us hard and fast answers to copyright conundrums. But what it will do is to give us a consistent – and principled – way of thinking about how we can use copyright to support access to and use of our cultural heritage. It is an approach that gives us a vision of what the cultural heritage sector could, and should, look like in a time of tempestuous change.



so as to converge the light upon any crystal brought into the centre of the field.\* Some means of focussing it within a short



Fig. 14.—Petrological microscope with rotating stage.

range should be supplied, and it is a great convenience when

\* A  $\frac{1}{4}$ -inch objective, supported inverted under the slide and above the polariser, serves to produce the characteristic figures.



*“Bringing cultural heritage and people together in a changing Europe  
and finding new ways of engaging with heritage in a digital world”*

[resources.riches-project.eu](https://resources.riches-project.eu)  
[www.riches-project.eu](http://www.riches-project.eu)  
[www.digitalmeetsculture.net/riches](http://www.digitalmeetsculture.net/riches)



This project has received funding from the European Union's  
Seventh Framework Programme for research, technological  
development and demonstration under grant agreement n° 612789