

EVA

EUROPEAN
VISUAL
ARTISTS

Framing leaves artists with empty frames

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<iframe src="http://
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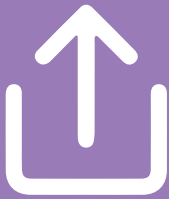
Published.

Framed.

Authors'

Rights gone.

```
></iframe>
```



Published.

❖ *by the artist
or with permission*



Framed.

❖ *without the
artist's permission*



Authors' rights gone.

❖ *unlimited displays
can be made without
the artist's permission*

Framing displays the work directly

A usual hyperlink leads to a source website where – for instance – an image is displayed within its original context. Framing technology however, allows anything to be embedded from a published website somewhere else on the world-wide-web. For the public, this technical detail is invisible. The website visitor perceives no difference between a work displayed from the websites' own resources and a work displayed from a different source.

European Court of Justice Case law

The Svensson (C-466/12), Bestwater (C-348/13) and GS Media (C-160/15) decisions of the European Court of Justice have mistakenly treated all the linking scenarios under the same rule, which denies their factual and legal diversity. Article 3 Directive 2001/29 provides authors with a right of communication to the public. The Bestwater court case leads to factual exhaustion of this right, as soon as the work is displayed for the first time on the internet, if there are no technical protection measures in place.

Factual Exhaustion

With subsequent uses being legal, without further permission the works' inherent economic value can be exploited by any third party without control and with no revenues flowing to the authors. This includes non-commercial usage as well as commercial use and advertisement. It is also a way to divert traffic from source websites and risking moral rights of authors such as the indication of the author or unaltered works. Image search engines apply framing technology often, thus, multiplying these negative effects. Within the redress of the transfer of value image search engines must be included.

Cultural Heritage Digitisation Projects

Granting of licenses to cultural heritage institutions for mass digitisation projects is the core business for the members of EVA. Today, such agreements are being concluded everywhere in the EU. Between collective management organisations for visual works on one side and museums, archives and libraries on the other side there is a fundamental partnership to jointly promote and preserve cultural diversity and to remunerate authors. If a work on a museum website is framed, it is displayed somewhere else and all the information about the museum, pedagogical texts and information is removed.

New-Public-Test

The European Court's decisions deny the right of communication to the public for subsequent uses if two conditions apply. *The first of these conditions is:* the subsequent use is addressing no new public. This so-called new-public-test is in conflict with a large number of pieces of legislation: Articles 11(1)(ii), 11bis(1), 11ter(1)(ii), 14(1) and 14bis(1) of the Berne Convention • Article 8 of the WCT • Articles 2, 10, 14 and 15 of the WPPT • Article 3 of the EU Information Society Directive • previous CJEU decisions • interpretation rules of Articles 31 and 32 of the Vienna Convention on the Law of Treaties.

Technical Protection Measures

The second condition is: the first display is made with the consent of the author; if there is no consent framing would require a further permission by the author to be legal. Technical protection measures and controlled access would clearly demonstrate that there is no consent for framing. However the purpose of Cultural Heritage Institutions' digitisation projects needs to be aligned to their public mission. Failure to introduce a solution to the EUCJ decisions will lead to authors having to restrict digitisation and access to be able to protect their moral and economic rights.

Solution

European legislator to clarify Directive 2001/29

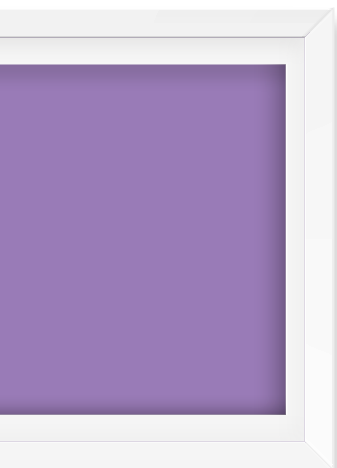
The framing loophole needs to be closed and addressed by the policy makers in order to ensure a better economic environment for authors' rights – especially in the field of visual arts (image sector).



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