



EUROPEAN

# POLICY BRIEF



## CULTURAL CREATIVITY: DIGITAL SINGLE MARKET – A MAJOR IMPLICIT POLICY FOR CULTURE

The brief summarises the work carried out within the Cultural creativity axis of the CulturalBase project that reflected on the concept of creativity within the context of European societies. It will identify key issues, challenges, questions and the resulting implications for policy makers as well as cultural professionals.

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## INTRODUCTION

Since the second half of the last century, culture has experienced a profound mutation, through which its position and role in social dynamics have been transformed to constitute an essential basis of today's society. Cultural digitization and globalization have radically altered the cultural ecosystem and intensified the relationship between cultural identity, cultural heritage and cultural expression. This transformation has occurred both within the professional cultural sector as well as in society as a whole.

The [CulturalBase. Social Platform on Cultural Heritage and European Identities](#) project, funded by the European Union's Horizon 2020 Research and Innovation programme, aims to identify and analyse the main current debates and controversies as regards culture, in particular in relation to cultural heritage and European identities from a double standpoint, namely, an analytical as well as a public policy perspective. To carry out this work, three axes have been prioritised: cultural memory, cultural inclusion and cultural creativity.

This **policy brief** focuses on **how the changes brought about by digitisation impact culture and the ways heritage is being communicated today, culture's position and role in the social dynamics of today's society and how the Digital Single Market (DSM) strategy may affect this role**. The brief summarises the work carried out within the Cultural creativity axis of the CulturalBase project that reflected on the concept of creativity within the context of European societies. It will identify key issues, challenges, questions and the resulting implications for policy makers as well as cultural professionals.

## EVIDENCE AND ANALYSIS

### Digital culture - more than just creative economy

*"Culture is a memory, collective memory, dependent on communication for its creation, extension, evolution and preservation".* (Foresta, Mergier, Serexhe, 1995)

Culture, communication and information are closely related concepts: through communication our society constantly recreates itself and redefines its collective reality.<sup>1</sup> The right to obtain and share

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<sup>1</sup> Foresta, D. et al., *The new space of communication, the interface with culture and artistic activities*, Strasbourg: Council of Europe, 1995.

Uzelac, A. "[How to understand digital culture: Digital culture – a resource for a knowledge society](#)", in: *Digital Culture: The Changing Dynamics*, ed. Aleksandra Uzelac, Biserka Cvjetičanin (Zagreb: IMO, 2008).

knowledge and the right to create and re-create are central to survival of any culture. The knowledge embedded in our cultural memory, has always been communicated and preserved through our cultural communication structures; the communication technologies represent an important element that enable and facilitate the processes of creating, sharing and preserving our cultural memory. Information is a non-rival good, which is not “spent” in communication with others, but is sustained and “preserved”.

The widespread use of digital technologies has visible impacts on different aspects of our culture. These changes do not happen due to some inner technological logic, the concrete change depends on how society accepts it, to which uses it puts it and how it regulates it.

Since the “creative economy” has become a main focus of EU policies for culture, the cultural sector continuously questions the aims that should be achieved by regulating digital culture. What public policies ensure that society can make the best of digitization in the cultural sector? On the one hand, the Council of Europe considers that “*digitisation must be accompanied by enlightened cultural policies, if opportunities for access and participation, individual and collective creativity are to be fully used*”<sup>2</sup>. On the other hand, the EU policies that provide regulatory frameworks for the development of digital culture mostly focus on the creative economy and on providing opportunities to business sector and consumers. Consequently, the issue of policies for creative economy in Europe and how they navigate the tensions between culture and economy represents a challenge that impacts the entire cultural sector, including heritage institutions and citizens who practice and communicate culture in the digital context, as their digital practices in the cultural heritage domain have impact on issues of identity and belonging.

### **Digital Single Market – will there be a room for culture and not just creative economy?**

As cultural production is becoming more digital, the influence of national political governance seems to be decreasing. Today, complex regulatory frameworks regulate our economic, social and cultural activities and digital context is regulated mostly outside the purview of cultural policies. As the changes brought about by digitisation knows no borders and convergence processes cut across global and national levels, this makes regulation awkward. In the situation of convergence, how can we regulate content that comes from channels that are considered as ‘light broadcasting’? How can we differentiate ‘communication’ and ‘unofficial broadcasting’ in the context of digital networks? What should be regulated and what left free? Nowadays European countries face similar challenges in their attempt to regulate digital culture, and they need to address diverse issues outside of the remit of cultural policies, such as: technological convergence; internationalization and integration of online markets; harmonization and coordination of policies within the EU; and, from the point of view of cultural policies, a challenge related to the prevalence of market logics at the expense of approaches emphasizing the variety of values at stake in the cultural sector.

DSM with its focus on digital and data economy and its technical discourse seems to be a barrier to fully understand its full implications for culture and particularly in the cultural heritage community. Nevertheless, the fact that it has become both a political imperative and an instrument

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<sup>2</sup> [coe.int/en/web/culture-and-heritage/culture-and-digitisation](https://coe.int/en/web/culture-and-heritage/culture-and-digitisation)

structuring the EU, **DSM represents a major implicit policy for culture:** its implications for cultural trade bring questions related to our collective identity<sup>3</sup> with unintended cultural side-effects. In this logic, the consequences of these changes will affect both the cultural and creative sectors as well as the cultural heritage sector and thus merit a better understanding.

Among its objectives, the Europe 2020 strategy includes developing a digital single market in order to generate smart, sustainable and inclusive growth in Europe. The DSM<sup>4</sup> remit is high quality digital service throughout the EU. Aiming at creating a single EU regulatory space, its main focus is on: creating the adequate conditions and a levelled playfield for digital networks and innovative services to flourish; ensuring that consumers and businesses have better access to digital goods and services across Europe; and maximising the growth potential of the digital economy. As digital and creative economy are interlinked, the EU priorities concerning DSM include also the development of a creative economy. This represents a complex framework within which the development of online services and opening up of cultural content should be looked at. The opening up of access to cultural content is expected to contribute towards a vibrant European digital single market and Europeana, the EU flagship cultural project, is expected to bring benefits to EU society through smart use of ICT and revealing information that promotes cultural diversity, creative content and accessibility of European cultural heritage online. Whereas, the DSM emphasises the business side of cultural content provision and considers that an enhanced use of digital technologies can improve citizens' access to information and culture and improve their job opportunities, end-users' practices and participatory culture are left out of its focus. Indeed, issues related to cultural diversity are seen in a simplistic way - from the distribution point of view where more content can reach more people - and the market is only a key mechanism to this end.

In the context of current EU reality that faces regulatory fragmentation and fragmented markets in the content sector where rights have to be negotiated with 28 countries, simplifying such reality may represent a significant step forward for the cultural sector, providing that balance is stricken between the market logic and cultural values. From the point of view of the cultural researchers and professionals participating in the CulturalBase project, the Digital Single Market is understood as an attempt to implicitly reconfigure a cultural space in Europe, as the EU can be described as a set of territories with their particular cultural identities. DSM has a relevance on how we manage cultural life on those territories. This *“involves addressing significant tensions between the territorial principle and the supranational market principle”*<sup>5</sup>. The changes that DSM envisions will have major impacts on the business models in the cultural sector and the cultural sector has numerous questions regarding this major implicit cultural policy.

Who benefits from the proposed reforms? Is it about Trans-Atlantic product trade and big aggregators of content? Which stakeholders will benefit? Will the interests of larger and smaller EU countries in any future reforms be balanced? How DSM affects cultural and heritage sector that should preserve and enable to citizens access to culture and its knowledge resources? What place will be left to cultural policies in regulating cultural space at national and EU levels when we know that digitisation and use of digital technologies has had visible impacts on cultural sector services and business models?

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<sup>3</sup> See CulturalBase Vision Document. [The Digital Single Market](#)

<sup>4</sup> [A Digital Single Market Strategy for Europe](#) - COM(2015) 192 final

<sup>5</sup> See CulturalBase Vision Document. [The Digital Single Market](#)

The central issue of DSM for the cultural sector is **IPR reform** that is trying to achieve harmonized copyright regime in the EU. As this will have implications for rights' holders, intermediary institutions (such as heritage institutions) and end-users, a key question is - who will be advantaged and who will be disadvantaged? There is a visible divide among copyright stakeholders with, on the one hand, end-users and institutional users (e.g. libraries, archives, universities) in favour of a system based on openness, fairness and solidarity, and authors, collective management organizations, publishers and producers in favour of the current copyright rules, on the other. As stated in the Vision document "*The Digital Single Market should strive to simplify existing regulations and also ensure that existing public cultural resources remain openly accessible to citizens, as the right to obtain and share knowledge and the right to create and re-create are central to survival of any culture. These arguments, of course, may come up against the resistance of rights holders.*"<sup>6</sup>

For the cultural sector, aspects of particular importance within IPR reform include: **exceptions to copyright rules** relevant for the digitization of heritage institutions' collections; and **the remuneration for the use of copyright protected works** for artists and cultural and creative industries.

Considering that the cultural sector is expected to be a catalyst for creativity and to contribute to EU economy and growth in jobs and, at the same time, preserve and enable citizens' access to culture, it would be important that EU IPR regulation supports appropriate **business models** that provide **for the digitization of collections' holdings** in the cultural public sector as well as support of **users' rights for use and reuse of digital heritage content**. For the cultural heritage sector the important question is - how should IPR be conceptualised in the digital age that would ensure preserving robust public domain and users' rights from analogue times? The existing system of copyright clearance is complicated and time consuming. Content belonging to the 20th century culture is either under copyright regime or falls in the category of the orphan works. The unclear status of significant part of 20th century's heritage collections that have not yet entered into the public domain is an impediment for providing digital access to it. Such content is often not digital and frequently out of distribution in its analogue form. Its unclear status (orphan works) represents a barrier to mass digitisation projects or free reuse of such objects, if digitised. Re-balancing copyright requires at least some reform as demanded by end-users and institutional users, most importantly a more harmonized and flexible system of exceptions and limitations. The EU's IPR reforms consider some exceptions and limitations for educational use. The CulturalBase stakeholders questioned whether these exceptions and limitations should be called users' rights - as opposed to authors' rights - to ensure a balance among different stakeholders.

### **Will microenterprises and artists benefit from the reforms?**

For many cultural microenterprises IPR is not a system that they consider to be their main business model, as enforcing it via law suits is too expensive for them.

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<sup>6</sup> CulturalBase Vision Document. [The Digital Single Market](#)

Will **users' rights** and the free access to culture and sharing be preserved? In considering providing access to cultural content to users, DSM emphasises the business side of cultural content provision, leaving users' creative participatory practices out of its focus. The DSM focus is on providing "consumers" with better access to digital goods and services across Europe. This includes the issue of **portability of content** paid for in the country of origin that has been put forward with the aim of lifting geographic limits (geoblocking) to consumers and providing consumers more opportunities and choices.

Considering the DSM logic that favours the supranational market principle over the territorial principle, questions arise regarding **the position of small countries in the EU's DSM**, as well as, the possibility to use **cultural arguments supporting a special position of cultural products within the DSM**. Will we still be able to argue for the special position of cultural products in the digital single market? Cultural commerce is different from "regular" commerce - selling cultural products (e.g. books) to other countries is not the same as selling other products (e.g. shoes), as there are different barriers for this, including, for example, the language barrier. Will small countries benefit? The cultural industries' production capacities of the smaller EU Member States is fundamentally different than that of the larger EU Member States, thus, their ability to sustain national cultural production and contribute to European cultural diversity might be hindered if the logic of the DSM favouring only economic benefits prevails over the accepted principles of European cultural policies including national IPR regulation. It would be important to ensure that cultural policy makers participate as interlocutors in conversations about DSM reforms to question consequences the reforms have on national cultural sectors and introduce cultural discourse and argumentation that would go beyond economic issues and find strong arguments for broader view of culture – not just as a commodity but as a public good, as well.

The EU has not been involved in formulating its explicit common cultural policy, as this was considered politically unacceptable in the context of the implementation of the subsidiarity principle. However, other explicit public policies that the EU has developed have a concrete impact on the cultural sectors within both the EU and within Member States. Culture and digital culture are becoming closely interlinked. In the situation where cultural production is becoming more digital, DSM represents a major implicit policy for culture in the digital age. Thus, if we still hold on to the expectations that digitization will democratise and open access to heritage as a social resource, it is important to make room for cultural policies and cultural arguments when decisions are made about DSM, as today we cannot talk about culture as something separate from the digital environment that underpins it.

## POLICY IMPLICATIONS AND RECOMMENDATIONS

Based on the evidence and analysis presented above, some recommendations are provided aimed at a range of policy-makers at European, national, regional and local levels.

1. Evidence-based policies are needed and they should be supported by systematic research and monitoring of issues and developments in digital culture. As DSM represents a major agenda of change for the cultural sector this merits that systematic research be undertaken in order to provide explanations and evidence for cultural policy makers when considering DSM reforms. Such monitoring should include developments coming from the EC and EP, as well as, responses to these deriving from stakeholder groups, lobbies and the wider policy community.

**We recommend that related research include: researching the interests that are at play in this field; providing arguments for making culture a special case in the context of market that is not about culture; proposing alternative visions and alternative ways to disseminate non-commercial cultural content and proposing sustainable business models for survival of alternative players in the market; researching consequences of DSM on cultural diversity across territories. Cultural policy-makers should use such research results as a base for framing discourse that informs policy agendas; keep in focus public sphere dimension of digitisation; ensure that the proposed policy agendas foster creative communities and commons and not only commercial cultural content.**

Expert discourse about DSM is a key barrier that prevents cultural professionals from understanding it and engaging with the process of ongoing reform. “Translation” into simple understandable arguments and language is needed to ensure that relevant questions are asked about a process and interests that come into the play.

2. The main issue discerned within the proposed DSM reforms that affect the cultural sector relates to the tensions between the territorial principle (the cultural policies domain) and the supranational market principle (DSM logic). This, together with the tensions between values of culture and economy and the relationship between cultural and digital policy making, represents an obstacle for building better understanding and synergies between them.

**We recommend that, in the elements of DSM that concern the creative economy and cultural issues, greater focus should be placed on striking a balance between culture and economy, as culture is not just a commodity, but equally a public good as well. It should be considered if a ‘level playing field’ - a concept that is about fairness based on playing by the same set of rules (market rules) – promotes cultural diversity and enables the aspects of culture that are not about profit-making to prosper in the digital environment.**

3. To be able to address development of digital culture and heritage, and before changes envisioned by DSM take effect, cultural policy-makers should address the issue related to prevalence of a market logic at the expense of variety of cultural values, and set the goals they want to reach to be able to defend those goals in discussions concerning DSM reforms.

**We recommend that a relevant cultural policy goal should ‘creating an enabling environment for digital culture and for empowering citizens, within which issues of long-term sustainability and viability of digital cultural services must be address.**

## RESEARCH PARAMETERS

[CulturalBase documents](#) used for this Policy brief include:

Matías Zarlenga & Arturo Rodríguez Morató, “The Digital Single Market: Synthetic Report on Cultural Creativity”.

The literature and on-line resources quoted in the brief.

## PROJECT IDENTITY

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**WEBSITE**

<http://culturalbase.eu>

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**FURTHER READING**

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