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IT ASPECTS OF MUSEUM OPERATIONS

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Activities of museums, similarly as of other bodies, are connected with generating, acquiring, or disseminating various documents, data, and information. In the current organizational and technological conditionings, it is essential to resort to IT capacities, this being reflected in legal regulations, taking into account this IT aspect of the activities of various bodies, museums included.

Museums providing access to public information

The Act of 6 September 2001 on the Access to Public Information (Journal of Laws of 2019, Item 1429), hereinafter Act on API, specifies in its Art. 4 that it is bodies performing public functions or using public assets that are obliged to share public information.

A substantial majority, particularly of larger museums, are run by public organizers, and are therefore public bodies. For example, in compliance with Art. 4.1.4 of the Act on API the entities obliged to share public information are those representing state legal persons and local government legal persons, as well as entities representing other state organizational units or local government organizational units, namely e.g. central and local government museums entered in the register of cultural institutions of respective organizers.

Public information is essentially shared in a two-fold formula. The first mode of sharing this information is the online record called the Bulletin of Public Information (BIP). Art. 8 of the Act on API specifies the range of information that should be included in BIP and shared through it.

Furthermore, the second mode specifies that if there is information missing in BIP, it should be shared upon the request of an interested individual.

The obligation to share information in BIP translates into the creation of BIP's website with the application of the system as specified in Art. 9.4a of the Act on API, or another online system. The system specified in the above provisions is the Centralized System of Access to Public Information which allows the creation of BIP sites and processing of public information, with a search engine allowing the search of object matters and bodies.

Detailed requirements related to the layout of the unified system of BIP sites has been defined by the Ordinance of the Minister of the Interior and Administration of 18 Jan. 2007 with regard to the Bulletin of Public Information (Journal of Laws of 2007, No.10, Item 68). Among others, it stipulates in Art. 7.2 that the contents collected on BIP sites are shared in the quality raising no doubts as for their content and are not protected against printing and copying. In compliance with 11.2 of the Ordinance in question, the body's BIP site shall not contain advertising.

Of interest is particularly Art. 9 of the Ordinance in question which defines the relation between the BIP site and the museum's own website. Arts. 9.1 and 9.3 claim that bodies' BIP sites are run in the format of separate websites, however the body's website can be at the same time the body's BIP site, provided it remains in harmony with all the Act's and Ordinance's stipulations. In such events, 9.2 of the Ordinance is not applicable; it reads that if the body obliged to comply, e.g. a local-government museum, enjoying the status of a cultural institution, already has its own website, the body's BIP site created by the body is extracted from this site by placing a link with the BIP logo allowing direct access to the body's BIP site on the body's main website.

Museum's own website

As distinct from BIP sites whose creation by public museums has been clearly specified by the regulations on access to public information, there is no analogical equally precise regulation as for museums' websites.

For practical reasons, first of all informative, websites are created as a rule by museums. The analysis of the current regulations in place allows the conclusion that independent public museums being cultural institutions should have

such sites, given the requirement for digital accessibility of those websites.

Conditionings for museums as cultural institutions owning their own websites result from the current regulations for appointing the institutions' directors. Of relevance in this respect is Art. 15. 5a in force as of 19 April 2019 of the Act of 25 October 1991 on Organizing and Running Cultural Activity (Journal of Laws of 2020, Item 194), amending the Act on 6 December 2018 (Journal of Laws of 2019, Item 115).

This new provision stipulates that the programme as specified in 15.5, namely the programme of the institution's activity specified in the contract concluded by the organizer and its director before the director's appointment, shall be shared with the general public within seven days of the appointment of the cultural institution's director on the organizer's body's BIP site or by the cultural institution on its website.

Websites owned by public bodies, including public museums that are cultural institutions, are specifically addressed in the Act of 4 April 2019 on the Accessibility of the Websites and Mobile Applications of Public Sector Bodies (Journal of Laws of 2019, Item 848), hereinafter the new Act.

The new Act implements the Directive of the European Parliament and Council (EU) 2016/2102 of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies (Official Journal EU L 327 of 2 Dec. 2016; p. 1), hereinafter the Directive.

Although the new Act does not address museums directly, it is of importance for them for the following reasons:

- Firstly, as it is signalled by the new Act's very title, it is addressed to public sector bodies. Among them in the new Act's Art. 2 bodies of the public finance sector as specified in the Act on Public Finances, are enumerated. Bodies of the type are e.g. local-government cultural institutions (see: Art. 9 of the Act on Public Finances), thus also museums that are such cultural institutions. Furthermore, museums can also operate as a structural part of other cultural institutions, e.g. local-government cultural centres.
- Secondly, the purpose of the introduction of the regulation, this clearly visible from (9) of the Directive's Preamble is to ensure accessibility of websites and mobile applications of the public sector bodies in harmony with the common accessibility requirements, also for the disabled.

References to individuals with disabilities are mentioned in the new Act, among others in the Annex to it titled: 'Guidelines on the accessibility of online content 2.1 applicable to websites and mobile applications in accessibility for the disabled'.

As far as the Act on Museums of 21 November 1996 (Journal of Laws of 2019, Item 917) is concerned, the regulations that should be analysed in this context come from Art. 25a.2. It stipulates in the second sentence that direct access to the images of museum exhibits online shall be free of charge.

As a rule, the stipulations of the new Act do not have direct references to museums or their activity. The exception in this respect is Art. 3 of the new Act, specifying the cases to which its provisions are not applicable. In particular, it is Art. 3.2.7 which stipulates that the Act is not applicable to the content presenting e.g. museum exhibits in the understanding of Art. 21.1 of the Act on Museums which cannot be made accessible as digitized, since making a digital accessible presentation: a) would imply the loss of authenticity of the duplicated element, or b) is not possible for technical reasons, or c) would imply incurring excessive costs.

Art. 5.2 of the new Act stipulates that digital accessibility of a website or mobile application consists in its operability, robustness, perceivability, and understandability. The definitions of these principles (criteria) of digital accessibility are contained in Ar. 4 of the new Act (see Arts. 4.4, 4.6, 4.9, and 4.11), while its Annex specifies the guidelines referring to each of the four above principles, specifying success criterion for each principle.

Art. 5.3 of the new Act foresees that the requirements defined in the Act's Annex are fulfilled when a public sector body provides digital accessibility meeting the requirements in points 9, 10, and 11 of the EN 301 549 V2.1.2. Standard. It is a European Standard comprising the Web Content Accessibility Guidelines (WCAG) 2.0, namely on the accessibility of online content meeting the international ISO/IEC 40500:2012 Standard.

The museum obliged to provide accessibility of its website or mobile application can be exempt from the requirement in the event that this implies excessive cost (Art. 8.1 of the new Act).

Regardless of the above exemption, resulting from financial limitations, Art. 8.2 of the new Act defines the subject range of the digital accessibility that the body (museum) is obliged to provide. Apart from the body's BIP site, among website's and mobile application's elements and functionalities, there should be an accessibility statement of the website or mobile application of the public sector body.

The above statement is defined in Art.10 of the new Act; in 10.2, it makes reference to the model to be found in the Annex of the Commission Implementing Decision (EU) 2018/1523 of 11 October 2018 defining the model statement of accessibility in accordance with Directive (EU) 2016/2102 of the European Parliament and of the Council on the accessibility of the websites and mobile applications of public sector bodies.(Official Journal of the EU L 256/103 of 12 Oct. 2018).

In compliance with Art.10.7 of the new Act, the accessibility statement should be made on this website.

The entry into effect of the new Act has been spaced in time. Since 23 May 2019 essentially the initial and final articles of the Act have been in force (Arts. 1–4, Art.12.1, and 12.4–12.7 and Arts. 20–27)

Whereas the remaining provisions of the new Act, namely Arts. 5–11, Art.12.2 and 12.3, as well as Arts. 13–19, in compliance with the Act's Art. 27 have entered into force or will enter with substantial respite, varied with regard to websites (depending on their publication date) and mobile applications, in the range:

1. Websites of public sector bodies unpublished before 23 Sept. 2018: as of 23 September 2019;
2. Websites of public sector bodies published before 23 Sept. 2018: as of 23 Sept. 2020;
3. Mobile applications of public sector bodies: as of 23 June 2021.

Computer software in museums' activity

Computer software is protected by the Act on Copyright and Related Rights (see Chapter 7 of the Act on Copyright and Related Rights, hereinafter Act on Copyright). In this context museums play a two-fold role: 1) as the rightholder of the author's economic rights to the computer program, specified in Art. 74.4 of the Act (with respect to the programs created by museum's employees or commissioned by the museum with the acquisition of author's economic rights to the ordered program), or 2) as licenced users of the programs applied.

In practice, it is rare for museums to purchase exclusive author's economic rights to programs. What dominates in the distribution of computer programs by its producers is granting licences. Acquiring the 'ownership' of a computer program is justifiable in the event when the program is commissioned by the museum and customized to meet its specific needs.

In the latter case, it should be borne in mind that author's economic rights to the program were particularly stipulated in Art. 74.4 of the Act on Copyright, and they have to be acquired in this range. In compliance with these provisions, author's economic rights to a computer program shall include the right to: 1) the permanent or temporary reproduction of a computer programs in full or in part, by any means and in any form; however, where it is necessary to reproduce a computer program for its loading, displaying, running, transmitting and storing, consent of the rightholder shall be required for such acts; 2) the translation, adaptation, arrangement, or any other modification of a computer program, protecting the rights of the person who made such modifications; 3) public dissemination, including letting for use or rental, of a computer program or a copy thereof.

Interestingly, the above list of author's economic rights includes modifications introduced to the program, which demonstrates that as a rule museum is not authorized to modify the applied computer programs unless such modifications are provided for in the program's licence or such a right has been acquired in the contract to transfer author's economic rights to the program, e.g. designed (ordered) to meet the museum's individual needs.

Databases in museums' operations

Databases are non-tangible assets, similarly as computer software. They unquestionably constitute assets essential in museums' activity, this well testified to in Art. 2.9 of the Act on Museums, stipulating that museum performs tasks as defined in Act's Art.1 where it is emphasized that museum shall, e.g. inform on the value and content of its collections, particularly by guaranteeing proper conditions for public visiting and for benefitting from its collections and gathered information. In view of the legal protection, databases may be divided into two basic categories:

1. Databases that are pieces of work in the meaning of the Act on Copyright for being creative, genuine for their arrangement and content selection contained (See Art. 3 of the Act on Copyright)
2. Databases being pieces of work deprived of creative character, requiring incurring essential costs for their quality or volume in order to create, verify, or to present their materials, and protected with the provisions of *sui generis* exclusive specific rights applicable to databases with the provisions of the Act on Database Protection of 27 July 2001 (Journal of Laws of 2019, Item 2134).

Databases should not be confused with data as such, since as the very name: database points to, they are data or information items ordered in a defined way and constituting a definite set of pieces of information.

Examples of creative copyrighted databases are e.g. bibliographic bases or bibliographies which are pieces of bibliographic information worked out or put together according to specified selection criteria, e.g. related to a given set of materials, such as e.g. periodicals.

Meanwhile, examples of databases that are not pieces of work and can be protected only by sui generis right are e.g. databases grouping data exclusively in a chronological or alphabetical order, thus in compliance with the criteria conditioning the way elaborating a given database. Thus, examples of non-creative catalogues are simple databases (lists), e.g. alphabetical lists (according to authors' names and titles) of art works collected in a museum.

Apart from purely informative value resulting from the database content, its value then results from an appropriate elaboration of given information as part of a definite base thanks to which it becomes a separate marketable object. Formally, the marketable distinctness of the two is reflected in appropriate rights to databases, namely author's economic rights and sui generis rights to databases defined in the Act on Database Protection.

As much as museum being the producer of a database enjoys the latter by the power of law, as for copyright to creative databases museum should aim at acquiring them.

For creative databases created by museum employees as part of their employment relationship, Art. 12 of the Act on Copyright is applicable. If a creative database is commissioned by a museum from another body, the acquisition of copyright by the museum should be provided for in the Contract to create the database by an outside body.

Digitizing of museum collections

Digitizing does not have a separate regulation in Polish domestic legal system that might provide an overall systemizing of this technological process and its practical applications. Actually, there is no legal definition of digitizing which should be understood in compliance with its essence as creating a digital record of the content of various documents (materials) existing in more traditional non-digital forms, such as printed documents, using appropriate technologies, e.g. scanning.

In this context of importance are IT definitions of data carriers and electronic documents, defined in Arts. 3.1 and 3.2 of the Act on Computerization of Entities Pursuing Public Tasks of 17 February 2005 (Journal of Laws of 2019, Item 700, with later amendments). In compliance with the Act, an IT data carrier is material or device serving to record, store, and read data in their digital form. Such a carrier is e.g. a CD, but also a computer boasting definite storage capacity.

Meanwhile, an electronic document is a separate

meaningful whole of data following a definite internal structure and registered on an IT data carrier. In such a view, an electronic document cannot exist without the existence of an IT data carrier, the latter being essential in producing the document, also since it is created as a result of a digitizing process.

Clearly, from the point of view of digitizing, with regard to the need to respect other rightholders' rights to non-tangible assets, what is of major importance is the copyright applicable to works understood in compliance with the provisions of Act on Copyright and Related Rights registered in digitized materials (documents).

Actually, in the case of museum exhibits that are of older provenance, if they are carriers of works, the context of author's economic rights is rarely of importance, since the rights have expired. Paradoxically, however, caution has to be exercised, as against all appearances rights may have not expired, e.g. in the case of artworks created in the late 19th century whose authors died after 1940 (see Art. 36 of the Act on Copyright).

The scope of statutory licence for museums related to making copies of its collections, also through their electronic copies, is provided for by Art. 28.1.2 of the Act on Copyright.

The legislator clearly specifies in this case that it refers only to works recorded in the museum's collections, yet as part of the above licence copying of works, understood broadly, shall be allowed, also as part of the digitizing of the collections in order to include them in electronic databases, however without fixing copies of the works on material electronic carriers, e.g. CDs. This does not go to say that the licence in question has not been restricted in any way as for its scope. Firstly, let us analyse the provisions of Art. 28.2 of the Act on Copyright stipulating that making copies as specified in Art. 28.1.2 shall not increase the number of work copies and enlarge the collections, respectively let to use or made available in compliance with the provisions of Arts. 28.1.1 and 28.1.3.

Furthermore, the definition of the purpose for which works can have copies made as specified in Art. 28.1.2 of the Act on Copyright is restrictive. The purpose shall be to supplement, maintain, or protect the museum's collection. Since in compliance with Art. 1 of the Act on Museums museum's statutory goal is, among others, durable preservation of tangible and non-tangible heritage of humanity, digitizing of museums' collection is unquestionably factually justified.

Other statutory licences with reference to the digital environment

In the digital context another statutory license essential for museums is provided for in Art. 28.1.3 of the Act on Copyright. Its provisions stipulate that museums shall make the collections available for research or learning through information technology system terminals (endings) located on museums' premises.

This is related to the increase of the availability of museum collections, which a user can either become acquainted with not only when visiting, but also through 'entering' the IT system in which the museum's collections are available as well. This licence is, therefore, strictly connected with the museum collections' digitizing.

However, it should be emphasized that the user can take advantage of this possibility, provided the museum offers it, and has an adequate IT system for the purpose, yet it requires a personal arriving of the user at the museum, thus the user's personal presence at the museum, since those terminals have to be located on the museum premises. Thus the formula of this statutory licence does not allow the Internet transfer to the user's private address of materials (works) protected with author's economic right.

However, in compliance with Art. 28.3 of the Act on Copyright, Art. 28.1.3 is not applicable provided the availability mode complies with a prior contract concluded with the rightholder.

Apart from Art. 28 of the Act on Copyright, also other statutory licences are of relevance for museums in the regulations of permissible use, these including the one provided for in Art. 333 of the Act. In its current wording, Art. 333 permits the use of works for the advertising of museum's exhibitions, not only through their dissemination in promotional publications (paper ones), including catalogues, but also in other materials disseminated for exhibition's promotion, including the internet.

As for copyrighted pieces of museum collections, it has to be borne in mind that making them available online has been provided for with the regulations allowing permissible use of orphan works (provisions of oddz. 5, Chapter 3 of the Act on Copyright).

Orphan works are, e.g. works published in books, journals, periodicals or other publication format, currently in the museum collection, (works in two exploitation fields: making copies and making them available to the public in a manner that everyone has access to them at any chosen place or time) if none of the rightholders in that work is identified or, even if one or more of them are identified, none is located despite a diligent search for the rightholders having been carried out and recorded (in accordance with Arts 335 and 336 of the Act on Copyright).

Protection of images disseminated online

Apart from moral rights that museums should take into account when using works, also those no longer protected as author's economic right, museums in their activity deal with personal rights for which provisions of the Act on Copyright are respectively applicable (see Art. 83 of the Act)

One of those rights is image (Art. 81of the Act on Copyright) which is also provided for in the Civil Code, hereinafter CC (see Arts. 23 and 24, CC). In this respect the Act on Copyrights is a sui generis regulation with regards to the Civil Code.

In the light of the provisions of the Civil Code the claim to protect rights to the image results from unlawful actions of another person (see Art. 34.1, first sentence, CC). Generally, this is decided upon with the lack of permission of the rightholder. The Act on Copyright stipulates the need to have permission to disseminate image (Art. 81.1, first sentence, Act on Copyright). This requirement is important e.g. if a museum wishes to disseminate an image of a definite individual on its website.

It is most appropriate to receive the necessary permissions (declaration) in writing so as to avoid potential doubts.

Also such declarations sent in an e-mail can be of evidential value, particularly if they are dispatched from a private email address of the individuals granting their consent to disseminate their image. The consent of the rightholder constitutes a contractual exclusion of unlawfulness. Furthermore, there are two exceptions when the permission of the individual is not requested (Art. 81.2, Act on Copyright):

- dissemination of the image of a commonly known individual (only if connected with the performance of his/her public function);
- it is not unlawful to disseminate images of individuals in situations when these images constitute a larger whole, such as landscape, a meeting or a public event;

One practical conclusion from the above for museums is the following: when taking photos in relation to their statutory activity of different individuals, e.g. participants of events organized by museums, caution has the be exercised when individuals' images are disseminated, e.g. by posting photographs with their images on their websites. In the case of a recorded event or other events participated in by a larger number of people, it is recommended for a photo to adopt a wider perspective, avoiding the exposure of the face of a given individual who has not granted the museum his/her permission to disseminate their image.

Abstract: In the current technological environment, operation of every institution, museum included, requires the use of IT networks, among them the internet. This results from the fact that museums have their respective websites and web addresses.

Regardless of the technological aspects, the use of the internet by museums has to bear in mind legal requirements resulting in particular from the Act on Access to Public Information, this including the BIP page, namely that of the Bulletin of Public Information that allows to provide access to this kind of information within the range as defined in the above Act.

The requirements of the accessibility of digital websites of public museums taking into account the needs of disabled citizens is specified by the Act on Accessibility of the Websites and Mobile Applications of Public Sector Bodies. Some of the provisions of the Act with respect to websites published before 23 September 2018 will come into force as of 23 September 2020.

In the discussed context it is also legal provisions related to IT assets that are of importance; these contain computer software and electronic databases. The legal status of these assets is specified in the provisions of the Act on Copyright and Related Rights (see its Arts. 3 and 7) as well as of the Act on Database Protection.

Apart from the above, which, however, do not exhaust the whole range of the topic-related issues, it is also important to tackle the question of the digitizing of the assets (collections) that museums have at their disposal, in particular museum objects and images of people that constitute personal rights, which are digitized and disseminated online.

Apart from the Act on Museums, particularly its Art. 25a, it is the Act on Copyright and Related Rights as well as the Civil Code that through the general provisions on the protection of personal rights, these also including images of people, give the prescriptive context to the problem.

Keywords: Bulletin of Public Information (BIP), website, computer software, database, digitizing, making information accessible, disseminating images of people.

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