



**British Institute of
International and
Comparative Law**

The Human Right to Access and Enjoy Cultural Heritage in the United Kingdom

Workshop Report

On the 31st of May 2018, the British Institute of International and Comparative Law hosted a workshop on the human right to access to, and enjoyment of, cultural heritage in the United Kingdom (UK), which was moderated by Kristin Hausler (Dorset Senior Research Fellow). This workshop was organised as part of HEURIGHT, a research project on ‘The Right to Cultural Heritage – Its Protection and Enforcement through Cooperation in the European Union’.¹

While there is no right to cultural heritage *per se*, a right to access and enjoy cultural heritage is now understood as being part of the human right to take part in cultural life as enshrined in Article 15 of the International Covenant on Economic, Social and Cultural Rights, which was ratified by the UK in 1976. The former Special Rapporteur in the field of cultural rights, Farida Shaheed, stated that “[C]onsidering access to and enjoyment of cultural heritage as a human right is a necessary and complementary approach to the preservation/safeguard of cultural heritage” and that “[A]ccessing and enjoying cultural heritage is an important feature of being a member of a community, a citizen and, more widely, a member of society.”² Within the good practices her report highlighted, there was one example regarding the UK, i.e. the free admission policy for national-funded museums and galleries.³ The goal of this workshop was to identify further how, and to what extent, the right to access to, and enjoyment of, cultural heritage is being implemented in the UK from a human right’s perspective. It sought to

This Report was prepared by Kristin Hausler, Camilla Adach, and Anna Khalfaoui.

¹ HEURIGHT is financed by JPI – Cultural Heritage and the AHRC in the UK. For more information about the project, see <<http://heuright.eu/>>

As part of the project, a volume entitled ‘Cultural Heritage in the European Union: A Critical Enquiry into Law and Policy’, edited by Andrzej Jakubowski, Kristin Hausler, and Francesca Fiorentini, was published by Brill Nijhoff in 2019.

² Report of the independent expert in the field of cultural rights, Farida Shaheed, A/HRC/17/38 (21 March 2011) para 2.

³ *Ibid*, para 55.

highlight some good practices, such as the use of digitisation to make heritage more widely accessible. In addition, it also sought to identify possible obstacles to access to, and enjoyment of, cultural heritage in the UK, including those that may arise out of Brexit.

The present document is a summary of the key discussion points raised by the workshop participants, who included: Geoffrey Bennett (Institute of Art and Law), Megan Blakely (Lancaster University), Elizabeth Crooke (Ulster University), Laura Crossley (Museums and Cultural Consultant), Katey Goodwin (Art UK), Emily Gould (Institute of Art and Law), Sophie Hayes (Metropolitan Police Art and Antiques Unit), Rachel Joseph (HMRC), Benedict Leigh (British Museum), Ewa Manikowska (Institute of Art, Polish Academy of Sciences, Warsaw), Alison McCleery (Edinburgh Napier University), Jo Pugh (National Archives), Janet Ulph (University of Leicester), Joe Sherwen (HMRC), Matt Thompson (English Heritage), Andrea Wallace (University of Exeter), Ben White (British Library), Paula Westenberger (Brunel University), Charlotte Woodhead (Warwick University), and Alexandra Xanthaki (Brunel University). In addition to those participants who participated in the workshop formally, Alex Herman (Institute of Art and Law) and Karl Jagdis (DCMS) also participated in the discussions. The final session of the day was opened to the general public, in which 50 individuals participated.

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1. The Concept of Cultural Heritage and Access

‘Cultural heritage’ is “commonly understood to refer to tangible heritage (*e.g.* sites, structures and remains of archaeological, historical, religious, cultural, or aesthetic value); intangible heritage (traditions, customs and practices, aesthetic and spiritual beliefs; vernacular or other languages; artistic expressions, folklore) and natural heritage. (*e.g.* protected natural reserves; other protected biologically diverse areas; historic parks and gardens and cultural landscapes)”.⁴ Cultural heritage is not limited to what is considered to be of outstanding value to humanity as a whole, but also includes “what is of significance for particular individuals and communities, thereby emphasizing the human dimension of cultural heritage.”⁵

In its Heritage Statement (2017), DCMS adopts a broad concept of cultural heritage, without providing a definition. It lists a number of expressions of heritage, such as “historic buildings, places of worship, inspiring landscapes, ancient ruins and archaeological sites, statues and memorials” but it does not highlight intangible forms of heritage, even though it is mentioned it once.⁶ Its understanding of heritage is nevertheless wide-encompassing as it is seen as creating “great places to live, work, visit, and do business, as well as contributing to our economy, our wellbeing and the regeneration of our communities.”⁷ It is also deemed as having an “economic, social and environmental value”, with the social benefits ranging “from increased social cohesion and a greater sense of identity to improved wellbeing and better learning and skills outcomes.”⁸

The first session reflected on the concept of cultural heritage and its access in the United Kingdom.

1.1. Defining Cultural Heritage in the UK

Under UK law, there is no definition of ‘cultural heritage’ and reaching consensus on such a definition is problematic. To illustrate the concept, **Janet Ulph (University of Leicester)** discussed the display of a piece of ‘fatberg’ at the museum of London to question the concept of cultural heritage.⁹ The ‘fatberg’ may be considered cultural heritage simply because it is displayed in a museum, or because it presents a snapshot of the social history of a certain era, or because it conveys a story. Any legal definition of cultural heritage should thus be flexible enough to encompass fatbergs. Yet, under UK laws, it is challenging to clearly identify what can be considered as ‘cultural heritage’ as different pieces of legislation will have different aims. For example, with regard to trafficking, there are some special laws which are relevant.

⁴ Report of the independent expert in the field of cultural rights, Farida Shaheed, A/HRC/17/38 (21 March 2011) para 4.

⁵ *Ibid*, para 7.

⁶ See on page 7, “breadth and diversity of our tangible and intangible heritage”. Note that the Culture White Paper (2016) does not refer to intangible *per se* but it does list intangible forms of heritage (such as knowledge of performing arts, including music) as an important part of children education.

⁷ *Ibid*, p. 4.

⁸ *Ibid*, pp. 7-8.

⁹ A fatberg is a congealed mass found in a sewage system; see Vyki Sprakes, ‘Fatberg! Exhibiting the ‘Monster of Whitechapel’ (6 February 2018) <<https://www.museumoflondon.org.uk/discover/exhibiting-fatberg-monster-whitechapel>>

In addition, one must take into account the context for the adoption of a particular law and the purpose of definitions contained therein. However, there may be no need to find an overarching definition for cultural heritage.

A wide-ranging definition can provoke controversy. For example, many scientists consider fossils not as part of human civilisation but purely as scientific objects. Others would say that, whereas this was how they were presented in the 19th century, the approach now taken by museums is to interpret these objects, with many of the view that dinosaurs' remains, for example, are heritage objects.¹⁰ This has a number of implications, such as with regard acquisition and restitution. For example, if you consider fossils as heritage objects, there are legal considerations and limitations to take into account when purchasing such objects. For the purpose of repatriation, whether an object is consider as having purely a scientific value or also a heritage value can also have implications. Therefore, how an object is classified really matters.

Both copyright law and rights to ownership may affect access to heritage. This issue was raised in relation to the exhibition of protest posters at the People's Museum in Manchester. Although some posters had been tossed on the ground, they had not necessarily been entirely abandoned. It was thus preferable to obtain the right to use those posters from the protests' organisers themselves.

More in general, museums need to satisfy the right to cultural participation by adapting to the values of the 21st century. Institutions should follow the Collections Trust checklist in order to avoid taking in stolen or illegally exported objects and thus fuelling the illicit trade and stripping owners, whether states or individuals, of their objects. Another issue will arise when museums seek not to acquire but to sell cultural objects in their possession. For example, the Baltimore Museum is selling several works of arts by established artists in order to purchase cultural goods by minority ethnic communities and women. Despite strong arguments in favour of diversifying collections, there remains a number of ethical and legal issues which need to be considered. If a cultural institution wishes to sell an object for financial reasons, it must abide by strict ethical guidance because of the risk that the objects may be purchased by private purchasers and disappear from public view. Museums may consequently be unable to sell objects to raise money to acquire new cultural goods which will be relevant to minorities and which will stimulate debate concerning such matters as societal inequalities and climate change. Furthermore, most museums possess objects the ownership of which is unclear. Some of these objects may have been on loan for an extended period of time and the owner cannot be identified. While the law may sometimes allow museums to discard certain objects, in most cases they cannot legally dispose of objects on loan even where they are of little or no cultural interest.

Finally, Professor Ulph raised the issue of Brexit as it raises many questions, including in relation to the fluctuation of currencies. For example, the 'Portrait of a Young Man in a Red Cap' by Jacopo Pontormo was sold for approximately £30 million. A campaign had raised money in order for the National Gallery to purchase it but the buyer refused because of the

¹⁰ See J. Ulph, 'Acquiring Fossils: A Complex Picture' *The Geological Curator* (2018) 10 (10) 517. https://www.geocurator.org/images/resources/geocurator/vol10/extra_content/geocurator_10_10_pp657-670.pdf

fall in the value of the sterling, which would have resulted in a potential loss of £8 million. At present, there is very little detail with regard to establishing a fair market price as part of the export licensing system.¹¹

1.2. General Challenges to Accessing Cultural Heritage in the UK

Access to heritage is a right that has a positive benefit on communities, creating connections, and developing skills, according to **Laura Crossley (Museums and Cultural Consultant)**. The provision of free access has proven important to ensure that people value their own heritage. In general, some staff in the cultural sector believe they have a moral duty to support people accessing heritage, by developing long-term partnerships between communities and institutions and through local policies that prioritise access to heritage and diversified participation.

In times of crises, access to heritage can be challenged on several levels. Brexit and the lack of EU workers it may generate could pose a real challenge to the cultural sector, where dedicated staff are key in ensuring access to cultural heritage. As a result of already implemented substantial budget cuts, staff have had to change the way they strive for access; with their capacity being stretched, it has already been difficult to allow for continued access. As cuts have been made rapidly, there generally was no opportunity for institutions to plan and build resilience as a response. In the past, when certain industries dwindled, there was an opportunity to create museums and employ workers. However, the cuts have been implemented too rapidly to envisage such projects, with local authorities having been forced to make emergency decisions.

The fact that local authorities sometimes act as financial managers will have an impact on the museum's operations and distance between council and museum staff can create issues. Local council governance of cultural institutions highlight the need to bring together local authorities and museum staff. Another issue with local governance regards the sale of collections for financial reasons, a possibility exposed by the bankruptcy of the city of Detroit which considered selling artworks in its public collections in order to pay its creditors. Ensuring that museums' collections owned by local authorities have charitable status (thus ring-fencing the collection) would end financially motivated sales and provide tax breaks for museums. Who would then act as trustees for the local museum? In the case of some museums that have a charitable management trust, the local authorities retain ownership of the collection but establish an independent management structure. However, financially motivated disposal of cultural goods may also benefit and involve local communities, which needs to be better understood.

While funding ensures the financial sustainability of cultural and heritage organisations, it is at risk with Brexit and the potential lack of EU funding for heritage in the UK. Further cuts would also lead to a more demoralised workforce, with one heritage professional having stated that "without people it is really hard to sustain stuff". In order for staff to be able to continue to offer access, exchange of skills across the international community must also

¹¹ Note that these rules may change, see DCMS public consultation 'Strengthening the Process for Retaining National Treasures' (December 2018)

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/765165/_Consultation_Document__Strengthening_the_Process_for_Retaining_National_Treasures__2_.pdf>

continue to be ensured, with staff being trained internationally. Those with a leadership role in the cultural sector must also continue to champion access to cultural heritage. Funding cuts must also take into account the specific security risk posed by certain objects in museums, with organised crime gangs targeting certain institutions, such as local museums for ivory horns, which have a high financial value.

Policies regarding cultural heritage must be clear so that they are adequately implemented. Staffs are the ones enacting policy on the ground so they must not only understand the policies but also feel invested in them.

Collaboration and partnerships (including through digitisation projects) can be valuable tools to retain access to heritage in times of crises. It can also support individuals and communities feel a sense of ownerships over heritage and increase their understanding of heritage. Along with support, organisations will need to show further resilience in order to continue to offer access to heritage. However, the continued uncertainty around Brexit makes it difficult to do any long-term planning. While the Culture White Paper (DCMS 2016) has sought to identify good practices and current gaps, Brexit remains an unknown quantity in terms of potential loss of funding and immigration, among other issues.

A current trend is for institutions to diversify their funding, such as through partnerships with the department of health, through access to health funds. The rationale being that museums are instrumental in supporting the population's wellbeing, thus strengthening the role heritage plays in societies.

1.3. A Northern Ireland Perspective on Accessing and Enjoying Cultural Heritage

According to **Elizabeth Crooke (Ulster University)**, Northern Ireland faces specific challenges that impact access to and enjoyment of cultural heritage. As well as the legacy of the Troubles and dealing with the past, there are also the current issues arising from the lack of the Northern Ireland Assembly and the uncertainty around Brexit.

Without a functioning devolved Executive since January 2017, there have not been parliamentary debate and scrutiny of devolved matters since then. Division between the main political parties leaves the political situation paralysed. The Northern Ireland Civil Service is continuing to administer in Northern Ireland, following a draft Programme for Government which was published in October 2016 and has not advanced since then. The NICS proceeds with caution, mindful to ensure the legality of their decision making.

While Northern Ireland is still in a state of transition from conflict, on the culture front there have been success stories since the signing of the Good Friday Agreement in 1998. The military barracks in Derry/Londonderry is a historic site that is now a vibrant public space, accessible via a footbridge named the 'Peace Bridge', which has transformed the walking experience in the city. When the Peace Bridge first opened there were frequent anecdotes of people crossing it and shaking hands. Another example is the positive impact of research into and acknowledgement of the shared histories associated with the First World War memorial in the city centre. Despite these successes, the consequences from the Troubles are still felt,

in particular with incredibly high suicide rates and mental health problems in Northern Ireland.

In the last two decades, the region has seen an increasing number of museums interpreting the Troubles period, ranging from new permanent galleries in National Museums Northern Ireland to new community-based museums in Derry and Belfast. In addition to that there have been various temporary initiatives, such as the exhibition *Every Day Objects Transformed by the Conflict* created by Healing Through Remembering. In every case, there are sensitivities around how the conflict is interpreted and for what purpose. To varying degree, there are initiatives that closely reflect the shared future thinking of good relations policy and others that see the museum as a platform for cultural or political campaigning. The clearest example of the sensitivities around the formation of heritage sites associated with the Troubles was the failure to build the planned peace and conflict centre at the former Long Kesh/Maze prison, despite funding secured from the EU.

There are also continuing silences or histories very slow to emerge, such as the experiences of LGBTQ+ communities. For instance, the UK wide National Trust project 'Prejudice and Pride' in 2017 was far less extensive in Northern Ireland. In the Republic of Ireland, people voted recently to repeal the Eighth Amendment, thus changing the abortion law, and same-sex marriage was legalised in 2015. On a culture front, this has triggered collecting projects that are archiving changing attitudes in the Republic of Ireland. For the moment, Northern Ireland seem a long way off being able to do the same in its museum spaces.

Finally, Brexit has not only a direct impact on Northern Ireland but also on its relationship with the Republic of Ireland. The EU has supported significant cultural projects that have fostered cross-border relationships. While some of those projects have resulted in established partnerships across the border, there is concern for the potential impact of not being able to participate in such EU cultural projects in the future. A recent Irish Museums Association-Ulster University study has found concerns within the cultural sector about the impact of a potential hard border on the movement of cultural goods and people.¹² For instance, Northern Ireland curators used to touring exhibitions to the Republic of Ireland are concerned with the lack of guidance on the new import/export licensing procedures necessary to move exhibitions to Ireland post Brexit. As a result, until such guidance is in place, they are reluctant to plan new touring exhibitions. There is also concern about the potential impact of Brexit on workforce movement. Not only are there people in the border regions, who cross the border daily to travel to work, there are also museums in Ireland that avail of the expertise of their curatorial and conservation colleagues in the UK. Although that will not come to an end post Brexit, the lack of guidance has brought some insecurity to planning for the future.

1.4. The Right of Minorities to Accessing and Enjoying Cultural Heritage in the UK

Alexandra Xanthaki (Brunel University) noted the ongoing debates in the UK about the cultural heritage of migrants, refugees, and other minority groups, in particular their intangible heritage. The cultural practices of migrants are generally more readily accepted in

¹² Elizabeth Crooke and Gina O'Kelly, 'Brexit and the Museum Sector in Northern Ireland and the Republic of Ireland' (Ulster University and the Irish Museums Association, January 2018)
<https://www.ulster.ac.uk/__data/assets/pdf_file/0006/257613/BrexMusrel_report_21Feb18_web.pdf>

the UK than in other European countries, such as France and Germany, even though the terms 'access' and 'cultural heritage' are not used in the country. This is for example the case with regard to food, customs, and cultural events. Special measures have for example been adopted in the school system, with exams being rescheduled due to Ramadan. However, this open approach to the cultural heritage of minority groups in the UK has not been systematic or consistent.

In the 2017 Heritage Statement, minorities are always considered as recipients of knowledge rather than partners. It generally appears to assume that accessing cultural heritage means accessing national cultural heritage or, in some instances, to local cultural heritage. The 2017 Heritage Statement could thus have provided more specifically for the participation of minorities, devising projects to ensure the protection of the rights to access to culture for migrants. This should not be seen as doing migrants a 'favour' but, rather, as fulfilling international legal obligations. The UK is not only bound by the International Covenant on Economic, Social and Cultural Rights, but also by the International Covenant on Civil and Political Rights (1966), which guarantees the rights of persons belonging to minorities to enjoy, in community with the other members of their group, 'their own culture, to profess and practise their own religion, or to use their own language' (Article 27), as well as to the International Convention on the Elimination of All Forms of Racial Discrimination (1965), which guarantees the right to equal participation in cultural activities, without any discrimination (Article 5 (e) (vi)). Therefore, under international law, the UK is required to adopt positive measures to protect, respect, and fulfil the rights of minorities, including migrants and refugees, to the UK's cultural heritage, as well as their own cultural heritage.

For migrants, informal cultural heritage centres, such as the Seven Sisters Market in London may be tools to realise their cultural rights. In addition to being a trading place, the Seven Sisters market hosts language lessons for children, as well as social dance evenings. However, all the discussions that took place as to whether or not the market should be redeveloped did not engage with human rights but focused on planning instead. Yet, if the so-called 'Latin village' was to be removed from its current location, the state authority could violate its obligation to respect the human right of its users, the Latin American community, to access their own cultural heritage. An open inquiry into the compulsory purchase order showed that impact assessments had not considered possible violations of the right of accessing culture. Nevertheless, the Council was of the view that affording special consideration to this particular community could amount to discrimination.

Overall, in the UK, discussions around cultural heritage tend to approach it as an art issue, an economic issue, but not as an identity issue, which is of particular importance to those who have migrated into the UK. Brexit may further limit the access of minorities and migrants to their cultural heritage. Until now, the EU had indirectly funded several projects supporting minorities and migrants.

2. The Role of Public Institutions in Providing Access to Cultural Heritage

2.1. Limiting Access and the Question of Deaccessioning

National museums governed by statutes, such as the British Museum, have an obligation to make their collections available to the public as clarified by **Charlotte Woodhead (Warwick University)**. Non-national museums, which have charitable status will also need to provide sufficient access to satisfy the public benefit test, whereas non-national museums with other legal structures will not necessarily be under any legal obligation. While local authority museums can charge for entry, they should consider how it affects public access which is clear from section 13(2) of the Public Libraries and Museums Act 1964. The Museums Association has made statements regarding the provision of access to cultural heritage, which is present in the legislative and ethical frameworks.

Several recent court decisions demonstrate the importance of access to cultural heritage. In the *Wedgwood Museum* case,¹³ the High Court ruled that the Wedgwood collection was an asset that could be sold by the Museum Trust to meet insolvency costs and liabilities due to the particular legal structure that had been used; the loss of public access to the collection was not relevant to the decision. While there were fears that the collection would be dispersed, in that case the V&A Museum managed to take ownership of the collection, following a support campaign led by the Art Fund. According to the case of *R (on the application of Hall) v Leicestershire City Council*,¹⁴ local authorities are the guardians of such assets. Furthermore, a decision to deaccession collections by a local authority is irreversible. Therefore, local authorities should first look for viable partnerships.

Another relevant case emanates from the rich body of case law concerned with matters pertaining to the Church of England, which has its own system of laws. In accordance with its rules, if a decision is made to sell a church treasure, the matter has to be approved by a consistory court, which is the ecclesiastical court. In *Re St. Lawrence Oakley with Wootton St. Lawrence*,¹⁵ the consistory court had to consider the sale of a Flemish armet. It recommended to secure the 'visibility' (thus considering the 'access') of an object belonging to the Church at the time of its sale, as well as to first seek a loan, for example to a museum, secondly considering a limited sale, such as to a museum, before finally considering an outright sale which might be to private buyer.

In addition to a museum deciding to de-accession an artwork, it may also be requested to do so by a community or by individuals who may claim ownership over a particular object. When an object is returned, it may (or may not) be publicly displayed. In cases where an object is meant to be publicly accessible upon its return, there is a question regarding the type of access that should be granted, i.e. inclusive of the general public or restricted to those having a specific connection with the object. In addition, when an object is returned to a remote community, its access may be limited *de facto* to the local level. When an object is returned

¹³ *Young and another v HM Attorney General and others* [2011] EWHC 3782 (Ch)

¹⁴ [2015] EWHC 2985 (Admin)

¹⁵ [2015] Fam 27

as the result of an individual claim, such as in cases of spoliation, the object may possibly be made widely accessible as part of a public collection; however, this is not necessarily the case as it may remain in a private collection, becoming accessible only if it is purchased by a public institution.

There are similarities in the arguments that can be advanced regarding repatriation and restitution claims made, from the state, from a community or an individual (e.g. Nazi Era restitution) but the effect on access differs. Individual access may be the result of return to an individual whereas collective access can be also divided into the public at large, a nation, or a local community; access for research purposes, i.e. to the scientific community is another form of access that may be relevant to consider. Return can be important because continued retention of objects with problematic provenance, can taint the public who access the objects, as mentioned by Baroness Deech during the House of Lords debate on the Holocaust (Return of Cultural Objects) Bill 2009 which allows de-accessioning of Nazi Era dispossessed objects from UK national museums.

2.2. Access Beyond Borders: the Case of the British Museum's Touring Exhibitions

Benedict Leigh (British Museum) stated that for his institution, the 'museum of the world for the world', providing access is the main goal, but it was not always the case. When it was established, it was not open to the public for seven years, and not accessible for women. We are constantly evolving as an institution. At present, in addition to offering free access to its permanent collection, free guided tours and training programmes, the British Museum is always looking at new ways to make its collection available online in order to share it with a wide global audience.

Touring exhibitions, loans, and knowledge exchange, are an important way to increase access to the British Museum collection. In the UK already, nine million people saw British Museum's objects outside London as it loaned 3000+ objects to 156 venues across the country. Loans can take different formats including for example long-term or 'spotlight' loans, with only one object on tour, which are generally powerful and easier to organise. The public is often keen to attend those events given the reputation of the British Museum; in turn, the loan allows them to engage with the host museum's collection.

Knowledge exchange programmes offer access to cultural heritage through training and sharing expertise and experience. Community partnerships are important and must be offered with communities from all around the world. These types of partnerships may also generate discussions about restitution. In addition to community partnerships, knowledge exchange and skills' sharing are also a direct product of loans, with regard to which skill sharing is vital: staff have to travel along with the object on loan, engaging with the staff attached to the host institution. Specific training programmes are another way of sharing skills. For example, the British Museum has developed an impactful Iraq Emergency Heritage Management Training Scheme for local archaeologists, who come to the UK for training; thereafter, UK archaeologists go to work with them in Iraq.

Touring exhibitions, loans, and knowledge exchange, should be further encouraged as they are a way to share expertise and experience through objects, and thus to cultivate an idea of

shared heritage, but also to generate income. More in general, ensuring free and easy access to museums, as the British Museum does, is an effective and simple way to improve public engagement with cultural heritage.

2.3. Access to Listed Heritage: the Case of English Heritage

With a diverse collection which includes over 400 sites, very often brought together because they were culturally important but not financially sustainable, as well as over 700,000 artefacts, the portfolio of English Heritage is smaller than the National Trust, as explained by **Matt Thompson (English Heritage)**. Among its sites, it counts seven World Heritage sites. While their status may bring a lot of people together, it also means that they can be complicated to manage, with various sub-groups (curatorial, marketing for example), as well as a multitude of external stakeholder voices and operators. In addition, in the UK people are largely unaware of the meaning of the World Heritage listing.

English Heritage charges to visit around 120 of its sites, including its 20 'star sites'. While about 6 million annual visits can be counted, it is not possible to estimate the number of visits to the free sites, which constitute the majority of the English Heritage portfolio. While providing free access is seen as key to providing access to heritage and would be the ideal scenario, it is not feasible to offer free access to all sites given the high costs of maintenance and interpretation of the portfolio. However, some of the chargeable 'star sites', such as Stonehenge (a 'bucket list' site popular with overseas tourists), helps to support other heritage sites. The popularity of a site such as Stonehenge, which can see over 6,000 visitors a day, means however that the experience of visitors cannot be intimate, which is problematic for those wanting to 'commune' with the stones. However, English Heritage has worked for example with special interest community groups, who are life members of English Heritage and have free access to Stonehenge and thus have a voice in its management.

In addition to chargeable sites, another obstacle to accessing heritage sites is transportation to remote sites. While English Heritage signposts visitors to public transport, it can remain difficult to access certain sites. . Given their remote location, these sites allow for a public engagement in a manner that is both interesting and different. Therefore, these sites can be particularly important for the community and there are on-going debates to find compromises and engage the local community with those sites.

English Heritage operates under a licensing arrangement from the Secretary of State to manage the properties and collections on behalf of the population. It is an independent charitable trust, which does not own the collections. Nevertheless it benefits from considerable freedom in its use of the collections. In addition, it has been transferred real assets, a great advantage in comparison to charitable museums which may have to look after buildings and liabilities without the benefit of any assets.

In addition to sites, English Heritage takes care of diverse collections, ranging from social history, to fine arts, to archaeology. English Heritage only exhibits about 18% of its collections, more efforts are being made to exhibit collections and to provide access to stored material, which is a challenge. In particular, bulk archaeological material is not immediately appealing in comparison with other types of heritage. Nevertheless, English Heritage is, for example, seeking to increase knowledge of Roman heritage through narratives designed to appeal to

distinct audiences. Thus, defining cultural heritage is extremely complex, English Heritage seeks to make it appealing to the general public, allowing people to step into the (his)story of England. It also seeks to appeal to a more diverse audience by creating dialogues. A good example of engaging with local community is the cooperation with the University of Bournemouth, regarding landscapes for persons with mental health issues, as part of the wellbeing agenda. While only 12 people were involved, it was particularly meaningful.

Many objects also consist of wall paintings, attached to the buildings. While working with Google Arts & Culture in 2017 in a bid to increase its online presence, English Heritage not only curated 31 individual digitised exhibits but also managed to make high-resolution digital images of its ceilings. In that way, digitization allows people around the world to access English Heritage collections while also serving conservation purposes. While Augmented Reality (AR) and Virtual Reality (VR) can be excellent means to present collections, the benefits associated with the use of these innovative processes should be properly unpacked before being used.

In sum, some of the key challenges faced by English Heritage are: (1) to render more of its collections accessible, including its archaeological collections; (2) to understand its collections comprehensively in order to be able to share stories; (3) to ensure its financial sustainability; (4) to address the effects of climate change (coastal sites in particular); and (5) to increase diversity both in terms of audience and workforce.

3. The Legal Framework Protecting Cultural Heritage in the UK and its Implementation

3.1. The Role of Domestic Criminal Law in Protecting Access to Cultural Heritage in the UK

Issues surrounding access to heritage in the UK can be exemplified through various cases of offences against cultural property. **Emily Gould (Institute of Art and Law)** gave the example of the site of Long Meg and Her Daughters, a Bronze Age stone circle in Cumbria which had been massively looted during the night, before archaeologists managed to conduct excavations. As a result of the looting of this, and countless other sites of archaeological and historical importance, significant objects, and the stories attached to them can be permanently lost. In another example, a reader who had access to rare manuscripts at both the Bodleian and the British Library stole some of their pages for his own collection. He was eventually caught and sentenced, with the Court of Appeal Judge declaring that: “Cultural property cannot be valued in the same way as cash or readily replicable items, and the gravamen is the damage to rare items of historical, intellectual and cultural importance, and that is why, in our judgement, a significant element of deterrence is always necessary to deter others from such crimes which diminish the intellectual and cultural heritage of the nation” (*R v Hakimzadeh*, 2009).

Criminal law is key to the protection of cultural heritage, in particular provisions regarding dealing and the illicit trade in cultural property. In that regard, the main obligations at an international level are set out in the 1970 UNESCO Convention on the Means of Prohibiting

and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, which provides for return mechanisms for States Parties in some circumstances. When the UK acceded to the Convention, it considered that its own existing applicable laws, such as the Theft Act 1968, provided adequate protection for cultural property, such that no new legislation was specifically required. Nonetheless, the Panel established to review the UK's position¹⁶ did identify a loophole that the UK could address to strengthen its protection of cultural property by providing protection in respect of such property that had been illegally removed or excavated but not necessarily stolen. This led to the implementation of the Dealing in Cultural Objects (Offences) Act 2003, which created the offence of dishonestly dealing in 'tainted' cultural property, a wide offence including dealing by way of acquiring or disposing of cultural property, not only by purchase but also by loan or gift. Not only individuals but museums also have to ensure they do not infringe this legislation.

Since then, a number of laws have been enacted to protect against the illicit dealing in cultural property in specific situations. Devastating looting in Iraq and Syria led to UN Resolutions which were implemented at the European level and in the UK, with the Iraq (United Nations Sanctions) Order 2003 and the Export Control (Syria Sanctions) (Amendment) Order 2014, which create offences of dealing in cultural property from these States. The offence under the Iraq Order is particularly interesting. Normally, in a criminal action, it is for the prosecution to prove every element of that criminal offence. However, under the Iraq Order, the burden of proof is reversed as the accused has to prove that he or she did not know and had no reason to suppose that the item in question was illegally removed Iraqi cultural property. The latest specific legislation adopted by the UK is the Cultural Property (Armed Conflicts) Act 2017, which finally allowed the UK to ratify the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and created a new offence of dealing in cultural property unlawfully removed from occupied territory.

So far, the UK regime has been implemented in a limited fashion, with only one conviction under the Dealing in Cultural Objects (Offences) Act 2003 (of an individual who had stolen numerous items from churches). Even though there are suggestions that the Iraq and Syria Orders have curbed the trade in cultural objects from these countries, they have not led to any prosecutions. One of the issues identified is that the laws regarding cultural property in the UK are somewhat inconsistent and thus create some level of uncertainty. For example, the definition of cultural property that was adopted in the 2003 Dealing in Cultural Objects (Offences) Act is a rather vague statement,¹⁷ which differs from that appearing in the Iraq Order.¹⁸ A few recommendations could be made to strengthen the protection afforded by the UK against the illicit trade in cultural property.

Firstly, enforcement authorities are, broadly, rather unfamiliar with the cultural property-specific offences and thus prefer to rely on general offences such as theft or criminal damage, about which they have greater confidence. Some awareness-raising over the last decade has already led to some changes. For example, there has been a change in sentencing guidelines for certain theft offences (and more recently, for criminal damage offences too) so that a court must now take into account any damage to a cultural asset, which allows the court to

¹⁶ The Illicit Trade Advisory Panel, or ITAP.

¹⁷ See S. 2(1): "Cultural object" means an object of historical, architectural or archaeological interest.

¹⁸ See S. 8(4): "Illegally removed Iraqi cultural property" means Iraqi cultural property and any other item of archaeological, historical, cultural, rare scientific or religious importance illegally removed from any location in Iraq since 6th August 1990.

impose a harsher sentence.¹⁹ Despite the efforts already made, more education and awareness-raising of heritage crime in the UK is still required.

Secondly, legislative change could be considered. When the UK acceded to the 1970 UNESCO Convention, no new Act was adopted to implement the obligations under the Convention. Some other countries adopted a more robust and comprehensive approach to implementing these international obligations. For example, in Australia, a specific Act gives power to the Government to seize and forfeit any property imported or exported illegally or in violation of the law of the source country.²⁰ As a result, a Dancing Shiva statue which had been purchased by a national institution in Australia which was discovered to have been stolen from a temple in India was returned under this Act within six months of its seizure by the Australian authorities.

Thirdly, existing laws should be better used, in particular anti-money laundering legislation, given the proven links between the illicit international trade in cultural property and money laundering. At present, the rates of reporting suspicious transactions are extremely low. In April 2017, the EU Parliament announced that there will be a Fifth Anti-Money Laundering Directive which will come into force by the end of 2019 and, for the first time, specifically apply to the art trade.²¹ In addition to legislation, means of self-regulation, such as the codes of ethics of trade associations and museums, adopted both at the UK and at the international level, should also be applied more effectively.

3.2. The Role of the Metropolitan Police Art and Antiques Unit in Fighting Art Crimes

Sophie Hayes (Metropolitan Police Art and Antiques Unit) explained that her unit has been in existence for 50 years; it is the second oldest Met Unit. It was originally set up as the Philatelic Squad as stamps were targeted because of their value and the fact they could be easily transported across the border. The Art and Antiques Unit is small, with only three Detective Constables and one Detective Sergeant.

While there is a national policy that each force should have a cultural heritage officer, this is not the case as resources have to prioritise violent crime; the Met Unit was itself suspended for six months in order to strengthen the response to the Grenfell Tower fire. Often, uniform officers also carry out the responsibility of heritage officer.

The Met Art and Antiques Unit sits within the organised crime department and is responsible for investigating cultural heritage crimes and crimes against museum exhibitions, such as when an individual damaged an item on display at the V&A museum. That case was interesting as this item could be touched by the public, thus raising the question between

¹⁹ For the new sentencing guidelines, see <<https://ial.uk.com/new-sentencing-guidelines-for-criminal-damage-offences-in-the-uk/>>

²⁰ The Protection of Movable Cultural Heritage Act 1986.

²¹ The European Parliament adopted the Fifth Anti-Money Laundering Directive in April 2018. It must be implemented by Member States by 10 January 2020. For the first time, this legislation specifically incorporates the art trade (including galleries and auction houses) into the 'regulated sector' in respect of transactions or series of linked transactions worth €10,000 or more, irrespective of the payment method.

security and access. The Unit also investigates fakes and forgeries, as well as art trafficking from conflict zones and elsewhere. It also undertakes joint investigations with Interpol and police forces from other countries in relation to international cases.

While the heritage crime legislation and its sanctions do make things easier for the Metropolitan Police Art and Antiques Unit, crimes are sometimes difficult to prove. In order to prosecute under the Iraq Order for example, the location the item is from must be known, which can be a challenge. This is the reason general laws are often used instead. It can also be difficult to work with experts who may not be in the UK or who may have other issues to deal with than a crime in London. For example, there was a case of items which had been allegedly stolen in Egypt during the Arab Spring and then auctioned in London; a British academic expert came to the Unit to assert that the items had been stolen. It was thus easy in that particular case to prove that the owner was lying when he stated that he had bought them during WWII.

The UK is more and more active in prosecuting crimes against cultural heritage. As some time has now passed since the first dedicated laws have been adopted, it becomes easier to implement legislation. However, while heritage legislation has allowed the recognition of heritage crimes, the message needs to be further disseminated as some objects are particularly exposed to crimes because they are accessible. While rendering certain heritage more accessible has benefits, it can also present a danger for the object or site in question. The small Met Unit cannot be the sole actor in the fight against heritage crimes. Another enforcement hurdle is specific to export and import, with its relevant legislation remaining a challenge to implement given the difficulty in keeping a close eye on all the art exports and imports, which go by rapidly. Therefore, when adopting legislation, its future enforcement must be taken into account in a realistic manner.

The UK has specific issues in relation to the art market, with London being the second largest art market in the world, after China and America. It is bigger than the rest of Europe and thus represents a logistical burden, especially in terms of implementing the current legislation. While in certain smaller jurisdictions, such as Israel, dealers must be registered and their stock entered into databases, this would be impractical in the UK as it would generate an enormous amount of data, which would in turn require considerable expertise to monitor it effectively. However, buyers on the London market must be confident that their purchase is legitimate material and the adoption of the Cultural Property Act in 2017 further reflects an intention to be hostile towards the illegal trade.

Another issue, although not particular to the London market, is the internet, which also raises issues pertaining to the origin of objects, which must be proven by the prosecution. In addition to objects on sale on the internet, including eBay, the appearance of phishing emails is an issue. Some cultural heritage professionals have received emails saying: "I just dig that object up in Afghanistan, would you like to buy it?"

Finally, the long-term impact of Brexit on the Met Art and Antiques Unit is difficult to assess. Its work and cooperation with other police forces goes beyond Europe, including Iraq or Syria for example. A key pathway for art trade is the one between the UK and the US, and that relationship it is not dependent on EU membership either.

3.3. HMRC and Exports and Imports Regulations

Rachel Joseph and Joe Sherwen (HMRC) explained that Her Majesty's Revenue and Customs (HMRC) oversees the enforcement of the UN and EU sanction regimes, including those concerned with cultural objects from Iraq and Syria. In case an object has to be retained and returned, it has to ensure that it is returning it to its rightful owner, in accordance with the UK's international obligations. HMRC will intercept goods if it appears that there is a sanctions breach for instance. It also enforces the export policy as set up by the DCMS. HMRC sees itself as a more a reactive department, dealing with the illicit cultural movement when it occurs, rather than providing access to cultural heritage.

The EU import regulation presents a lot of common issues for all enforcement authorities.²² It covers various aspects of cultural imports, with the aims of stopping terrorist financing and strengthening the protection of cultural heritage, as well as the regulation of its trade. These two aims are different and complicated to deal with for customs which will have to deal with evidence regarding provenance. The risk with the EU import regulation, which requires an import licence for certain objects older than 250 years, is that it will be difficult to enforce in practice.

4. Strengthening Access to Cultural Heritage in the UK through Digitisation

4.1. The Role of Digitisation in Strengthening Access to Cultural Heritage

Ewa Manikowska (Institute of Art, Polish Academy of Sciences, Warsaw) first mentioned that, in 2009, the Max Planck Kunsthistorisches Institut in Florence hosted a conference, which led to the adoption of the Florence Declaration which includes 'Recommendations for the Preservation of Analogue Photo Archives'.²³ It also clarifies the distinction between an analogue (physical) photograph and its digital reproduction which amounts to an entirely new object: accessing one is therefore different from accessing the other. The Florence Declaration was a response to global calls to pare down (or close) photography libraries as a result of the digitisation of museums' collections. However, at the time the Declaration was adopted, the implications of the use of technology for arts and heritage access were not fully understood.

While digitisation is a useful tool to document a collection, it requires particularly efficient processes as well as a lot of resources, including financial resources. Those resources have to be taken away from other areas in the cultural sector, including human resources. While staff is a key element of the cultural sector, the price of digitisation may be a threat to it. In addition, it is not possible to digitalise everything and decisions must be made as to what is going to be digitised (and what kind of access to digitised images will be provided, i.e. full or restricted); however, this type of decision should be taken in accordance with certain scientific rules. Some institutions can serve as model for the way they have used digitisation,

²² The EU Regulation on the Import of Cultural Goods was adopted on 9 April 2019.

²³ For the Florence Declaration (2009), see

<https://www.khi.fi.it/pdf/photothek/florence_declaration_EN.pdf>

such as the German Archaeological Institute and the University of Cologne with their Arachne database project.

Digitisation may also be useful in recovering heritage that has been lost or destroyed. The use of 3D projects can also support the revival of cultural buildings, with one example being the reconstruction of Palmyra's Arch of Triumph, backed by UNESCO. However, the making of such replicas begs questions regarding the actual reconstruction of Palmyra and the limit between authenticity and non-authenticity. Another example of digitisation used to revive the past is the project by artist Marina Amaral, which consists of colouring photographs from children detained at Auschwitz. As one of her pictures was widely circulated online, the Auschwitz Memorial started to explain the context of the picture and to cooperate with the artist. This type of work also raises the key question of authenticity and whether such product amounts to heritage or not: are we dealing with an issue similar to fake news? The response is unclear and, so far, there has been a lack of debate surrounding appropriate behaviour when applying digitisation techniques to photographic archives, as well as the risk of cultural appropriation (and cultural misappropriation).

Additional questions may be raised with regard to digitisation including the aim of such projects, i.e. what is it really for? Some concerns have been voiced as to the risk of misusing digitised images. For example, the V&A museum runs a 'culture in crisis' programme which highlighted that digitisation helps draw young people to heritage (as they may be able to manipulate a 3D image) but that they may bypass the real object which may be out of reach. The digital object may attract people to see the real object but not necessarily; there is a link that the link between the digital image and the object gets lost, with the digital object taking a life of its own.

4.2. [Mass Digitisation of Out of Commerce Works: the Digital Single Market Directive](#)

As noted by **Ben White (British Library)**, cultural heritage institutions and organisations were some of the main players on the internet in the early days of digitisation as they realised its value for their sector. However, this phenomenon only hit the headlines in 2004, with the Google Books Project. In comparison with other European countries, the UK is still behind when it comes to digitisation. Germany, France, Japan, and Norway in particular, have all invested large sums of money in digitisation as well as conducted discussions in order to increase democratic access to culture through digitisation and the internet. In addition, in the UK, there is marked asymmetry between rural and urban access to art.

At the EU level, there has been a lot of support for digitisation, including the i2010 digital library initiative, which was launched in 2005, the Commission Recommendation of 24 August 2006 on the digitisation and online accessibility of cultural material and digital preservation, the 2012 Directive on 'certain permitted uses of orphan works by cultural heritage institutions' (Orphan Works Directive), the Licenses for Europe, agreed in 2013, which pertain to digitising, restoring and making accessible European film heritage, and the Directive on Copyright in the Digital Single Market (which came into force on 7 June 2019). The Directive on Copyright in the Digital Single Market applies to works that are in-copyright but out of commerce (but not to artistic works by non-EEA citizens) in order to facilitate their digitisation. While it does contain a number of exceptions (with regard to the use of works for

teaching or preservation purposes), it is an important development for institutions such as the British Library as there is in general more interest in purchasing relatively recent material. Therefore it is not just a democratising force, it will also sustain the British Library and other similar institutions. The idea was to create a dialogue between stakeholders, with Member States having to engage with cultural institutions and other organisations that provide the licences. While there are some technical issues in the Directive, the reliance on licences is perhaps the main sticking point; for example the system will not work in the presence of a collecting society which cannot provide a licence for statutory reasons (although that would not be the case in the UK where there are no collecting societies).

The EU has thus developed several key initiatives pertaining to digitisation but there has been a lack of discourse about it in the UK, where government support for copyright laws is somewhat lacking. For example, there is no dedicated funding to implement the Directive. Irrespective of Brexit, the current legal framework in the UK in the area is not in need of drastic changes. However, there is a need for a dramatic change of perspective on the value of mass digitisation in order to grow the sector; the current lack of interest in the area means that developments at EU level are unlikely to have an appreciable effect on digitisation in the UK.

4.3. Art UK: a Single Digital Platform Providing Access to Public Collections

Art UK, which is based in London and Glasgow (the latter in relation to its sculpture project), is a charity that was specifically set up to catalogue and digitise all oil paintings in public ownership in the UK, which it achieved over 10 years from 2002 to 2012, as explained by **Katey Goodwin (Art UK)**. The organisation's current project is to digitise sculpture across the UK. It has staff across the country working on this project, with 24 coordinators in charge of contacting collections within their own regions. The objective of Art UK is to give free access through a single digital platform and its five aims are: (1) to support collections through shared infrastructures, services and skills improvement; (2) to grow and diversify audiences for the nation's art via Art UK and partner collections; (3) to grow the number of artworks on the Art UK site; (4) to grow mutually beneficial relationships with artists and estates; (5) to improve the financial resilience and sustainability of the sector and of Art UK. It conducts its work in a systematic fashion, city by city, county by county, and collection by collection and has created a database.²⁴

Its website provides access to works that are often behind-the-scenes (up to 80% of oil painting are in storage). The website is not meant solely as a catalogue but, rather, as starting point. A variety of people write for Art UK about artists and artworks. Art UK also hosts 'Art Detective', an interactive online forum through which anyone can assist public art collections in making new discoveries and initiate public discussions. The website has searchable maps, as well as venues. Art UK also uses 'tagger', a crowdsourcing tool with which people can add keywords to artworks, and it has been working with Oxford University on object identification technology.

Its remit covers 3,000 collection venues and over 215,000 artworks. Since the launch of the Art UK website in February 2016, it has had 4m unique visitors, with over half of its users being overseas, directed to site through search engines such as Google. According to initial

²⁴ It can be accessed online for free at www.artuk.org.

research conducted by Art UK, users are attracted to the site because of personal interest and research, as well as to plan site visits. Professionals, such as curators, have used the website to search for specific paintings. In order to attract new users, who would not otherwise engage in the website, Art UK has developed online content. For example, it has commissioned spoken poetry from young artists and hosted a competition. Its aims thus go beyond the online remit as it seeks to develop in-person relationships as well. It also seeks to support skill-sharing, in particular in relation to the way it uses objects to connect with young people.

In addition to its focus on oil paintings, Art UK has also initiated a major project to digitise sculptures, funded by the Heritage Lottery Fund, the Scottish government, as well as a number of trust and foundations. A key element of the sculpture project is engage with communities and schools to allow physical interaction with the artworks. This type of engagement has already been undertaken with oil paintings, through an initiative called Masterpieces in Schools, which sees an artwork taken into a school for a day. One example from this activity took place in Wales where Welsh language poetry was made by primary school children in response to a portrait loaned for the day from National Museums Wales. The sculpture project will lead to 125 of those types of direct engagements at the community level.

Art UK faces a number of challenges including financial constraints, with certain collections lacking resources and staff, as well as the cost of digitisation and dissemination itself. There are also physical barriers in cases where artworks are not readily accessible to be digitised (as they may be stored in crates, etc) or in cases where there may be security issues in accessing certain artworks. Further barriers can be psychological, with some people believing that art is simply not for them. This may stem from the fact that art is not prioritised in schools curriculums. Rights management systems are also generally complicated and costly. Furthermore, there are a number of technical obstacles: the use of the internet, which is not universally accessible; the quality of data, which is not always up to date nor in a searchable format (as well as the question of quality versus quantity which begs for a planned managed process with specific outcomes); and the issues associated with the longevity of technology and the preservation and long-term storage of data and images (with formats which risk becoming obsolete).

However, Art UK also benefits from a number of opportunities, including the possibility to provide a democratic online access across the world using technological advancements (digital images, 3D imaging), as well as specific advancements for people with specific needs (audio description, subtitled films). Social media is another tool that allows Art UK to reach a broader audience and target its promotion. In addition, organisations are generally willing to share their collections while users can share their knowledge through crowdsourcing technology (in particular the use of Art UK Tagger). Images can be both re-used for education and learning and for income generation. Its work also enables in person engagement with cultural tourism where users visit the artworks.

4.4. 'Open and Shut', Barriers and Digital Cultural Heritage: the Case of the National Archives

The National Archives is a non-ministerial government department, which is separate from the British Library, as explained by **Jo Pugh (National Archives)**. With regard to accessing archival records, three types of barriers can be identified: (1) artefactual (record loss or destruction; sheer volume of material; name or spelling variants; writing hard to decipher); (2) environmental (paywalls and charges; record description a poor guide to relevance; privacy and data protection; copyright; close periods; and the application of the right to know in light of the right to be forgotten); and (3) personal (limited search strategies; unfamiliarity with material and its context).

If one lacks an archivist's knowledge of the collection and relevant research skills (the 'personal' barriers to access), the system should seek to remove those barriers. At present, in order to conduct research into the National Archives, and most cultural heritage institutions, it is a matter of matching keywords which means that the user has to make some effort in order to conduct efficient searches.

While digitisation can lead to wider access, digitisation does not necessarily equal access. When a digitised collection is placed behind a paywall requiring a subscription, its access is not democratised. Digitisation can also lead to different form of access, depending on the aim sought through digitisation. For example, a document may be only digitised in black and white, rather than colour which may be more difficult and costly or only the front of a document may be digitised, rather than both sides. It is therefore important to first define what is meant by access and what is the aim sought: is it for publishing, promoting, or teaching purposes? How can information be turned into knowledge and data into insight?

From the perspective of the human right to access cultural heritage, it is worth considering whether cultural institutions have a duty to support its realisation. Within the human rights framework, as states are responsible to fulfil the right to participate in cultural life, governmental cultural institutions bear a responsibility towards the realisation of human rights, including cultural rights. With regard to providing access to cultural heritage, when is the human right to participate in cultural life infringed? There are several situations that could be considered as infringements of this right, such as when an object is destroyed, but also in cases of extraction (such as with old records from former colonies which may breach the rights of the people in those countries), concealment (when a descriptions appear to hide information, such as when only 'correspondence' is mentioned), analogue versions (the presentation of a copy rather than the original), or paywall (as is the case of the National Archives which has privatised access). Given the many ways that right can be infringed by a cultural institution which may one way or the other limit access to heritage, a number of steps should be taken, such as preserving objects, cataloguing them in order to make them findable, and making them freely accessible physically, as well as digitally.

Broader considerations must also be taken into account in order to ensure that digitisation successfully secures a wider access to cultural heritage. Cultural organisations must benefit from strong leadership when it comes to digitisation projects. There is also a need to consider available internet infrastructure to support the digitisation projects. Furthermore, in order to be inclusive, such projects must consider that certain segments of the population may not have the skills to engage with online access at all. In order to not leave those persons

(generally the elderly) out of the reach of those initiatives, some general training on using the technology required may be essential.

4.5. Intellectual Property Law and Intangible Cultural Heritage in the UK

Among the various types of intellectual property, which includes patents, trademarks, industrial designs, and geographical indications of origin, copyright is particularly relevant when considering cultural heritage as it pertains to the rights of creators over their literary and artistic works. One of the key elements of copyright is that it requires a particular work to be 'fixed' in a material form. However, **Megan Blakely (Lancaster University)** stated that this may be an issue with regard to intangible cultural heritage, which may not be recorded or written on a material support.

In 'The envy of the world?: intangible heritage in England' (2008), Laurajane Smith and Emma Waterton interviewed heritage professionals about the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage, to which the UK is one of the few states that is not yet a party. One of their interviewees even stated that there is no intangible heritage in the UK. The lack of interest for intangible heritage in the UK is further exemplified when an interviewee stated that no one is in charge of intangible heritage within English Heritage. In addition, there appears to be some issues with regard to what are the communities that should be engaged with regard to intangible heritage, with one interviewee asked whether stories from Gypsies should be collected. Another obstacle identified in the British context is the commercial value that must be associated with heritage in order for funding to be released to preserve it.

Scotland is particularly active when it comes to conducting research into intangible heritage; for instance, Professor Alison McCleery, along with others, completed a scoping and inventory of ICH in Scotland, which complies with the 2003 Convention for Safeguarding Intangible Heritage, despite the UK not being a party to the Convention. One example that may be considered as part of Scotland's intangible heritage is Tartan patterns. Several organised Scottish community groups had catalogued tartan patterns, techniques, and stories concerning colour associations. In 2008, the Scottish Register of Tartans was formed via Parliament, centralising this recordkeeping and registration task with the Scottish government. While it can be part of intangible heritage, for which there is no specific protection in the UK, Tartan may also fall under IP law as it is 'fixed' in a material object. However, unless they have been more recently designed, Tartan designs are generally too old to still be in copyright. Thus many Tartan designs are not protected under IP law. Copyright law provides some legal protection for intangible heritage protection in the UK, in absence of specific protection for intangible heritage, for a duration of 70 years from the death of the creator of a particular form of intangible cultural heritage, such as a particular Tartan design. Although copyright protection will apply to intangible heritage that fulfils the statutory requirements, additional issues arise when an author is granted a limited monopoly to exclude others from the intangible heritage as central features of these practices encompassing the evolving identity of the practicing community. If copyright attaches, then an individual author, not the community, has rights to the intangible heritage, and this representation will also be fixed, leading to the possible ossification and stagnation of the practice, affecting the nature of the community identity.

4.6. Copyright and Human Rights

When considering the application of copyright to cultural heritage, participants noted that the application of the concept of property (as in intellectual property) to heritage may be questioned, in line with the differentiation between cultural property and cultural heritage (as discussed by Prott and O'Keefe).²⁵ In general, the rights of ownership may conflict with community interests over a cultural object.

Paula Westenberger (Brunel University) stated that, within the human rights framework, property has been understood broadly, in particular by the Inter-American Court of Human Rights, which has enforced cultural rights through the application of the right to property, generally in cases involving Indigenous communities. Courts may be required to interpret culture and what it entails, a difficult task with regard to a concept that is in constant flux. For example, if a court decides to order the removal of a wall of graffiti to protect a neighbourhood's heritage, it may at the same time destroy art work that may also be deserving of legal protection.

In addition to different perspectives on what amounts to cultural heritage, there are also different perspectives of what constitutes access. Access can be a goal on its own, while it may also be seen as an enabler of other rights. For example, 'access' leads to 'expression' and to active participation in culture. In this sense, it goes beyond passive consumption and can be seen as an essential part of cultural rights, given the wording of Article 15 of the International Covenant on Economic, Social and Cultural Rights (1966) which provides for the right to 'take part' in cultural life. In this regard, the United Nation's Committee on Economic, Social and Cultural Rights General Comment 21 (2009) refers to three interrelated components of the right to take part in cultural life: participation, access and contribution.

5. Current Challenges (and Opportunities) to Accessing Cultural Heritage in the UK and Beyond

The workshop concluded with a public event, which covered some of the key themes discussed during the day, including the impact of Brexit on accessing cultural heritage in the UK, questions surrounding digitisation and its limits in providing access to cultural heritage, as well as intangible cultural heritage, an important tenet of cultural heritage which has not yet been asserted in the UK. The event concluded with a view beyond our borders, with a presentation of the impact of the democracy crisis in Poland and its impact on the cultural sector, underlining the importance of the realisation of the right to access and enjoyment of cultural heritage, the violation of which may threaten public order.

²⁵ Lyndel V. Prott, Patrick J. O'Keefe, 'Cultural Heritage' or 'Cultural Property'? (1992) 1 International Journal of Cultural Property 307

5.1. Brexit and its effect on Art Loans

Geoffrey Bennett (Institute of Art and Law) first mentioned Article 167 of the Treaty on the Functioning of the European Union (TFEU), which states that 'The Union shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore' and that action shall be aimed at non-commercial cultural exchanges (among others). Art mobility is thus expressly articulated as an EU objective and not just a side effect of the EU's common market. The EU has adopted some specific and practical initiatives in the area, including the Action Plan for the EU Promotion of Museums' Collections and Mobility and Loans Standards (2006), which promotes administration and lower cost for mobility between State Parties and led to the Network of European Museums Organisation (NEMO). NEMO produces standards and loan agreements, with alternative versions to fit various needs, which are useful practical resources. It also provides a checklist of what should be considered in relation to a loan.

In addition to promoting the exchange of cultures, loans are also a major source of funding for museums. At present, the cultural sector is heavily supported by the EU, a support which has an impact on the museums' power to contract loans. Creative Europe, the EU's programme for the period 2014-2020, has a budget of €1.46 billion. In 2014-2015, the UK received €40 million. Liverpool Museums alone benefited from a £10 million investment from the European Regional Development Fund in 2016.

Beyond the general issue of EU funding, the lack of clarity around Brexit raises some specific legal issues that may affect loans. The UK Registrars' Group issued a paper on the impact of EU exit highlighting the concerns of museums, including possible changes in the legislation on the import and export of cultural goods which could make the UK less attractive as a partner for exhibitions and art loans. Such changes could lead to delays at the border and complicate logistics, with possible visa requirements for those accompanying the art on loan, as well as additional insurance costs (including health insurance for traveling staff). While a specific category already exists for business visitors to the UK for which there is no visa or elaborate paperwork requirement, it only targets a limited number of professionals in a limited role.

The lack of clarity surrounding Brexit is particularly problematic in case something goes wrong between the dispatch of the art and its possible return, i.e. when there is the need for a clearly articulated contract. This could be the case if an item or museum is destroyed by fire or an earthquake. The eruption of the volcano in Iceland caused an issue for a gallery that had some artefacts on loan, which could only be handled by the curator of the museum that had sent them, in accordance with the terms of the loan agreement. As a result of the eruption, he could not reach the gallery, which was problematic. Another issue could arise in the case an owner accidentally damaged the work (and decreased its value) before the contract could be performed or if one of the items that is meant to be transferred is missing at the time of delivery.

It is important that the UK maintain its attractiveness for art loans and does not end up having more difficulties agreeing to art loans with EU countries than it has with non-EU countries. Although a number of issues are foreseeable, it is difficult to manage them in advance. For

example, the fact that the UK would no longer fall under the jurisdiction of the European Court of Justice may render EU members uneasy about our new regime. Geoffrey Bennett raised the possibility to resort to Irish law, which is in English and falls within the EU framework. In any case, as Professor Norman Palmer suggested, loans between institutions do not have to be made in a conventional manner.

5.2. Understanding Digital Access to Cultural Heritage

People appear to interpret digital access in different ways, whether it entails digitising a piece simply to make it available online or making it available in a way that replicates the onsite experience. **Andrea Wallace (University of Exeter)** discussed access to the public domain, whether onsite or online through digital content, such as photography policies and other policies about the reuse of digital content online that raise barriers to access the public domain. Moreover, is the image of the Mona Lisa actually the Mona Lisa? The copyright notes provide a different name for the work and rights-holder (© RMN Grand Palais and Michel Urtado, jpeg, series of numbers, etc.), according to which this image will transfer to the public domain around 2100 at the earliest, when people will no longer be using low resolution images. This example illustrates the main repercussions that copyright has on access to the public domain. In theory, the public domain is available to everyone to monetise, including cultural institutions. At the same time, the museum will claim its own reproduction as a new original work. As the Mona Lisa painting is in the public domain, anyone should all be able to go to the Louvre, take a picture of it and monetise it under copyright. However, in reality, the Louvre sets visitors' rules according to which the use of the images taken in the museum must be strictly private. Such a restriction creates a monopoly around cultural heritage in the public domain, and conflates IP rights with property rights, as well as authorship.

As part of 'Display At Your Own Risk', a research project undertaken by Ronan Deazley (University of Belfast) and Andrea Wallace, hundreds of images were downloaded from cultural institutions' websites, before being printed at the original dimensions of the underlying object and exhibited with the name of the institution as their authors and other information. Those images were also exhibited online and made available as an open source exhibition for people to download. The exhibition invited the public to reflect on the impact of digitisation on norms of authorship and the way that copyright and public domain are interpreted. It also amounted to a comment on a new generation of born-digital art that is created and disseminated online.

There is a new trend with more cultural institutions embracing open access. But many still resist open access expectations to retain control over the reuse of artworks. For example, the digitised version of 'The Great Wave off Kanagawa' by Hokusai – held among a number of institutions – is copyright protected according to the Museum of Fine Arts (MFA) in Boston. The MFA's online terms claim that the digital image is not simply a reproduction of the artwork, but expresses the aesthetic and scholarly views of the institution. However, a quick search using Google Images returns the same image as openly licensed by other institutions, with a slightly different colour or quality, for example.

With reproduction technologies, there may be layers of surrogacy in a single image. Indeed, some images available online are digital reproductions of material reproductions (e.g., a scan of a photograph of a sketch of the Mona Lisa). While the material reproductions (and the

underlying work) may be in the public domain, a new copyright is often claimed following digitisation. Therefore, access to these surrogates is restricted by that copyright. Using the Mona Lisa to examine the various layers of surrogates in an image illustrates this issue. For example, Getty Images provides a digitised version of the Mona Lisa which is allegedly in-copyright but was taken from a 1924 book. Chronologically, the use of a surrogate will be different as laws change. The quality of the image and its metadata also changes over time. But within Wallace's study, the only images of the Mona Lisa (and not a reproduction) labelled as public domain are medium resolution and in black and white (made available by the Library of Congress).

Wikimedia Commons also hosts images subject to a copyright claim. Therefore using such an image may lead to a copyright infringement. The Mona Lisa Wikipedia page hosts a high-resolution image, but upon closer look it reveals the name of the user who uploaded it, as well as the source website that displays a clear copyright claim. The uploader is the same user who downloaded tiled images from the website of the National Portrait Gallery (NPG) in London and reassembled them into a high-resolution image, and he used the same technique to capture the Wikipedia Mona Lisa image. While the NPG alleged a copyright infringement, the dispute never reached the court.

The issue is further complicated when access to images representing cultural heritage is restricted or permitted based on a Museum's subjective values for appropriate reuse, but without allowing the public access for the same purpose. This was the case with the collaboration between Louis Vuitton and Jeff Koons, with Koons curating a selection of works by "Great Masters" and printing them on Vuitton handbags. The inside of the bags included bios of Koons and the featured artist, along with the host institution. Among the images used, only two (but only in low resolution) are openly-licensed to allow for a similar use by the public. Another issue was the reinforcement of the 'male gaze' narrative through an object marketed to women (who can afford the bag). All of the institutions involved that agreed to take part of this project, the Louvre's director, Jean-Luc Martinez, stating that he was immediately on board in order to get the art on the street. Meanwhile, the Louvre prohibits reuse of its images without a payment of a copyright fee.

In addition to inclusivity issues, the digitisation of collections also raises the question as to what collections should not be made available through digitisation. For example, the Auckland Museum in New Zealand makes certain culturally sensitive objects belonging to communities available digitally only under certain conditions, as agreed upon with the communities of origin.

Finally, the way 'open' is defined can be problematic, in particular when it comes to making a collection available for commercial purposes. Along with Douglas McCarthy, collections manager at Europeana, Andrea Wallace conducted the Open GLAM survey, reviewing cultural institutions' online policies to determine whether they made digital collections freely available for commercial reuse. According to this particular survey, the UK only counts eight institutions that provide such access to their collections, and often under limited circumstances.

5.3. The Conservation of Living Culture: Where Now for Intangible Cultural Heritage in the UK?

Considering the 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, cultural heritage is not limited to material artefacts. It also includes the traditions or living expressions of individuals groups and communities. **Alison McCleery (Edinburgh Napier University)** voiced her preference for the term 'living culture'. This form of heritage is not tangible as it cannot be touched but it is nevertheless a very important part of our collective and individual cultural heritage. Intangible cultural heritage, or living culture, cascades from generation to generation, constantly recreated, and evolving as communities adapt their practices in response to their environment. If culture doesn't evolve, it is not living.

In Scotland, there is no mention of 'Scottish intangible cultural heritage' but, rather, of intangible cultural heritage 'from Scotland'. This is because the Scottish definition of intangible cultural heritage is civic, rather than ethnic. It is a very inclusive intangible cultural heritage, although 'officially' there is no intangible cultural heritage in Scotland as it cannot sign the 2003 UNESCO Convention independently.

Intangible cultural heritage is important for several reasons. It provides a sense of identity and belonging in relation to our own culture, which in turn promotes the respect and understanding of the culture of others. Although a lot of intangible cultural heritage is commercialised, commodified, commoditised, it is not the reason for conserving it. The real reason is to celebrate and conserve these practices.

Intangible cultural heritage practices are living examples of human creativity and ingenuity, embedded in the community, ascribing meaning to lived experience and promoting social cohesion. The approach to intangible cultural heritage in Scotland is inclusive, respecting the diversity of Scotland's communities.

Intangible cultural heritage faces a number of challenges. There is often an idea that intangible cultural heritage is all 'motherhood and apple pie' or at least wholesome and worthy. However, the intangible cultural heritage celebrated by one community may be abhorred by another or offend accepted social norms. For example, every year in July in Glasgow, there is an Orange Festival promoted as a happy, family day. For people that do not belong to that community, it can be considered as offensive. Equally, intangible cultural heritage considered to belong to one group may be usurped by another, giving rise to accusations of cultural appropriation. For example, the Maori culture can be appropriated by others, mostly for commercial gain. Finally, intangible cultural heritage practised for commercial gain is considered by many to be commodified, impure, or inauthentic. For example, in some touristic sites, groups will practise the type of intangible cultural heritage as they have done for centuries, but if they show it to tourists, it may then change slightly as some aspects may be secrets.

Examples of controversial intangible cultural heritage include: whaling, which offends environmentalists; the Fire Festival in Shetland, which is liked by tourists but carries an important gender issue as women have not traditionally been leaders of the processions, something which has changed in some islands; the Hastings Fire Festival can also be offensive, as there are some visual similarities with the KKK, along with blackened faces; in the Netherlands and elsewhere, the character of Zwarte Piet (Black Peter) does not have a clear

origin, with some believing that the blackening of faces refers to little boys going up chimneys, while others have another interpretation.

In addition to being possibly offensive, one of the key issues with regard to intangible cultural heritage is the question of ownership, i.e. what living culture should be promoted and who get to decide what is appropriate? Some intangible cultural heritage is regarded as secret or sacred by its practitioners, who may not wish it to be made available. Cultural appropriation may also infringe on the ownership rights of a particular community over intangible cultural heritage. For example, JK Rowling has been accused of appropriating the culture of Native American Navajos and profiting from it, when the website Pottermore featured skinwalkers.

At present, intangible cultural heritage is safeguarded by the 2003 UNESCO Convention, to which the UK is not a party. Even if the UK were a party to the 2003 UNESCO Convention, its action would not be limited as the Convention neither prescribes nor proscribes State parties on the way to interpret intangible cultural heritage, with each State party being able to interpret differently in its own manner. In the UK, the Department for Digital, Culture, Media & Sport (DCMS) is primarily responsible for tangible but also for intangible cultural heritage in England. However, in its 2017 Heritage Statement, it mentions intangible cultural heritage only once. The Scottish Government and Parliament are responsible for both tangible and intangible cultural heritage within Scotland. In addition, at the European level, the Council of Europe also promotes the value of intangible cultural heritage through its 2005 Framework Convention on the Value of Cultural Heritage for Society (Faro Convention), to which the UK is also not a party. While the Council of Europe's efforts for to strengthen the use of digitisation to safeguard intangible heritage is worth noting, initiatives in that area are also taking place outside of its framework. In Scotland, for example, there is a wiki maintained by Museums Galleries Scotland that lists intangible cultural heritage. Furthermore, the Council of Europe appears so far to have understood the value of intangible cultural heritage to society in the same way as the value of tangible or material heritage. It makes only few references to intangible cultural heritage. For example, in a handbook on heritage produced for teachers, there is only one mention of intangible cultural heritage.

The impact of Brexit on intangible cultural heritage will likely be minimal, given that the UK does not fully integrate it within its conception of cultural heritage. However, there is a risk that the way it considers intangible cultural heritage narrows. As already mentioned, Smith and Waterton highlighted that some believe that there is no intangible cultural heritage in the UK. The term intangible cultural heritage appears as a complex nomenclature for a concept that has eluded most people. As a result, cultural activity and production reflect the impact of social and legal systems that disproportionately reward tangible manifestation of cultural heritage. This 'tangification' of cultural heritage, as Blakely argued, leads to 'propertisation' and commodification which may not be adequate when dealing with constantly evolving living culture.

To conclude, the rights and respect of intangible cultural heritage ownership, practice, and access are complex and can create tension and conflict. When the rights surrounding intangible cultural heritage give rise to conflict, it is often a difficult matter to resolve. At present, both national and supranational guardians of intangible cultural heritage are more focused on tangible/material heritage. The UK is, at best, ambivalent towards intangible cultural heritage and, at worst, indifferent.

5.4. Museums in the Time of Populism: Poland's Crisis of Democracy as a Threat to Cultural Heritage

Going beyond the UK, the day ended with a presentation by **Ewa Manikowska (Institute of Art, Polish Academy of Sciences, Warsaw)** on the impact of the Polish democracy crisis on the cultural sector. Before the crisis, between 2004 and 2005, several institutions were established in order to decentralise, depoliticise, and professionalise the management of state-controlled cultural institutions. For example, the Polish Book Institute, the Adam Mickiewicz Institute, and the Polish Film Institute have all developed special programmes to promote Polish culture, both nationally among the Polish society and also internationally. This was for example the case with the translation of Polish literature classics. More recently, several Polish artists have received important international awards for their work, especially in the film industry. However, their accomplishments have been received rather coldly by the Polish authorities.

While there has been a lot of discussions around the democracy crisis in Poland and its effect on the judiciary and Polish membership in the EU, little thought has been given on its impact on cultural heritage. Nevertheless, Poland's populist Law and Justice (PiS) government also pushed for controversial reforms of the civil service, which affected the institutes promoting Polish culture and led to drastic changes. While the cultural institutes still have the same name and appear to have the same status and programmes as before, the management and financing is no longer the same. Most of the management is now undertaken by people close to the government. The participation of these institutions in international events has also been curtailed.

After 1989, Polish cultural institutions were provided with some autonomy, although the government could still name the director of an institute. Also, as many institutions depend on State funding, their management board could be manipulated. However, there have been some notable exceptions, including the Auschwitz Memorial Museum, the POLIN Museum of the History of Polish Jews, and the Museum of the Second World War in Gdansk. With regard to the Auschwitz Memorial Museum, the International Auschwitz Board was first established by the Polish Prime Minister in 1990. In 2009, the Auschwitz Birkenau Foundation was set up, leading to the creation of a perpetual fund of 120 million euros and an ambitious 30-year conservation project. The Foundation has also received substantial contribution from States in order to provide education about Auschwitz, such as with youth visit programmes. With a board of Ambassadors (one for each country), it is quite internationally managed. The POLIN Museum of the History of Polish Jews is a newer institution, established in 2014. It represents an interesting example of private-public collaboration in the Polish museum sector. It was established in the former Warsaw Ghetto by the Polish Prime Minister and goes beyond its walls, with programmes involving the whole city. Finally, the Museum of the Second World War in Gdansk was founded on the initiative of the State and is fully financed by the State but it has a scientific board, as well as a board of trustees.

The establishment of several boards and an international management have given to these institutions not only autonomy but also an international platform. All three museums have generated an important network for scientists, historians, and other experts, and cooperation with other Holocaust museums, as well as an active participation of war survivors. In the Polish museum sector, these internationally recognised institutions attract the largest

number of visitors. They have an enormous scientific, educational, and social impact, and had so far been a perfect example of balance between State control and autonomy.

Unfortunately, the autonomy of all three museums has been under continuous threat since the 2015 elections. The values and international involvement were considered unacceptable by the new government, which based its support on a strong nationalistic and anti-European strategy. Particular pressure was placed on the Museum of the Second World War, which has been under constant verbal and financial attack from the national authorities, which removed its financial and legal responsibilities. However, the management of the Museum was an obstacle, with the board of trustees refusing to remove the director and the scientific board unanimously supporting him. Although the mandate of the director and the board of trustees was meant to end only in 2019, the Minister of Culture applied a law which allows the fusion of cultural institutions. He thus established a fictitious museum, merging it with the Museum of the Second World War. The Museum, with the support of the Ombudsman, challenged this decision before the administrative court, which enabled the museum to reopen its exhibition. A few days later, the Supreme Administrative Court rejected the previous judgement; the director was let go and the board of trustees was dissolved. In the following months, all the staff were removed and the scientific board was replaced by a new one. In a civic movement, both visitors and professionals showed their support to the Museum. Nevertheless, the situation became worse, with the exhibition itself being altered, changing dramatically its meaning and narrative, along with provocative new activities.

POLIN and the Auschwitz Memorial Museums are also under attack. In February 2018, the government passed the Holocaust Bill, which makes it illegal to accuse the Polish nation of complicity during the Holocaust. This poses a threat, especially for cultural institutions dealing with Jewish history. The director of the Auschwitz Memorial Museum has been the target of continuous verbal attacks and slander. The POLIN Museum was highly criticised by state authorities for organising an exhibition and conferences for the 50th anniversary of the 1968 anti-Semitic purge. Attacks have also included acts of vandalism. The Minister of Culture is planning to use the ten-year deadline to replace the management of both institutions and to drastically change them. The government is also planning to replace the Auschwitz Memorial Museum's international board. These changes will destroy the museums' narratives and undermine the role of cultural institutions.

The situation in Poland shows that autonomous and open cultural institutions are a key factor in a democratic society. It also shows that the human right to access and enjoy cultural heritage is protected under the Polish constitution. But attacks on the rule of law affect cultural heritage.

The democracy crisis in Poland is thus also a threat to cultural narratives. Cultural institutions are the key for accessing cultural heritage and must thus be protected as well.

While the workshop was focused on cultural heritage in the UK and the potential impact of Brexit on its enjoyment and access, the access and enjoyment of heritage is at risk in the EU more widely. The democracy crisis in Poland (and other Member States) may also influence the policy of the EU, as well as of other organisations such as UNESCO or ICOM. However, so far, this has largely been ignored. In 2017, at the 41st UNESCO Conference in Krakow, there was no mention or condemnation of what was happening to the cultural sector in Poland and, so far, the EU Parliament has not said anything either.

Conclusions

This day of discussions highlighted many good practices in terms of realising the right to accessing and enjoying cultural heritage in the UK, as well as some shortcomings. Among the good practices, the Special Rapporteur in the field of cultural rights had highlighted the UK's free admission policy for national-funded museums and galleries.

Under UK law, there is no overarching definition of 'cultural heritage', with different legislative acts addressing different types of cultural heritage. While there may not be a need to adopt a legal definition of cultural heritage in the UK, its generally narrow conceptualisation, which focuses on tangible forms of cultural heritage may have a negative impact on the realisation of the human right to accessing and enjoying cultural heritage. In particular, there is a lack of governmental initiatives regarding the safeguarding of intangible cultural heritage (or 'living culture'), with Scotland being an exception. While the UK is party to most cultural heritage treaties, and it is striking that it has not ratified the 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, which has been ratified by nearly all States. It has also not become a party to the Council of Europe's Faro Convention or the Council of Europe Framework Convention on the Value of Cultural Heritage for Society, which includes intangible forms of heritage. However, although the UK stands out as an outsider to the 2003 UNESCO Convention, its lack of consideration for intangible cultural heritage is also a reflection of the EU's scarce attention to it. Of course, intangible cultural heritage raises its own set of issues. For example, some cultural practices may be offensive while others may raise issues of ownership, i.e. what living culture should be promoted and who get to decide what is appropriate? However, those challenges should not be an obstacle to the realisation of the right to access and enjoy intangible cultural heritage in the UK.

In addition to being somewhat narrow, discussions around cultural heritage tend to approach it as an art issue, an economic issue, but not as an identity issue. This can be problematic with regard to the cultural practices of minorities. While the cultural practices of migrants, including those relating to food, religious customs, and cultural events, are generally well accepted in the UK, this open approach to the cultural heritage of minority groups in the UK has not been systematic or consistent. Furthermore, in the 2017 Heritage Statement, minorities are systematically considered as recipients of knowledge rather than partners.

With regard to tangible cultural heritage, the UK has several specific pieces of legislation, such as the Dealing in Cultural Objects (Offences) Act, but they have only been implemented in a limited fashion. The obstacles to their implementation may include a lack of knowledge of those offenses on the part of the authorities. However, this may in turn be due to the fact that some of those offences are difficult to prove.

Another challenge is that London is one of the largest art market in the world, which represents a logistical burden and not everything being sold on the market can be checked by the police. Nevertheless, providing access to cultural heritage also means that the cultural object in question should not be tainted. The UK has legislation in place to restrict imports from Iraq and Syria. However, in order to prosecute under the Iraq Order, the location the item is from must be known, which can be a challenge. The new EU import legislation, while seeking to ensure that only licit cultural objects enter the EU, will also be difficult to enforce in practice.

While human rights must be fulfilled within a State's particular jurisdiction, public bodies such as the British Museum favour a perspective of global access, focused on touring exhibitions, loans, and knowledge exchanges, which also allow the sharing of expertise and experience and support an idea of shared heritage. Providing global access to cultural heritage has also been made possible through digitisation. For example, English Heritage worked with Google Arts & Culture on digitised exhibits and high-resolution digital images of parts of its collections. The not-for-profit Art UK is another good example, as it was specifically set up to digitise all oil paintings in public ownership in the UK, providing global access to works that are often behind-the-scenes. Despite digitisation initiatives in the UK, there has been a lack of discourse about it at the government level, which does not particularly support copyright laws, despite the many initiatives taken at EU level. But although digitisation is a valuable tool in strengthening access to cultural heritage, it also raises a number of issues. As digitisation is resources-heavy, it is generally not possible to digitise an entire collection but who decides what to include in such projects and what should not be digitised at all? In addition, digitisation does not necessarily equal wider access, in particular if a digitised collection is placed behind a paywall.

Political instability has also had a negative impact on cultural heritage in the UK, more precisely in Northern Ireland which continues to lack a devolved government and where the consequences of The Troubles are still felt, despite numerous success stories. The discussion around Poland's democracy crisis and its impact on the cultural sector, in particular museums concerned with the Holocaust, highlighted the risk associated with political changes to cultural heritage. In the UK, Brexit continues to raise a number of important questions and represents a threat to the strengthening of the right to accessing and enjoying cultural heritage in the UK. The lack of dedicated EU funding for heritage in the UK is a real risk, unless the UK continues to fund cultural heritage projects post-Brexit. Further cuts to the cultural sector may limit the key role of staff in providing access to cultural heritage. The threat of climate change has also been noted as a real risk to cultural heritage, such as with regard to coastal heritage sites, which will require additional funding to be safeguarded. Beyond the general issue of EU funding, the lack of clarity around Brexit raises some specific legal issues that may affect cross-border loans. Unfortunately, while DCMS is actively attempting to assess and mitigate those issues, cultural heritage is not a governmental priority. Whether the UK will continue to support the cultural sector after Brexit is unsure.