

**BÜSING
MÜFFELMANN
& THEYE** RECHTSANWÄLTE
UND NOTARE

BREMEN
FRANKFURT AM MAIN
BERLIN
MÜNCHEN

**WHEN MUSEUMS GO ONLINE
THE LAW & DIGITAL CULTURAL HERITAGE DAY-CONFERENCE**

**DIGITAL DUE DILIGENCE – MUSEUM CODE OF CONDUCT:
PRACTICES AND LEGAL CHALLENGES
2020 DECEMBER 11TH , 15:00 PM PLENARY SESSION**



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DUE DILIGENCE WHEN DIGITIZING - WHAT DOES IT MEAN

BMT

- Goal: Full compliance with the law
- This means:
 - Clearance of all rights relating to the content to be digitized
 - There is no such thing as „good faith“ regarding rights infringements!

LEGAL CHALLENGES ENCOUNTERED IN DIFFERENT DIGITIZATION PROJECTS INVOLVED

- Artifacts protected by copyright law are an issue when digitizing.
 - Most **artifacts** in museums as such are in the public domain, except for modern and contemporary art museums.
 - Way forward: Find out death dates of artists. Works the author of which died more than 70 years ago are in the public domain. The rights of all other works have to be cleared.
 - Some art works/photographs are still protected
 - Way forward: Collecting society, artist or heirs
- Please note: Also **reproduction** photographs even of objects that are in the public domain enjoy a separate layer of protection (copyright or neighboring rights)
 - Way forward: Contracts with photographers
- Other rights to bear in mind:
 - Rights of the owner of items (e.g. lenders)
 - Way forward: Ask lenders
 - Personality rights
 - Way forward: Ask persons on photographs/paintings
 - Sometimes: Trademarks
 - Way forward: Ask rightsholder

“DIFFICULT CATEGORIES”

“Difficult categories” by fact:

- Every day photographs
- Orphan works
- Collective works

WORST CASE: WHAT HAPPENS IN CASE OF AN INFRINGEMENT

Cease and desist

Damages

Legal costs

Reputational damage

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Dr. Katharina Garbers-von Boehm

Attorney, focusing on art law, intellectual property law and information technology related matters

Competences:

copyright law, intellectual property law, art law, tech and e-commerce law, media law (non-contentious and litigation)

Studied law in Heidelberg, Paris and Berlin, 2000 Maîtrise en Droit at the Université Panthéon-Assas, 2004 LL.M International Studies in Intellectual Property (Exeter/Dresden), 2010 PhD on a digitization topic





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