

# GENERAL ARTICLES

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## “Narrative Museums” and Curators’ Rights: The Protection of a Museum Exhibition and Its Scenario under Polish Law

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**Abstract:** Since at least the 1990s, museums have expanded to cover a variety of societal functions, often enabling inclusive and participatory spaces for critical dialogue about the past and the future, and bridging together various narratives and cultural experiences, contributing to social cohesion and reconciliation. The new functions of museums, involving novel technological forms of display and communication, pose several legal questions concerning the management of such institutions, their resources, and exhibitions, including issues of copyright and other intellectual property rights. While referring to a recent case concerning an alleged infringement of the moral rights of the authors of the permanent exhibition of the Museum of the Second World War in Gdansk (MWII), this article examines the scope of copyright protection in new, so-called, “narrative” museums under Polish law. First it briefly scrutinizes main facts and circumstances of this case. Secondly, it discusses the current legal framework on the copyright protection of museum exhibitions under Polish law. Next, in light of the judgment rendered in the MWII case, the standard of legal protection of moral interests resulting from a museum exhibition’s design and its scenario (script) is explored. Finally, the article concludes with a set of observations concerning the extent to which copyright law may serve as a tool for protecting the integrity of museum exhibitions and their original conceptual design.

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**Keywords:** museum exhibition, creative work, copyright, curators’ moral rights, Museum of the Second World War in Gdansk

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## Introduction

The protection of intellectual property (IP) rights in the museum sector has always been a thorny issue for law and its practice. Many of the scholarly debates and legislative activities have long been focused on the issue of managing the rights attached to museums’ collections in terms of providing the widest possible public access to museums resources, physically (i.e. in museums’ exhibition spaces) through traditional reproductions, and digitally, including the use of orphan works.<sup>1</sup> These debates have also addressed the protection, enjoyment, control of, and access to those cultural manifestations (including their intangible aspect<sup>2</sup>), preserved

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<sup>1</sup> See, e.g., A.M. Young (ed.), *Rights and Reproductions: The Handbook for Cultural Institutions*, 2nd ed., American Alliance of Museum, Rowman&Littlefield, Lanham 2019.

<sup>2</sup> Particularly see two recent studies included in the volume: M. Cornu et al. (eds.), *Intangible Cultural Heritage Under National and International Law. Going Beyond the 2003 UNESCO Convention*, Edward Elgar Publish-

in museum collections, which are important to various traditional groups and communities, particularly to Indigenous peoples, who have not been fully covered by traditional IP legal regimes.<sup>3</sup> In essence, the legal scholarship has been centred on cultural object-museum exhibits, with no significant analysis regarding the protection of curators and exhibitions as such. As a result, the question of authorship of museum exhibitions and the protection of curators’ rights has not been subject to much theoretical investigation, although it has been addressed in the jurisprudence of domestic courts.<sup>4</sup>

This has also been the case with the Polish legal scholarship.<sup>5</sup> In fact, the prevailing theoretical work has been focused mainly on the question of whether an exhibition is an artwork and/or whether a museum exhibition can be assessed as a manifestation of creative activity of an individual nature (i.e. a creative work)<sup>6</sup> rather than on practical aspects of protecting the economic and morals rights of its authors.

However, present-day museum exhibitions and their diverse creative elements pose several legal questions, particularly relating to the issue of copyright and other IP rights. Indeed, exhibitions are often complex, creative, multidimensional projects, involving the contribution of multiple authors. Moreover, with the rise of New Museology in the 1980s, the postulates of including the larger society in museum work and practice<sup>7</sup> have increasingly been implemented. Various media and materials are used in order to make the exhibitions more attractive, engaging to the public, and responsive to information technology (IT).<sup>8</sup>

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ing, Cheltenham–Northampton 2020: L. Martinet, *Interactions between Intangible Cultural Heritage and Intellectual Property Law*, pp. 97-121, and M. Cornu, C. Hance, *The Capacities of Safeguarding Intangible Cultural Heritage as Legal Tools*, at p. 128.

<sup>3</sup> For an overview of these debates and regulatory choices, see M. Burri, *Cultural Heritage and Intellectual Property*, in: F. Francioni, A.F. Vrdoljak (eds.), *The Oxford Handbook of International Cultural Heritage Law*, Oxford University Press, Oxford 2020, pp. 459-482.

<sup>4</sup> See A. Kushnir, *The Curator’s Copyright*, in: J. McCutcheon, F. McGaughey (eds.), *Research Handbook on Art and Law*, Edward Elgar Publishing, Cheltenham–Northampton 2020, pp. 95-96; also see M. Fisher, *Acknowledging the Intellectual Labor of Curators in a Museum*, “Hyperallergic”, 31 July 2018, <https://hyperallergic.com/453438/acknowledging-the-intellectual-labor-of-curators-in-a-museum> [accessed: 15.09.2020].

<sup>5</sup> M. Dreła, I. Gredka, *Prawo autorskie w działalności muzeów* [IP Law in Museums’ Activity], NIMOZ, Warszawa 2014, pp. 15-16; P. Gwoździewicz-Matan, *Museum Exhibition Versus Copyright*, “Muzealnictwo” 2019, Vol. 60, pp. 225-232.

<sup>6</sup> P. Łada, *Prawo autorskie w muzeum. Przewodnik ze wzorami umów* [IP Law in Museum. A Guide with Model Contracts], Wolters Kluwer, Warszawa 2019, pp. 123-133.

<sup>7</sup> M. Ross, *Interpreting the New Museology*, “Museums and Society” 2004, Vol. 2, pp. 84-103.

<sup>8</sup> See, e.g., J. Lohman, *Design and Diversity: Future World Museums*, in: K.J. Goodnow, J. Lohman, J. Bredekamp (eds.), *Challenge and Transformation: Museums in Cape Town and Sydney*, UNESCO Publishing, Paris 2006, pp. 12-21; J.C. Stickler, *Total Immersion: New Technology Creates New Experiences*, “Museum International” 1995, Vol. 47(1), pp. 26, 39; also see A. Leshchenko, *Cybermuseumology as an Ethically Charged Discourse in Museology*, in: K. Smeds (ed.), *The Future of Tradition in Museology. Materials for a Discussion. Papers from the ICOFOM 42nd Symposium Held in Kyoto (Japan), 1-7 September 2019*, ICOFOM-ICOM, Paris 2019, pp. 100-101.

Importantly, since the 1990s many museum institutions have turned from “monolithic” or “universal” premises of their expositions towards more reflexive or “narrative” ways of display, going beyond presenting collected items.<sup>9</sup> Such narrative expositions are thus designed to enable inclusive and participatory spaces for critical dialogue about the past and future, and to bridge together various cultural and social experiences.<sup>10</sup> Accordingly, “narrations perform multiple tasks: they become a structure employed to offer contextualization (which is better when it’s incorporated in specific subjects) or a stratagem to resolve communication problems, such as the linking of sources, themes, and particularly heterogeneous temporalities”.<sup>11</sup> Narrations and their different interpretations are of great relevance for those museums which address traumatic historical events and painful social themes. While the United States Holocaust Memorial Museum (USHMM) in Washington, DC, is credited with being the world’s first historical narrative museum, many new institutions have been established in Europe after the end of the Cold War as a way to respond to often conflicting individual and collective memories, including those related to recent events surrounding political and social transformations. Not surprisingly, this also means that their narratives and programmes have not been spared from criticism.<sup>12</sup>

In contrast to non-narrative museums, such new institutions are usually built on a uniform scenario, and all artefacts, photographs, installations, and other exhibits are part of a predetermined story. Hence the concept of the exhibition and the authorship of its scenario are key elements of the entire design of a narrative museum. Accordingly, this article addresses the scope of copyright protection in such new narrative museums under Polish law, while referring to the recent case concerning the alleged infringement of IP rights attached to the permanent exhibition of the Museum of the Second World War in Gdansk (MWII). More precisely, the core objective of this article is to discuss whether the current regulatory copyright law framework for managing museum exhibitions meets the challenges of today’s modern narrative expositions. To this end, the article firstly scrutinizes the main facts and circumstances of the MWII’s case to show possible risks to the practical dimension. Secondly, it discusses the current legal framework on creating museum exhibitions on the one hand, and the protection of copyrights attached to them on the other. In this regard, it should be noted that the analysis offered in this article does not refer to other sectors of the IP law, in particular the protection of

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<sup>9</sup> P. Higgins, *Developing Narrative Exhibitions and Science Centres. Training Needs of Exhibition Designers*, “Journal of Science and Communication” 2016, Vol. 15(4), pp. 1-9.

<sup>10</sup> In relation to this, see the new definition of “museum” debated by the International Council of Museums (ICOM), <https://icom.museum/en/news/icom-announces-the-alternative-museum-definition-that-will-be-subject-to-a-vote> [accessed: 18.09.2020].

<sup>11</sup> V. Padiglione, “*Let the Silent History Be Told*”: *Museum Turn to Narratives*, “Fractal: Revista de Psicologia” 2016, Vol. 28(2), p. 181.

<sup>12</sup> *Ibidem*, p. 185.

patents and trademarks. Next, in light of the judgment rendered in the WWII case, the standard of legal protection of moral interests resulting from a museum exhibition’s design and its scenario is explored. Finally, the article considers to what extent copyright law may serve as a tool for protecting the integrity of museum exhibitions and their original conceptual designs.

## The WWII in Gdansk and Its Narrative Permanent Exhibition

The Museum of the Second World War in Gdansk (MWII) was established in 2008<sup>13</sup> and has been viewed as one of the most important, ambitious institutions devoted to this global conflict.<sup>14</sup> Its collection features over 37,000 items, nearly one third of which were received as donations from both private and public actors, and audio-visual media.<sup>15</sup> The actual concept of the permanent exhibition was created by a team led by the MWII’s Director, Paweł Machcewicz,<sup>16</sup> supported by the Academic Advisory Committee. It gathered together leading international scholars in the history of the Second World War and totalitarianism.<sup>17</sup> The architectural project was created by a Polish studio, Kwadrat, chosen by an international jury that included such global architectural stars as Daniel Libeskind. The exhibition design and scenography were made by the Belgian studio Tempora,<sup>18</sup> while multimedia content was offered by a Polish company, NoLabel.<sup>19</sup>

The large permanent exhibition, covering an area of c. 6,000 m<sup>2</sup>, was designed to address various experiences of the war, displaying the perspectives of societies around the world. It started with the rise of totalitarian and authoritarian regimes in the 1920s and 1930s and goes through the events of the global conflict, with particular focus placed on human suffering and trauma.<sup>20</sup> It concluded with a short film by Mateusz Subieta, the so-called “Dyptych”, depicting political and social

<sup>13</sup> Zarządzenie nr 29 Ministra Kultury i Dziedzictwa Narodowego z dnia 1 września 2008 r. w sprawie utworzenia Muzeum II Wojny Światowej w Gdańsku [Decision No. 29 of the Minister of Culture and National Heritage on the Establishment of the World War II Museum in Gdansk], consolidated text: Official Journal of the Ministry of Culture and National Heritage 2013 item 57.

<sup>14</sup> T. Snyder, *Poland vs. History*, “The New York Review of Books”, 3 May 2016.

<sup>15</sup> Ibidem.

<sup>16</sup> Professor of Modern History from the Polish Academy of Sciences.

<sup>17</sup> This scientific team also cooperated with the key international museums and research centres for studying the history of the war, veterans, and victims associations, see more P. Machcewicz, *The War that Never Ends: The Museum of the Second World War in Gdańsk*, trans. A. Połapska Adamek (in cooperation with B. Dewalt and D. Monaghan), De Gruyter, Oldenburg 2019, pp. 76-79.

<sup>18</sup> See <https://sztuka-architektury.pl/article/2192/czerwona-bomba> [accessed: 10.10.2020].

<sup>19</sup> <https://dzieje.pl/aktualnosci/nolabel-wygrala-konkurs-na-multimedia-dla-muzeum-ii-wojny-swiatowej> [accessed: 21.10.2020].

<sup>20</sup> More on the interpretations of the Second World War in Polish museology before 2015, see J. Szczepanski, *Romanticising and Revising the Second World War in Polish Museums*, “Museum Management and Curatorship” 2012, Vol. 27(3), pp. 273-289.

changes from 1945 to the present, including paths to global peace and freedom and the struggle against antisemitism and racial discrimination, as well as current challenges and the tragic conflicts and wars in Syria and Ukraine, the ruins and suffering civilians in Aleppo and Donbas, and the issue of refugees. The Animals' ballad *The House of the Rising Sun* (1964) served as music background.

The WWII was opened on 23 March 2017. However, the opening was marked by a conflict between the Museum's Directors and Poland's Ministry of Culture and National Heritage (MCNH).<sup>21</sup> This conflict arose from criticism of the content of the permanent exhibition. More precisely, the universal message of the exhibition's narrative was seen by ministerial experts as insufficiently reflecting the trauma suffered by Poles and their heroism and martyrdom, and only partially addressing the issues of patriotism and sacrifice for others, while mainly presenting the horrors of warfare.<sup>22</sup> In 2016 the Minister of the MCNH issued a decision on the merger of the WWII with another, newly established institution: the Museum of Westerplatte and the War of 1939.<sup>23</sup> This decision, challenged by the WWII and Poland's Commissioner for Human Rights, was upheld in cassation by the Polish Supreme Administrative Court on 5 April 2017.<sup>24</sup> It resulted in an institutional merger and the employment contract of the WWII's Director was discontinued. Subsequently, changes in the exhibition were gradually introduced, without consulting its authors-curators.<sup>25</sup>

These events have sparked the attention of an international audience and led to considerable press coverage concerning the more general ideas surrounding cultural policy, historical politics and memory narratives, and freedom of

<sup>21</sup> J. Szyndzielorz, *Dispute over 'Patriotism' Delays Opening of Gdańsk's New War Museum*, "The Guardian", 28 January 2017.

<sup>22</sup> P. Semka, *O co chodzi w sporze o Muzeum?* [What is the Dispute over the Museum About?], "Do Rzeczy", 25 July 2016; also see P. Machcewicz, op. cit., pp. 125-137; R. Donadio, *A Museum Becomes a Battlefield Over Poland's History*, "The New York Times", 9 November 2016.

<sup>23</sup> *Zarządzenie Ministra Kultury i Dziedzictwa Narodowego z dnia 6 września 2016 r. w sprawie połączenia państwowych instytucji kultury – Muzeum II Wojny Światowej w Gdańsku i Muzeum Westerplatte i Wojny 1939 oraz utworzenia państwowej instytucji kultury – Muzeum II Wojny Światowej w Gdańsku* [Decision of the Minister of Culture and National Heritage of 6 September 2016 on the Merger of State Cultural Institutions – The Museum of the Second World War in Gdansk and the Museum of Westerplatte and War of 1939 and the Creation of the State Cultural Institution – The Museum of the Second World War in Gdansk], Official Journal of the Ministry of Culture and National Heritage 2016 item 54; *Zarządzenie Ministra Kultury i Dziedzictwa Narodowego z dnia 23 września 2016 r. zmieniające zarządzenie w sprawie połączenia państwowych instytucji kultury – Muzeum II Wojny Światowej w Gdańsku i Muzeum Westerplatte i Wojny 1939 oraz utworzenia państwowej instytucji kultury – Muzeum II Wojny Światowej w Gdańsku* [Decision of the Minister of Culture and National Heritage of 23 September 2016 Changing the Decision on the Merger of State Cultural Institutions – The Museum of the Second World War in Gdansk and the Museum of Westerplatte and War of 1939 and the Creation of the State Cultural Institution – The Museum of the Second World War in Gdansk], Official Journal of the Ministry of Culture and National Heritage 2016 item 59.

<sup>24</sup> Supreme Administrative Court (Poland), Decision of 5 April 2017, II OZ 299/17.

<sup>25</sup> J. Berendt, *Court Clears Takeover of Poland's New World War II Museum*, "The New York Times", 5 April 2017.

speech.<sup>26</sup> In turn, although from the legal perspective the law allows for merging and even for liquidating a public museum, the core question is how and on what grounds the changes to its permanent exhibition can be introduced. On one hand it is clear that such exhibitions cannot be unchangeable or permanent. On the other hand the rights of an exhibition’s authors to the integrity of their work need to be considered and protected. For these reasons the case of the MWII regards three major and interlinked legal questions: (i) freedom of scientific and artistic expression; ii) the autonomy of cultural institutions and access to justice and the right of the exhibition’s creators to a fair trial; and iii) the protection of intellectual property rights, moral rights, and the personal interests of the authors of the museum exhibition and its script.<sup>27</sup> While the first two issues are covered by an application by the authors of the MWII’s exhibition filed in the European Court of Human Rights,<sup>28</sup> and also addressed by Ms Karima Bennouna, UN Special Rapporteur in the field of cultural rights,<sup>29</sup> the third issue has recently been the subject of judicial interpretation by a Polish civil court. As already indicated, this latter question constitutes the key problem addressed in this article.

Accordingly, it is necessary to refer to the notion of a narrative exhibition as an independent creation under copyright law. In this case, the authors of the MWII’s permanent exhibition demanded bringing it back to its original state and asked for an official apology for violating their moral rights (right to the integrity of the artwork) and personal interests. Their suit was filed before the District Court in Gdansk in 2017 (the claim was extended in 2018) against the MWII on the basis that the plaintiffs’ rights were infringed by the introduction of changes in the exhibition, which was based on their written script. More precisely, the plaintiffs<sup>30</sup> stated that

<sup>26</sup> See, e.g., E. Flieger, *The Populist Rewriting of Polish History Is a Warning to Us All*, “The Guardian”, 17 September 2019.

<sup>27</sup> See *Gdansk World War II Museum: Copyright Dispute Before the Court*, Allinfo, 11 October 2018, <http://allinfo.space/2018/10/11/gdansk-world-war-ii-museum-copyright-dispute-before-the-court> [accessed: 18.09.2020].

<sup>28</sup> A. Leszczyński, *Cenzurowanie historii przez PiS przed Europejski Trybunał Praw Człowieka. Pozew prof. Machcewicza* [Censorship of History by Law and Justice Before the European Court of Human Rights. The Suit by Professor Machcewicz], <https://oko.press/cenzurowanie-historii-przez-pis-przed-europejski-trybunal-praw-czlowieka-pozew-prof-machcewicza> [accessed: 15.09.2020].

<sup>29</sup> See Human Rights Council, *Visit to Poland: Report of the Special Rapporteur in the Field of Cultural Rights*, 12 May 2020, UN Doc. A/HRC/43/50/Add. 1, para. 25. Importantly, in her recommendations she stressed that the Polish government should “[r]espect the artistic and scientific freedom of the directors and staff of cultural institutions and museum curators as well as the autonomy of universities and refrain from politicizing or exercising undue pressure on the content of their work”, and “[s]upport the work of those seeking to display a complex vision of history and of past human rights abuses and atrocities, foster open debates about historical events and respect the integration of this complexity in school history curricula and in museums, as important means of developing critical thinking and understanding and of shaping a tolerant and inclusive society” (para. 94(b)(c)). For the response of the Polish government, see UN Doc. A/HRC/43/50/Add.3 (2020), paras. 21-27.

<sup>30</sup> Paweł Machcewicz, Piotr Majewski, Janusz Marszałec, and Rafał Wnuk.

their moral rights to the exhibition's script (they were the authors of the script) and exhibition itself (they are co-authors of the exhibition) were violated.<sup>31</sup> They explained that the final exhibition (in its original form) was the result of a long-lasting process of consultations and works and constituted a compound entirety. It is worth mentioning that the scope of the challenged changes in the exhibition differs in terms of gravity, from minor changes (transfer of exhibits to a different room, however with a new context) to significant (removal of exhibits and cabinets, and changes in the film closing the final section of the permanent exhibition). They did not authorize these changes, which allegedly affected the integrity of their work.

The Court had thus to analyse each of them separately in order to establish in what parts and to what extent the authors' rights were infringed. In fact the plaintiffs in their final statement presented 28 detailed demands, including 17 demands for removal of changes that had been introduced since 2017 in the main exhibition.<sup>32</sup> These included the reinstatement of the exhibition's closing film on the way from the war to freedom ("Diptych"), and the concomitant removal of its replacement, which was an animated production of the Institute of National Remembrance titled *The Unconquered*, focused on the heroism of Poles in the Second World War and narrated by the English actor Sean Bean.<sup>33</sup> Hence the authors of the main exhibition pointed out that the exhibition underwent changes which the creators of the exhibition may oppose because they violate their moral rights and personal interests, as creators and scholars, and distort the content and message of the whole exhibition, thus changing its overtones and sometimes affecting its historical accuracy.<sup>34</sup> It was emphasized that the exhibition of the WWII "is a narrative exhibition, so it is a kind of story, a bit like a film or a theatre. If in a film about the Second World War someone changed frames and cut out certain sequences, there would be no doubt that the creators could object".<sup>35</sup>

The actual arguments of the defendant have not been published yet. However, from the official statements published in the media, it results that the WWII has argued that the changes introduced were aimed at correcting mistakes (typos) or obvious inconsistencies in the exhibition. Additionally, it was pointed out that

<sup>31</sup> P. Machcewicz, op. cit., Excerpt of legal opinion att. M. Slosarek, Law Firm, p. 171; see Claim extension, 6 September 2018, <https://archiwumosiatynskiego.pl/images/2018/10/Rozszerzenie-pow%C3%B3dztwa-bez-bibliografii-i-zdj%C4%99%C4%87.pdf> [accessed: 18.09.2020].

<sup>32</sup> District Court in Gdańsk, 1st Civil Division, Plaintiffs' final statement, 17 August 2020, I C 84/18, unpublished.

<sup>33</sup> See <https://www.youtube.com/watch?v=Q88AkN1hNYM> [accessed: 20.09.2020]. The two films are available at <https://m.radiogdansk.pl/wiadomosci/item/68170-zmiana-filmu-w-muzeum-ii-wojny-swiatowej-budzi-emocje-czy-slusznie-zobacz-oba-filmy/68170-zmiana-filmu-w-muzeum-ii-wojny-swiatowej-budzi-emocje-czy-slusznie-zobacz-oba-filmy> [accessed: 21.09.2020].

<sup>34</sup> <https://www.rmf24.pl/fakty/polska/news-sprawa-wystawy-w-muzeum-ii-wojny-swiatowej-przed-sadem,nld,2608199> [accessed: 28.09.2020].

<sup>35</sup> Ibidem.



some of the changes resulted from the plaintiffs’ alleged negligence, mainly their non-renewal of deposit agreements and licenses regarding the ballad *The House of the Rising Sun*. It was indicated that the exhibition’s final version was changed during the advanced works on its production. The defendant has also supposedly argued that the exhibition’s script had never been finally established, and that the changes introduced were also designed to reinforce the meanings of the narrative of the exhibition and to make better use of all the available exhibits in the collection of the museum. Furthermore, the changes were also driven by the public mission of the WWII, which is financed from public funds.<sup>36</sup>

On 15 October 2020 the District Court in Gdansk issued a judgment in the first instance. It dismissed 26 of the 28 claims of the plaintiffs. Out of the 17 changes to the main exhibition that were the subject of these proceedings, 16 were dismissed.<sup>37</sup> At the time of writing this article the court proceedings are not concluded, and access to the trial materials is limited (the District Court’s judgment has not yet been delivered<sup>38</sup>). One can assume that the first instance court judgment will be challenged on appeal. However, at the same time this judgment, together with its justifications, may perhaps serve as a compass for future museum exhibitions. In this regard, the key notions, as well as risks and challenges for copyright law related to the creation of permanent exhibitions, need to be analysed.

## Museum Legislation and the Legal Notion of an “Exhibition”

There are three types of museums under Article 5 of the 1996 Act on Museums (AM),<sup>39</sup> differentiated according to their organizing entity: state museums – established by central administration bodies; local museums – created or taken

<sup>36</sup> For instance see *Komunikat dr. Karola Nawrockiego Dyrektora Muzeum II Wojny Światowej w Gdańsku, dotyczący sprawy sądowej wytoczonej MIIWŚ w przedmiocie żądania przez powodów usunięcia nowych treści wprowadzonych na wystawie głównej* [Communication of Dr Karol Nawrocki, Director of the WWII in Gdańsk, Concerning a Court Case Brought against the WWII Concerning the Claim by the Claimants to Remove New Content Introduced in the Main Exhibition], 31 March 2020, <https://muzeum1939.pl/komunikat-dr-karola-nawrockiego-dyrektora-muzeum-ii-wojny-swiatowej-w-gdansk-d dotyczacy-sprawy-aktualnosci/3297.html> [accessed: 17.10.2020]; M. Mróz, *Karol Nawrocki przed sądem: Prawa autorskie do wystawy stałej w Muzeum II WŚ należą do dyrekcji, a nie jej twórców* [Karol Nawrocki in Court: The Copyright for the Permanent Exhibition at the WWII is Held by the Museum, Not by its Creators], 15 November 2018, <https://m.radiogdansk.pl/wiadomosci/item/85716-karol-nawrocki-przed-sadem-prawa-autorskie-do-wystawy-stalej-w-muzeum-ii-ws-naleza-do-dyrekcji-a-nie-jej-tworcow/85716-karol-nawrocki-przed-sadem-prawa-autorskie-do-wystawy-stalej-w-muzeum-ii-ws-naleza-do-dyrekcji-a-nie-jej-tworcow> [accessed: 17.10.2020].

<sup>37</sup> District Court in Gdańsk, 1st Civil Division, Judgment of 15 October 2020, I C 84/18; Ministerstwo Kultury i Dziedzictwa Narodowego, *Polscy bohaterowie zostają na wystawie głównej Muzeum II Wojny Światowej w Gdańsku* [Polish Heroes Stay on the Main Exhibition of the WWII in Gdansk], 15 October 2020, <https://www.gov.pl/web/kultura/polscy-bohaterowie-zostaja-na-wystawie-glownej-muzeum-ii-wojny-swiatowej-w-gdansk> [accessed: 17.10.2020].

<sup>38</sup> A written judgment is prepared upon a motion of one or both parties of the proceeding. The court ruling was given orally during a closed session.

<sup>39</sup> *Ustawa z dnia 21 listopada 1996 r. o muzeach*, consolidated text: Dz.U. 2020 item 902.

over by local government entities; and those established by private entities (usually non-governmental organizations). Central administration bodies can also co-manage museums, together with entities of either the local government and/or with private entities. The role of the organizing entity is pivotal as it may establish and dissolve a museum. In addition, the functioning of museums, including the management of collections, is subject to a regulatory regime different from other cultural institutions such as art galleries and science centres, which are covered by the provisions of the Act of 25 October 1991 on Organizing and Running Cultural Activity (AORCA).<sup>40</sup> These differences particularly regard conservation and the de-accession of collections.

Although Polish law offers a quite complex regulatory framework vis-à-vis the management of museums and their collections, it does not explicitly define a museum exhibition.<sup>41</sup> Despite this lack, the display of collections, under the AM, constitutes one of the key aspects of a museum's mandate and activity. According to Article 2(5) AM "organization of permanent and temporary exhibitions" is one of the basic activities of museums, one by which they pursue the objectives for which they were established, i.e. "collection and permanent protection of the natural and cultural heritage of mankind of a material and non-material nature, information about the values and contents of collections, dissemination of the fundamental values of Polish and world history, science and culture, shaping cognitive and aesthetic sensitivity and making possible the use of collections" (Article 1 AM).<sup>42</sup> Importantly, the opening of a permanent exhibition is one of the most important stages in establishing a museum. Accordingly, Article 6(3) AM regarding the process of establishing a museum states that the day of completion of the process of museum's organization shall be the day on which a permanent exhibition is open. In practical terms, this means that from the moment of installing a permanent exhibition a museum, as an institution, becomes fully operational. Moreover, under Article 10(2) AM "[o]n one day of the week, admission to permanent exhibitions of museums is free". In turn, when it comes to other cultural institutions the fact of completing an exhibition – for example of science centres – does not constitute any important threshold under the AORCA. Nonetheless,

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<sup>40</sup> *Ustawa z dnia 25 października 1991 r. o organizowaniu i prowadzeniu działalności kulturalnej*, consolidated text: Dz.U. 2020 item 194.

<sup>41</sup> A specific legal definition is used only in respect of "international exhibitions" under the regime of the Convention relating to International Exhibitions, signed at Paris on 22 November 1928, supplemented by the Protocols of 10 May 1948, 16 November 1966, 30 November 1972, and the Amendments of 24 June 1982 and 31 May 1988, [https://www.bie-paris.org/site/images/stories/files/BIE\\_Convention\\_eng.pdf](https://www.bie-paris.org/site/images/stories/files/BIE_Convention_eng.pdf) [accessed: 21.10.2020].

<sup>42</sup> In this regard, the Polish legislation reflects the ICOM's current definition of "museum", see Article 3(1) of the ICOM Statutes, adopted on 22 August 2007, and amended by the Extraordinary General Assembly of ICOM on 9 June 2017, [https://icom.museum/wp-content/uploads/2018/07/2017\\_ICOM\\_Statutes\\_EN.pdf](https://icom.museum/wp-content/uploads/2018/07/2017_ICOM_Statutes_EN.pdf) [accessed: 15.10.2020].

in both situations the opening of permanent exhibitions to the public means that the institutions can from then on fulfil their statutory mission.

A permanent exhibition is thus an exhibition where collections of museum objects – “musealia” – a special category of cultural property under Polish law and constituting a national good owned by the museum and entered in its inventory<sup>43</sup> – are presented on regular basis, and reflect the specificity of a given museum institution. In this regard, according to the working definition used by the Central Statistical Office (GUS):

[a] permanent exhibition usually reflects the character of a museum, being a kind of its “showcase” (e.g. folklore, crafts and folk art – in an ethnographic museum; or a set presenting the history and scientific achievements of a university, teaching aids and writing – in a university museum) or presents the characteristics or history of the city or region where the museum is located.

Moreover, some permanent historical exhibitions can be seen, under the Act of 23 July 2003 on the Protection and Guardianship of Monuments (APGM),<sup>44</sup> as a protected multicomponent movable monument, an ensemble of objects collected and arranged according to the concept of the people who created the collection (Article 6(1)(2)(b)).

As explained above, the existence of a permanent exhibition constitutes a premise for the creation of a museum. In turn, the organization of temporary exhibitions is regulated under Polish law as one of the main duties of museum staff. In particular, in accordance with Article 32(3) AM “[a]n employee belonging to a professional group of museum professionals who have been entrusted with the task of organizing an exhibition, consisting in the author’s own preparation and organization of the exhibition, as well as substantive supervision over the exhibition, shall act as the exhibition curator”. Other provisions of the AM refer to the special protection of foreign cultural property on loan in Poland for the purposes of a temporary exhibition (immunity from seizure).<sup>45</sup>

## An Exhibition as a Creative Work under Copyright Law

While the museum legislation refers to the role of an exhibition for the establishment and functioning of a museum, an exhibition’s concept, its script, and creation are regulated by copyright law. Generally speaking, a museum exhibition gathers

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<sup>43</sup> Article 21(1) AM.

<sup>44</sup> *Ustawa z dnia 23 lipca 2003 r. o ochronie zabytków i opiece nad zabytkami*, consolidated text: Dz.U. 2020 item 282.

<sup>45</sup> See Chapter 4a of AM; for a commentary on immunity from seizure of cultural property on loan in Poland, see P. Gwoździewicz-Matan, A. Jakubowski, *Enhancing the Mobility of Collections and Access to Cultural Heritage: Immunity of Cultural Objects from Seizure in Poland*, “International Journal of Cultural Policy” 2019, Vol. 25(3), pp. 355-359.

and displays diverse works, including both those copyrighted and those for which copyright has already expired (50 to 100 years after the creator dies, depending on the jurisdiction; under Article 36 of the Act of 4 February 1994 on Copyright and Related Rights [AC]<sup>46</sup> copyright is extinguished 70 years after the death of the author, and with respect to co-authors' works, after the death of the surviving co-author). A separate regime regards orphan works, i.e. works to which copyrights have probably not expired while at the same time it is impossible to identify the rightsholders in those works. Under the EU law, the permitted use of such works is limited to non-commercial uses by the listed state institutions (public libraries, state archives, state universities and research institutions, state cultural institutions whose purpose is to collect and make their collections available), and only to fulfil their statutory tasks in the public interest. Before making orphan works available to the public, these institutions must diligently and in good faith search for the rightsholders in those works.<sup>47</sup> In addition, in many jurisdictions separate regulations concern the display and use of Indigenous peoples' artefacts.<sup>48</sup>

Considering that a museum exhibition displays such works of diverse authors, does it also constitute an independent creation? Should its author/creator have exclusive rights to his or her creation?

Under Article 2(1) of the Berne Convention for the Protection of Literary and Artistic Works ("Berne Convention")<sup>49</sup> "literary and artistic works' shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression". Moreover, arrangements or other alterations of an artistic work "shall be protected as original works without prejudice to the copyright in the original work" (Article 2(3)); and collections of artistic works, "by reason of the selection and arrangement of their contents, constitute intellectual creations and shall be protected as such, without prejudice to the copyright in each of the works forming part of such collections" (Article 2(5)). Similarly, under Article 1 AC the subject of a copyright is any manifestation of creative activity of an individual nature established in any form, regardless of its value, purpose, and form of expression (work).

In light of the above, it appears that a museum's exhibition may constitute a separate creative work under copyright legislation. However the manifestation of creative activity must meet several requirements to constitute a creative work.

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<sup>46</sup> *Ustawa z dnia 4 lutego 1994 r. o prawie autorskim i prawach pokrewnych*, consolidated text: Dz.U. 2019 item 1231, as amended.

<sup>47</sup> Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works Text with EEA relevance, OJ L 299, 27.10.2012, p. 5.

<sup>48</sup> More on the problems relating to Indigenous peoples' heritage and IP law see D. Zografos Johnsson, H.-Y. Tualima, *Cultural Heritage, Traditional Knowledge and Intellectual Property*, in: A. Xanthaki et al. (eds.), *Indigenous Peoples' Cultural Heritage: Rights, Debates, Challenges*, Brill-Nijhoff, Leiden-Boston 2017, pp. 218-228.

<sup>49</sup> 9 September 1886, as amended on 28 September 1979, <https://wipolex.wipo.int/en/text/283693> [accessed: 28.09.2020].

Based on the definition given in Article 1 AC, it has to be of an individual character; that is, the manifestation has to distinguish itself from other similar manifestations. Another approach to the individual character is “that the condition of individual character is a reference to the creator and links a certain immaterial being to a specific person in a way which justifies the authorship knot. This condition helps capture some characteristic features of the creator and his or her unique personality”.<sup>50</sup> Next is the feature of originality, in the sense that the creative work is a product of a creative process and an author’s creative effort. Additionally, novelty is indispensable to the protection provided under the Polish AC.<sup>51</sup> It has to be emphasized that this protection applies regardless of the scientific or artistic value, its purpose, commercial value, or fulfilling any formal requirements.<sup>52</sup> The broad definition of art creation covers those creations with a relatively low level of novelty and individuality. This feature results in many court proceedings ending with court decisions regarding whether copyright protection is applicable.<sup>53</sup> It is also true that court decisions may raise doubts when it comes to the results of the evaluation process of a creative manifestation. Therefore, it is usually considered necessary that courts should take a more restrictive approach when assessing the conditions of creativity and individuality.<sup>54</sup>

As a consequence, in the jurisprudence of the Polish courts not every exhibition of artistic material has been considered a subject of copyright. This depends on the creative contribution of its author or authors.<sup>55</sup> In this latter regard, a museum exhibition can constitute “a collective work” within the meaning of Article 11 AC, which provides that “[c]opyright in a collective work, in particular in an encyclopaedia or periodical publication, shall be vested in the producer or publisher, and in the individual parts having an independent meaning, in their authors”.<sup>56</sup>

<sup>50</sup> J. Kępiński, *Cumulative Protection in the Case of Works of Applied Art/Industrial Design. Should a Cemetery Candle Be Protected by Polish Copyright?*, “Zeszyty Naukowe Uniwersytetu Jagiellońskiego” 2018, Vol. 1, p. 13.

<sup>51</sup> M. Poźniak-Niedzielska, *Wprowadzenie. Pojęcie utworu* [Introduction. The Concept of a Creative Work], in: J. Barta (ed.), *Prawo autorskie, System Prawa Prywatnego* [Copyright, Private Law System], 3rd edn., C.H. Beck, Warszawa 2007, Vol. 13, pp. 8-9.

<sup>52</sup> See J. Barta, R. Markiewicz, commentary to Article 1 AC in: J. Barta, R. Markiewicz (eds.), *Ustawa o prawie autorskim i prawach pokrewnych. Komentarz* [Act on Copyright and Related Rights: A Commentary], 5th edn., LEX online.

<sup>53</sup> E. Ferenc-Szydełko, *Ustawa o prawie autorskim i prawach pokrewnych* [Act on Copyright and Related Rights], C.H. Beck, Warszawa 2011, p. 11.

<sup>54</sup> J. Kępiński, op. cit., pp. 12, 19.

<sup>55</sup> See the judgment of Poland’s Supreme Court on the use of the exhibition dedicated to Pope John Paul II, titled “Pilgrim of the Millennium – the Pope of the World – Countrymen to the Pope”, Judgment of 26 January 2011, IV CSK 274/10; compare A. Kushnir, op. cit., in relation to other countries’ jurisprudence on copyright essentials, pp. 101-105.

<sup>56</sup> See Court of Appeal in Warsaw, Judgment of 20 June 2018, V ACa 18/17.

A museum exhibition can also be seen as derivative work under Article 2(1) AC (“[t]he development of someone else’s work, in particular translation, alteration, adaptation, is subject to copyright without prejudice to the right to the original work”)<sup>57</sup> if it meets the basic criterion of creative work.<sup>58</sup> Hence it has been argued that a museum exhibition is “a type of work that is dependent, firstly, because it is based in most cases on objects protected by copyright and, secondly, because it is an implementation of previous design assumptions (more or less deviating from the original ones)”.<sup>59</sup> An exhibition can also be seen as a collection, subject to copyright protection without prejudice to the rights of the works used, “provided that the selection, arrangement or combination is creative in nature” (Article 3 AC).<sup>60</sup> Indeed, in museum practice it is hardly possible to find an exhibition that has no creative contribution on the part of its curator/designer.

Theoretically, an example of such a non-creative exhibition may be a mere display of objects of one author in chronological order. Similarly, hanging paintings in alphabetical order is not enough creative input to constitute a creative artwork.<sup>61</sup> This shows that the sole technical aspect of a curator’s work, although it may be of value to the museum’s visitors, does not meet the required conditions of creativity. Yet, for instance, hanging the objects upside down and very high and close to the ceiling may change its creative status. Thus in each case the court has to analyse in depth whether the requirements of a creative work have been met, i.e. the creative aspect of the exhibition needs to be verified. The creative contribution can concern, *inter alia*: the choice of exhibits together with their display, and the narrative and conceptual framework of the exhibition offered to the public. Therefore, it can be stated that the majority of exhibitions meet the criteria of Article 1 AC. The above conclusion clearly refers to both permanent and temporary exhibitions, including online exhibitions. In practice, an author does not create an exhibition in a vacuum. Most importantly, the author is limited by the area available, fire safety measures, and rules regarding safeguarding museum collections from destruction or theft, as well as other technical requirements. These limitations and restrictions, however, do not affect the possibility of creation of a copyrighted work.

Undoubtedly, most museum exhibitions can be perceived as creative copyrighted works. Yet the question arises whether their authors can rely on the law to protect their creative input. Alana Kushnir, an Australian art lawyer, curator, and art advisor, argues that “[t]he curator of the 21st century is no longer solely a care-

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<sup>57</sup> Also see Article 2(3) of the Berne Convention.

<sup>58</sup> See Supreme Court (Poland), op. cit.; further see P. Łada, op. cit., p. 125; P. Gwoździewicz-Matan, op. cit., p. 62.

<sup>59</sup> P. Łada, op. cit., p. 125.

<sup>60</sup> Also see Article 2(5) of the Berne Convention; further read P. Gwoździewicz-Matan, op. cit., pp. 62-63.

<sup>61</sup> Supreme Administrative Court (Poland), Judgment of 9 March 2000, I SA/Wr 1000/99: “[t]he work consisting of an alphabetical arrangement of names, addresses and telephone numbers is devoid of originality”.

taker of objects in an institutional collection”. In fact, he or she is “a caretaker of the artist, the artwork and its audience, and they facilitate relationships between them”.<sup>62</sup> While this author refers to the role of curatorial work in the domain of contemporary art, her statement can be all the more extended to narrative exhibitions that, as already explained, may often constitute the founding element or key element of a museum’s design and identity. In this regard, the curator can be defined as the author of an exhibition, responsible for its concept, message, and selection of displayed material.<sup>63</sup> In the practice of Polish cultural institutions, these creative inputs are reflected in terms of an “exhibition scenario” or “exhibition script”, “exhibition concept”, or “exhibition conceptual design”, which may be separate subject matters of copyright. Although these terms are not defined by the law, their meaning and scope depend on whether they relate to new permanent exhibitions, temporary exhibitions held at the seat of a cultural institution, or temporary exhibitions only planned as part of open competitions outside the seat of an institution.

Depending on the circumstances, the conditions that such works must meet may vary greatly. The term “exhibition concept” is usually seen as the first step in preparing the future exhibition. The exhibition concept is expected to be an original manifestation of creative activity of an individual character. According to Article 21 AC, only the manner of expression may be protected, while discoveries, ideas, procedures, methods, and principles of operation are not copyrighted. The exhibition concept therefore needs to be marked with the name of the author(s) and contain a title and a detailed summary of the assumptions and objectives of the planned exhibition (including the identification of the target audience of the exhibition); and it should indicate the envisaged location/space of the exhibition. Such a concept should explain in the most detailed way possible the nature and number of exhibits planned for an exhibition, the way in which they will be presented and, if applicable, conservation recommendations and planned loans. It should also refer to the economic and moral rights attached to the planned exhibits.<sup>64</sup> In practice these requirements would vary in the case of a permanent exhibition and in the case of a temporary one.

In contrast to the exhibition concept, which is usually more general in nature, the exhibition scenario/script contains a precise indication of the main content, the narrative, and communication with the viewer(s). The exhibition scenario is

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<sup>62</sup> A. Kushnir, *op. cit.*, p. 95, also see pp. 109-112.

<sup>63</sup> See Article 32(3) AM: “An employee belonging to the professional group of museologists who has been entrusted with the task of organizing an exhibition, consisting in the author’s own preparation and organization of the exhibition as well as substantive supervision over the exhibition, acts as the curator of the exhibition”.

<sup>64</sup> See M. Dreła, I. Gredka, *op. cit.*, pp. 15-16; R. Golat, *Wybrane aspekty prawne w procesie organizacji wystaw* [Selected Legal Issues in Organizing Exhibitions], in: M. Rogowski, J. Grzonkowska (eds.), *ABC organizacji wystaw czasowych w muzeach* [ABC of Organizing Temporary Exhibitions in Museums], NIMOZ, Warszawa 2013, pp. 40-42.

sometimes compared to a film script, on the basis of which a new work is created. Arguably, this comparison seems particularly valid with regard to narrative exhibitions. The scenario should therefore contain a precise description of exhibition's content and instructions according to which the exhibition is to be organized. The scenario/script should also contain the exact number of exhibits with the substantive justification for their selection. The third term, "exhibition conceptual design" relates to the concept of the artistic, architectural, technical, or artistic-spatial arrangement of the exhibition.<sup>65</sup> The conceptual design usually precedes the executive design, often carried out by the same author. It concerns both the scenario and exhibition conceptual design, together with detailed plans and visualizations.<sup>66</sup>

In Polish practice, exhibitions can be created both by museum employees and "external" authors-curators. In the latter instance, an exhibition can be commissioned or chosen in an open competition. The management of the copyright of exhibition creators is thus regulated under separate contractual arrangements, which allow for a high degree of flexibility as to the management of IP rights. In turn, the creation of an exhibition based on an employment contract is precisely regulated under the AC. First of all, it needs to be stressed that for a particular work to be considered as an employee work, it must meet two criteria: its creator must be an employee under labour law, and it must be created as a result of the performance of duties resulting from the employment relationship. An employee work is not a work that has been created on the basis of another contract or within the framework of a competition.<sup>67</sup> According to Article 12(1) AC:

[u]nless the law or the employment contract provides otherwise, the employer whose employee created the work as a result of the performance of his duties under the employment relationship shall, upon acceptance of the work, acquire economic rights in this work within the limits resulting from the purpose of the employment contract and the agreed intention of the parties.

The employer is also required by the law to formally accept the work, and to distribute the work, if it was intended for distribution under the contract of employment. In case the work is not distributed within two years from the date of receipt of the work, or after a different time-limit agreed by the parties, the rights

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<sup>65</sup> See Court of Appeal in Warsaw, Decision of 7 April 2016, I ACa 2222/15. For instance, consult the "Conceptual design of the exhibition in the 'Emilia' building for the Museum of Modern Art in Warsaw", [https://artmuseum.pl/public/upload/files\\_oldier/zamowienia\\_publiczne/zal\\_1b\\_wroblewski.pdf](https://artmuseum.pl/public/upload/files_oldier/zamowienia_publiczne/zal_1b_wroblewski.pdf) [accessed: 20.10.2020].

<sup>66</sup> In addition, the term "curatorial exhibition project" is sometimes used. For instance, according to the regulations of the competition for such a project in the Polish Pavilion at the 58th International Art Exhibition, *Venice Biennale 2019*, this was expected to include both the exhibition concept and script, as well as a summary of the script and a detailed cost estimation. See [https://zacheta.art.pl/public/upload/download/WENECJA\\_Regulamin\\_Sztuka\\_2019.pdf](https://zacheta.art.pl/public/upload/download/WENECJA_Regulamin_Sztuka_2019.pdf) [accessed: 20.10.2020].

<sup>67</sup> M. Dreła, I. Gredka, op. cit., pp. 43-44.



obtained by the employer, together with the ownership of the object on which the work is fixed, shall return to the author (Article 12(2) AC).<sup>68</sup>

It is important to underscore that the contractual arrangements, both with a curator-employee and an external curator-author, should specify the fields of use (exploitation) and territorial scope. However, under Article 41(5) AC “[t]he author of a work used or included in an audio-visual work and a work included in a collective work may not, without valid reason, refuse to authorize the use of that work in an audio-visual work or a collective work in fields of use unknown at the time of conclusion of the contract”. In this regard, the Court of Appeal in Warsaw explained that in the case of an exhibition not originally designed to be displayed online, the economic copyright of one of the authors was effectively transferred to the museum on the basis of the original contract.<sup>69</sup>

Last but not least, the public aspect of the exhibition and its financing has to be examined. Museums in Poland are mostly public institutions and subsidized by regional authorities or by the MCNH. The Polish AC has a special regulation regarding works, the creation of which was connected with the administration of the State and other important public purposes. Works mentioned in Article 4 AC are not subject to copyright protection. The list includes: normative acts or their official drafts, official documents, materials, signs and symbols, published patent or protection descriptions, and simple press releases. Special attention has to be paid to works mentioned in Article 4(2), i.e. official documents, materials, signs and symbols. Although the list is exhaustive, the scope of some works such as official documents can be subject to various interpretations.<sup>70</sup>

Inasmuch as a museum can be treated as an entity that belongs to the public administration, the exemption from protection under this provision needs to be considered.<sup>71</sup> The interpretation whether a work constitutes official materials has a relatively broad scope. What’s more, the lack of copyright protection is independent of the value of the official material and its content. The official materials should be created as a part of administrative procedures or appear in connection with the activities of a public entity activities – for example a zoning plan is not subject to copyright protection.<sup>72</sup> Museums in their statutory activities provide a public service by opening their exhibitions to the public, and in order to achieve this museums use the exhibitions’ concept, projects, and scripts. It seems hardly justified to treat commissioned exhibitions and projects as official documents, even if their role in the public purpose of access to culture and the museum’s public role in it

<sup>68</sup> Ibidem, pp. 48-61.

<sup>69</sup> See Court of Appeal in Warsaw, Judgment of 20 June 2018, op. cit.

<sup>70</sup> J. Barta, R. Markiewicz, *Ustawa...*, pp. 58-59.

<sup>71</sup> K. Zalańska, *Muzea publiczne. Studium administracyjnoprawne* [Public Museums: An Administrative Law Study], Lexis Nexis, Warszawa 2013, pp. 215-223.

<sup>72</sup> J. Barta, R. Markiewicz, commentary to the Article 1 AC...

is undisputed. Although there are strict rules governing the expenditure of public money and special models for commissioning works from external contractors, Article 4(2) AC is not applicable to works such as museum exhibitions and their scenarios.<sup>73</sup> Yet the judicial practice may bring new interpretations in specific cases.

### Moral Rights and Museum Exhibitions

While economic rights in the work can be transferred, the situation of an author's moral rights – understood as “the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honour or reputation”<sup>74</sup> – is more complex, varying from jurisdiction to jurisdiction. In some countries these moral rights might be waived or transferred, while in some countries they are protected as perpetual, inalienable, and imprescriptible. Particularly under the French Intellectual Property Code<sup>75</sup> moral rights may be transmitted *mortis causa* to the heirs of the author, and their exercise may be conferred on another person under the provisions of a will (Articles L121-1 and L121-2). In Polish law, under Article 16 AC moral rights in a work are indefinite (unlimited in time) and non-transferable (permanently connected with the author), although to a certain extent these rights may be exercised by an author's heirs (Article 78 AC). The author's moral rights include the right to: authorship of the work; to mark the work with his name or pseudonym or to make it available anonymously; the integrity of the content and form of the work and its fair use; to decide whether to make the work available to the public for the first time; and supervision of the use of the work.

In the case of a museum exhibition, key practical problems may arise in respect of the right to the inviolability of the form and content of a work and its reliable use (Article 16(3) AC), and to the author's supervision of the use of the work (Article 16(5) AC). The right to the inviolability of the form and content of a work, i.e. the so-called right to integrity, means a prohibition on third parties to introduce changes, alterations, or modifications to an author's work without his or her prior consent. The right to fair use, on the other hand, includes a prohibition to use the work in a way that could adversely affect its reception, and thus be contrary to the values, message, or idea given by the author. In this regard, Article 78(1) AC stipulates that:

[T]he creator may demand that the person who has committed the infringement should perform the acts necessary to remedy the infringement, in particular, that he should make a public statement of appropriate content and form. If the infringement

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<sup>73</sup> See E. Ferenc-Szydełko, *op. cit.*, p. 69.

<sup>74</sup> Article 6(1) of the Berne Convention.

<sup>75</sup> *Code de la propriété intellectuelle*, [https://www.legifrance.gouv.fr/codes/texte\\_lc/LEGITEXT000006069414/2020-11-11](https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006069414/2020-11-11) [accessed: 11.11.2020].

was culpable, the court may award the author an appropriate sum of money as compensation for the harm suffered or, if the author so requests, oblige the author to pay an appropriate sum of money for the social purpose indicated by the author.

As already highlighted, the protection of moral rights may refer to authors of displayed works and curator(s) and an exhibition’s author(s) alike. In the first instance, the authors’ rights have been the subject of some judicial elaborations in various jurisdictions.<sup>76</sup> In turn, the exercise of moral rights of an exhibition’s author-curator has been much less often addressed in the case law. In this regard, Kushnir emphasizes the importance of the French jurisprudence.<sup>77</sup> Of particular relevance is the case concerning the Henri Langlois Foundation. A collection of more than 5,000 artefacts gathered by Henri Langlois, a famous French film archivist and pioneer of film preservation, had been preserved in the Musée du Cinema Henri Langlois in Paris (currently the Musée de la Cinémathèque) since 1972. Following a fire in 1997, the collection was intended to be relocated, and many exhibits were to be removed and stored for safety reasons. However, Langlois’ heirs objected this removal. The Paris Court of Appeal held that the exhibition, in its entirety, was unquestionably “the creative work” of one man and therefore protected under Article L112-3 of the Intellectual Property Code concerning copyright in collections of miscellaneous works.<sup>78</sup> Accordingly, the creative nature of the museum exhibition was covered by the copyright regime, which enabled a successful action against its dismemberment pursuant to the exercise of the author’s moral rights in the work.<sup>79</sup>

Returning now to the WWII case, it needs to be emphasized that it is a precedential case. Indeed, in Polish practice there are relatively few court disputes concerning copyright infringement in the context of exhibition organization. Moreover, it is the first judicial dispute – not only in the Polish context but also internationally – wherein the subject of dispute is a museum’s narrative exhibition and its scenario (script), understood as works protected by copyright. Although the grounds for the Gdansk District Court’s judgment have not been published, it is clear that the Court recognized that the exhibition and its script were protected works and that the Museum violated to some extent the authors’ rights. Accordingly, the Court ordered the WWII to cease screening the animated film *The Unconquered* in the final section of the permanent exhibition, “From War to Freedom”. Its introduction was considered by the plaintiffs as the most serious and most painful change in the main exhibition, which absolutely distorted the general message of their work. They argued that it violated the overall message of the Museum, and was in com-

<sup>76</sup> P. Gwoździewicz-Matan, *op. cit.*, p. 63; also see S.B. Bonneau, *Honor and Destruction: The Conflicted Object in Moral Rights Law*, “St. John’s Law Review” 2013, Vol. 87(1), pp. 47-105.

<sup>77</sup> A. Kushnir, *op. cit.*, pp. 105-109.

<sup>78</sup> Court of Appeal of Paris, 1re ch., 2 oct. 1997, RIDA n° 176, avr. 1998, p. 422.

<sup>79</sup> A. Kushnir, *op. cit.*, pp. 106-107; also see M.P. Markellou, *Appropriation Art and Cultural Institutions*, “Queen Mary Journal of Intellectual Property” 2013, Vol. 3(2), pp. 152-153.

plete contradiction to the message that they constructed in all previous parts of the exhibition, which itself was the core of the entire museum project.<sup>80</sup> The Court held that the authors' moral rights and personal interests were infringed. Moreover, it results that the infringement needs to be seen as culpable, since the Court charged the Museum with the costs and awarded the amount to be paid for a social purpose indicated by the authors, as provided by Article 78(1) AC.<sup>81</sup>

On the other hand, the Court dismissed other demands, including the correction of historical data presented in the exhibition and the replacement of some exhibits, and the reinstallation of the original film ("Diptych") was not ordered. In other words, it seems that the Court only considered the most obvious and well-evidenced distortion of the exhibition's integrity, i.e. the serious infringement of the authors-curators' moral rights in the WWII's permanent exhibition, which was deemed to be a creative work protected under the AC. At the same time it allowed for the possibility of some interference in the integrity of this creative work.

Hence in light of the Gdansk District Court's judgment it seems clear that at the present time the regime of copyright law has not developed to serve as a truly efficient legal mechanism for protecting the integrity of a museum exhibition and its original conceptual design. It needs to be emphasized however that the WWII case shows that museums' management boards in Poland should now be more cautious about every change introduced to exhibitions displayed in their institutions and take into consideration the moral rights of their creators. One could say, provocatively, that taking into account the IP law perspective, from now on a museum director should – in order to avoid all risks connected with the integrity of the work – close the entire exhibition he or she is going to alter, make a proper documentation in the museum's archives, and have a new one produced.<sup>82</sup>

Considering the Polish legislative framework, it can also be argued that the aforementioned provisions of Article 6(1)(2)(b) APGM on the protection of a multicomponent movable historic monument, i.e. an ensemble of objects collected and arranged according to the concept of the people who created the collection, may potentially offer a better framework for protecting permanent exhibitions. In practice however it is questionable if the author of an exhibition would be successful in claiming *restitutio in integrum* when it comes to older museum exhibitions, such as those of archaeological objects or of ancient paintings.<sup>83</sup> Obligatory safety

<sup>80</sup> District Court in Gdańsk, 1st Civil Division, Plaintiffs' final statement, op. cit., pp. 16-19, 20-22.

<sup>81</sup> See E. Fliieger, *Pilne! Film IPN musi zostać usunięty. Jest wyrok w procesie o wystawę w Muzeum II Wojny Światowej* [Urgent! The IPN Film Must be Deleted. There Is a Verdict in the Trial for an Exhibition at the World War II Museum], 15 October 2020, <https://oko.press/pilne-film-ipn-musi-zostac-usuniety-jest-wyrok-w-procesie-o-wystawie-w-muzeum-ii-wojny-swiatowej> [accessed: 16.10.2020].

<sup>82</sup> In this guise, such documentation would also serve to preserve the information on exhibitions that will not or cannot be recreated.

<sup>83</sup> For more on the forthcoming changes of permanent art exhibitions in Poland see, e.g., K. Wójcik, *Sellin: wyrok sądu dotyczący wystawy stałej w Muzeum II Wojny Światowej jest precedensowy* [Sellin: The Court Judg-

measures (evacuation plans and signs), fire protection requirements, and their implementation can also affect an exhibition’s integrity. Another example can be that of necessary changes introduced in order to make museum accessible for disabled persons, i.e. additional wheelchair ramps and lifts. Potentially, an author may also want to change the way his/her work is exhibited to the public by presenting it in a different context or separately from the works of other authors.<sup>84</sup> Obviously, the work’s integrity could also be affected when an informative educational panel is replaced by a modern multimedia set with audio-visual content and user friendly navigation.

In fact, exhibits are very often rotated due to conservation purposes, the termination of long-term loans or loans (both short- and long-term) to other institutions for temporary exhibitions. Moreover, the APMG provisions could hardly be applied to newly-created narrative museum exhibitions. In this regard, the protection of exhibitions of newly established narrative museums from changes, often driven by conflicting interpretations of historical events and violent alterations of memory policies, could be achieved through reform of the legislation concerning museums and their cultural activity. Accordingly, the position of an organizer of a cultural institution under the AORCA could evolve towards more inclusive forms of management, securing procedural forms of effective participation for all affected stakeholders, and offering a space and time for the necessary reflection and dialogue, especially while dealing with the process of memorialization.<sup>85</sup>

## Final Remarks

Undoubtedly, the status and role of curators and other creators of museum exhibitions have greatly increased in recent years, thus raising a number of questions concerning the scope of the legal protection of exhibitions and their authors. The case of the WWII clearly shows that a museum exhibition, constituting the core of the entire programme of this narrative museum, as well as its script, can be seen as creative works, the integrity of which is protected under IP law. On the other hand, irrespective of this particular case, it is clear that museums and their exhibitions will always be subject to changes, modifications, and (re)interpretations. Importantly, many recent exhibitions that employ information technologies on a wide basis and will thus need to change their exhibitions often in light of the rapid tech-

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ment Concerning the Permanent Exhibition at the World War II Museum Is a Precedent], “Gazeta Prawna”, 19 October 2020.

<sup>84</sup> See P. Gwoździewicz-Matan, op. cit., p. 228.

<sup>85</sup> Compare the statement of the International Council on Monuments and Sites (ICOMOS) on evaluations of World Heritage nominations related to sites associated with memories of recent conflicts; see *ICOMOS Discussion Paper “Evaluations of World Heritage Nominations related to Sites Associated with Memories of Recent Conflicts”*, 2018, p. 10, [https://www.icomos.org/images/DOCUMENTS/World\\_Heritage/ICOMOS\\_Discussion\\_paper\\_Sites\\_associated\\_with\\_Memories\\_of\\_Recent\\_Conflicts.pdf](https://www.icomos.org/images/DOCUMENTS/World_Heritage/ICOMOS_Discussion_paper_Sites_associated_with_Memories_of_Recent_Conflicts.pdf) [accessed: 25.10.2020].

nological progress and changes. It seems clear that new methods of communication with the audience will require profound alterations of many existing exhibition programmes, thus affecting the integrity of the original creative works.

Indeed, at the end of the day a museum's manager cannot be "strapped in" with all pre-existing exhibitions forever, and a museum's activity cannot be petrified or frozen. Otherwise the main goal of a museum – to provide access to culture (often with use of new IT tools and technologies) – cannot be achieved. This however does not mean that the economic and moral rights of exhibitions' authors should somehow be limited.

Instead, a careful and well-thought-out model of conduct while creating new exhibitions should be introduced. Firstly, the relationship between an exhibition's script and final exhibition's design structure needs to be assessed. Each deviation should be verified and justified in terms of the script's authors and the institution's needs. However the questions arise: To what extent is it possible to go beyond the script and even to omit its essential part? Is, for example, a financial reason sufficient to skip one part of an exhibition? If agreed upon with the script's author, the answer is obviously yes to both questions. However, where possible an additional contractual agreement with the author should be provided. Secondly, the relationship between the final exhibition itself and its authors-creators has to be addressed, taking into consideration their creative input. When it comes to the moral rights of an exhibition's authors, especially their right to the integrity of its content and its use, these are non-transferable under most European legal systems, including the Polish one. However, contractual arrangements can indicate what kind of changes may be acceptable to the author(s). This would be particularly relevant for those exhibitions which are changed in order to provide for a better use of new information technologies and/or new interactive educational tools. Hence at the time of concluding agreements the respective interests of museums and an exhibition's creators should be carefully considered. Perhaps operational guidelines in this regard should be officially published and widely promoted. Finally, in order to avoid the unnecessary costs of court proceedings, disputes that may arise from the protection of the economic or moral rights of exhibitions' creators should be resolved by means of alternative methods of dispute resolution, which often turn out to offer more efficient platforms for dialogue and consensus. In particular, the wide involvement of experts and the participation of other stakeholders and rightsholders in such proceedings should be guaranteed.

### References

- Barta J., Markiewicz R., commentary to Article 1 AC in: J. Barta, R. Markiewicz (eds.), *Ustawa o prawie autorskim i prawach pokrewnych. Komentarz* [Act on Copyright and Related Rights: A Commentary], 5th ed., LEX online.
- Berendt J., *Court Clears Takeover of Poland's New World War II Museum*, "The New York Times", 5 April 2017.

- Berne Convention for the Protection of Literary and Artistic Works, 9 September 1886, as amended on 28 September 1979, <https://wipolex.wipo.int/en/text/283693> [accessed: 28.09.2020].
- Bonneau S.B., *Honor and Destruction: The Conflicted Object in Moral Rights Law*, “St. John’s Law Review” 2013, Vol. 87(1).
- Burri M., *Cultural Heritage and Intellectual Property*, in: F. Francioni, A.F. Vrdoljak (eds.), *The Oxford Handbook of International Cultural Heritage Law*, Oxford University Press, Oxford 2020.
- Code de la propriété intellectuelle* [Intellectual Property Code], [https://www.legifrance.gouv.fr/codes/texte\\_lc/LEGITEXT000006069414/2020-11-11](https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006069414/2020-11-11) [accessed: 11.11.2020].
- Convention relating to International Exhibitions, signed at Paris on 22 November 1928, supplemented by the Protocols of 10 May 1948, 16 November 1966, 30 November 1972, and the Amendments of 24 June 1982 and 31 May 1988, [https://www.bie-paris.org/site/images/stories/files/BIE\\_Convention\\_eng.pdf](https://www.bie-paris.org/site/images/stories/files/BIE_Convention_eng.pdf) [accessed: 21.10.2020].
- Cornu M., Hance C., *The Capacities of Safeguarding Intangible Cultural Heritage as Legal Tools*, in: M. Cornu et al. (eds.), *Intangible Cultural Heritage Under National and International Law. Going Beyond the 2003 UNESCO Convention*, Edward Elgar Publishing, Cheltenham–Northampton 2020.
- Court of Appeal in Warsaw, Decision of 7 April 2016, I ACa 2222/15.
- Court of Appeal in Warsaw, Judgment of 20 June 2018, V ACa 18/17.
- Court of Appeal of Paris, 1re ch., 2 oct. 1997, RIDA n° 176, avr. 1998, p. 422.
- Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works Text with EEA relevance, OJ L 299, 27.10.2012, p. 5.
- District Court in Gdańsk, 1st Civil Division, Judgment of 15 October 2020, I C 84/18.
- District Court in Gdańsk, 1st Civil Division, Plaintiffs’ final statement, 17 August 2020, I C 84/18, unpublished.
- Donadio R., *A Museum Becomes a Battlefield Over Poland’s History*, “The New York Times”, 9 November 2016.
- Drela M., Gredka I., *Prawo autorskie w działalności muzeów* [IP Law in Museums’ Activity], NIMOZ, Warszawa 2014.
- Ferenc-Szydełko E., *Ustawa o prawie autorskim i prawach pokrewnych* [Act on Copyright and Related Rights], C.H. Beck, Warszawa 2011.
- Fisher M., *Acknowledging the Intellectual Labor of Curators in a Museum*, “Hyperallergic”, 31 July 2018, <https://hyperallergic.com/453438/acknowledging-the-intellectual-labor-of-curators-in-a-museum> [accessed: 15.09.2020].
- Flieger E., *Pilne! Film IPN musi zostać usunięty. Jest wyrok w procesie o wystawę w Muzeum II Wojny Światowej* [Urgent! The IPN Film Must be Deleted. There Is a Verdict in the Trial for an Exhibition at the World War II Museum], 15 October 2020, <https://oko.press/pilne-film-ipn-musi-zostac-usuniety-jest-wyrok-w-procesie-o-wystawie-w-muzeum-ii-wojny-swiatowej> [accessed: 16.10.2020].
- Flieger E., *The Populist Rewriting of Polish History Is a Warning to Us All*, “The Guardian”, 17 September 2019.
- Gdansk World War II Museum: Copyright Dispute Before the Court*, Allinfo, 11 October 2018, <http://allinfo.space/2018/10/11/gdansk-world-war-ii-museum-copyright-dispute-before-the-court> [accessed: 18.09.2020].

- Golat R., *Wybrane aspekty prawne w procesie organizacji wystaw* [Selected Legal Issues in Organizing Exhibitions], in: M. Rogowski, J. Grzonkowska (eds.), *ABC organizacji wystaw czasowych w muzeach* [ABC of Organizing Temporary Exhibitions in Museums], NIMOZ, Warszawa 2013.
- Gwoździewicz-Matan P., *Museum Exhibition Versus Copyright*, "Muzealnictwo" 2019, Vol. 60.
- Gwoździewicz-Matan P., Jakubowski A., *Enhancing the Mobility of Collections and Access to Cultural Heritage: Immunity of Cultural Objects from Seizure in Poland*, "International Journal of Cultural Policy" 2019, Vol. 25(3).
- Higgins P., *Developing Narrative Exhibitions and Science Centres. Training Needs of Exhibition Designers*, "Journal of Science and Communication" 2016, Vol. 15(4).
- Human Rights Council, *Visit to Poland: Report of the Special Rapporteur in the Field of Cultural Rights*, 12 May 2020, UN Doc. A/HRC/43/50/Add.1 and UN Doc. A/HRC/43/50/Add.3.
- ICOM Statutes, adopted on 22 August 2007, and amended by the Extraordinary General Assembly of ICOM on 9 June 2017, [https://icom.museum/wp-content/uploads/2018/07/2017\\_ICOM\\_Statutes\\_EN.pdf](https://icom.museum/wp-content/uploads/2018/07/2017_ICOM_Statutes_EN.pdf) [accessed: 15.10.2020].
- ICOMOS Discussion Paper "Evaluations of World Heritage Nominations related to Sites Associated with Memories of Recent Conflicts", 2018, [https://www.icomos.org/images/DOCUMENTS/World\\_Heritage/ICOMOS\\_Discussion\\_paper\\_Sites\\_associated\\_with\\_Memories\\_of\\_Recent\\_Conflicts.pdf](https://www.icomos.org/images/DOCUMENTS/World_Heritage/ICOMOS_Discussion_paper_Sites_associated_with_Memories_of_Recent_Conflicts.pdf) [accessed: 25.10.2020].
- Kępiński J., *Cumulative Protection in the Case of Works of Applied Art/Industrial Design. Should a Cemetery Candle be Protected by Polish Copyright?*, "Zeszyty Naukowe Uniwersytetu Jagiellońskiego" 2018, Vol. 1.
- Komunikat dr. Karola Nawrockiego Dyrektora Muzeum II Wojny Światowej w Gdańsku, dotyczący sprawy sądowej wytoczonej MIIWŚ w przedmiocie żądania przez powodów usunięcia nowych treści wprowadzonych na wystawie głównej [Communication of Dr Karol Nawrocki, Director of the WWII in Gdańsk, Concerning a Court Case Brought against the WWII Concerning the Claim by the Claimants to Remove New Content Introduced in the Main Exhibition], 31 March 2020, <https://muzeum1939.pl/komunikat-dr-karola-nawrockiego-dyrektora-muzeum-ii-wojny-swiatowej-w-gdansk-u-dotyczacy-sprawy/aktualnosci/3297.html> [accessed: 17.10.2020].
- Kushnir A., *The Curator's Copyright*, in: J. McCutcheon, F. McGaughey (eds.), *Research Handbook on Art and Law*, Edward Elgar Publishing, Cheltenham–Northampton 2020.
- Łada P., *Prawo autorskie w muzeum. Przewodnik ze wzorami umów* [IP Law in Museum. A Guide with Model Contracts], Wolters Kluwer, Warszawa 2019.
- Leshchenko A., *Cybermuseumology as an Ethically Charged Discourse in Museology*, in: K. Smeds (ed.), *The Future of Tradition in Museology. Materials for a Discussion. Papers from the ICOFOM 42nd Symposium Held in Kyoto (Japan), 1-7 September 2019*, ICOFOM–ICOM, Paris 2019.
- Leszczyński A., *Cenzurowanie historii przez PiS przed Europejski Trybunał Praw Człowieka. Pozew prof. Machcewicza* [Censorship of History by Law and Justice Before the European Court of Human Rights. The Suit by Professor Machcewicz], <https://oko.press/cenzurowanie-historii-przez-pis-przed-europejski-trybunal-praw-czlowieka-pozew-prof-machcewicza> [accessed: 15.09.2020].
- Lohman J., *Design and Diversity: Future World Museums*, in: K.J. Goodnow, J. Lohman, J. Bredekamp (eds.), *Challenge and Transformation: Museums in Cape Town and Sydney*, UNESCO Publishing, Paris 2006.



- Machcewicz P., *The War that Never Ends: The Museum of the Second World War in Gdańsk*, trans. A. Połapska Adamek (in cooperation with B. Dewalt and D. Monaghan), De Gruyter, Oldenburg 2019.
- Markellou M.P., *Appropriation Art and Cultural Institutions*, “Queen Mary Journal of Intellectual Property” 2013, Vol. 3(2).
- Martinet L., *Interactions between Intangible Cultural Heritage and Intellectual Property Law*, in: M. Cornu et al. (eds.), *Intangible Cultural Heritage Under National and International Law. Going Beyond the 2003 UNESCO Convention*, Edward Elgar Publishing, Cheltenham–Northampton 2020.
- Ministerstwo Kultury i Dziedzictwa Narodowego, *Polscy bohaterowie zostają na wystawie głównej Muzeum II Wojny Światowej w Gdansk* [Polish Heroes Stay on the Main Exhibition of the WWII in Gdansk], 15 October 2020, <https://www.gov.pl/web/kultura/polscy-bohaterowie-zostaja-na-wystawie-glownej-muzeum-ii-wojny-swiatowej-w-gdansk> [accessed: 17.10.2020].
- Mróz M., *Karol Nawrocki przed sądem: Prawa autorskie do wystawy stałej w Muzeum II WŚ należą do dyrektora, a nie jej twórców* [Karol Nawrocki in Court: The Copyright for the Permanent Exhibition at the WWII is Held by the Museum, Not by its Creators], 15 November 2018, <https://m.radiogdansk.pl/wiadomosci/item/85716-karol-nawrocki-przed-sadem-prawa-autorskie-do-wystawy-stalej-w-muzeum-ii-ws-naleza-do-dyrekcji-a-nie-jej-tworcow/85716-karol-nawrocki-przed-sadem-prawa-autorskie-do-wystawy-stalej-w-muzeum-ii-ws-naleza-do-dyrekcji-a-nie-jej-tworcow> [accessed: 17.10.2020].
- Padiglione V., “Let the Silent History Be Told”: *Museum Turn to Narratives*, “Fractal: Revista de Psicologia” 2016, Vol. 28(2).
- Poźniak-Niedzielska M., *Wprowadzenie. Pojęcie utworu* [Introduction. The Concept of a Creative Work], in: J. Barta (ed.), *Prawo autorskie, System Prawa Prywatnego* [Copyright, Private Law System], 3rd ed., C.H. Beck, Warszawa 2007, Vol. 13.
- Ross M., *Interpreting the New Museology*, “Museums and Society” 2004, Vol. 2.
- Semka P., *O co chodzi w sporze o Muzeum?* [What is the Dispute over the Museum About?], “Do Rzeczy”, 25 July 2016.
- Snyder T., *Poland vs. History*, “The New York Review of Books”, 3 May 2016.
- Stickler J.C., *Total Immersion: New Technology Creates New Experiences*, “Museum International” 1995, Vol. 47(1).
- Supreme Administrative Court (Poland), Decision of 5 April 2017, II OZ 299/17.
- Supreme Administrative Court (Poland), Judgment of 9 March 2000, I SA/Wr 1000/99.
- Supreme Court (Poland), Judgment of 26 January 2011, IV CSK 274/10.
- Szczepanski J., *Romanticising and Revising the Second World War in Polish Museums*, “Museum Management and Curatorship” 2012, Vol. 27(3).
- Szyndzielorz J., *Dispute over ‘Patriotism’ Delays Opening of Gdańsk’s New War Museum*, “The Guardian”, 28 January 2017.
- Ustawa z dnia 21 listopada 1996 r. o muzeach* [Act of 21 November 1996 on Museums], consolidated text: Dz.U. 2020 item 902.
- Ustawa z dnia 23 lipca 2003 r. o ochronie zabytków i opiece nad zabytkami* [Act of 23 July 2003 on the Protection and Guardianship of Monuments], consolidated text: Dz.U. 2020 item 282.

## GENERAL ARTICLES

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*Ustawa z dnia 25 października 1991 r. o organizowaniu i prowadzeniu działalności kulturalnej* [Act of 25 October 1991 on Organizing and Running Cultural Activity], consolidated text: Dz.U. 2020 item 194.

*Ustawa z dnia 4 lutego 1994 r. o prawie autorskim i prawach pokrewnych* [Act of 4 February 1994 on Copyright and Related Rights], consolidated text: Dz.U. 2019 item 1231, as amended.

Wójcik K., *Sellin: wyrok sądu dotyczący wystawy stałej w Muzeum II Wojny Światowej jest precedensowy* [Sellin: The Court Judgment Concerning the Permanent Exhibition at the World War II Museum Is a Precedent], "Gazeta Prawna", 19 October 2020.

Young A.M. (ed.), *Rights and Reproductions: The Handbook for Cultural Institutions*, 2nd ed., American Alliance of Museum, Rowman&Littlefield, Lanham 2019.

Zalasińska K., *Muzea publiczne. Studium administracyjnoprawne* [Public Museums: An Administrative Law Study], Lexis Nexis, Warszawa 2013.

*Zarządzenie Ministra Kultury i Dziedzictwa Narodowego z dnia 23 września 2016 r. zmieniające zarządzenie w sprawie połączenia państwowych instytucji kultury – Muzeum II Wojny Światowej w Gdańsku i Muzeum Westerplatte i Wojny 1939 oraz utworzenia państwowej instytucji kultury – Muzeum II Wojny Światowej w Gdańsku* [Decision of the Minister of Culture and National Heritage of 23 September 2016 Changing the Decision on the Merger of State Cultural Institutions – The Museum of the Second World War in Gdansk and the Museum of Westerplatte and War of 1939 and the Creation of the State Cultural Institution – The Museum of the Second World War in Gdansk], Official Journal of the Ministry of Culture and National Heritage 2016 item 59.

*Zarządzenie Ministra Kultury i Dziedzictwa Narodowego z dnia 6 września 2016 r. w sprawie połączenia państwowych instytucji kultury – Muzeum II Wojny Światowej w Gdańsku i Muzeum Westerplatte i Wojny 1939 oraz utworzenia państwowej instytucji kultury – Muzeum II Wojny Światowej w Gdańsku* [Decision of the Minister of Culture and National Heritage of 6 September 2016 on the Merger of State Cultural Institutions – The Museum of the Second World War in Gdansk and the Museum of Westerplatte and War of 1939 and the Creation of the State Cultural Institution – The Museum of the Second World War in Gdansk], Official Journal of the Ministry of Culture and National Heritage 2016 item 54.

*Zarządzenie nr 29 Ministra Kultury i Dziedzictwa Narodowego z dnia 1 września 2008 r. w sprawie utworzenia Muzeum II Wojny Światowej w Gdańsku* [Decision No. 29 of the Minister of Culture and National Heritage on the Establishment of the World War II Museum in Gdansk], consolidated text: Official Journal of the Ministry of Culture and National Heritage 2013 item 57.

Zografos Johnsson D., Tualima H.-Y., *Cultural Heritage, Traditional Knowledge and Intellectual Property*, in: A. Xanthaki et al. (eds.), *Indigenous Peoples' Cultural Heritage: Rights, Debates, Challenges*, Brill-Nijhoff, Leiden–Boston 2017.