



Communia International Association on the Public Domain

COMMUNIA International Association on the Public Domain is a network of researchers and practitioners from universities, NGOs and SME established in 10 European Member States and in the US. The mission of Communia Association is to foster, strengthen, and enrich the Public Domain.

Policy paper on digitization agreements for Public Domain works: Recommendations for cultural heritage institutions

The aim of this policy paper is to make policy recommendations for cultural institutions to preserve the Public Domain when using digitization services provided by private entities. This becomes particularly relevant in the context of the 2013 Public Sector Information (PSI) Directive¹ which adds Museums, Libraries and Archives in the list of Public Sector Bodies (PSBs) that have to make their information reusable.

The Public Domain ensures the free dissemination of knowledge and provides everyone with the potential to access and create new works based on previous works. Thus, all Public Domain works should be free for everyone to use and reuse. Yet, as many cultural heritage institutions are entering into contractual agreements with third parties for the digitization of Public Domain works, there are serious concerns regarding the conditions of access, use and reuse of the resulting digitized copies.

Ideally, digital copies of Public Domain materials would be made immediately and freely available to the public. However, in practice, many of these public-private partnerships impose contractual restrictions that limit access and re-use of Public Domain materials. These restrictions have the same effect as introducing a new proprietary right over the digitized copies of Public Domain material, thereby substantially limiting the use and reuse of content that belongs to the common cultural heritage by subjecting it to a requirement of prior authorisation.

This risk is further increased with the introduction of the PSI 2013 regime, which allows the conclusion of exclusive agreements between private entities and PSBs under restrictive terms and with a potential perpetual validity.²

A work in the Public Domain should have the same legal properties, regardless of the format or medium it is in. Hence, **works that are in the Public Domain in analog form [should] continue to be in the Public Domain once they have been digitised** (see the [Europeana Public Domain Charter](#), Principle #2, and Communia [Public Domain Manifesto](#), Recommendation #5). Contractual agreements as regards the digitization of Public Domain works should acknowledge and respect the fundamental properties of these works, and not attempt to subvert Public Domain principles through contract and other legal mechanisms.

To ensure the broadest availability and long-term accessibility of Public Domain works, their digital copies should be made available to the public in a format and medium allowing for easy identification, retrieval and modification, while ensuring the maximum interoperability of these works. The use of metadata and open formats constitutes an important requirement to ensure that the value of the Public Domain is properly understood and that the works belonging to the Public Domain will always remain freely (re)usable.

¹ Directive 2013/37/EU of the European Parliament and the Council

² According to the 2013 PSI Directive: "The period of an exclusive right to digitise cultural resources should in general not exceed 10 years. Any period of exclusivity longer than 10 years should be subject to review, taking into account technological, financial and administrative changes in the environment since the arrangement was entered into."



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In view of this, we make the following recommendations:

No copyright protection

- **over the digitized version:**

All parties to the partnership should expressly state that they do not claim copyright nor sui generis rights in the digitized copies of the Public Domain material.

- The digitized version should be marked as in the Public Domain using a tool such as the [Creative Commons Public Domain Mark](#), or, alternatively, if digitization itself gave rise to new related rights, these should be waived by applying a Public Domain dedication tool such as [CC0](#).
- Up-to-date metadata and the database (if protected by sui generis rights) should be made available and dedicated to the Public Domain using tools such as the [CC0 Public Domain Dedication](#) following the model of Europeana, the Digital Public Library of America, Harvard Library and the British Library.

- **for newly published works:**

In countries where copyright law grants an additional term of protection to the publishers of Public Domain works that have never been published before, the rights holder should dedicate the work to the Public Domain by means of tools such as the CC0 Public Domain Dedication.

No contractual restrictions

- Access and reuse to Public Domain works should be unrestricted, both on premises and on the Internet for any type of use and reuse, including for commercial purposes.
- No exclusive agreements should be made between the cultural institution and the commercial vendor that would preclude another vendor or institution from digitizing or distributing the same Public Domain material.

Openness & Transparency

- The institution should use standardized, open technological formats and request the contractor to transfer digitized material and metadata in standardized open technological formats.
- Bidders' offers should be made publicly available. Transparency should prevail in the decision-making process affecting public access to our common cultural heritage collections.

The Communia International Association calls for cultural institutions, such as libraries, archives and museums to observe the following guidelines, and to promote them in their negotiations with contractors, donors and legal owners of materials.