

Conference Proceedings “Legal Aspects of Digitisation of Cultural Heritage”

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Proceedings of scientific conference held on 19. October 2017 at Serbian Academy of Science and Art “Legal aspects of digitisation of cultural heritage”, edited by Dragan Prlja,¹ contains fourteen original scientific papers which deal with the issues of “normative regulation of jurisdiction for digitisation of cultural heritage in Serbia, countries in the region and the European Union” from different aspects, as well as with many other questions concerning legal standards and intellectual property protection during the process of digitisation. In the foreword of the Proceedings it is pointed out that new possibilities of digitisation related to availability and protection of material brought new technical and organizational challenges too, but no less important legal ones. However, legal aspects have been neglected so far, although this activity has existed for twenty years. The aim of the Proceedings is to compensate the lack of literature, and to unite knowledge from this area in which the research will continue and in which some questions are going to get real answers.

Diversity of presented subjects and multiple approaches enabled the fulfillment of designated tasks and Proceedings provides comprehensive overview of documents which could be relevant for this issue, on the one side, and it discusses the question of protection and security of digitized material, from legal to technical in the strict sense. The Proceedings offers oversight of actual condition in national and international legal domain, but also indicates the aspects that should be improved and developed.

¹ Prlja, Dragan, ed., *Legal aspects of digitisation of cultural heritage*. Belgrade: Institute for Comparative Law, Serbian Academy of Science and Art, Audiovisual archive and Center for Digitization of SASA, 2017.

1 Documents

In the first article of Marko Reljanović and Dragan Prlja (“Digitisation of cultural heritage in the Republic of Serbia – normative aspects”) emphasizes the necessity of very well regulated normative framework concerning laws, but also the other legal documents. Although there are many law solutions in this area,² Law on archive documents and archive activity is yet to be enacted. The National strategy of development of information society in the Republic of Serbia till year 2020 treats the development of digitized content as one of the priorities. Changes of Law on copyright and similar rights, which are planned for the first quarter of the 2018 are very important and their goal is the harmonization of EU Directive on some permitted uses of orphan works. Then it will be possible, by following certain procedure, to digitize works whose copyright holders are unknown or unavailable.³

The overview of international standards of digitization, presented in paper of Ana Batričević, covers standards of UN, but also those of European Council and European Union.⁴ The activities defined within the goals of National center for digitization – such as the need for legal regulation of access to digitized content, followed by protection of intellectual property, right on commercial distribution of publicly available commercial content, mandatory deposit of digitized versions of new editions and contents born digital, rights for automatic harvesting of digitized content – are also emphasized.

² The most important laws are: Law on culture, Law on cultural works, Law on library and information profession, Law on cinematography, Law on electronic document, and above all Law on copyright and related rights. For this area it could also be relevant: Law on optical discs, Law on electronic signature, Law on free access to information of public interest, Law on electronic communications, Law on information security, etc.

³ “Orphan works”, or works of unavailable copyright holder, include works which are still under copyright, but whose copyright holders are unknown or for some other reason unavailable, so it is not possible to get the permission for making copies of the work. Many works from the first part of 20th century, which make part of cultural heritage, belong to this group.

⁴ Standards of United Nations include primary Charter of Unesco on preserving of digital heritage from 2003; the most important Standard of European Council is Convention on the value of Cultural Heritage for the Society from 2005, documents belong to EU standards are: Lund principles, Charter of Parma and Conclusion of European Council on the role of Europeana for the digital access, visibility and use of European cultural heritage.

List of national and international legislations are completed with presentation of legal aspects of digitisation in the region, mainly in Montenegro (Dražen Cerović), but also in Bosnia and Herzegovina (Iza Razija Mešević). In the paper of Jelena Kostić and Miloš Stanić the comparative law analysis of competencies of state authorities is given, during cultural heritage's digitization procedure in the Western Balkans countries. Short report of competences in each EU country is brought in the paper of Gordana Gamsi, Vanja Korać and Sanja Prlja ("European Union and digitisation of cultural heritage") in which the relevance of documents such as recommendations is heavily emphasized. Among them the Recommendation 2011/711/EU is particularly important since it defines "the rules of digitisation of cultural heritage in the line with the European Union Strategy by 2020", the implementation of which is monitored through periodical reports. The importance of Europeana portal, "large digital cultural platform" is underlined, through which in the years to come EU will endeavor "to provide progress in digitisation of cultural heritage", long term preservation, but also improvement of content quality and availability.

In the paper of Andrej Diligenski ("Court cases related to the digitisation of cultural heritage and its availability in cyberspace") the development of Europeana project is presented, thanks to which around 55 million works of cultural heritage are available today. Nevertheless, main part A. Diligenski's paper is aimed at court cases which often become legal frameworks for certain issues, since "they are live law sources and they improve shortage of law regulations". This is illustrated with three particular cases or verdicts brought in European courts: that books that can no longer be found in bookstores can be digitized and used only if their authors were aware of digitisation and had the possibility to cancel it, that the lending of digitized and printed copy in the public institutions is equaled and that libraries can under certain conditions make books available in electronic reading rooms without authors' permission.

Finally, in the paper of Jelena Matijašević Obradović and Joko Dragojlović documents like Digital agenda for Serbia are analyzed. Agenda, as initiative of Digital Agenda of Europe for the year 2020, is defined by the Strategy of development of Information society by 2020 and by Strategy of development of e-communication in Serbia from 2010 to 2020.

2 Protection and archiving of documents

Security aspect of digitized material is treated in the paper of Dragan Jovašević (“Security protection of the digital databases of cultural heritage of the Republic of Serbia”). In the paper it is emphasized that with the changes of Criminal law of the Republic of Serbia from 2003, based on international standards, especially Convention on cybernetic (cyber) criminal (2001), in the system of criminal law for the first time are brought “several cyber (computer) criminal acts”. This is incorporated in later version of Criminal law of the Republic of Serbia (2005), in which it is subsumed under section of Criminal acts against the security of computer data.

Protection of artistic works, as a part of cultural heritage which is also the subject of digitisation, can contain more technical aspects, which is discussed in the paper of Katica Tomić, focused on the liability in the process of authentication of art works and the implementation of new technologies (block chain), and in the paper of Nikola Paunović on the importance of databases of stolen cultural goods, for the prevention of illegal trade on internet. In this paper, the importance of Convention on criminal acts related to cultural works, which is adopted by the Ministry Council in 19th may 2017, is analyzed in particularly.

In the context of digitisation term of protection also indicated the issue of copyright protection, but this topic brings new challenges and traps, as it is discussed in the paper of Miodrag Savović and Danilo Rončević (“Digitisation between the protection of copyright and the right to use cultural heritage”). The difficulties with which institutions can face during the process of digitisation are indicated, which is related mainly to harmonization of authors’ rights on the one side, and public need of usage the cultural works by the wide range of people, on the other. Very often, institutions estimate the risk of digitisation and digitize even the material for which they do not have a permission. The conclusion brought in the paper is that the solution lies in constant changes and adjustments of legal regulations, in creating the database of authors which could facilitate finding of copyright holders, and in forming the competent councils who could provide necessary help.

The other, maybe ultimate challenge for each institution which starts the process of digitisation – “orphan works”, could be solved through so called model of collective rights management, as it is explained in the paper of Nataša Mrvić Petrović and Vladimir Čolović. This is a model to “bypass limitations of copyright”, named “ECL – extended collective license”, but it is applicable only on the territory of one country. Organizations for col-

lective management of copyright can become representatives of copyright holders, and they can freely negotiate with cultural institution for approval of digitisation. In different versions, this model is already implemented in Scandinavian countries, and in France and Great Britain.

Although in the majority of papers the accent is put on the conversion of analogue documents into the digital, and on application of legal solution in that part of process, in the paper on legal aspects of Digital repository of the University of Belgrade, Dragana Stolić and Tatjana Brzulović Stanisavljević, the attention is called on repository as means of preserving digitized material which makes the infrastructure for so called “green open access” and enables the use of digitized content. However, a few noticed problems are pointed out, such as: misunderstanding the way of law regulations in the frame of repository (Creative Commons licenses), doubts about ownership over deposited objects and, finally lack of accordance between different laws, mainly Law on copyright and related rights and Law on high education.

In spite of diversity of presented papers of the Proceedings, the dominant subjects in the context of discussion on law regulations related to digitisation of cultural heritage can be singled out. It is, above all, question of implementation of Directive EU on certain permitted use of “orphan works”, which will unblock digitisation process in one part and enable digitisation of those works which are still under the copyright. In many papers the importance of different ways of education is underlined, as well as the need for forming the instances for providing professional help. Legislation which regulates process of digitisation, directly or indirectly, is very wide in this moment, on national and international level, but these frameworks need to be constantly monitored, adjusted and completed if it is necessary, so that the requests posed by this long term and important process put in front of institutions can be fulfilled.