

MUSEUM COPYRIGHT CHALLENGES

April 29, 2019, Singapore

Yaniv Benhamou

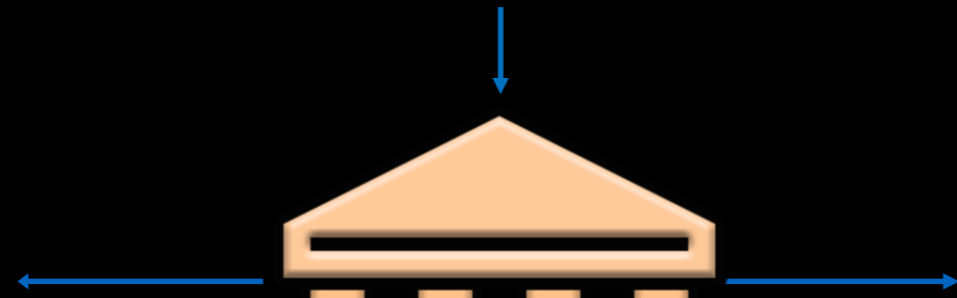
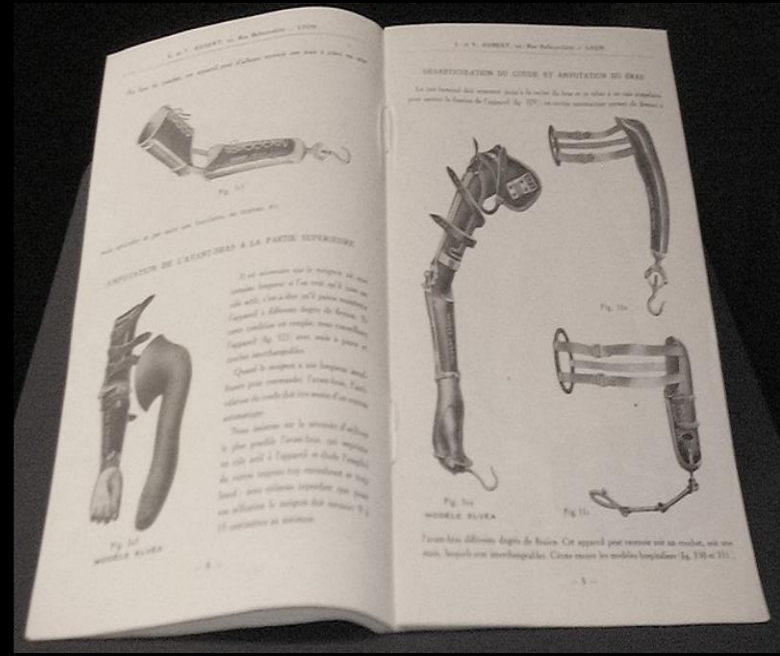
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MUSEUM & COPYRIGHT

• **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**”.

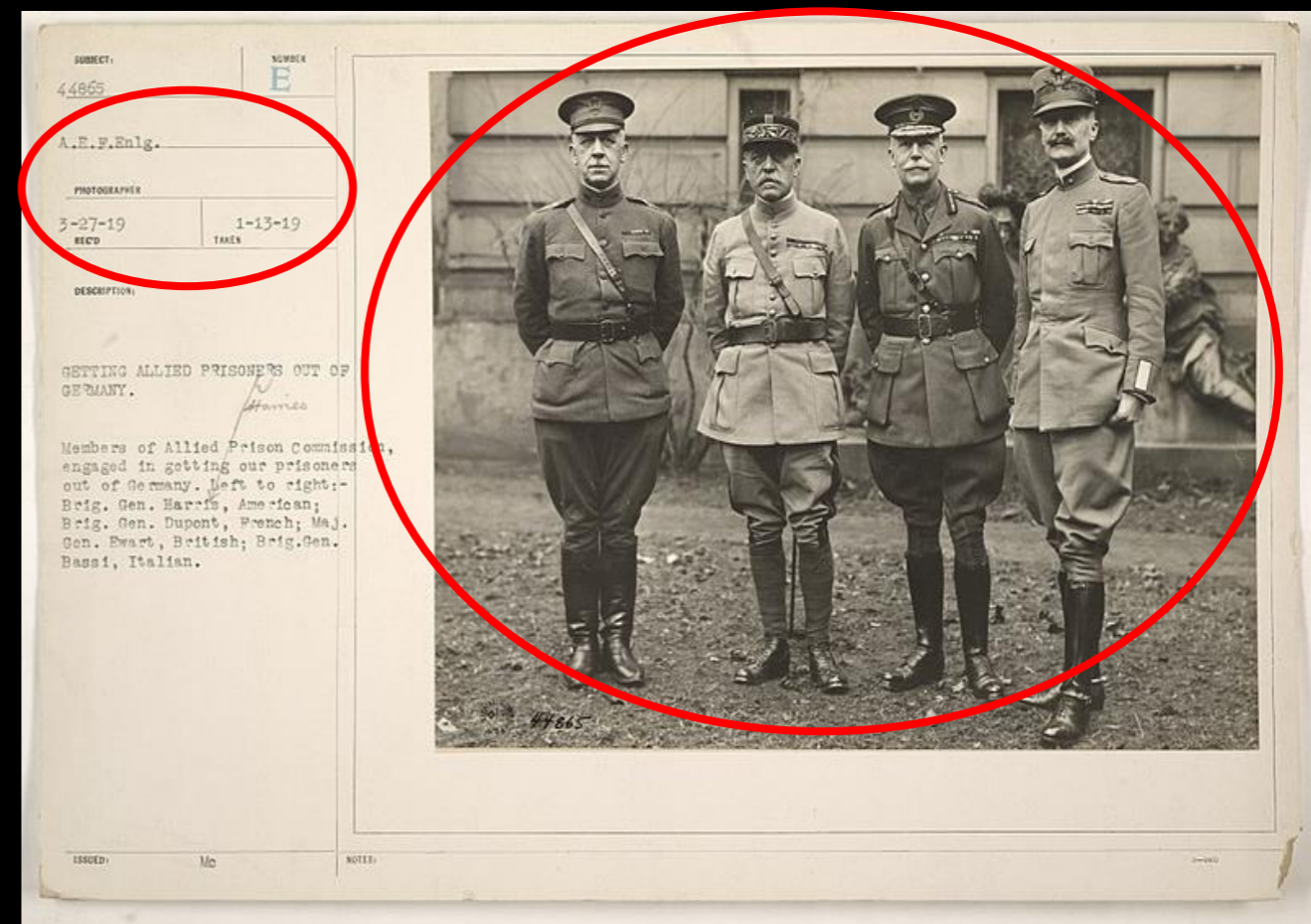


- Museums may be both users and creators

- Copyrighted works

- Public domain works

- Non copyrighted works



- 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

TYPOLOGY ON LIMITATIONS AND EXCEPTIONS (SCCR/38/6)

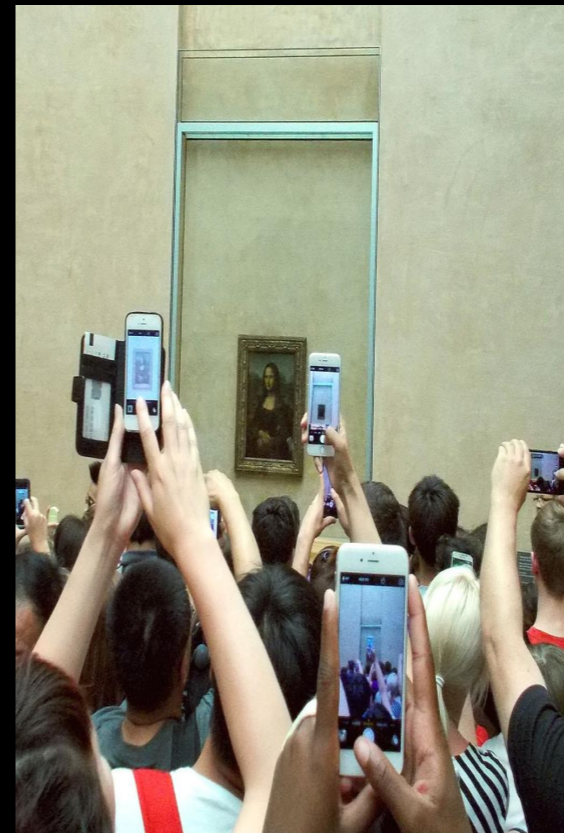
COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4
Category of Museum Function or services	Rights implicated	Elements of statutory exceptions	Elements for ongoing considerations

- **Preservation**
- **Replacement**
- **Archiving**
- **Study & research**
- **Making available on terminals**

- **Exhibition of physical works**
- **Exhibition of time-based media**
- **Photo-shooting**
- **Non-attributed works**
- **Exhibition catalogue**
- **Online exhibition**

REPORT ON MUSEUM PRACTICES AND CHALLENGES (SCCR/38/5)

OWNERSHIP	PRESERVATION	EXHIBITION	COMMUNIC.
Copyright status Licensing practices	Archive and document Restore or replace	Onsite display Photo-shooting	Online museums Publications



ZOOM INTO THE ASIA-PACIFIC GROUP



- **Among 191 WIPO Member States, 141 countries provide no specific exceptions for museums; 50 countries provide specific exceptions for museums, such as in ASPAC:**
 - Bangladesh, China, India, Fiji, Mongolia, Pakistan, South Korea



Topic: Preservation
(*cf.* Typology p. 6)

Definition: Copyright exception authorizing museums to reproduce works for preservation purposes

- **CATEGORY OF EXCEPTIONS**
- **CATEGORY OF BENEFICIARIES**
- **CONDITIONS OF USE**
 - Scope of works
 - Number of copies
 - Remuneration
 - Authorship requirements

- **HYPOTHETICAL STATUTES**

- **Specific:** “*[some] **works** [forming part of a collection accessible to the public] may be **reproduced** [by the museum] [without payment of remuneration to the copyright owner] for **preservation purposes** [by any means whatsoever.] [The other rights of the copyright owner must not be prejudiced. The source should be mentioned.]*” (see e.g. India & Afghanistan limited to libraries, China very detailed)
- **General:** “*It shall be **lawful** to make **reproductions** by photographic or other pictorial processes, provided this reproduction is **not-for-profit**, of statues, monuments and other works of art acquired by the authorities that are displayed in streets, parks and **museums**” (see e.g. Panama, Costa Rica)*

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- **CROSS-BORDER USES AND ITS IMPACT (E.G. FOREIGN USERS)**
- **UNWAIVABLE NATURE OF THE EXCEPTIONS**
- **IMPLICATIONS OF EXTENDED COLLECTIVE LICENSES (ECL)**
- **EXTENSION TO DIGITAL OR NEIGHBORING RIGHTS**
- **LIMITATION OF LIABILITY OF MUSEUMS IN LIEU OF EXCEPTIONS**

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