

Kluwer Copyright Blog

Who holds copyright in 3D copies of repatriated cultural heritage?

Pinar Oruc (University of Manchester) · Thursday, January 5th, 2023

It is a common practice to make copies of deteriorating or far away cultural heritage. As of 2022, it is not even a new idea to use digital methods to copy heritage, considering that the mass digitisation of cultural heritage, especially books, started more than two decades ago. But we should also recognise the current extra push towards digitising tangible heritage. A recent [European Commission recommendation](#) mentions using 3D technology in the highest level of detail, and sets targets for digitisation by 2030, with the goal of digitising 100% of cultural heritage that is at risk and 50% of the most physically visited cultural and heritage monuments, buildings and sites.



Photo by awsloley via Pixabay

If we limit ourselves to the noble goal of preserving the heritage of all humankind, as repeated in [multiple UNESCO instruments](#), then digitisation is very helpful in saving and restoring lost heritage or heritage at risk, and at the same time drawing public attention to damaged monuments. A good example would be the destroyed [Palmyra Triumphal Arch](#), a smaller 3D printed copy of which went on to tour multiple cities. Despite the concerns about the value of a copy without the ‘aura’ of the original arch, this project at least allowed the public to experience lost heritage and show solidarity.

But if we try to solve the issue of ownership and decide on who should hold the heritage that has not disappeared and that is still around, 3D digitisation is actually not that helpful, and it would be insensitive to even question if any country would give up on the repatriation requests if they were given a digital copy. In fact, we can all find the 3D models for [the Elgin Marbles](#) or the [Nefertiti Bust](#) online, and we can even print them ourselves if we have the right tools. But, not so surprisingly, Greece and Egypt respectively still seek their return.

While technological developments are useful in creating realistic copies that can be shared easily, treatment of digitised heritage is an area where cultural property laws meet intellectual property law, both of which have differing approaches as to who should ‘keep’ what. Unless there are more

stringent national cultural heritage codes that require authorisation from the government prior to reproduction, copyright laws are going to have the biggest impact on who gets to create these copies and then enjoy the benefits of protection.

Given that the subject matter of cultural heritage and intellectual property protection partly overlap (such as with books, paintings, and sculptures), copyright law will play a role even at the beginning of these projects by determining the scope of what can be digitised. As 3D scanning would fit under the definition of reproduction, scanners might initially prefer working with objects that are no longer protected by copyright.

More importantly, if certain conditions are met, copyright arises automatically and gives limited, yet significant, long term protection which could allow the scanners to enjoy the benefits and to prevent others from using their work. This possibility is very good incentive for embarking on costly and time-consuming scanning projects.

If we turn to these abovementioned conditions for copyright subsistence, assuming that fitting 3D models within the categories of protected subject matter is not a problem, the originality of the copies will be the main issue here. This depends on what kind of contribution is involved in the making of 3D copies, which will require [an analysis](#) of the nature of the digitisation project, especially its purpose. This is also confirmed by Article 14 of the [CDSM Directive](#), at least for works of visual art. In the unlikely event that the 3D scans meet the originality threshold, then a new copyright term begins in which digital heritage is controlled by their digitisers, who can then try to monetise them or share them freely online.

So what happens to these digital copies – or what should happen – when the artefacts are returned to their original countries? It is usually assumed that the digitising institution will keep digital copies but make them available either to the repatriated country or to everyone. Alternatively, ownership of the scans is not addressed at all when discussing physical repatriation.

A not-so-recent example is the [2018 report](#) by Felwine Sarr and Bénédicte Savoy on the restitution of African cultural heritage held in France, recommending sharing of digital copies on open-access platforms. Similarly, the 2021 [Statement](#) on the handling of Benin Bronzes in German museums and institutions also refers to online portals for collections from a colonial context. This was followed by a 2022 [joint declaration](#) showing the intention to understand digitisation and copyright issues. Other comments on these developments from a copyright law perspective can be seen [here](#) and [here](#).

Since the parties are understandably more frustrated about – and therefore focused on – the repatriation of the physical copies, it is easy to overlook copyright concerns or embrace an overly generous approach to letting everyone access the heritage of others – but only subject to conditions determined by the copyright holders. Since the copies can be shared an indefinite number of times without losing quality, and then be subsequently printed out with great accuracy, it would mean that whoever keeps the copyright of the digitised object would still hold a strong control over how the heritage will be viewed and shared by the public. This could range from commodification of heritage of others, allowing public access to secret and sacred heritage and/or rewriting how historical events will be interpreted, such as why the artefacts are not in their original locations in the first place.

To conclude, in addition to not solving the question of who keeps the cultural heritage, 3D

technology creates a set of new concerns over who keeps the copies. Given the push to digitise cultural heritage as the last step before physical repatriation, and the repeating recommendations on urgently digitising a large percentage of the heritage at risk, the ownership of scans needs to be assessed carefully from the perspective of copyright by all involved parties.

*This post is based on an article titled [Rethinking Who ‘Keeps’ Heritage: 3D Technology, Repatriation and Copyright](#) published in *GRUR International*.*

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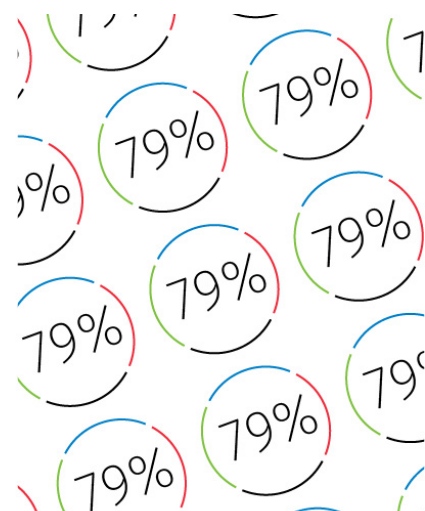
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