
Article 6 Preservation Exception

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What is at issue in Article 6?

Preservation is a core public interest mission of cultural heritage institutions.

Existing exceptions often place limits on preservation copying, and provide no clarity for cross-border collaboration.

The Directive broadly resolves these questions, and offers possibilities to go further.

What is at issue in Article 6?

InfoSoc: **optional** exception

- 'specific acts of reproduction made by publicly accessible libraries, museums, ed. Establishments...'
- All works, for any (non-commercial) purpose (but not online delivery)
- No guidance on potential restrictions
- Failure to mention contract override/ cross-border

DSM: **mandatory** exception

- 'copying for the purposes of preservation'
- Works in permanent collections
- Wider definition of beneficiaries
- Number/format/ tools as appropriate
- Cross-border/ contract override/ TPMs

Breaking down Article 6

- What can be done? **Copying, extraction from databases**
- Who can make those uses? **Publicly accessible cultural heritage institutions (open)**
- Which works can be used? **Those in the permanent collection, at any point in their lifespans**
- To what extent? **As necessary**
- For which purposes? **Preservation (open)**

Breaking down Article 6

- Where? **Open, including across borders**
- How? **Open**
- For free or paid? **No mention**
- Is the use allowed if there are licenses for the same use?
n/a

How to deal with Article 6?

- **Move beyond Article 6 adopt or maintain preservation exceptions, without restrictions, for all legally accessed works**
- **Implement Article 6**
 - **Best Version adopt or maintain text of the Directive as it is (as many are)**
 - **Worst Version introduce restrictions where Directive is unclear (materials, remuneration)**

The Best Version of Article 6

- **Open definition of beneficiary institutions:** the current list is wide, but should remain open ended
- **Wide definition of works in the permanent collection:** include that works held on long-term loan or in custody
- **No restrictions on tools/ media/format/partners:** CHIs should have freedom to act as appropriate

The Best Version of Article 6

- **Open list of permitted purposes:** any copying associated with preservation should be permitted
- **Contract override/TPMs:** simple and easy workarounds

The Worst Version of Article 6

- **Closed lists of institutions/purposes:** potential for uncertainty
- **Restrictive definition of ‘permanent collection’:** hard to preserve digital works
- **Retention/introduction of restrictions:** commercial availability checks, remuneration
- **Provisions on ‘stacking’:** it’s been tried before...

The Ideal National Implementation of Article 6

- **Best version of Article 6 implementation, plus...**
- **Open list of works that can be preserved: i.e. not just those in the permanent collection (in line with InfoSoc)**
- **Wider list of permissible copying by CHIs: also subject to workarounds on contracts and TPMs**



How to adapt this locally?

- **Check on how well adapted current exceptions are. How do they fit with the new one as regards who can copy what? Make sure implementation does not narrow this.**
- **Seek local legal support in order to assess how to implement the exception best.**



Implementations so far?

- **Text available for: Belgium, Netherlands, Germany, Croatia, Hungary**
- **Primarily direct transpositions of the Directive**
- **Little reference to technology, or who can carry out copying**
- **The devil is in the secondary legislation**

Thank you!

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