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Free access to pictures shapes human character! – A Conversation about the Future of Copyright Law

The Deutsche Digitale Bibliothek has the task of facilitating free access to German cultural heritage online and for this purpose, is creating a network of what its partners - German cultural and knowledge institutions - have to offer. One significant area of this work is the debate on valid copyright law and the question of how cultural and knowledge institutions may display their pieces online without impairing creator and proprietor interests.

In September of last year, the Europeana, the European counterpart to the Deutsche Digitale Bibliothek, introduced its position paper on copyright law and demanded an update of European copyright law. A quotation follows. „Allowing cultural heritage institutions to make [their] material available on their own websites under a tailored exception will not cause harm to creators, publishers or other rights holders. Instead it would be complementary to their activities and ensure increased access to the full diversity of European Culture.”

Within the framework of the conference "Shaping Access! More Responsibility for Cultural Heritage!" on 5 and 6 November in the Altonaer Museum in Hamburg, Ellen Euler, Deputy Managing Director of Finance, Law, Communication for the Deutsche Digitale Bibliothek, held a "Talk on the Future of Copyright Law". The following panellists were invited: artists Anja Jensen and Frauke Dannert, Gerhard Pfennig (formerly of VG Bild-Kunst), Till Kreutzer (legal expert), Antje Schmidt (Museum für Kunst und Gewerbe in Hamburg) and Hanns Peter Frenz (bpk). A central question of the talk was how pieces could be distributed, displayed and used online in the face of technological developments.

Is conveying art and culture through cultural institutions and their digital collections publicity for the artists or should artists be compensated for this? What liberties does the "Sharing & Remix Community" need? How can there be assurance that both the interests of the creator or proprietor as well as those of the user are respected and taken into account fully?

From the ninety-minute discussion, one significant aspect should be excised, namely, the perspective of institutions and creators - visual artists in this case - on the issue of displaying pictures. A further important aspect concerning how freely cultural heritage institutions could shape access online will be discussed in a subsequent talk.

A short introduction to the current legislation

In order to make it possible for cultural and knowledge institutions such as museums, archives, libraries and media centres to display their collections online in a way that is

as comprehensive as possible, which means including works of the 20th and 21st centuries, regulations have been created at the European and national levels for certain works, i.e. the regulation for "Orphan Works" and the regulation for "Out-of-Print Works". However, both regulations have deficits concerning practical application.

The "Orphan Works" regulation has only a very limited area of application. It is only valid for certain works such as film, sound and text and, as far as these are concerned, only for works whose proprietor cannot be identified or found. In order to settle these legal situations, a "thorough search" must be conducted. The strict guidelines for this search cause mass digitisation projects to fail in practice. There is too little staff and there are too few resources available to put in the necessary effort.

The "Out of Print Works" regulation was also limited in the amount of help it provided. As a solution for a licensing agency, it makes it possible for institutions to use out of print works in exchange for a small licensing fee according to the copyright protection law. Out of print works are those which are no longer published and can therefore no longer be supplied by book stores. But this regulation is also very limited in its application, namely for text.

"A digital catalogue image limit for the internet which enables cultural heritage institutions to display their cultural treasures online is lacking." – Ellen Euler

For the non-digital world, there is a provision that allows images of protected works to be used in collection catalogues without the permission of the proprietor. For the digital world, on the other hand, there is no corresponding provision. That is why for every image of a work that is still protected, cultural heritage institutions are required to find out not only whether they are allowed to digitise works but also if they are allowed to display them as digital objects online.

Deutsche Digitale Bibliothek vs. VG Bild-Kunst: Proposed solutions

The Deutsche Digitale Bibliothek is attempting to solve this problem for cultural and knowledge institutions by way of a framework contract with the VG Bild-Kunst. The VG Bild-Kunst is a licensing agency for the collective management of copyright law. It represents artists who have created works of visual art.

A contract was negotiated with the VG Bild-Kunst which would have allowed the Deutsche Digitale Bibliothek to display these works online with medium resolution. As a contract to the benefit of a third party, those institutions that cooperate with the DDB would have had the privilege of displaying their contents not only on the website of the DDB, rather also on their own page. However, the contract could not go into effect because two verdicts have been handed down at the European level that are causing the licensing system for individual applications to collapse.

Following the European Court of Justice's rulings in the Best-Water International

case and the Svensson case, editorial contents may be illustrated, for example, by images from the Deutsche Digitale Bibliothek being embedded without them being licensed with the VG Bild-Kunst. The VG Bild-Kunst now sees itself as incapable of offering a rate that can balance out the losses in income which are now feared. It would like to have a contract with the condition stipulating that the Deutsche Digitale Bibliothek implement what is known as framebreaking technology.

The Board of the DDB, who has dealt with the issue and the effort, spoke against implementing this technology. Some reasons include that this is not representative of the DDB's open architecture, rather would require a high level of implementation effort, which would be impossible for the institutions that cooperate with the DDB to perform (so that they would no longer benefit) and would also affect all contents instead of being restricted to the contents from the VG Bild-Kunst without a further provision.

"Framebreaking is a good word for the game of hangman - otherwise useless. We need a solution without it!" Ellen Euler

And what do the creators say?

The answer of the independent artist, Anja Jensen, to the question of how she sees it that her art will no longer be available in the Deutsche Digitale Bibliothek when the contract with the VG Bild-Kunst does not take effect was resolute:

"I would like my images to be available in the Deutsche Digitale Bibliothek, but I do not want anyone to make money from my work behind my back without me being a part of it. It is a double-edged sword.

On the one hand, for me, art is communication. What good is art that is simply stored away in archives? What is the use of my art, my images, when I am unable to display them? And that means not only displaying them at trade fairs, in exhibitions, in catalogues, rather that they are made available generally for the educational sector, for further education.

But I also see the problem of commercialisation. An example would be getting ready for an exhibition. I make all my graphic material available for public relations and it is published. Then someone may want to produce a report after the exhibition. The first question asked is 'How much do the pictures cost?' I name the prices taken from the VG Bild-Kunst table and the answer is 'Thank you, Ms Jensen, that is kind of you, but we will not be displaying them'.

And what should I do then? I can get a six-page report in Korea, Shanghai, Warsaw. Do I decline? No, I request an exemption from my contract because I am interested in my images being available. I would like to have money for that, but reality has shown me that I will not receive it.

Now, that is from the artist point of view. I depend on it after all. I don't earn money by placing my images online. But I want as many people as possible to have access to

them and I want to be a part of the cultural memory. Because, if we take care of everything using payment limitations, only a small portion will be available and the rest will disappear from memory.

Which, by the way, has already been the case. Art history is always a presentation of the highlights of each epoch. However, in the age of globalisation, we should, in my opinion, make as many works as possible available to the public.

And I would like to address one last aspect. I worked as a grammar school teacher for art and French for a long time. I taught master's courses in art therapy at the Sigmund-Freud-Universität in Vienna. And, again an important point is that we need access to images. Displaying images and having access shapes human character!"

According to what she said here, Anja Jensen would allow the Deutsche Digitale Bibliothek to display her images as well as other cultural portals who would like to. She is convinced that payment limitations should not be allowed to prevent this material from being displayed.

This is confirmed in the discussion by the artist, Frauke Dannert. She wants her images to be distributed over the internet and discussed as much as possible by both journalists and bloggers. Both artists are of the opinion that artists who see themselves as faced with the option of seeing their images reproduced and distributed and discussed as opposed to generating additional income by having them licensed for individual use, the former would be preferable.

A preliminary conclusion

There must be a new solution for visual artists to receive adequate compensation for creative work. The Deutsche Digitale Bibliothek desires this as well. It supports artists and users being reasonably remunerated for the creative contributions that they make and being involved in use by third parties. The DDB does not wish to exploit this commercially, instead, their wish is to make access to these works simpler for everyone as well as to facilitate and inspire new creations.

The Deutsche Digitale Bibliothek is continuing to hold talks with the VG Bild-Kunst. Just as before, the talks are proceeding in an objective and solution-oriented framework. It has become clear that the VG Bild-Kunst cannot agree to any solution that puts the artists it represents at a disadvantage or that imposes a loss of income upon them. On the other hand, these same artists have expressed publicly and indicated that it is more important to them that their art be displayed rather than that it be subject to unremunerated connection usage due to framing.

"Being forgotten is worse than statutory violations" – Paul Klimpel

Ultimately, this is confirmed by the efforts of the Deutsche Digitale Bibliothek to arrive at barrier regulations when updating the copyright law. As this cannot be expected in

the foreseeable future, further attempts will be made to arrive at contractual regulations.

It is possible to hear the complete discussion online here:

<https://voicerepublic.com/talks/gesprach-uber-die-zukunft-des-urheberrechts>

Tags:

[Urheberrecht](#), [Framing](#), [VG Bild-Kunst](#), [Zugang gestalten](#), [Cultural Heritage](#), [Digitalisierung](#)

<https://www.deutsche-digitale-bibliothek.de/content/journal/hintergrund/der-freie-zugang-zu-bildern-ist-menschenbildung-ein-gespraech-zur-zukunft-des-urheberrechts?lang=en>