

GUEST EDITORIAL

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Cultural Heritage and Technology

This issue of the “Santander Art and Culture Law Review” (SAACLR) is dedicated to the theme of “Cultural Heritage and Technology”. As such, it brings into focus the current challenges faced by cultural heritage law and policy in view of the changes brought about by the emerging prominence of digital technologies. Stimulated just several years ago by the Google Books project – the first initiative of such global reach and breadth – digitization is nowadays at the heart of national and supranational cultural heritage policies worldwide. It is profoundly shifting the traditional approach to heritage – an approach based on the ideas of preservation, access, and education – to one with a global, economic, contemporaneously-focused, and democratizing perspective. While institutional stakeholders and policy-makers strive to keep pace with the rapidly-changing technological innovations and possibilities, they still tend to operate in a context defined in the pre-digital era, conceived to fit the concept of “classical” (analogue) heritage. The new approach still has problems with basic issues, such as the definition of digital heritage, the proper delineation of the complex problems surrounding its copyrights, and its inclusion in state or institutional long-term cultural heritage policies and strategies.

The contributions included in the following sections of this issue of the journal – Interviews, General Articles, Legal Commentaries, Debuts, and Varia – reflect the growing need for defining and systematizing digital heritage and the implications of digitization on cultural heritage at various legal and policy levels. Importantly, the contributions are constructive; they either signal the pitfalls and inconsistencies of the existing definitions, legal frameworks, and policies, or propose specific solutions.

The application and proliferation of digitization in the cultural heritage realm is bringing about substantial changes to the core of what we understand as cultural heritage. It is transforming our ideas on what heritage is, to whom it belongs, and how it should be preserved and shared. Such broad questions are the primary focus of the interviews included in the issue.

Given that digitization is considered as a primordial means of preservation that allows for the perceived smooth conversion and conservation of analogue cultural objects in digital forms, and that digital assets raise new and substantial preservation challenges, Ewa Manikowska's interview with Łukasz Bratasz, "Heritage Science – The Benefits of an Interdisciplinary Approach in Protecting Cultural Heritage" focuses on current scientific evolutions in the realm of cultural heritage protection, of which digitization is just one element. It explores in particular the concept, tools, and methods of sustainable conservation, an important branch of heritage science and a new academic discipline established in the 21st century. The rapid application of Information Technologies has not only given rise to the digital preservation of cultural assets, but also witnessed the rise of a new category of cultural heritage – born-digital heritage. Its peculiar nature and the challenges faced by memory institutions in the classification, collecting, and preservation of born-digital assets are explored in Gil Pasternak's interview with Natalie Kane, "Collecting Digital Designs: Reasons, Definitions, Challenges, and Implications". Pasternak's conversation with Kane, a Curator of Digital Design at the Victoria & Albert Museum in London, fleshes out a range of important insights into the recently-redefined collecting strategy elaborated and implemented by the Victoria & Albert Museum in the years 2019 and 2020, which for the first time has included digital design as a collecting priority on its own.

General issues around definitions are analysed in Sabine von Schorlemer's opening article "UNESCO and the Challenge of Preserving the Digital Cultural Heritage", which focuses on the only international instrument related to digitization and digital heritage: the UNESCO Charter on the Preservation of Digital Heritage of 2003, together with its supplemental 2015 Recommendation Concerning the Preservation of, and Access to, Documentary Heritage Including in Digital Form. Both trend-setting documents, which provide a definition of digital heritage and guidelines related to the threats and challenges of its preservation, are applied by States, memory institutions, and NGOs in their policies and by heritage scholars in their research. However, inasmuch as digital heritage is a rapidly-evolving and changing phenomenon, the author observes that UNESCO's framework must be continuously updated, revised, extended, and made more concrete and specific.

This point is taken up by Antoinette Maget Dominicé and Dario Henri Haux in their short but in-depth legal commentary entitled "The Decision of the German Federal Court of Justice against Facebook: Opportunity to Define Digital Heritage?". As they argue, the discussed case, while referring to the digital inheritability of social media users' accounts, also touches upon the key cultural heritage issues of safeguarding and providing access, as well as giving important new insights into the very nature of digital heritage. By juxtaposing the key points of the decision with the definition and provisions of the 2003 UNESCO Charter on the Preservation of Digital Heritage, the authors point to new challenges

related to digital heritage, which had not been foreseen yet at the time of the adoption of the UNESCO Charter.

In the article “Digital Heritage Surrogates, Decolonization, and International Law: Restitution, Control, and the Creation of Value as Reparations and Emancipation”, Lucas Lixinski investigates the role assigned to digitization in the so-called “Sarr-Savoy report” of 2018, postulating the return of artifacts and collections from France to Sub-Saharan African nations. Lixinski explores the complex legal status of digital surrogates, focusing more specifically on the issue of digital copyright in cases of contested cultural objects. Throughout his discussion he argues that digitization and colonialism have not yet been sufficiently addressed by international law.

The complex issue of accessibility and rights to digital or digitized heritage is the focus of four articles. In “The Digitization of Cultural Heritage under Polish Law and Policy: Challenges Presented by Copyright Law”, Aleksandra Guss explores the area of well-established multi-annual programmes of digitization of cultural heritage in Polish memory institutions, which are part of a wider EU strategy for the digitization of cultural heritage. She argues that the lack of a separate regulation on the digitization of cultural assets in the Polish legal system is a major obstacle to fulfilling the EU recommendations and ensuring the digitization of a substantial share of Polish cultural heritage. In “Digitization, Vulnerability, and Holocaust Collections”, Malin Thor Tureby and Kristin Wagrell examine the obstacles to putting into practice the postulates of inclusiveness and accessibility, which for several years now have been at the heart of the public digitization policy in Sweden. Their case study focuses on two Holocaust collections created in the 1990s, access to which is restricted by serious ethical concerns. In the article “Misappropriation of Indigenous Cultural Heritage – Intellectual Property Rights in the Digital Era”, Karolina Prażmowska questions the limits of digital accessibility of intangible cultural heritage. Based on recent examples of misuse and appropriation of digitized Indigenous handicrafts by the fashion industry, she inquires into whether and how Indigenous people’s intellectual and material property rights to their digitized heritage can be protected from misuses and appropriation. In “Narrative Museums’ and Curators’ Rights: The Protection of a Museum Exhibition and Its Scenario under Polish Law”, Alicja Jagielska-Burduk and Andrzej Jakubowski examine the recent example of the Museum of the Second World War in Poland, while focusing on the complexity of a museum exhibition based on novel technological forms of display. In doing so, they raise additional, broader questions concerning the protection of the integrity of museum exhibitions and their original conceptual design.

The challenges of digitization and digital heritage in memory institutions are also the focus of three articles which approach this issue in the wider context of the current transformations of the museum as an institution and its role and place in society. In the reports and strategies of the museum sector worldwide, digitization is framed as a tool of democratization, which guarantees and broadens access

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to culture, heritage, and education. Moreover, using the means of technology the museum as an institution is able to engage younger, digitally-oriented generations, address its educational mission, as well as tackle aspects of heritage and the past that are important for present-day societies. In her article “What’s in a Name? Museums in the Post-Digital Age”, Claudia Quiñones Vilá focuses in particular on virtual museums, analysing how digitization and the growing use of information technology have transformed and challenged the traditional museum as an institution. Against the backdrop of the redefinition of a museum recently-proposed by ICOM, Quiñones Vilá argues that virtual museums are taking up the challenges signalled by these redefinitions. In “Democratizing Museum Practice Through Oral History, Digital Storytelling, and Collaborative Ethical Work”, Armando Perla concentrates on the examples of two recent born-digital museum projects in Canada and Sweden. He explains the concept of Human Rights Museology while demonstrating the difficulties in the paths for putting this idea into practice. In “Museums and the Traps of Social Media: The Case of the Auschwitz-Birkenau Memorial and Museum”, Ewa Manikowska analyses recent museums’ activity in social media considered as a space of social activism. In her discussion – based on the example of the Auschwitz-Birkenau Memorial and Museum in Poland and several US museum institutions – she argues that such activity may be integrated into the traditional museum functions if connected to well-thought-out redefinitions of their missions and strategies and to the wider concepts of museum ethics and education.

This issue on “Cultural Heritage and Technology” is a research output created by the DigiCONFLICT International Research Consortium for the European Commission-funded research project entitled “Digital Heritage in Cultural Conflicts”.¹ Focusing on three nationally-framed case studies, the Project’s three Principal Investigators, who are the guest co-editors of this issue, explore the impact of digital heritage on contemporary engagements with the past in Poland, Sweden, and Israel. The articles in this volume not only provide important answers and solutions to the substantial definitional and operational issues which are encountered in the selected case studies, but also frame an issue that lies at the very heart of our Project, namely the contested and controversial aspects of digital heritage and of the application of digitization in the heritage realm. We hope that the ideas, solutions, and comments presented in the various sections of this issue of SAACLR will illuminate a path which can bring us to a better understanding of digital heritage and of the substantial changes that the rising prominence of digital technologies has introduced into the realm of cultural heritage.

¹ E. Manikowska, *Digital Heritage in Cultural Conflicts (DigiCONFLICT) – A New Joint Programming Initiative in Cultural Heritage and Global Change Project*, “Santander Art and Culture Law Review” 2018, Vol. 4(2), pp. 338-340; <https://digiconflict.net> [accessed: 20.11.2020].