



# General Assembly

Distr.: General  
24 February 2025

Original: English

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## Human Rights Council

### Fifty-eighth session

24 February–4 April 2025

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

## Digitalization of cultural heritage: preserving cultural rights

### Report of the Special Rapporteur in the field of cultural rights, Alexandra Xanthaki\*

#### *Summary*

In her report to the Human Rights Council, submitted in accordance with Council resolution 55/5, the Special Rapporteur in the field of cultural rights, Alexandra Xanthaki, focuses on the digitalization of cultural heritage and its impact on cultural rights. After presenting an overview of her activities over the past year, she discusses the importance of adopting a cultural rights approach to digitalization of cultural heritage in order to overcome weaknesses that have not been addressed. A cultural rights approach to digitalization involves asking questions regarding who decides which heritage will be digitalized, when, how and in which form. A cultural rights approach places a priority on recognition of source communities; non-discrimination in selecting, identifying and protecting cultural heritage; equitable benefits; the real and meaningful participation of all, especially source and guardian communities, to varying degrees; respect for cultural diversity in protecting and preserving cultural heritage; and, finally, revisability and accountability with regard to decision-making. In the present report, the Special Rapporteur asks States to take measures to ensure that commercial interests do not limit cultural rights in digitalization processes and to push international organizations to revise their documents, policies and standards so that they are consistent with the cultural rights approach.

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\* The present report was submitted to the conference services for processing after the deadline so as to include the most recent information.



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## I. Introduction

1. Digitalization is widely seen as a dynamic and innovative process that transforms how individuals engage with, preserve and share cultural heritage.<sup>1</sup> It is seen as a promise to overcome geographical and physical barriers, provide more equitable access to heritage and promote a fresh approach to engaging with cultural heritage.<sup>2</sup>

2. However, the Special Rapporteur in the field of cultural rights is concerned that cultural rights – understood as rights that protect the development and expression of cultural identities – have not been integrated into digitalization discussions, processes and practices. Cultural rights are the rights of individuals, groups and communities to express their humanity, their world view and the meanings that they ascribe to their existence and development through various forms of human creativity, including cultural heritage. They involve the right of individuals and communities to identify, preserve, access, engage with and transmit cultural heritage that they deem essential for expressing and developing their cultural identities.<sup>3</sup>

3. In digitalizing cultural heritage, it is important that cultural rights, including the right to cultural heritage, are fully protected. The preservation and safeguarding of cultural heritage do not automatically align with the protection of cultural rights. Protecting heritage, promoting creativity and ensuring equitable access to heritage for all can give rise to complex tensions.<sup>4</sup>

4. The Special Rapporteur argues that digitalizing cultural heritage can only be of sustainable and consistent benefit to individuals and groups if a cultural rights approach is followed. Such an approach, deeply rooted in human rights principles and standards, requires the following: first, recognition of source communities of cultural heritage and their rights; second, non-discrimination in selecting, identifying and protecting cultural heritage through culturally appropriate methods; third, real and meaningful participation in any decision-making regarding cultural heritage; fourth, respect for cultural diversity in the protection and preservation of cultural heritage; and, finally, revisability and accountability. Digitalization efforts are not solely technical processes, nor are they neutral decisions.

## II. Overview of activities

5. During the past year, the mandate holder either led on or joined 74 communications about alleged violations of cultural rights<sup>5</sup> in letters addressed to 29 countries<sup>6</sup> and to 37 other actors, such as international organizations and private companies. The Special Rapporteur thanks those stakeholders who replied to these letters.<sup>7</sup> Thematically, the following issues were addressed:

(a) The rights of everyone, including Indigenous Peoples, to take part fully in decision-making processes regarding development policies that have an impact on their cultural life, including on their ability to maintain specific ways of life and practices and transmit them to future generations. This was the case in the communications addressed to

<sup>1</sup> Digitalization is understood as including digitization processes as well as certain artificial intelligence and machine learning processes.

<sup>2</sup> See [A/HRC/17/38](#).

<sup>3</sup> International Covenant on Economic, Social and Cultural Rights, art. 15. See also [A/HRC/17/38](#).

<sup>4</sup> [A/HRC/17/38](#), paras. 12 and 64; and [A/HRC/31/59](#) and [A/HRC/31/59/Corr.1](#), para. 28.

<sup>5</sup> See <https://spcommreports.ohchr.org/TmSearch/Mandates?m=19>.

<sup>6</sup> The countries are: Algeria, Angola, Cambodia, China, Colombia, Ecuador, Egypt, France, Germany, Greece, Guyana, Iran (Islamic Republic of), Israel, Japan, Montenegro, Namibia, Nepal, New Zealand, Nigeria, Norway, Pakistan, Paraguay, Peru, Republic of Korea, Russian Federation, Serbia, Sri Lanka, United Kingdom of Great Britain and Northern Ireland and United States of America.

<sup>7</sup> All communications mentioned in the present report, and the responses thereto, are available at <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

Guyana,<sup>8</sup> Norway<sup>9</sup> and the United States of America<sup>10</sup> concerning the issuance of carbon credits in Guyana without the free, prior and informed consent of Indigenous Peoples; to China,<sup>11</sup> Nepal<sup>12</sup> and the Republic of Korea<sup>13</sup> about the construction of the Kathmandu-Terai/Madhesh fast track (expressway) road project affecting the rights of the Newar people, as well as to the related companies involved in the aforementioned development projects;<sup>14</sup>

(b) The right to participate, without discrimination, in sports as an element of cultural life was raised in the context of the hijab ban in France (see para. 9 below),<sup>15</sup> as well as in a communication to the Fédération Internationale de Football Association<sup>16</sup> about the Occupied Palestinian Territory, and in another to the International Olympic Committee<sup>17</sup> concerning Afghan women;

(c) The right to heritage was addressed in the context of the adoption of a new law in Greece aimed at preserving Greek music and songwriting;<sup>18</sup> the memorialization efforts of Tamil civil society in Sri Lanka;<sup>19</sup> the “comfort women” of the Republic of Korea;<sup>20</sup> the inhabitants of a heritage site in Cambodia,<sup>21</sup> with related communications to France,<sup>22</sup> Japan<sup>23</sup> and the United Nations Educational, Scientific and Cultural Organization (UNESCO),<sup>24</sup> raising concerns about the displacement of those persons from Angkor; and, similarly, in the context of Namibia,<sup>25</sup> with related letters to Germany,<sup>26</sup> the United Kingdom of Great Britain and Northern Ireland<sup>27</sup> and four private actors;<sup>28</sup>

(d) The right to freedom of artistic expression and creativity was raised in the contexts of Algeria,<sup>29</sup> Angola,<sup>30</sup> Egypt,<sup>31</sup> Iran (Islamic Republic of),<sup>32</sup> Nigeria<sup>33</sup> and Pakistan.<sup>34</sup> In the case of Algeria, the Special Rapporteur notes with satisfaction that Djamila Bentouis has been granted a pardon, while remaining concerned about the charges that had been pressed against her;

(e) The right to express one’s identity and to practice one’s language and religion without fear was raised in relation to the situation of Baha’i women and other cultural

<sup>8</sup> See communication GUY 1/2024.

<sup>9</sup> See communication NOR 4/2024.

<sup>10</sup> See communication USA 26/2024.

<sup>11</sup> See communication CHN 4/2024.

<sup>12</sup> See communication NPL 1/2024.

<sup>13</sup> See communication KOR 1/2024.

<sup>14</sup> See communications OTH 128/2024, OTH 140/2024–148/2024 and OTH 23/2024–39/2024.

<sup>15</sup> See communication FRA 7/2024.

<sup>16</sup> See communication OTH 132/2024.

<sup>17</sup> See communication OTH 113/2024.

<sup>18</sup> See communication GRC 1/2024.

<sup>19</sup> See communication LKA 1/2024.

<sup>20</sup> See communication KOR 4/2024.

<sup>21</sup> See communication KHM 1/2024.

<sup>22</sup> See communication FRA 8/2024.

<sup>23</sup> See communication JPN 3/2024.

<sup>24</sup> See communication OTH 136/2024.

<sup>25</sup> See communication NAM 1/2024.

<sup>26</sup> See communication DEU 5/2024.

<sup>27</sup> See communication GBR 10/2024.

<sup>28</sup> See communications OTH 117/2024–120/2024.

<sup>29</sup> See communication DZA 1/2024.

<sup>30</sup> See communication AGO 2/2024.

<sup>31</sup> See communication EGY 3/2024.

<sup>32</sup> See communication IRN 22/2024.

<sup>33</sup> See communication NGA 1/2024.

<sup>34</sup> See communication PAK 1/2024.

activists in the Islamic Republic of Iran,<sup>35</sup> Palestinians in Gaza,<sup>36</sup> Palestinian pastoralists in the West Bank,<sup>37</sup> and Tibetans in China;<sup>38</sup>

(f) The free, prior and informed consent of Indigenous Peoples regarding recognition of land and ancestral territories, with related ways of life, was raised in relation to the Māori Indigenous communities of Wairarapa Moana and Nelson Tenth in New Zealand,<sup>39</sup> the Kichwa Indigenous People of Sarayaku in Ecuador,<sup>40</sup> the Guaraní Paĩ Tavyterã in Paraguay<sup>41</sup> and in the context of Colombia;<sup>42</sup>

(g) The rights to academic freedom and to take part in cultural life were raised in relation to Montenegro<sup>43</sup> and in the context of the repression of student protests in the United States;<sup>44</sup>

(h) The intentional destruction of cultural heritage and the related right to take part in decisions concerning heritage were raised about the “El Ojo que Llorá” (The Eye that Cries) memorial in Peru<sup>45</sup> and about the unilateral removal of the protection status of heritage buildings in Belgrade, Serbia.<sup>46</sup>

6. The Special Rapporteur followed up on two cases concerning individuals sentenced to death for the exercise of their freedom of artistic expression and creativity, namely Yahaya Sharif-Aminu in Nigeria<sup>47</sup> and Toomaj Salehi in the Islamic Republic of Iran.<sup>48</sup> In her communications, the Special Rapporteur urged those Governments to abolish the death penalty or at the least ensure that its use was restricted to the “most serious crimes”. She recalled that criticism of government policies and about social issues, including through artistic expression, must not be criminalized. In the Special Rapporteur’s view, the human rights of Mr. Sharif-Aminu and Mr. Salehi have been violated. She welcomes the release of Mr. Salehi, in December 2024, and is following with interest the remaining case against him. She again calls upon the Government of Nigeria to release Mr. Sharif-Aminu immediately.

7. The Special Rapporteur also continued her engagement with the Government of China regarding the situation in Tibet.<sup>49</sup> She considered the impacts of the construction of the Kamtok (Gangtuo) hydroelectric power plant, a development project that has led to the displacement of Tibetans and the irreversible destruction of important cultural, natural and religious assets. She thanks the Government for its responses but remains highly concerned, in view of numerous and repeated accounts of reprisals against Tibetans. She recalls that no violation of human rights, including cultural rights, may be justified in the name of development and that expressing concerns and criticisms regarding government projects is a legitimate use of one’s human right.<sup>50</sup>

8. Following on from her communications with the Governments of Germany and Namibia, in 2023, concerning recognition of the harm committed during the colonial period

<sup>35</sup> See communications IRN 14/2024 and IRN 12/2024.

<sup>36</sup> See communication ISR 14/2024, ISR 23/2024 and ISR 24/2024.

<sup>37</sup> See communication ISR 25/2024.

<sup>38</sup> See communication CHN 8/2024.

<sup>39</sup> See communication NZL 1/2024.

<sup>40</sup> See communication ECU 4/2024.

<sup>41</sup> See communication PRY 2/2024.

<sup>42</sup> See communication COL 4/2024.

<sup>43</sup> See communication MNE 1/2024.

<sup>44</sup> See communications USA 12/2024 and OTH 71/2024.

<sup>45</sup> See communication PER 3/2024.

<sup>46</sup> See communication SRB 4/2024.

<sup>47</sup> See communications NGA 4/2020 and NGA 1/2024. See also Office of the United Nations High Commissioner for Human Rights (OHCHR), “Nigeria: UN experts demand release of Yahaya Sharif-Aminu”, press release, 16 May 2024.

<sup>48</sup> See communications IRN 26/2022, IRN 6/2023 and IRN 22/2023, and the respective responses from the Government of the Islamic Republic of Iran. See also OHCHR, “Iran: UN experts alarmed by death sentence imposed on rapper and songwriter, Toomaj Salehi”, press release, 25 April 2024.

<sup>49</sup> See communications CHN 8/2024, CHN 14/2023, CHN 8/2023, CHN 14/2022, CHN 6/2022, CHN 14/2021, CHN 5/2019 and CHN 16/2018, and the respective responses from the Government.

<sup>50</sup> A/77/290, paras. 97 and 98.

and the need for adequate reparation and memorialization, the Special Rapporteur enquired about development projects in the vicinity of the Shark Island memorial site and their potential impacts on the rights of the Nama and Ovaherero peoples.<sup>51</sup> In view of the information received from various of the stakeholders involved, the Special Rapporteur has concluded that the right of the Nama and Ovaherero peoples to take part in decision-making processes that have an impact on their cultural life and heritage has been violated and that the Government of Namibia must improve its consultation schemes, with a view to obtaining the free, prior and informed consent of the people concerned.

9. The Special Rapporteur again raised her concerns with the Government of France regarding the ban on hijabs in the practice of sports and in sport competitions.<sup>52</sup> She regrets that, to date, she has not received a response on this issue. The Special Rapporteur is of the view that the current bans adopted by certain French sports associations violate the rights of women and girls who decide to wear the hijab to freely take part in sports, an important element of the right to take part in cultural life, and to be protected against discrimination on the basis of sex, religion or belief, and opinion and expression.

10. Finally, the Special Rapporteur is delighted that her efforts facilitated the adoption at the eleventh Summit of Southern Countries of the European Union, in September 2024, of a declaration on cultural rights, under the aegis of the Government of Cyprus. In the declaration, the ministers of culture of Croatia, Cyprus, France, Greece, Italy, Malta, Portugal, Slovenia and Spain acknowledged the important role that cultural rights have in times of crisis and reaffirmed their commitment to fulfil their international law obligations on cultural rights.<sup>53</sup> The Special Rapporteur welcomes the fact that, at a time when the annihilation of peoples' cultures is central in fuelling conflicts, with catastrophic results, these States stand united in the fight to stop the undermining of cultures and cultural rights.<sup>54</sup> This also applies to the digitalization of cultural heritage in times of crisis.

11. The Special Rapporteur conducted two official country visits in 2024: the first, to Chile, from 25 March to 5 April;<sup>55</sup> the second, to the Lao People's Democratic Republic, from 19 to 29 November (report to be presented in March 2026).<sup>56</sup> She thanks the respective Governments and all stakeholders who contributed to her visits for the wealth of information received and hopes that the implementation of her recommendations will contribute to improving the situation of cultural rights in both contexts.

### III. Digital technologies and cultural heritage: a cultural rights approach

12. Cultural heritage serves as a foundation for cultural expression, offering individuals and communities resources, inspiration and a sense of identity, which are necessary to create, innovate and share their narratives.

13. Although digital technologies do not allow for the same physical and sensorial experience of and engagement with cultural heritage, they can certainly bring critical added value when enhancing awareness of and accessibility to cultural heritage for education,

<sup>51</sup> See communications DEU 5/2024, DEU 1/2023, NAM 1/2024 and NAM 1/2023, and the responses received from the respective Governments.

<sup>52</sup> See communications FRA 13/2023, and the response of the Government thereto, and FRA 7/2024. See also OHCHR, "France: hijab bans in sports are discriminatory and must be reversed, say experts", news release, 28 October 2024.

<sup>53</sup> See <https://www.gov.cy/en/other-topics/declaration-on-cultural-rights/>.

<sup>54</sup> See <https://www.ohchr.org/sites/default/files/documents/issues/culturalrights/activities/2024-09-30-sr-cultural-rights-stm-med9.docx>.

<sup>55</sup> [A/HRC/58/60/Add.1](#).

<sup>56</sup> See the preliminary observations of the Special Rapporteur on her visit to the Lao People's Democratic Republic, available at [www.ohchr.org/sites/default/files/documents/issues/culturalrights/statements/SR-Cultural-Rights-EOM-Statement-Laos-20241129.pdf](http://www.ohchr.org/sites/default/files/documents/issues/culturalrights/statements/SR-Cultural-Rights-EOM-Statement-Laos-20241129.pdf) (available in English and Lao).

research and enjoyment purposes and to enrich understanding of cultural diversity and historical contexts, for example through digital archives.<sup>57</sup>

14. Digital technologies<sup>58</sup> open new possibilities for experiences of cultural heritage and the engagement of individuals and communities, transcending physical and temporal limitations to create dynamic, immersive learning experiences. They enable the history of a heritage to be retraced and dispersed collections to be reconstructed, allowing for artefacts to be presented in their original contexts. Digital technologies may help to preserve a community's collective memory of specific objects and practices, enabling better documentation of cultural artefacts, sites and practices with accuracy, including for reparation purposes in case of destruction during conflict or disaster. They may also assist practitioners in inventorying cultural heritage and enhance the work of archaeologists, architects, artists, curators and all sorts of cultural heritage professionals who cannot travel to gain on-site access to specific cultural heritage for various reasons, including economical, ecological and security concerns. Digital technologies provide crucial tools to disseminate information, raise awareness of the importance and significance of cultural heritage and of cultural diversity, while enhancing education on cultural heritage for all and promoting mutual recognition, understanding and respect. They can be used to ensure that those affected by crisis, in particular refugees and internally displaced persons, and migrants more generally, continue to have access through digital platforms to the cultural heritage from which they have been separated. Digital technologies may enhance monitoring of the destruction of cultural heritage through satellite imagery, especially during conflict and natural disasters, which can be useful for accountability or restoration purposes. They open up new possibilities to enhance the participation of communities in the interpretation of and meaning given to cultural heritage, thereby making their own narratives visible alongside those of cultural heritage professionals, and, more generally, enabling individuals to play a meaningful role in cultural heritage.

15. Such fantastic promises, however, can only be realized holistically and sustainably if implemented through a cultural rights-based approach, which brings with it the principles of the universality and indivisibility of rights, non-discrimination, equality, participation, and respect for cultural diversity. It means ensuring non-discrimination in selecting, identifying and protecting cultural heritage; equitable benefits; the real and meaningful participation of source and guardian communities to ensure that digitalization protects cultural heritage as a dynamic element of collective identity and memory; respect for cultural diversity in the protection and preservation of cultural heritage; and, finally, revisability and accountability.

16. Realizing these promises will not be possible without putting strategies in place to actually implement them. Goals should be set for each objective, towards which financial support and other efforts from States and relevant stakeholders should be directed, as a matter of priority. Otherwise, the potentials of digital technologies and digitalization may be used as a façade to disguise other goals, particularly economic goals, with no or little consideration given to the ascribed meanings of heritage or to the identities, justice and well-being of communities.

17. The present report certainly cannot provide solutions to all of the challenges posed by the digitalization of cultural heritage. Its purpose is to draw the attention of States and other stakeholders to a number of questions that should systematically be addressed from a cultural rights perspective, namely: who holds the decision-making power when it comes to when and what to digitalize for preservation purposes? Who has a seat at the table when making such decisions? In other words, what can be done to ensure that what is digitalized is what really matters to people? How do we take into consideration the diverse interests, views and narratives of individuals and communities according to their relationship to specific cultural heritages?

18. The Special Rapporteur stresses that by not addressing the above-mentioned challenging questions not only will the above-mentioned potentials of the digitalization of

<sup>57</sup> Such as the European digital library platform, Europeana; and the Vatican Library platform, DigiVatLib.

<sup>58</sup> In the present report, the Special Rapporteur focuses on digitalization and digitization, two processes leveraging digital technologies in the field of heritage.

cultural heritage for communities be lost but, even worse, digitalization will risk severely and negatively affecting the cultural rights of individuals and groups, including through discrimination, marginalization and dispossession.

19. Diverse digital technologies are applied to cultural heritage. They include digitizing processes that convert physical cultural heritage into digital formats (such as photographs, audiovisual recordings, scans or three-dimensional models, including laser scanning, light detection and ranging (LiDAR), photogrammetry and reflectance transformation imaging), as well as more complex digitalization processes that change how cultural heritage is managed and shared, such as through virtual and augmented reality, interactive platforms and digital storytelling. For example, machine learning can help to create comprehensive maps of the past, facilitating pattern recognition and iconographic searches and identifying missing fragments across global collections.

20. The importance and value of cultural rights should always be recalled, despite such diversity, in a fast-moving and innovative sector.

#### **IV. Main challenges of digitalization of cultural heritage**

21. Digitalization poses numerous, multifaceted challenges to respect for cultural rights. As with all issues surrounding cultural heritage, these challenges can be articulated by a number of questions, namely how to resolve conflicts and competing interests over cultural heritage while ensuring the participation of communities most related to such heritage, and when and how to arbitrate these conflicts.

22. The first mandate holder, Farida Shaheed, asserted that varying degrees of access and enjoyment may be recognized, taking into consideration the diverse interests of individuals and groups according to their relationship with specific cultural heritages. Distinctions should be made between: (a) originators or “source communities”, namely communities that consider themselves as the custodians or owners of a specific cultural heritage, people who are keeping cultural heritage alive and/or have taken responsibility for it; (b) individuals and communities, including local communities, who consider the cultural heritage in question to be an integral part of the life of the community but may not be actively involved in its maintenance; (c) scientists and artists; and (d) the general public, accessing the cultural heritage of others. Interestingly, the Council of Europe Framework Convention on the Value of Cultural Heritage for Society, in its article 2 (b), refers to the notion of “heritage community”, which “consists of people who value specific aspects of cultural heritage which they wish, within the framework of public action, to sustain and transmit to future generations”. This implies that concerned communities may reunite people from diverse cultural, religious, ethnic and linguistic backgrounds over a specific cultural heritage that they consider they have in common.<sup>59</sup>

23. From a cultural rights viewpoint, having in mind international human rights standards relating to Indigenous Peoples and minorities, the Special Rapporteur considers that, as a matter of principle, source communities, as well as those who have close connections to a specific cultural heritage, should be prioritized in decision-making.<sup>60</sup>

##### **A. Recognizing and ensuring the right to cultural heritage in the digital era**

24. International human rights law does not expressly recognize a right to cultural heritage, but numerous provisions provide scope for such an interpretation, based on the understanding that “cultural heritage is important not only in itself, but also in relation to its human dimension, in particular its significance for individuals and communities and their identity and development processes”.<sup>61</sup> As was stressed by previous mandate holders, the

<sup>59</sup> A/HRC/17/38, para. 62.

<sup>60</sup> Ibid., para. 76.

<sup>61</sup> Ibid., para. 77.



right of access to and enjoyment of cultural heritage forms part of international human rights law, finding its legal basis, in particular, in the right to take part in cultural life, the right of members of minorities to enjoy their own culture, and the right of Indigenous Peoples to self-determination and to maintain, control, protect and develop cultural heritage. Other human rights must also be taken into consideration, in particular the rights to freedom of expression, freedom of belief and religion, the right to information and the right to education.<sup>62</sup>

25. Through its periodic resolutions 33/20, 37/17 and 49/7 on cultural rights and the protection of cultural heritage, the Human Rights Council has confirmed that the enjoyment of cultural rights, in particular the right of everyone to take part in cultural life, includes the ability to access and enjoy cultural heritage. It has underscored the importance of cultural rights in safeguarding cultural heritage and has requested the United Nations High Commissioner for Human Rights to advance efforts in this area.

26. The Special Rapporteur, together with her predecessors, considers that the right of access to and enjoyment of cultural heritage includes the right of individuals and communities to, inter alia, know, understand, enter, visit, make use of, maintain, exchange and develop cultural heritage, as well as to benefit from the cultural heritage and the creation of others. It also includes the right to participate in the identification, interpretation and development of cultural heritage, as well as the design and implementation of preservation and safeguarding policies and programmes.<sup>63</sup> In her view, the time has come to label this right as a “right to cultural heritage”, one that encompasses not only access to and enjoyment of cultural heritage but also identification with and participation therein, as affirmed by the eleventh Summit of Southern Countries of the European Union, in its declaration on cultural rights (see para. 10, above).

27. This approach to and understanding of the right to cultural heritage applies both to digital and non-digital cultural heritage. There is no reason why the right to cultural heritage should be ignored in digitization and digitalization processes.

28. One major difficulty, for all types of cultural heritage, is to identify and recognize the varying degrees of access, enjoyment and participation based on the diverse interests of individuals and communities according to their relationship to specific cultural heritages. Notably, for Indigenous Peoples, participation must take the form of seeking free, prior and informed consent, as required by the United Nations Declaration on the Rights of Indigenous Peoples and the recognition of their right to self-determination. Other communities who are entitled to the right of self-determination will also enjoy free, prior and informed consent. In any case, everyone has the right to effective participation in matters relating to their cultural heritage. Implementation should also ensure accountability for and revisability of any decision-making relating to the digitalization of cultural heritage.

29. Despite the fact that the right to participate in all decision-making relating to one’s cultural heritage, including its digitalization, is an important element of cultural rights, it is too often reduced to a box-ticking exercise. The voice of source or guardian communities, particularly Indigenous Peoples, is taken away or is diluted by a majority of State officials, experts, academics and others, and their control over their cultural heritage is lost. Digital technologies often fail to consider Indigenous notions of ownership and custodianship, which are rooted in communal and intergenerational relationships rather than individual or institutional control.<sup>64</sup> Therefore, States and public bodies must ensure that rights holders maintain their right to free, prior and informed consent (Indigenous Peoples) or to meaningful contribution to decision-making processes in all phases of digitalization, from its inception to its use once finalized. Governments should incorporate free, prior and informed consent into their domestic systems and ensure that penalties exist in case of violation.

<sup>62</sup> Ibid., para. 78.

<sup>63</sup> Ibid., para. 79.

<sup>64</sup> Michael F. Brown, *Who Owns Native Culture?* (Cambridge, Massachusetts, Harvard University Press, 2003); and Kimberly Christen, “Does information really want to be free? Indigenous knowledge systems and the question of openness”, *International Journal of Communication*, vol. 6 (2012).

30. All international law and policy documents on digital heritage, including UNESCO heritage conventions, which naturally extend to the digital sphere, should be interpreted and implemented in a way that allows for the recognition of the communities most connected to a specific cultural heritage.

31. As digital technologies advance, artificial intelligence plays an increasing role in the protection of cultural heritage. International law has yet to catch up with the challenges that these technologies pose, but some instruments already have the potential to foster a cultural rights approach, provided that human rights standards are systematically taken into consideration. The Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law highlights the need for accountability, transparency and compliance with human rights law, while initiatives such as the Global Digital Compact and the European Union Artificial Intelligence Act (Regulation (EU) 2024/1689) can help to tackle structural biases in the training of artificial intelligence and promote its ethical development, serving as tools to restrain the unauthorized use of creators' work and the commodification of cultural expressions. Globally, the Recommendation on the Ethics of Artificial Intelligence reinforces the importance of international cooperation to safeguard cultural diversity and human dignity in the context of emerging technologies.

32. A more practical tool to address these challenges involves the creation of community-led archives. Such archives have proven to be a positive way to empower communities and allow them to retain control over their cultural heritage. In the past few decades, more and more digitalization projects have been carried out by communities themselves who create their own digital archives where they can control the storage, distribution of and access to their cultural heritage. It is vital to carefully reflect on all elements of such projects to ensure that communities do indeed have overall control in substance, rather than being used as a façade for projects that are really led by others.

## **B. Right to cultural heritage and digitalization processes in times of crisis**

33. In the face of armed conflict, natural disasters and environmental degradation, digitalization can ensure the long-term preservation of cultural heritage for future generations. Institutions can make significant strides in ensuring that music, dance and oral storytelling continue to thrive, even as the originating communities face displacement, environmental change and cultural erosion due to conflict or natural disasters.<sup>65</sup> The 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict (the Hague Convention), together with its two Protocols, obligates States to take preventive measures during peacetime to protect cultural property, including through the documentation and inventorying of significant cultural assets, which digital technologies can greatly enhance. Similarly, frameworks such as the Sendai Framework for Disaster Risk Reduction 2015–2030 and the 2003 Declaration concerning the Intentional Destruction of Cultural Heritage highlight digitalization as a preventive measure, enhancing the resilience of cultural assets against disasters and conflicts.

34. Digital tools, such as satellite imagery and geospatial analysis, enable the monitoring of threats, facilitate preventive measures and can also support recovery, accountability and reconciliation efforts by reconnecting people through their heritage.<sup>66</sup> Digital records can also play an important role in enabling the restoration of sites or objects, as was done after the

<sup>65</sup> See

[www.researchgate.net/publication/334735261\\_Intangible\\_Cultural\\_Heritage\\_and\\_New\\_Technologies\\_Challenges\\_and\\_Opportunities\\_for\\_Cultural\\_Preservation\\_and\\_Development](https://www.researchgate.net/publication/334735261_Intangible_Cultural_Heritage_and_New_Technologies_Challenges_and_Opportunities_for_Cultural_Preservation_and_Development). For examples, see <https://ich.unesco.org/en/home>; <https://blogs.bl.uk/music/world-and-traditional-music/>; <https://folkways.si.edu/>; <https://livingtongues.org/>; and [www.itma.ie/](http://www.itma.ie/).

<sup>66</sup> See, for example, UNESCO, “Digitization of the intangible cultural heritage elements of communities in Bosnia and Herzegovina” (accessed on 12 February 2025).

2015 earthquake in Nepal<sup>67</sup> and the 2011 tsunami in Japan.<sup>68</sup> For its Endangered Archives Programme, the British Library has focused on digitizing rare and fragile historical documents, manuscripts and books from regions at risk of natural disasters, conflict and environmental degradation. Backup systems and long-term storage solutions in secure, geographically dispersed locations help to prevent data loss, ensuring that digital copies remain intact, even in the event of technological failure or natural calamity.

35. Unfortunately, in the urgency to protect cultural heritage from severe threat, it may be digitalized without the critical questions being asked and without the active participation of the people concerned, who are often dispersed and focused on their own survival. Hence, urgent digitalization may preserve access to cultural heritage, but the nuances of cultural rights may be severely affected by uncritical or biased choices in the digitalization process, distorted narratives about the meaning of the heritage, and the preservation of selected aspects of the history of the place or of the heritage asset. Military personnel must be made aware of the negative consequences to be avoided or reversed to the extent possible.

36. As focus is growing on post-war restoration of cultural heritage in several parts of the world, how will digitalization be employed in a way that accurately reflects cultural heritage in all its diversity and, even more importantly, its significance for all people – in Lebanon, Ukraine or Yemen, in Gaza, or elsewhere? How can digitalization move away from a top-down approach, whereby government institutions and international experts take control away from local populations and decide which sites are to be restored and preserved and with which narrative? The cultural rights approach requires that, in all areas affected by war, the digital technologies used to restore cultural heritage follow a real participatory methodology, where locals have the first say on identifying, recognizing and expressing the importance of cultural heritage.

### C. Avoiding dispossession through digitalization

37. The relationship between original cultural heritage and its digital copies, including three-dimensional reproductions, must carefully be considered. While digitization offers opportunities to gain access to copies of cultural heritage, it cannot replace the transformational effect of physical access to heritage. From the outset, it should be affirmed that digitization will be no substitute for the protection of cultural heritage. Digitalized forms of cultural heritage cannot replace original human creativity. The protection of cultural heritage and digital recording and transformation must go together. Digitalization cannot be allowed to undermine the focus on preserving and protecting the original objects or expressions that constitute heritage. Digitization should never be used to justify destroying physical objects or denying their restoration or their restitution to source communities. Proposals to return only three-dimensional copies, rather than original heritage assets, to the original owners overlook the symbolic, spiritual and experiential value of engaging physically with heritage. While digital cultural heritage can enhance experiences, it should always be framed as an addition, not a replacement.

38. Decisions regarding digitalization sometimes involve multiple stakeholders and reflect power dynamics that may exclude those communities most intimately connected to the heritage. Decisions often rest with State or institutional bodies that might centralize the control thereof and marginalize diverse perspectives, sometimes even being used as a means of “cultural genocide”. In such cases, digitalization may protect the cultural heritage but threaten the right to cultural heritage, including the right of communities and individuals to own and control their cultural heritage.

<sup>67</sup> See UNESCO World Heritage Convention, “Nepal’s museums re-opening post-earthquake”, 5 August 2016.

<sup>68</sup> See Vicente Santiago-Fandiño and others, eds., *The 2011 Japan Earthquake and Tsunami: Reconstruction and Restoration – Insights and Assessment after Five Years*, Advances in Natural and Technological Hazards Research Series (Springer Publishing, 2018).

## D. Ensuring contextualization

39. Digital processes can contribute to revealing the context of a piece of cultural heritage, an object's biography, by highlighting its origins, uses and historical transformations. These applications highlight the dynamic nature of heritage, challenging static notions of "originality" and reflecting evolving societal values and perceptions.

40. At a different level, though, digitalization for the preservation and safeguarding of cultural heritage increases the risk of diminishing the context of heritage, leading to oversimplified or false narratives and misconceptions about a group's past and identity. As digitalized forms of cultural heritage become separated from the original source, their original context, meaning and cultural significance can potentially be lost, thereby distorting the way that they are understood or experienced.

41. Immersive art experiences use digitalization of cultural heritage to increase accessibility, revive interest and recapture the imagination of the audience. However, they often repackage heritage by recontextualizing it, opt for more palatable formats or focus on quirky details, potentially erasing nuances and essentializing it. For example, the exhibition entitled "The Art of Banksy" was developed without the consent of the artist and completely decontextualized Banksy's art by neglecting to feature the political meaning it conveys. When cultural objects become separated from the rest of the cultural heritage, they lose their specific positionality in a coherent narrative.

42. The sale of digital art by museums is often less risky than the direct involvement of private technology companies in digitization projects. These entities often lack expertise in cultural heritage preservation, and their primary goal may not be the protection of heritage and the rights of rights holders. For instance, while a collaboration between private technology companies and the Relief Map Museum, in Paris, to bring Mont-Saint-Michel to life through immersive technology had many benefits, it also raised concerns about inclusivity and about the depth and accuracy of the information presented.

43. It is therefore crucial to highlight that digitalization processes are not neutral activities and may perpetuate historical biases or manipulative cultural narratives.<sup>69</sup> Artificial intelligence's potential for cultural homogenization is of significant concern, as artificial intelligence systems are primarily developed in technological hubs, with their own values and ways of looking at life that may be quite isolated or distinct from local realities. This marginalizes local traditions and minority cultures, imposing, for example, urban or modern standards on rural, traditional or Indigenous communities. The integration of certain cultural norms into artificial intelligence models can erode unique identities, raising fears of artificial intelligence-driven cultural colonization. Addressing these issues requires a concerted effort to ensure that digital technologies respect cultural diversity, promote linguistic inclusivity and prioritize underrepresented communities' perspectives.

44. Applying a cultural rights approach will allow the relevant questions to be posed and reflected upon. In paragraph 16 of its general comment No. 21 (2009), the Committee on Economic, Social and Cultural Rights established that availability, accessibility, acceptability, adaptability and appropriateness were necessary conditions for the full realization of cultural rights. These conditions are crucial when discussing digitalization. It is important to acknowledge colonial practices and power asymmetries in all discussions regarding heritage; digitization processes must intersect with decolonization efforts, adopting what has been called by some a "slow digitization" approach, a thoughtful way through which as much attention is given to the process as to the objects themselves.<sup>70</sup>

<sup>69</sup> Rebecca Bailey and others, *Unlocking the Potential of Digital Collections: A Call to Action* (Arts and Humanities Research Council, 2024), p. 22.

<sup>70</sup> Mathilde Pavis and Andrea Wallace, "Response to the 2018 Sarr-Savoy report: statement on intellectual property rights and open access relevant to the digitization and restitution of African cultural heritage and associated materials", *Journal of Intellectual Property, Information Technology and Electronic Commerce Law*, vol. 10, No. 2 (October 2019), pp. 115–129, para. 38. Available at <https://www.jipitec.eu/jipitec/issue/view/jipitec-10-2-2019/44>.

## **E. Combating cultural misappropriation and misuse**

45. An acute danger of the digitalization of heritage assets is that of cultural misappropriation – whereby meaningful cultural expressions are adopted without understanding, respecting or honouring their original cultural or historical significance, without recognizing and acknowledging source communities and guardians, and are used in a way that reinforces negative stereotypes, disrespects sacred traditions or dispossesses or excludes the persons and groups related to that cultural expression from the use thereof and the benefits stemming therefrom. Misappropriation often results from an imbalance in power relations, whereby source communities end up being marginalized in the presentation, use and exploitation of their heritage. It can be particularly damaging when it decontextualizes sacred traditions or exploits Indigenous knowledge.

46. Several cases of misappropriation have been raised internationally.

## **F. Ensuring access and participation to overcome the digital divide**

47. While the digitalization of cultural heritage has the potential to increase access to cultural content globally, it also risks exacerbating the digital divide. Unfortunately, not everyone has the same infrastructures and skills to be able to access digital collections, and not all regions have the means to contribute to and benefit from digital cultural heritage.<sup>71</sup> Professionals in low-income regions and countries often lack the resources needed to participate in digitization efforts. Limited access to digital tools, infrastructure and technological expertise often prevents Indigenous Peoples and local communities from leading digitalization efforts regarding their cultural heritage. Heritage assets of remote communities may be excluded from digital collections, reducing these persons' rights to participate as well as to access their heritage and that of others, as an audience. The latter raises concerns about the continuity of neocolonial practices, whereby the resources of poorer or less technologically advanced areas are exploited and end up benefiting persons other than the source communities. To address these disparities, policies promoting equitable partnerships, technology transfer and knowledge-sharing are essential to ensure that no one, including marginalized and underresourced communities, is excluded from these initiatives due to digital inequality.

48. Language also affects access to digitalized cultural heritage initiatives. There remains a major linguistic imbalance in digital content, with English constituting over 50 per cent of online material, while seven other languages account for another 30 per cent.<sup>72</sup> In contrast, over 30 languages spoken by millions represent just 0.2 to 2 per cent of digital content, and thousands of languages are barely represented.<sup>73</sup> As artificial intelligence-generated content is expected to dominate up to 80 per cent of online material, this linguistic disparity is likely to grow, further sidelining underrepresented languages and the cultural expressions they convey.

49. With the Internet now constituting a critical platform for scientific and cultural flows and exchanges, it is important to maintain freedom of access and open architecture to uphold cultural rights. Governments and international organizations should take measures to enhance access to computers and Internet connectivity, including through appropriate Internet governance that supports the right of everyone to have access to and use of information and communications technology in self-determined and empowering ways.<sup>74</sup> Ensuring access to digital technologies and promoting digital literacy are key to making sure that all people,

<sup>71</sup> See Towards a National Collection, “Linking digital collections globally”, webinar, 2 May 2024. The discussion included the challenges to sharing digital collections encountered in the Pacific region.

<sup>72</sup> Mehdi Snene, Office of the Envoy of the Secretary-General on Technology, “Artificial intelligence, cultural rights and right to development”, statement to the tenth session of the Expert Mechanism on the Right to Development, Geneva, 29 October 2024. Available at <https://www.ohchr.org/en/events/sessions/2024/tenth-session-expert-mechanism-right-development>.

<sup>73</sup> Ibid.

<sup>74</sup> A/HRC/20/26, para.74 (c). See also Committee on Economic, Social and Cultural Rights, general comment No. 25 (2020), para. 45.

especially marginalized communities, can engage with digital cultural heritage. There should be more focus on ensuring that rural, Indigenous and marginalized communities have affordable and equitable access to digital technologies. States and international organizations should establish publicly accessible digital libraries and archives that offer free access to cultural content, with priority given to underserved populations. This would ensure that digital heritage is not restricted to those with the most economic power or technological resources. However, people should not be obliged to have Internet connections in order to have access to cultural heritage. In addition, digital archives should include materials that represent diverse cultural perspectives, with special attention given to ensuring that minority and Indigenous cultures are adequately represented.

50. There should be more support for digital literacy programmes that help communities to build the skills necessary to engage with digital heritage. These programmes would not only teach individuals how to access and navigate existing digital platforms but also help them to create and share their own cultural content in the digital realm.

## **G. Addressing open access to digital cultural heritage**

51. The mandate holder has already drawn attention to significant challenges concerning copyright, patents and the public domain.<sup>75</sup> At the outset, the Special Rapporteur recalls that the human right to protection of authorship, provided for under article 15 of the International Covenant on Economic, Social and Cultural Rights, is not simply a synonym for, or reference to, copyright protection, but a related concept against which copyright law regimes should be judged. Protection of authorship as a human right requires in some ways more and in other ways less than what is currently found in the copyright laws of most countries.<sup>76</sup>

52. In general, the intersection of open access and copyright poses several challenges for cultural rights. Establishing mechanisms that protect the moral and material interests of creators without unnecessarily limiting public access to creative works is a challenge that is often resolved by exceptions, limitations and subsidies of openly licensed works. Protecting the rights of groups or collectives to pass their cultural expressions down through generations and to develop and transmit their cultural heritage in a rather individualistic system of intellectual property system is also a challenge. Finally, ensuring that cultural rights are maintained after digitalization has already occurred, in other words, deciding on how access is granted, how heritage is stored, when heritage digitalization is re-evaluated and by whom, and who gets to benefit from it must be an ongoing reflective exercise.

53. Open access to digital cultural heritage presents multiple advantages. It involves making heritage materials, such as collections of museums, libraries and archives, and their associated metadata, freely available online for broad access, sharing and reuse, including possibly for commercial applications.<sup>77</sup> Open access implies the leveraging of digital technologies with a view to protecting the public domain from erosion and using open licences, such as CC0 or CC BY, to clearly establish permissions for access and reuse. Open access fosters the democratization of cultural heritage by enabling equitable access, allowing broader public engagement, fostering scientific, artistic and other kinds of creativity, and encouraging collaboration, to the extent that people have access to the Internet and are aware of how to search for these resources. If used as a standard for all digitized heritage assets, open access can contribute to promoting and preserving diversity. However, open access is not a panacea as some would suggest; it can only democratize access to cultural heritage if the Internet is accessible, and this is not always the case, especially in remote and marginalized communities.

54. Data sovereignty is a key issue. Communities whose heritage is digitized should retain control over their cultural data and be involved in further digitalization processes, while still allowing for open access to digital cultural heritage. Ensuring data sovereignty also allows

<sup>75</sup> See [www.ohchr.org/en/special-procedures/sr-cultural-rights/impact-intellectual-property-regimes-enjoyment-right-science-and-culture](http://www.ohchr.org/en/special-procedures/sr-cultural-rights/impact-intellectual-property-regimes-enjoyment-right-science-and-culture); see also [A/HRC/28/57](#) and [A/70/279](#) and [A/70/279/Corr.1](#).

<sup>76</sup> [A/HRC/28/57](#), para. 29. See also Committee on Economic, Social and Cultural Rights, general comment No. 17 (2005), paras. 1–3.

<sup>77</sup> See, for example, <https://creativecommons.org/>.

these communities to retain income-generation rights, while sharing data for academic and preservation purposes promotes cross-cultural understanding and knowledge development. However, current experiences show that data ownership is often contentious, as institutions rather than source communities frequently control digital data.

55. In some instances, the specific significance of local cultural heritage may not be accounted for in open access digital repositories. Materials that hold spiritual or ceremonial significance, such as sacred objects, traditional songs or Indigenous art, may be widely disseminated without proper restrictions or acknowledgment of their cultural importance. Researchers have highlighted that digital spaces, while beneficial, often privilege global accessibility over the more restricted and nuanced rules that govern access and knowledge-sharing about certain heritage assets for which secrecy might be the standard. Again, participation of the persons and communities concerned is key for them to benefit from the full potential of open access.

## **H. Revising intellectual property protections to infuse a cultural rights approach**

56. The digitalization of cultural resources – whether tangible or intangible – often creates legal ambiguities around intellectual property, raising questions of ownership, access and ethical use.

57. Cultural heritage belongs to the public domain, which is essential for enabling access to cultural works and fostering creativity, innovation and education. Works in the public domain are not subject to copyright.

58. In contrast, digital reproductions of heritage resources can be subject to new copyright claims, even when the originals exist in the public domain. By being protected by copyright, the owners of such digital products enjoy exclusive economic (e.g. reproduction and distribution) and moral rights, including the right to attribution and the right to object to derogatory treatment of the work, that apply for the life of the author plus a minimum of 50 years.<sup>78</sup> This leads to a paradox, wherein the original works are freely accessible, while the reproductions are protected, creating new restrictions on access to and engagement with the digitized versions of the heritage resources. Depending on who has the rights to the digital reproductions, it may again lead to misappropriation and undue commercial exploitation of cultural heritage, especially when commercial partners are involved. It may also exacerbate historical power imbalances, particularly in decolonial contexts.<sup>79</sup>

59. It is possible to include some specific uses in copyright legislation that do not require the authorization of the copyright owner. These are known as limitations and exceptions to copyright. However, they must comply with the “three-step test”, which includes exceptions to copyright as follows: (a) in certain special cases; (b) when they do not conflict with the normal exploitation of the work; and (c) when they do not prejudice unreasonably the legitimate interests of the copyright owner.<sup>80</sup> The three-step test can be used to allow certain non-commercial cultural uses, thereby supporting digitization for research and preservation purposes. The interpretation of the test should be guided by the cultural rights approach and it should be recognized that cultural resources have more than mere monetary value. Considerations should include not only the legal and economic interests of authors or copyright holders but also the cultural and social significance of heritage materials for the persons and communities that relate to it.<sup>81</sup> However, the test is not always guided by the cultural rights approach.

<sup>78</sup> Berne Convention for the Protection of Literary and Artistic Works, art. 7 (1).

<sup>79</sup> Paula Westenberger, “Digital culture, copyright and the orphan works issue: a view from Brazil”, in *Law and Policy in Latin America: Transforming Courts, Institutions, and Rights*, Pedro Fortes and others, eds. (London, Palgrave Macmillan, 2017), pp. 293–309.

<sup>80</sup> Berne Convention, art. 9 (2); and Agreement on Trade-Related Aspects of Intellectual Property Rights, art. 13.

<sup>81</sup> A/HRC/28/57, paras. 75 and 76.



60. In any case, it is up to source and heritage communities to prove that their digitalized heritage falls within the above-mentioned exceptions so that they can be in control of its use. Clearance of the rights of the source or heritage community from any copyright restrictions takes time and involves costs, which may make their claims unfeasible. Their claims may also be unsuccessful in the case of orphan works (i.e. where copyright owners cannot be identified or located), resulting in the “locking up” of culturally relevant material.

61. Obtaining copyright for the source or heritage community over the original or the digital form of the heritage also poses problems. Apart from the cost and time barriers, conventional intellectual property frameworks tend to prioritize individual ownership, often failing to recognize the collective nature of many cultural heritage and living practices. For Indigenous Peoples in particular, protection mechanisms must respect collective ownership so that Indigenous Peoples can maintain sovereignty over their knowledge. Indigenous heritage is often excluded from conventional intellectual property frameworks, leaving it vulnerable to unauthorized use.<sup>82</sup> Despite the good practice to not impose copyright on heritage, even if collective ownership becomes possible and the difficulties that communities face are overcome, the digitalization process would only secure copyright for the source or heritage community for a specific period. Once the period of exclusive economic and moral rights was over, copyright law would no longer protect the “moral and material” interests of the “authors”, leaving the source communities without legal protection over their inherited cultural expressions because they are now open to all.

62. Overall, market actors are much more likely to use intellectual property regimes to impose limitations on access to and use of digitalized products by all, even source and heritage communities. Limited attempts have been made to address this imbalance. Article 14 of the European Union directive on copyright and related rights in the digital single market provides that there will be no new copyright on reproductions of visual art once the original copyright has expired, but it does not apply to all works. This directive also permits exceptions for the digitization of copyrighted works by cultural institutions for preservation purposes.

63. The protection of authorship represents an important safeguard for the recognition of the work of creators and is compatible with the protection of the moral and materials interests of creators. However, it is very evident and well documented that copyright rules can violate cultural rights. To ensure that the right balance is found, a cultural rights approach to copyright needs to be applied and recognized by intellectual property systems and organizations at the national, regional and international levels. In its general comment No. 17 (2005), the Committee on Economic, Social and Cultural Rights provides important guidance in this regard.

64. A complementary mechanism would be the establishment of licensing systems in international agreements to ensure fair compensation and benefit-sharing for communities when their cultural heritage is digitized. Cultural protocols, in which guidance is provided on how cultural materials can be shared, the terms under which they can be shared and the obligations of digital platforms to engage with and represent diverse cultural expressions in a fair and respectful manner, have been initiated and are gaining momentum. However, these practices must be followed by more generic, better regulated multilateral agreements encompassing the processes related to digitalized heritage.

65. Despite years of scholarship and interventions that acknowledge the problems, there are still no specific and agreed global standards that articulate the intellectual property regime in a way that is compatible with international human rights standards. Differing national laws and practices result in inconsistent protection and accessibility of digitized heritage, disproportionately affecting marginalized communities and large areas of the world. In recent years, the World Intellectual Property Organization (WIPO) has considered the need to account for both cultural rights and intellectual property in matters relating to traditional knowledge, but its scope is too limited to provide for a universal approach to the heritage of all. There needs to be a *sui generis* system in which the collective nature of cultural expressions, as opposed to individual ownership, is recognized. WIPO could develop, or at

<sup>82</sup> [A/HRC/28/57](#), para. 58.



least adequately adapt, existing frameworks to address digital cultural heritage, including by establishing sui generis intellectual property regimes on Indigenous knowledge and cultural practices.

66. In addition, UNESCO documents must be interpreted in accordance with cultural rights. Source and heritage communities should be recognized and granted a leading role in all phases of digitalization processes, and they should be involved in the sharing of benefits and the establishment of compensation measures. The Convention on the Protection and Promotion of the Diversity of Cultural Expressions explicitly emphasizes, through its two operational guidelines, the importance of encouraging States to promote complementarity among legal instruments addressing cultural diversity, transparency in trade negotiations affecting cultural goods and services, and close coordination between cultural, trade and other relevant authorities. In the context of digitalization, the Convention should be interpreted as favouring the need for cultural clauses in international trade agreements, particularly those related to e-commerce, that would recognize the specificities of cultural goods and services. Such measures would ensure that the digitalization of cultural heritage is aligned with the Convention's objectives and would safeguard the capacity of States to implement policies that protect and promote cultural diversity. The Convention for the Safeguarding of the Intangible Cultural Heritage, the Convention on the Protection and Promotion of the Diversity of Cultural Expressions and their respective handbooks and guidelines for implementation must be interpreted to safeguard heritage assets while fully respecting rights holders. Continuous evaluation and review of the measures taken should help to ensure that the processes on the ground are compatible with the rights of individuals and groups to their heritage. Collaborative approaches, such as community-driven agreements, are crucial for balancing the need to protect cultural heritage while ensuring equitable access and participation in the digital space.

67. Clear ethical standards for digital platforms must also be endorsed by organizations, private and public, and by States. Companies can be bound by ethical standards, such as the FAIR (findable, accessible, interoperable and reusable) principles for scientific data management and stewardship, proposed by academics, and the CARE (collective benefit, authority to control, responsibility, ethics) Principles for Indigenous Data Governance, created by Indigenous alliances. Specific principles regarding the digitalization of communities' sacred knowledge will serve as an important, albeit gentle, safeguard in such cases. To the extent that digital platforms agree to be bound to the principles adopted, this approach can enhance self-regulation and provide for accountability for violations.

68. Moreover, the relationship between digitization, artificial intelligence and copyright has not fully been addressed. Artificial intelligence systems often use digitized cultural content for training purposes, giving rise to the need for careful regulation regarding the source communities of that content. When it comes to decisions regarding heritage data sets, which are increasingly valuable in artificial intelligence development, heritage communities should be recognized as decision-making entities and their moral and material interests respected.

## **I. Long-term preservation to ensure the right to cultural heritage of future generations**

69. As for the long-term preservation of any physical assets, the long-term sustainability of digitalized heritage needs to be adequately considered and funded. Many of the current models of digital storage are underfunded and largely reliant on private entities, leaving data retention strategies unclear in the long term. When contracts and licensing agreements with private companies expire, access to and preservation of the digital data may be jeopardized. As technology evolves, digital files may become obsolete, rendering archives inaccessible. Planning for long-term sustainability, archive management, data storage and data security is pivotal, requiring proactive strategies to mitigate the risk of data degradation or obsolescence. To ensure the right to maintain and transmit cultural heritage and the right to cultural heritage of future generations, it is vital that Governments take a more active role in providing consistent funding, oversight and resources to support sustainable preservation initiatives.

70. Many current storage solutions, including cloud-based systems, often lack the stability and reliability necessary for sustainable archiving. Too often, archives are at risk of disappearing owing to lack of prioritization and inadequate long-term investment, including for maintenance and data storage. Long-term data storage is not only expensive but also resource intensive, with significant environmental impacts. These high costs of digital conservation and the limited research on its economic and cultural benefits make it difficult for institutions to justify investments in digitization projects. Governments and cultural institutions must invest in robust, long-term preservation strategies that address digital storage challenges, ensuring that cultural heritage is not lost due to technological advancements. Collaborative efforts underscore the need for comprehensive strategies to preserve at-risk archives and ensure their future availability for research and education.

71. Platforms such as Global Digital Heritage exemplify how cooperative efforts can create sustainable and accessible digital archives. Community-based initiatives provide for a complementary approach to sustainability by focusing on localized, smaller-scale archives that prioritize the involvement of local actors in digitization projects. These efforts foster capacity-building, empowering communities to take ownership of their digital heritage while promoting global access, and align with international frameworks such as the recommendations included in the evaluation of UNESCO standard-setting work related to the Hague Convention of 1954 and its two Protocols,<sup>83</sup> as well as the 2015 Recommendation concerning the Protection and Promotion of Museums and Collections, their Diversity and their Role in Society.

72. Long-term preservation strategies must ensure that the same human rights principles continue to be applied over a long period of time, preserving respect for the source and heritage communities and for their decision-making role in defining practices governing access to and the use, sharing and transformation of the heritage assets and the related digital data set, and ensuring the right to gain access to and enjoy heritage for educational, research and preservation purposes, regardless of the ownership of the data.

## V. Conclusions and recommendations

73. **Digitalization presents significant opportunities to preserve, document and share cultural heritage, offering innovative ways to celebrate cultural diversity and engage rights holders in heritage efforts. By adopting an inclusive and human rights-based approach, digitalization ensures that cultural heritage remains relevant, accessible and dynamic, thereby contributing to the full enjoyment of cultural rights for all.**

74. **Notwithstanding its benefits, if adopted uncritically and without safeguards, digitalization poses significant challenges to cultural rights. Questions must be asked about who holds the decision-making power to decide on digitalization, who has a seat at the table, how digitalization will enhance people's rights and how their interests, views and priorities will be reflected in digitalization projects.**

75. **Digitalization should never be seen as an alternative to protecting, gaining access to and returning cultural heritage. The digitalized form can never reach the transformational effect of physical access to cultural heritage.**

76. **A cultural rights approach to digitalization entails ensuring that, at every step, the principles of the universality and indivisibility of rights, non-discrimination, equality, participation and respect for cultural diversity must be considered and applied. To ensure that cultural rights are respected, the minimum standards that must be infused in all aspects of digitalization include recognition of the source community; non-discrimination in selecting, identifying and protecting cultural heritage; equitable benefits; the real and meaningful participation of source or guardian communities to ensure that digitalization protects cultural heritage as a dynamic element of collective identity and memory; respect for cultural diversity in protecting and preserving cultural heritage; and, finally, revisability and accountability.**

<sup>83</sup> See UNESCO document C54/19/13.HCP/6.

77. Various stakeholders may have an interest in the digitalization of cultural heritage, ranging from source and heritage communities, public bodies, museums and libraries, teachers and academics, and private companies. Such parties do not all have the same level of rights in terms of digitalization. The Special Rapporteur emphasizes the need for source communities to be given the first say in decision-making regarding the digitalization of their heritage. For example, if the source community is an Indigenous People, it will have the right to free, prior and informed consent derived from the right to self-determination. Minorities must be guaranteed effective participation. The heritage community will have more of a say than a private company, the aim of which is not necessarily the protection of heritage but economic benefits.

78. Digitalization is not a neutral exercise. Attention should be paid to ensuring that it does not perpetuate historical bias and prejudice, maintain power structures or decontextualize cultural heritage.

79. Participation is an essential prerequisite of the right to heritage and cultural rights. It is a right that must be enjoyed by all, at different levels and in different ways. The various elements of participation must continuously be reflected upon and re-evaluated at all phases of the digitalization process, as well as after the item has been digitalized. Source and heritage communities must also participate in sharing the benefits of digitalization processes.

80. Maintaining open access to cultural heritage is an important element of the right of everyone to heritage. However, open access must not lead to less control on the part of the original source community to the benefit of the commercial interests of the owners of digital copies of the heritage.

81. To this end, intellectual property regimes must adopt a cultural rights approach as a matter of urgency. Although some specific initiatives may bring positive results, unless and until the intellectual property systems address holistically and coherently the limitations of copyright in digitalization, intellectual property will not ensure the non-violation of cultural rights.

82. States must prioritize investments in financial, human and technological resources to address key challenges, including ethical practices, cultural sovereignty and the meaningful participation of source and heritage communities.

83. The digital divide remains a significant barrier, particularly for marginalized communities who often lack access to digital resources and technologies and whose heritage may be excluded from digitization efforts. Careful attention must be given to this infrastructure to ensure that local, heritage and Indigenous communities are adequately consulted and that digitalization efforts respect their protocols, priorities and the meaning they convey to their heritage assets.

84. To ensure culturally diverse and inclusive digital heritage repositories and collections, Governments, public and private cultural institutions and professionals in the field of digitalization should:

- (a) Adopt a cultural rights perspective that respects source and heritage communities' authority over their heritage;
- (b) Identify and involve diverse teams representing the various source communities from which the materials originate;
- (c) Ensure that all individuals have meaningful participation in the various elements and phases of digitalization on the basis of their interests and their different roles;
- (d) Ensure that Indigenous communities be accorded free, prior and informed consent in all matters that affect them in the digitalizing of cultural heritage;
- (e) Expand funding for community support and align open access efforts with key actors;
- (f) Ensure broad accessibility for all, including by diversifying the languages represented online to explain and contextualize heritage assets;

(g) Acknowledge the sensitive nature and meaning of heritage assets and apply ethical guidelines, such as the CARE Principles for Indigenous Data Governance, to ensure that the digitalization process does not distort or misrepresent heritage assets;

(h) Take all necessary measures to counter the digital divide by improving access to the Internet and digital literacy, in particular for marginalized parts of the population;

(i) Build and implement scalable, sustainable approaches to developing advanced technology skills within organizations that manage digital collections with a view to effectively preserving digital heritage;

(j) Invest in the transfer and sharing of digital knowledge and skills in order to empower sources and heritage communities to maintain their agency concerning their digitalized heritage assets;

(k) Implement, where full openness is not feasible, contractual practices that balance commercial interests with public access;

(l) Promote national investment in interoperability and data-sharing initiatives;

(m) Focus on safeguarding digital collections against technological obsolescence and change by investing in long-term infrastructure for data preservation;

(n) Support the revision of international documents in which the cultural rights approach in digitalization has been neglected and fund the revision of handbooks, tools and policies to ensure that they conform with the cultural rights approach in digitalization.

85. To align their practices in the field of digitalization of heritage with the cultural rights approach, public and private cultural institutions, heritage professionals and professionals in the field of digitalization should:

(a) Regularly review their practices in the light of the cultural rights standards elaborated, inter alia, in the reports of the special procedure mandate holders in the field of cultural rights, in order to ensure respect for the rights of all concerned rights holders;

(b) Adhere to the FAIR and CARE principles for cross-border usability and Indigenous data governance;

(c) Conduct pre- and post-assessments to measure the cultural, social and economic impacts of digital collections through community engagement;

(d) Prioritize open access to digitalized heritage assets;

(e) Ensure that platforms are accessible to all, including neurodivergent persons, persons with disabilities and persons without digital skills, through a user-centred approach.

86. In order to strengthen the coherence of international law frameworks that have an impact on digital heritage, Governments and relevant international organizations, such as UNESCO and WIPO, should:

(a) Give priority, to the extent possible, to the use of open access and the public domain for digitalized heritage assets and require open licensing for future digital collections research;

(b) Ensure that no new rights arise from the non-original reproduction of public domain works;

(c) Initiate changes in copyright law frameworks to support equitable access to digital heritage;

(d) Ensure that common standards and legislation safeguard digital heritage and their digital infrastructures from security risks;

(e) Improve dissemination of data standards and content aggregators;

(f) **Develop monitoring mechanisms to receive complaints and address cases of misuse or misappropriation of cultural heritage in digital forms;**

(g) **Address cultural rights in discussions and studies on digitalization and artificial intelligence.**

87. **The United Nations human rights treaty bodies should:**

(a) **Ask more questions on how digitalization processes affect cultural rights in the field of heritage as part of the monitoring process of States;**

(b) **Ask States about the measures they have taken to ensure that private interests in digitalized cultural heritage do not have negative effects on the cultural rights of individuals and communities.**

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