Accessibility and Open GLAM

Andrea Wallace

Introduction

The quest to make artworks accessible using new technologies is not new, nor has it only been led by heritage institutions.[1] Disability activism, antidiscrimination legislation and human rights treaties, technological innovation, and increased awareness of disabled audiences and their legal rights to participate in culture have accelerated institutions' efforts to translate visual works to tactile, haptic, aural, or other sensory experiences.

While this book examines how copyright can impede these acts, heritage institutions are not without recourse. Reproductions might be so transformative that questions of infringement can be set aside.[2] In addition, institutions can avoid copyright entirely by translating public domain works. Yet access to those translations is not always guaranteed. First, people with visual impairments (PVI) must physically visit an institution to participate in most accessibility programmes.[3] This practical limitation excludes less-mobile and non-local PVI audiences. Second, although technologies enable the rapid transfer (and printing) of digital data worldwide, another barrier arises when a *new* copyright is claimed in the newly-accessible work, which impedes access and reuse by digital PVI communities.[4] Finally, despite the growing number of institutions joining the Open GLAM (Galleries, Libraries, Archives, and Museums) Movement[5] to release data for public reuse, few acknowledge disabled audiences within the scope of their policies. In general, website terms categorically exclude any acknowledgement of online PVI audiences, let alone how they should legally access and reuse digital content (in standard formats) according to disability exceptions. Even fewer meet the W3C Web Accessibility Guidelines.[6] Thus, the need to reconsider and more holistically integrate disablility access in museums onsite *and* online is both apparent and long overdue.

---

[1] See Yvonne Ericksson, 'What Is the History of Tactile Pictures?' in Elisabeth Salzhauer Axel and Nina Sobol Levent (eds), *Art Beyond Sight: A Resource Guide to Art, Creativity, and Visual Impairment* (Art Education for the Blind, Inc and AFB Press of the American Foundation for the Blind 2003).

[2] Moral rights concerns might be settled by, for example, using historic practices signalling the new work's connection to its source: "After [artist's name]".

[3] Exceptions include deaf and hearing-impaired tours made accessible to non-local audiences through Facebook Live. See Elena Goukassian, 'Metropolitan Museum Aims for Accessibility with Sign Language Tours on Facebook Live' *Hyperallergic* (18 April 2018) <https://hyperallergic.com/436294/metropolitan-museum-accessibility-asl-facebook-live/> accessed 2 April 2020.

[4] Whether that copyright claim is valid is a legal question, the outcome to which might depend on variations between the source and final format, decisions made before, during, or after the work's capture, or even the technology used.

[5] Douglas McCarthy and Andrea Wallace, 'Survey of GLAM Open Access Policy and Practice' (*Google Docs*, 2018) <https://docs.google.com/spreadsheets/u/1/d/1WPS-KJptUJ-o8SXtg00llcxq0IKJu8eO6Ege_GrLaNc/edit?usp=embed_facebook> accessed 2 April 2020.

[6] 'Accessibility - W3C' (*Web Accessibility Initiative*) <https://www.w3.org/standards/webdesign/accessibility#wai> accessed 2 April 2020.

This chapter explores accessibility's potential against copyright's barriers and incentives to analyse the impact on access for PVI communities. It argues that while legal measures currently set *minimum* compliance standards and provide copyright exceptions for in-copyright works and accessibility, they fail to adequately consider institutional obligations around out-of-copyright works and accessibility. In doing so, the chapter analyses accessibility initiatives and sensory art projects in order to critique IP and access policies in practice. The analysis reveals a risk that accessibility programmes and legal measures could perpetuate a climate of *in*accessibility via the new IP arising, which positions accessibility as an "opt in" rather than default approach. To counter this risk, the sections below are framed by questions that scholars, lawmakers, the GLAM sector, and their plural audiences should be – or already are – asking about sensory art projects, IP, and open access. These include:

- What is *access* (which implies exclusion is default) in an age of greater inclusivity? How might this question be answered differently by the law than by the GLAM sector, or even a digital audience, depending on the audience? And how might "open" in combination with open access therefore become problematic depending on those context(s)?
- As applied to visual art, what is an *accessible format copy* in an age of rapidly developing technologies? And how do we ensure that equity, and not just equality, is extended through different iterations of an artwork according to need?
- Finally, how might legal exceptions or recommendations put forward by this book apply to the *new* works generated by GLAMs, especially with regards to translations of public domain works?

Within this inquiry themes emerge around the ableist nature of visual culture, communication, copyright, and access. These questions and themes guide the discussion and expose how visabled assumptions are deeply embedded in IP management and access to heritage. The chapter concludes with workable suggestions for institutions, lawmakers, and the plural public and recommends gradated access policies more aligned with social inclusion goals.

Aiming for Accessibility

Access in an Age of Greater Inclusivity

Before proceeding, we must discuss terminology. This chapter uses the term visabled to describe ableist conditions resulting in the exclusion of PVI (and other disabled) audiences, both onsite and online. To be clear, this is no attempt to introduce a new word into the discourse of disability. Rather, "visabled" serves a narrow purpose for the argument, which seeks to capture and confront the specific kind of ableism impeding access to visual culture embedded in accessibility initiatives *and* copyright due to historical misunderstandings of blindness.[7] It is also because more neutral phrases like "non-disabled", "sighted", or "non-

[7] See "The Tenacious Life of the Hypothetical Blind Man," in Georgina Kleege, *More Than Meets the Eye: What Blindness Brings to Art* (Oxford University Press 2018) 14–28.

PVI" are generally imperfect and overbroad: imperfect, because people can assume PVIs to be non-PVIs when the disability is not (visually) apparent,[8] and overbroad, because non-PVIs are not always non-disabled. Indeed, non-PVIs could have a cognitive or learning disability affecting their perception of visual information.[9]

As always, there is a danger in reducing a rich spectrum of individuals to binary categories. David Bolt argues such a reduction fortifies a homogeneity inconsistent with a breadth of people from varied demographics, potentially with more than one disability.[10] This chapter's use of "PVI" and "visabled" thus confronts and reminds us of the binaries perpetuating the designs of many cultural and legislative initiatives, and it captures the specific visual ableism reflected in mainstream societal conditions. This ableism, for example, assumes: an apparently- or partially-sighted person might sufficiently perceive a visual work; visual perception is the only or best method for meaningful consumption of visual art; or non-visually-impaired persons are best placed or equipped to lead PVI accessibility projects.[11] In reality, research shows accessibility initiatives are of value to PVI audiences in addition to wider disabled and non-disabled audiences through more enriched learning experiences[12] and for increased awareness of disabled communities.[13] If access is the goal, intersectional and inclusive principles must drive that process.

As we shall see, visabled regimes prevent our society from realising the potential of enabling environments, which now encompass the digital realm. But despite the technologies available, accessibility has yet to embrace its digital potential and move past temporary exhibitions or periodic programmes designed for PVI audiences who are local, more mobile, or have support.[14] Online, building accessibility information remains separate from general visitor information, and tour information for disabled visitors remains separate from general tour information. Such webpages may exist separately for functional efficiency: screen readers are better able to locate relevant information than if displayed among block text. However, few institutions' websites are web accessible.[15]

---

[8] See Georgina Kleege, *Sight Unseen* (Yale University Press 1999).

[9] For a discussion of psychosocial disabilities and accessibility, see Paul Harpur, *Ableism at Work: Disablement and Hierarchies of Impairments* (Cambridge University Press 2019); Paul Harpur, Ursula Connolly and Peter Blanck, 'Socially Constructed Hierarchies of Impariments at Work: Example of the Austrian and Irish Workers' Access to Compensation for Injuries' 27 Journal of Occupational Rehabilitation 507.

[10] David Bolt, 'Terminological Typology and the Social Model of Disability' (2005) 20 Disability and Society 539, 539.

[11] Many examples can be found in Kleege (n 7); Amanda Cachia, 'Talking Blind: Disability, Access, and the Discursive Turn' (2013) 33 Disability Studies Quarterly 35.

[12] Fiona Candlin, 'The Dubious Inheritance of Touch: Art History and Museum Access' (2006) 5 Journal of Visual Culture 137, 138; Catherine Kudlick and Susan Schwiek, 'Collision and Collusion: Artists, Academics, and Activists in Diaglogue with the University of California and Critical Disability Studies' (2014) 34 Disability Studies Quarterly; Georgina Kleege and Scott Wallin, 'Audio Description as Pedagogical Tool' (2015) 35 Disability Studies Quarterly.

[13] Kleege (n 8); Cachia (n 11).

[14] Exceptions are discussed *infra* in Making Art Accessible. For a review in the law's responsibility here, see Paul Harpur, 'From Universal Exclusion to Universal Equality: Regulating Ableism in a Digital Age' 40 Northern Kentucky Law Review 529.

[15] Lawsuits are increasing against US galleries with non-accessible websites in violation of the Americans with Disabilities Act. See Eileen Kinsella, 'More Than 75 New York Galleries Are Slammed With Lawsuits for Allegedly Violating the Americans With Disabilities Act' (*artnet News*, 29 January 2019)

Moreover, overbroad terms prohibiting any use of text, data, and images fail to account for user rights and general copyright exceptions, let alone exceptions for disabilities. These visabled systems carry the segregated approaches of early exhibitions over to contemporary digital spaces, thereby sustaining the creation of separate spaces and experiences for PVI and visabled audiences.[16]

Let us consider this in context with the Tate and British Museum.[17] The Tate Gallery hosted the first major touch exhibition in the UK in 1976, but did not allow PVI visitors to bring sighted friends.[18] At the time, visitors noted difficulties from navigating the exhibition to finding objects they were meant to touch.[19] Today, the Tate's onsite programme considers visitors who are blind and visually-impaired, deaf and hearing-impaired, have learning disabilities, dyslexia, autism, or require mobility provisions.[20] This information is online, but Tate's digital space is used to advertise onsite initiatives rather than reach digital disabled audiences.

Parameters around digital access are further compounded by IP: copyright is claimed in all content, and digital surrogates of public domain works are released © Tate, CC BY-NC-ND (3.0 Unported).[21] While the terms permit reproduction "for the non-commercial purposes of research, private study, criticism and review, or for limited circulation within an educational establishment," they prohibit "inaccurate or distorted reproduction, colour treatments, alterations or adaptations of website content" and "unauthorized text/data mining of website content and metadata."[22] Tate's terms incorporate fair dealing and select UK copyright exceptions, but disability access either is not one or, at the least, conflicts with many reuse restrictions designed around visabled engagement.

In 1990, the British Museum installed the first UK *permanent* touch tour using objects in the Egyptian and Graeco-Roman sculpture galleries,[23] and added the touch gallery outside the Parthenon Galleries in 1998.[24] PVI communities and their families planning visits will find only basic information and no photos of either tour online.[25] The Egyptian tour is more

<https://news.artnet.com/art-world/dozens-of-new-york-galleries-slammed-with-lawsuits-for-ada-compliance-on-websites-1450276> accessed 2 April 2020.

[16] See Kevin Hetherington, 'Accountability and Disposal: Visual Impairment and the Museum' (2003) 1 Museum and Society 104.

[17] Programmes began prior to the Disability Discrimination Act 1995. See also Anne Pearson, 'Please Touch: An Exhibition of Animal Sculptures at the British Museum' (1984) 3 Museum Management and Curatorship 376.

[18] Hetherington (n 16) 104–105.

[19] ibid.

[20] Tate Modern, 'Accessibility' (*Tate*) <https://www.tate.org.uk/visit/tate-modern> accessed 2 April 2020.

[21] Tate, 'Website Terms of Use' (*Tate*) <http://www.tate.org.uk/about-us/policies-and-procedures/website-terms-use> accessed 2 April 2020.

[22] ibid.

[23] Hetherington (n 16) 104–105.

[24] ibid 111.

[25] 'Egyptian Touch Tour' (*British Museum*) <https://www.britishmuseum.org/learning/access2/egyptian_touch_tour.aspx> accessed 28 June 2019; 'Room 18: Greece: Parthenon' (*British Museum*) 18 <https://www.britishmuseum.org/visiting/galleries/ancient_greece_and_rome/room_18_greece_parthenon.aspx> accessed 28 June 2019. Google Arts & Culture Street View provides views of the Egyptian touch tour, but ends outside the Parthenon Galleries. Street View: British Museum' (*Google Arts & Culture*) <https://artsandculture.google.com/project/street-view> accessed 2 April 2020.

accessible: users can download a large-print guide, a Braille book with raised drawings, and the tour's audio files.[26] But while the Museum's *Sketchfab* hosts 254 3D models for download CC BY-NC-SA,[27] no mention is made on the Egyptian Touch Tour webpage that four of the nine sculptures[28] – or any other models for that matter – are available for download on *Sketchfab*.[29] The CC license reserves commercial rights in 3D scans, which makes downloading and ordering a 3D print from a commercial printer difficult. Few 3D-printed replicas are available on *The British Museum Shop Online*.[30] This approach reinforces material assumptions about accessibility and physical sites of inclusion, and misses an opportunity to enable offsite engagement through use of the Braille and audio guides with 3D-printed models. That said, translating onsite initiatives to online audiences will not always be practical. With the Egyptian Touch Tour, the pieces are mostly there, but the Museum's execution fails to comprehensively consider and connect the dots for digital PVI communities.

In addition to their operational responsibilities, institutions must adapt polices to legal and cultural developments as necessary. Consequently, institutions operate within complicated a set of legal norms, interpretations, and customs that can vary from one institution to the next.[31] However, some legal measures, like human rights and international law, bind only state parties. For example, states party to the 2006 UN Convention on the Rights of Persons with Disabilities[32] must ensure disabled persons can enjoy access to cultural materials in accessible formats and participate in creative, artistic, and intellectual production for individual and societal enrichment.[33] Notably, Article 30 obligates states to "take all steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials."[34] Although signatories number 161, comprehensive reform to satisfy Article 30 has been slow to materialize.[35] Nor has the convention infiltrated institutional operations similar to other conventions, like the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transport of Ownership of Cultural Property.[36]

---

[26] No online equivalent exists for the Parthenon installation.
[27] Models are released under a CC BY-NC-SA license. '3D Models by The British Museum (@britishmuseum)' (*Sketchfab*) <https://sketchfab.com/britishmuseum/models> accessed 2 April 2020.
[28] This includes: (1) Seated statue of Amenhotep III (about 1390-1352 BC, granodiorite); (2) Lion statue of Amenhotep III (about 1390-1352 BC, red granite); (2) Sarcophagus (about 2400 BC, red granite); and (9) Colossal scarab beetle (about 200-100 BC, quartz diorite). See ibid.
[29] 'Egyptian Touch Tour' (n 25).
[30] 3D printed replicas are priced around £200. 'Sculpture - Replicas' (*British Museum Shop Online*) <https://www.britishmuseumshoponline.org/sculpture-replicas/sculpture.html?p=1> accessed 2 April 2020.
[31] See Andrea Wallace and Ronan Deazley, 'Display At Your Own Risk' <http://displayatyourownrisk.org/> accessed 2 April 2020.
[32] UN Convention on the Rights of Persons with Disabilities (2006).
[33] Article 30(1)-(2).
[34] Article 31(3).
[35] Other chapters explore implementation gaps. See also Julia Hoffmann and Aliaa Dakroury, 'Disability Rights between Legal Discourses and Policy Narratives: An Analysis of the European and Canadian Frameworks' (2013) 33 Disability Studies Quarterly.
[36] See Patty Gerstenblith, 'The Meaning of 1970 for the Acquisition of Archaeological Objects' (2013) 38 Journal of Field Archaeology 364.

As the introduction describes, competing interests in favour of IP protection can frustrate access-driven goals. The Marrakesh Treaty also aims to improve access to in-copyright (textual) works.[37] States party to the Treaty must implement copyright exceptions for making accessible format copies and allowing their transfer across borders,[38] but a 2017 WIPO scoping study on disability access found states "varied significantly in their coverage" and "have taken a diverse set of approaches to accessibility and copyright."[39] Some seem designed to protect the rightsholder's market for commercialization in PVI markets, rather than to ensure uninhibited inclusive access. For example, the UK excludes visual impairments that may be corrected by contacts or glasses, and only authorised entities are permitted to make accessible format copies and extend access for personal use.[40] The law therefore distinguishes between valid and invalid visual impairments and mandates reliance on physical public institutions for limited forms of copying, instead of empowering PVI communities to design solutions themselves. These distinctions are all the more disabling when applied to access around reproductions of public domain works.

Meanwhile, the need to find financial support for operations can entrench approaches that prioritise commercialisation above open access goals. National disability rights legislation require compliance, but such legal measures, if followed, set a floor for minimum conduct rather than a meaningful standard toward holistic inclusion. Rarely is such legislation accompanied by financial support.[41] Consequently, institutions can be hesitant to waive rights in material perceived to generate revenue, like copyright in digital surrogates of public domain works.[42] More complex projects may be realized through private funders, specific funding schemes, or third-party partnerships, with each setting its own access parameters. For example, funding may carry obligations to generate revenue through IP exploitation[43] or, conversely, to openly license data.[44] IP can attract partnerships bringing the technology and know-how, but programmes risk having access defined by third-party interests, as well as transplanting non-diverse and visabled assumptions into projects for PVI audiences.[45] Accessibility requires, but fails to receive, adequate and sustainable government investment to enable holistic integration for more inclusive missions.

---

[37] Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled adopted (2013).
[38] The Treaty was implemented and subsequently transposed across EU Member States via Directive 2017/1564 and Regulation 2017/1563.
[39] Blake Reid and Caroline Ncube, 'Scoping Study on Access to Copyright Protected Works by Persons with Disabilities' (World Intellectual Property Organization 2017) 2.
[40] Copyright Designs and Patents Act 1988.
[41] In addition to austerity measures gutting cultural funding worldwide, WIPO reported "a general lack of government support for people with disabilities." Reid and Ncube (n 39) 4. The Parthenon touch gallery was funded through private American donors, Lawrence and Barbara Fleischman. Hetherington (n 16).
[42] Simon Tanner, 'Reproduction Charging Models & Rights for Policy Digital Images in American Art Museums' (2004) <http://www.kdcs.kcl.ac.uk/fileadmin/documents/USMuseum_SimonTanner.pdf>.
[43] See Adrian Harvey, 'Funding Arts and Culture in a Time of Austerity' (Arts Council England and New Local Government Network, 2016).
[44] See Effie Kapsalis, 'The Impact of Open Access on Galleries, Libraries, Museums, & Archives' (Smithsonian Institutes 2016).
[45] Kleege (n 7) discusses visabled audiences misappropriating Braille with examples of the Alabama state quarter and the FDR Memorial. Kleege notes the quarter's Braille was impossible to read at such a tiny size, and unnecessary, since coins are already recognizable by touch, weight, and size. For the FDR Memorial, artist Robert Graham used Braille on bronze bas relief plaques four- to five-times larger than

As discussed above, institutions are not always at liberty to set broad open access policies around their own IP. GLAMs are bound by national copyright and disability rights legislation when managing collections and extending access. But the core of this latter activity is rooted in contract law and institutional policy-making. More often than not, public domain collections are treated as sources of revenue generation, rather than ripe for a reproduction agenda prioritizing access and inclusive design. While claiming copyright may seem antithetical to the purpose behind the work's translation, it is often supported by law,[46] especially with format shifts from 2D to 3D, or vice versa.[47] And without the economic benefits envisioned by copyright, many complex projects with third-party partners risk never being realized. In this way, IP incentives can pit greater inclusivity against the commercial market of potential PVI (and other) consumers, shaping how disabled audiences are able to participate in culture and creative industries.

Translations (and Copyright) in an Age of Rapidly Developing Technologies

So far, we have considered broader operational and legal conditions producing a visabled system of accessibility, onsite and online. We will now highlight concrete aspects of copyright and disability exceptions incompatible with holistic access.

To begin with, our normative legal notions of what constitutes a reproduction, adaptation, translation, communication, and even what "value" is within an IP framework have been shaped by ableist assumptions about a functioning society. These notions have been historically defined and measured by systems founded upon sighted experience.

Copyright exceptions can be similarly underscored by ableist assumptions, especially when designed to accommodate a single type of disability, medium, use, or specific act. The end result protects the exclusionary right secured to the rightsholder for a small market at the expense of more inclusive access and cultural enrichment.[48]

A visabled copyright system is disabling to non-visual audiences, leads to further restricted access, and undermines the potential of our collective cultural attainment. Indeed, the nature of art and inclusive cultural growth resists rigid forms of exclusivity. Art celebrates multiple perspectives, and technology now enables low-cost reproduction in various digital formats. Yet the public remains largely dependent on heritage institutions to reproduce and disseminate works in their collections. The combination of ownership of the object with a copyright claim in the reproduction reduces the potential spectrum of new perspectives to one produced by the host institution. Nor is there much opportunity for independent public creation. As Georgia Kleege argues, the failure to embrace and value disability with its

standard Braille with uneven spacing, placing some plaques higher than seven feet. Graham's intent was to invite touch and communicate graphic qualities of layering using relief and Braille. Kleege asks: "invitation to whom?" Kleege (n 7) 46–49.

[46] Thomas Margoni, 'The Digitisation of Cultural Heritage: Originality, Derivative Works and (Non) Original Photographs' (2014) Institute for Information Law (IViR) ID 2573104.

[47] For example, this might include 2D paintings captured by 3D scanning, or 3D objects captured by 2D photography. Issues arise when the output fails to satisfy the legal threshold of creativity. See Wallace and Deazley (n 31).

[48] Lionel Bently and others, *Intellectual Property Law* (5 edition, OUP Oxford 2018) 259.

learning benefits for all reinforces a monolithic experience of pictorial representation.[49] This monolithic experience is further bolstered by the law.

This critique is especially relevant to the suitable accessible format copy.[50] First, what *is* suitable and to whom? UK legal exceptions permit reproduction for personal and educational use and adaptation only to the extent necessary to enable the disabled person to enjoy a work to the same degree as someone without a disability.[51] With respect to moral rights, under the EU Directive a copy must also respect "the integrity of the work or other subject matter."[52] These visabled framings are problematic. Not only do they suggest a false equivalence, but a visabled legal system will adjudicate those boundaries if infringement is alleged. This can lead to further marginalization of those who cannot participate according to ableist understandings of access and suitable adaptation.

For states implementing the commercial availability clause, like the UK,[53] further hurdles arise: if the accessible format copy is commercially available on reasonable terms that provide a level of access enabling enjoyment, the exception no longer applies.[54] Those seeking access must purchase the commercially-available version. Importantly, a limitation exists around profit: those who make accessible copies of in-copyright works cannot profit by selling or making them available for hire.[55] They may recoup the cost of creation and supply, but no more.[56] Importantly, if the source work is in the public domain, this restriction will not apply and a market price may be set for securing a copy.

This raises the question posed in the introduction: how will legal exceptions apply to *new* works generated by GLAMs? Here we are faced with a Catch-22: in making the new work, copyright might be claimed in some component of the process, or in the end result. Thus, how might such material be subject to the *same* legal exceptions that apply to the in-copyright works in collections? Moreover, new works in accessible formats may be sold or licensed to generate revenue, thereby satisfying the commercial availability clause in jurisdictions like the UK. This combination of ownership of the source object and the act of making and licensing the accessible format copy could mean that PVI access is both extended and restricted simultaneously. With commercial partnerships on the rise, this scenario is already playing out.

As detailed in the previous chapter, the Van Gogh Museum worked closely with Fujifilm Belgium to develop an innovative technique combining a 3D scan of a painting with a

[49] Kleege provides the example of using tactile sensation to depict a Degas with pictorial clarity, rather than to communicate the painting's hazier qualities. Kleege (n 7) 54.
[50] Marrakesh Treaty, Art. 3(1).
[51] CDPA 1988, s. 31F(5).
[52] Directive 2017/1564, Art 3(2).
[53] Sections 31A, 31B and Schedule 2, paragraphs 3A and 3B of the CDPA contain "commercial availability" restrictions that require the beneficiary to verify before copying that copies in the same accessible format are not already available on the market.
[54] CDPA 1988, s. 31A(2)(c), s. 31B(2), s. 31B(6).
[55] CDPA 1988, s. 31B(10).
[56] ibid.

high-resolution print.[57] Nine works have been reproduced and access is extended to onsite PVI communities through the *Feeling Van Gogh* programme. This multisensory experience allows groups of up to 12 people to book a two-hour tour and workshop, which includes 3D-printed paintings, as well as sound and scent elements and 3D miniature models of scenes, like van Gogh's bedroom.[58] As discussed in the previous section, such access must be examined against parameters set to generate revenue. *Feeling Van Gogh* costs €120 in addition to a €19 admission ticket for each participant (carers receive free admission).[59] The 3D replicas are available in limited editions of 260,[60] and available for purchase in the giftshop for around €25,000.[61] The Museum extended its business model in 2018 to offer pop-up museums with gift shops in North American shopping malls.[62] Visitors may now purchase a 3D replica at the reduced price of $17,750.[63] The *Feeling Van Gogh* experience is not offered at pop-up museums.

Generating revenue for public sustainability is imperative to support mission-driven goals. In addition to reduced public funding, sources of private funding have received increased scrutiny. Many institutions are renaming galleries and ending long-term partnerships with contentious private funders, such as the Sackler Family.[64] Indeed, in 2018, the Van Gogh Museum ended its 18-year partnership with the Royal Dutch Shell oil and gas company.[65] With reduced support, institutions must explore new business models and opportunities for income. The irony is that through copyright, accessible format copies of public domain works become a new exploitable product, rather than used to increase access and participation as envisioned by disability rights treaties. Given this approach, Bess Williamson warns institutions against presenting projects as empowering while downplaying the commercial interests in profit.[66] In our case, this includes profit from not

---

[57] Van Gogh Museum, 'Van Gogh Museum Edition Collection' (*Van Gogh Museum*) <https://www.vangoghmuseum.nl/en/business/van-gogh-museum-edition-collection> accessed 2 April 2020.

[58] 'Feeling Van Gogh - Van Gogh Museum' <https://www.vangoghmuseum.nl/en/whats-on/feeling-van-gogh?v=1> accessed 2 April 2020.

[59] 'Blind and Partially-Sighted Visitors' (*Van Gogh Museum*) <https://www.vangoghmuseum.nl/en/plan-your-visit/accessibility/blind-and-partially-sighted-visitors> accessed 2 April 2020.

[60] Van Gogh Museum (n 57).

[61] Sarah Webb, 'Van Gogh Copies in 3D Look Almost Real, Cost 25,000 Euros' *Reuters* (13 September 2013) <https://uk.reuters.com/article/us-art-vangogh-copies-idUKBRE98C0QZ20130913> accessed 2 April 2020.

[62] Van Gogh Museum, 'Van Gogh Museum Editions Pop-up Tour' (*Van Gogh Museum*) <https://static.vangoghmuseum.nl/en/business/van-gogh-museum-editions-pop-up-tour> accessed 2 April 2020.

[63] ibid.

[64] This includes the Louvre, National Portrait Gallery, London, Tate Modern, and Metropolitan Museum of Art. See Elizabeth A Harris, 'The Louvre Took Down the Sackler Name. Here's Why Other Museums Probably Won't.' *The New York Times* (18 July 2019) <https://www.nytimes.com/2019/07/18/arts/sackler-family-museums.html> accessed 2 April 2020; Naomi Rea, 'As a Wave of UK Museums Cut Ties With the Sackler Family, One Small London Gallery May Have Led the Way' (*artnet News*, 22 March 2019) <https://news.artnet.com/art-world/south-london-gallery-rejected-sackler-money-1495687> accessed 2 April 2020.

[65] Martin Bailey, 'Shell Sponsorship Deal with Amsterdam's Van Gogh Museum Ends' <http://theartnewspaper.com/news/shell-sponsorship> accessed 2 April 2020.

[66] Bess Williamson, 'Access + Ability, Cooper-Hewitt National Design Museum, Smithsonian Institution, New York, USA, December 15, 2017 - September 3, 2018' (2018) 10 Design and Culture 223, 226.

only PVI audiences, but also broader commercialization opportunities with non-PVI and non-disabled audiences made possible by accessible format copies.

Making Art Accessible: Examining the Landscape of (a more) Inclusive Culture

We will now turn to institutional, private, and grassroots initiatives that challenge historical assumptions about disability and access. The following projects explore facets of accessibility with varying results and provide lessons that can inform subsequent initiatives, both onsite and online. To capture that spectrum of access, it is crucial to analyse how PVI audiences have been integrated and what effect that had on project missions, functionality, and revenue generation goals. The examples below help demonstrate how inclusive design might conflict or cooperate with the role of IP in accessibility projects.

The first example demonstrates the importance of centring voices of wider communities during accessibility projects, rather than those of lawmakers or communities of practice, to upend the exclusive systems that inclusivity seeks to dismantle. In 2015, the Museum of Contemporary Art in Chicago (MCA) and Prime Access Consulting launched a project called *Coyote* to enable the MCA's new website to meet the Web Accessibility Initiative's WCAG 2.0 AAA technical standard and extend digital access of its in-copyright collection to wider communities.[67] *Coyote* aimed to make all 18,000 images of exhibitions, programmes, collection artworks, and even retail items accessible to the widest possible audience through visual description.[68] Working with Sina Bahram and Prime Access Consulting, the partnership designed a workflow tool using the principles of universal design, which advances products designed to be useful to one community are likely to benefit a variety of users, not only those with disabilities.[69] The public-facing website includes an opt-in description layer available to any visitor to show users a new way to approach artworks and images and to increase awareness of digital accessibility[70]; and the software itself is open source.

Behind the scenes, *Coyote* enables users to create accounts and author descriptions for a given resource, which are sent to an administrator for approval.[71] Edits, co-authoring, and attribution are supported by *Coyote*'s functionality. And rather than nominate a single, preferred description for a work, the metadata model enables storage and retrieval of multiple descriptions to capture a "multiplicity of voices" in line with *Coyote*'s ethos.[72] During the process, the MCA learned that the core task of image description was more

[67] Sina Bahram and Anna Chiaretta Lavatelli, 'Using Coyote to Describe the World' (*MW18: Museums and the Web 2018*) <https://mw18.mwconf.org/paper/using-coyote-to-describe-the-world/> accessed 2 April 2020.
[68] ibid. The MCA relied on copyright law provisions Section 107 (fair use as clarified by *Authors Guild v HathiTrust*) and Section 121 (the Chafee Amendment).
[69] ibid.
[70] MCA Chicago, 'Welcome to Coyote' (*Coyote*) <http://coyote.mcachicago.org/> accessed 11 June 2019.
[71] Bahram and Lavatelli (n 67).
[72] ibid.

easily and accurately performed by non-experts rather than curatorial staff.[73] This demonstrates how the lens through which we have been trained to consume art might actually define (or inhibit) our understanding of a work, area of law, or cultural concept. The MCA has embraced this realisation by experimenting with poetry or rap-style descriptions for certain artworks, as well as cadence, tempo, and volume to convey a work's visual qualities.[74] Copyright will protect these and more basic descriptions. Accordingly, the open source software includes a multi-level rights and permissions function and stores description-level rights information using Creative Commons licenses.[75] Institutions may select a default license; viewing its descriptions as metadata, the MCA uses CC0.[76]

Coyote has also enabled the Museum to revisit its onsite inclusivity approach. The MCA is now integrating new digital functionalities into its physical space: visual descriptions will be used for a number of in-gallery applications, including electronic labels and recorded audio descriptions, to support more independent audiences onsite.[77] Descriptions also were repurposed as clues for scavenger hunts in the MCA and around Chicago.[78] And by bringing outside institutions onboard for the event and providing training, the MCA has increased the number of cultural organizations participating in digital accessibility and accessible experiences across Chicago.[79] Future plans involve Word Press integration, multi-lingual capabilities, and expanding *Coyote* to the private sector to aid the aging market of art investors.[80] By situating inclusivity at its core, the open source initiative has fed a network of innovative accessibility developments across various platforms with ongoing benefits to vast audiences.

For comparison, in 2017, the Cooper-Hewitt Museum hosted an exhibition entitled "Access + *Ability*" that featured visually-appealing products designed for disabled users.[81] In her review, Bess Williamson highlights how the exhibition was organized by categories similar to those used by the medical profession – "Mobility", "Connecting", and "Daily Routines" – which echo the medical model of disability that defines disability "as primarily a functional concern, instead of a cultural one."[82] As Williamson observes, this approach

[73] ibid. This observation is consistent with ARCHES, discussed *infra*. Jonathan Rix and Garcia Carrizosa, 'Deliverable D2.1 "Initial Recommendations and Guidelines"' (2016) ARCHES 12.
[74] Bahram and Lavatelli (n 67).
[75] ibid.
[76] Interview with Sina Bahram and Susan Chun.
[77] Bahram and Lavatelli (n 67). See also Claire Voon, 'This Open Source Software Could Make Museum Websites More Accessible' (*Artsy*, 19 April 2019) <https://www.artsy.net/article/artsy-editorial-open-source-software-museum-websites-accessible> accessed 2 April 2020.
[78] 'Case Study: Coyote Scavenger Hunt' (*Coyote*, 3 December 2018) <https://coyote.pics/resources/case-study-coyote-scavenger-hunt/> accessed 2 April 2020.
[79] Bahram and Lavatelli (n 67).
[80] Interview with Sina Bahram and Susan Chun.
[81] Cooper Hewitt, 'Access+Ability' (*Cooper Hewitt, Smithsonian Design Museum*) <https://www.cooperhewitt.org/channel/access-ability/> accessed 2 April 2020.
[82] Williamson (n 66) 225. By contrast, the social model of disability frames environments themselves as disabling, rather than any person's individual impairment or difference.

sustained a narrative that "does little to challenge the notion that disability needs to be treated or fixed."[83]

Similar to the previous example, the Museum hired a consultant from the disabled community, Liz Jackson, a Disability Design expert, to consult on the exhibition.[84] Later, Jackson wrote the Museum had declined a number of her recommendations, such as signalling which products were created by disabled designers and allowing disabled people to author title card descriptions.[85] Jackson wrote she also had to advocate strongly for using "by" as in "designed for and *by* disabled people."[86] While the Museum adopted its use, Jackson was ultimately disappointed, especially in the Museum's failure to embrace the word "disability" on the basis it was perceived to be stigmatizing,[87] and opting instead for the more generalizing term "ability."[88] Both Jackson and Williamson note the consequences of these decisions led to primarily non-disabled designers being interviewed by the press and therefore directing the narrative around the exhibition's importance.[89] Jackson tweeted about her experience and expressed disappointment with the Museum being comfortable adopting her language but without the values.[90] On a meta level, the experience underscores the need for the programme Jackson created in response called "WITH," encapsulating "how disabled people have historically experienced the design process" via products that are often designed *for* them, but rarely *with* them.[91]

We must also critically examine the narratives embedded or left unchallenged in accessibility projects. Another initiative engaging with PVI communities includes *Touching Masterpieces*, a partnership among tech and VR collaborators Neurodigital, the Leontinka Foundation for the blind and visually impaired, and the National Gallery of Prague.[92] The physical exhibition was accessible for PVI and non-PVI audiences. Visitors were invited to "view" statues through haptic feedback provided by patented gloves sensitive enough to convey the difference between rough, smooth, and textured materials.[93] The experience sought to remedy "relief aids and tactile pictures that far from accurately reflect reality."[94]

Currently, the series includes three works selected for their value to art history: the Venus de Milo (Louvre, Paris), David (Galleria dell'Accademia, Florence), and the Nefertiti Bust

---

[83] ibid.
[84] Liz Jackson, 'It Started a Year Ago When @cooperhewitt Asked Me to Consult on Their Access + Ability Exhibit. I Jumped in without Pause, as Disability Design Is My Passion.' (*@elizejackson*, 30 April 2018) <https://twitter.com/elizejackson/status/991082381535793152> accessed 2 April 2020.
[85] ibid.
[86] ibid.
[87] ibid.
[88] Williamson (n 66) 226.
[89] Jackson, 'It Started a Year Ago When @cooperhewitt Asked Me to Consult on Their Access + Ability Exhibit. I Jumped in without Pause, as Disability Design Is My Passion.' (n 84).
[90] ibid. Williamson (n 66).
[91] Liz Jackson, 'WITH' (*NYCxDESIGN*) <https://www.nycxdesign.com/events/with/> accessed 2 April 2020.
[92] Touching Masterpieces, 'Presenting the Unthinkable' (*Touching Masterpieces*) <http://touchingmasterpieces.com> accessed 2 April 2020.
[93] ibid.
[94] ibid.

(Neues Museum, Berlin).[95] Yet a moment occurs in video documentation that suggests visabled communities might rethink how selection proceeds to avoid perpetuating the values of mainstream (*i.e.*, Western) art history. As one visitor feels the space around Venus's shoulders and midsection, he asks: "How about the arms?" There is a pregnant pause as those present realise they must explain a visual given and one of her most valuable features for visabled audiences: "It doesn't have arms."[96] Reproduction enables PVI audiences to engage with works valued by – and thereby participate in – dominant discourses within the authorised heritage discourse.[97] However, new technologies enable us to challenge power dynamics embedded in this heritage by considering how we might prioritise reproduction within the values of historically-excluded audiences, thereby educating non-disabled audiences of the excluded or oppressed values systems of Othered communities.

Various components of these projects might support greater digital accessibility online, whether using existing data online or when generating new data. Indeed, *Touching Masterpieces* explores a different way of "feeling art" that could be generated using the same raw data produced during 3D scans. But what happens to institutions' raw data? Who should own it? And how might it be used in other ways? It is unclear how the *Touching Masterpieces* procured or generated its data.[98] For the works selected, access to the source is unnecessary. A number of high-quality and large-scale copies are held among various institutions, commercial platforms, or, as in the case of Nefertiti, high-quality public domain data is available online.[99]

Unlike touch exhibitions of the past, *Touching Masterpieces* considers how access might be extended to non-local audiences. While the website is not web accessible, it includes downloadable machine-readable PDFs for PVI visitors.[100] The PDF includes basic instructions to install the experience, which is presumably contingent upon access to patented technologies developed by the project.[101] It remains unclear how the files are licensed: no copyright policy is provided online and or embedded in the metadata.

Yet technological sophistication at this level is not necessary. In fact, already-existing technologies could be repurposed for disability art access so long as institutions release openly-licensed data. For example, *Touch Mapper* is a website created by a sighted person

---

[95] ibid.
[96] 00:56 to 01:10, "How it Works," ibid.
[97] Laurajane Smith, *Uses of Heritage* (Routledge 2006).
[98] 3D expert Cosmo Wenman was able to trace the source of David (david.blend, 10.5 MB) to Turbosquid and match the Venus file (venus.blend, 31.5 MB) to the SMK Denmark's public domain scan based on the triangle number (274,243). Nefertiti (nefertiti.fbx, 6.7 MB) is more difficult to read, but seems to be a reduced resolution version of The Other Nefertiti (*supra*, n. 99). Upon closer inspection, the digital files appear difficult to translate to a haptic system and lack provenance and metadata. Correspondence with Cosmo Wenman (9-11 August 2019), on file with the author.
[99] Jan Nikolai Nelles and Nora Al-Badri, 'Nefertiti Hack' (*The Other Nefertiti*) <http://nefertitihack.alloversky.com/> accessed 2 April 2020.
[100] However, the PDF includes hyphenated words and other visual elements that disrupt the machine-readable experience.
[101] Gloves are available for €1,500. 'Avatar VR' (*NeuroDigital Technologies*) <https://avatarvr.es/product/avatarvr/> accessed 2 April 2020.

after learning the challenges faced by PVIs traveling independently.[102] The website uses Open Street Map data, rather than commercial data sources (e.g., Google Maps) that prohibit commercial use.[103] Users are able to enter an address, adjust the map area, and create a file that can be downloaded and sent to almost any 3D printer, as well as a link for placing online orders. The software is open source, permitting further development, for example, to translate digital surrogates of artworks.

Imagine a similar online tool designed for enriched learning experiences: upload a high-quality image to the website that interprets the visual data and renders a file to be printed at home or commercially, or even modified, remixed, and sold. *Unseen Art* attempted to raise funds for a platform where users could contribute and download files for free, but the Indiegogo campaign was unsuccessful in reaching its £24,000 goal.[104] While such translations could be used for various audiences worldwide, the majority of GLAMs prohibit the type of access required,[105] and those with open policies rarely release data at the quality necessary for such a tool.[106] Revisiting an issue discussed above, how might someone request a high-resolution digital surrogate from a closed institution in order to translate the image from 2D to 3D? Institutions will arguably charge for this type of reuse despite whether the copyright is valid, or whether there is a clear copyright exception. Some users have turned to Freedom of Information legislation or filed public lawsuits to secure access to institutions' digital materials.[107] But releasing high-resolution digital surrogates and data around public domain artworks would enable the relevant communities to design their own initiatives, which have value to wider communities for a number of purposes.

Multi-faceted communities have been integrated during initiatives like ARCHES, a Horizon 2020 funded project that developed gesture-controlled multi-sensory technology for accessing heritage artefacts and resources.[108] ARCHES values echo Jackson's: its principles of participation stress the "intention of all those involved must be to do 'research with' rather than 'research on' the participatory research group members."[109] ARCHES's delivery method, designed *with* the relevant communities, simultaneously engages different senses as "analogues for vision" by using low-cost depth cameras that operate directly on relief surfaces to produce an interactive experience with location-dependent, verbal, captioned, and image-supported descriptions as the artefact is explored by the

[102] See Samuli Kärkkäinen, 'Tactile Maps Easily | Touch Mapper' (*Touch Mapper - Tactile Maps for the Visually Impaired*) <https://touch-mapper.org/> accessed 2 April 2020.
[103] This provides a cautionary tale against adopting non-commercial licenses.
[104] Marc Dillon, 'Unseen Art: Experiencing Art for the First Time' (*Indiegogo*) <https://www.indiegogo.com/projects/unseen-art-experiencing-art-for-the-first-time#/> accessed 2 April 2020. Notably, art does not need to be seen, or even touched, in order to be experienced.
[105] See Wallace and Deazley (n 31).
[106] See McCarthy and Wallace (n 5).
[107] Cosmo Wenman, 'Rodin's Thinker 3D Scan Access Effort' (*Cosmo Wenman*, 25 April 2018) <https://cosmowenman.com/bmamuseerodinthinker3dscan/> accessed 2 April 2020.
[108] ARCHES, 'Accessible Resources for Cultural Heritage EcoSystems | Projects | H2020' (*CORDIS | European Commission*) <https://cordis.europa.eu/project/rcn/204798_en.html> accessed 2 April 2020.
[109] Rix and Carrizosa (n 73) 17.

visitor.[110] And, similar to *Coyote*, the project produced an open source data management platform that can be freely downloaded, customized, and extended to meet individual needs.[111] Online, informational videos include British Sign Language interpreters, closed captioning, and downloadable machine-readable descriptions and PDFs in multiple languages.[112]

Key questions underlying these examples are: What role might technology play to invite alternative uses of public domain works that advance marginalized voices and facilitate more inclusive discussions around copyright, culture, and digital media accessibility? And how might GLAMs help clear the way for disability communities to explore and design their own solutions? As discussed in the first section, funding sources or partners might determine the final shape and format taken by accessibility projects. But besides funding, the IP rights claimed in newly-accessible works raise one of the biggest barriers to accessibility. Accordingly, this final section considers how GLAM open access and IP policies might be (re)designed for inclusivity.

Moving Away from Visabled Exclusivity and Control

The current framework of copyright is unequipped to handle the potential of technology during the translation of works from 2D to 3D for accessibility. Not only does it underestimate the potential of accessibility, but its economic incentives encourage business models that secure exclusivity and control in order to maximize potential revenue generation. But the necessary reform cannot proceed via visabled communities alone. Society's understanding of this area must be adaptable and continually enriched by listening, learning, and working *with* communities that have long been invested in accessibility and inclusive design.[113] Considering the history of accessibility, a reflective and reiterative process is necessary.[114] Accordingly, this chapter recommends embracing the work of many who call for broadly integrating the principles of universal inclusive design into policy and practice, and making space for disabled communities to become wholly embedded in the fabric of our cultural and legal institutions.[115] Only then can our cultural and legal measures begin to reflect the needs of a more inclusive society.

Liz Jackson advocates for an equitable and mutual framework of "mutuality," which she defines as "a radical act by an individual or group of individuals intended to create space for sustainable participation within a system or institution that benefits from representing

---

[110] ARCHES, 'Arches Project Cultural Heritage Inventory and Management Software' (*Arches Project*) <https://www.archesproject.org/> accessed 2 April 2020.
[111] ibid.
[112] 'ARCHES, Accessible Resources for Cultural Heritage EcoSystems,' <https://www.arches-project.eu/> accessed 2 April 2020.
[113] Jackson, 'WITH' (n 91). See also Bess Williamson, *Accessible America: A History of Disability and Design* (First edition, NYU Press 2019); Elizabeth DePoy and Stephen Gilson, *Rethinking Disability: Principles for Professional and Social Change* (Wadsworth 2004).
[114] Williamson (n 113); DePoy and Gilson (n 113).
[115] This list is far too long to include here. This chapter highlights: Sina Bahram, Fiona Campbell, Fiona Candlin, Elizabeth Depoy, Elizabeth Ellcessor, Stephen Gilson, Paul Hapur, Liz Jackson, Georgia Kleege, Bess Williams.

or serving them."[116] Jackson distinguishes mutuality from empathy, which she explains "more focused on the gesture than the impact" and can lead to situations of "pathological altruism" that worsen the conditions for the people they are intended to benefit.[117] By contrast, mutuality allows us to reconsider access and reflect on problematic areas in IP and heritage management, in general, through interdependence – and, importantly, it aligns with Article 30 of the UNCRPD. We must therefore consider the structural changes necessary to support mutuality.

On a legislative level, this requires sustainable investment and copyright reform. Governments must reconsider policies impacting the GLAM sector ranging from public funding to revenue-generating obligations to allow for greater inclusivity. As Georgina Kleege stresses, accessibility must "cease to be random acts of charity and become a way to enlarge cultural understanding of art."[118] Practically, this requires a serious commitment to increased funding for the cultural sector and, specifically, for disability projects. Such funding must be accompanied by obligations to adopt open access policies to the greatest (appropriate) extent around project data and outputs.

Copyright has much to learn from inclusive design. To begin with, disability challenges whether ableist assumptions in the law even serve the purposes they have been designed to serve for the dominant culture.[119] Meanwhile, the pervasiveness of ableism in copyright reinforces prevailing prejudices against disability. These legal measures historically designed *for* visabled societies perpetuate repressive norms of access and reuse.[120] Exceptions to these norms must recognise the continuum of visual impairments to ensure that equity, not only equality, is reached through different iterations of a work according to need. We must critically examine what an "accessible format copy" is in an age of rapidly developing technologies and consider the pressing need to adapt inflexible legal measures as technologies blend and progress to better reflect the messiness of reality. Lawmakers must revisit copyright through the lens of ableism and challenge ocular-centric cultural and legal practices that protect a rightsholder in opposition with the spirit of disability rights law. As Elizabeth Ellcessor argues, this process must better consider alternate uses, marginalized voices, and collaborative innovations in disabled accessibility to rethink digital media accessibility.[121] This same process must encompass copyright reform.

Practically, reframing copyright through inclusive design may prove challenging. But we must begin by critically examining the visabled structure of the copyright regime, especially by confronting the general bias underlying legislation that precludes "any changes to the work which are not necessary to overcome the problems *suffered by* the

[116] Liz Jackson, 'Empathy Reifies Disability Stigmas' (Interaction19, 24 February 2019) <https://vimeo.com/319388683> accessed 2 April 2020.
[117] ibid; Barbara Oakley and others (eds), *Pathological Altruism* (Oxford University Press 2011).
[118] Kleege (n 7) 11.
[119] See, e.g., Thomas Hehir, 'Eliminating Ableism in Education' (2002) 72 Harvard Educational Review 1.
[120] The Marrakesh Treaty marks an important advancement in the 'Nothing about us without us' mantra for more inclusive legal reform.
[121] Elizabeth Ellcessor, *Restricted Access: Media, Disability, and the Politics of Participation* (NYU Press 2016).

disabled persons for whom the accessible copy is intended."[122] Such ableist language and mindsets must be eliminated from legal framework and its framing of access to culture and perceptions around engagement.

On an institutional level, this requires a revision of access and operational policies and a commitment to gradated treatment of materials generated during accessibility initiatives. Institutions may not be bound by soft law, but GLAMs should embrace the 2006 UNCRPD similar to the 1970 UNESCO Convention in order to enable disability communities to digitally engage with accessibility projects protected by IP rights.

Operationally, institutions can work *with* disabled artists and communities to make onsite and online spaces more accessible.[123] Onsite, this must extend to creating sustainable employment positions for disabled persons within cultural institutions. Online, institutions must acknowledge digital disability communities through website policies and web accessibility and stop using overbroad language to claim rights in all digital materials.

As reproduction and accessibility projects become more complex, different components may – or may not – attract IP protection in addition to the output that becomes the accessible format copy. Rights management will naturally become more complicated as wider audiences and perspectives are incorporated during production. But not all components of these initiatives should be exploited. A climate already exists where IP's economic incentives can outweigh cultural obligations, thereby reducing disability to a market for which the law must design an exception. Research shows this negatively impacts competition and consumers, especially when multiple forms of protection, like copyright and patent, are secured for the same creation.[124] In the context of *this* market, GLAMs should consider *who* will lose out when reserving all rights for commercial exploitation and how licensing and reuse terms might be designed to enable greater access for disabled audiences, especially the new audiences made possible by the digital realm.

Importantly, this does not require an all-or-nothing release of new IP. In fact, releasing non-original and less innovative materials, like raw data and digital surrogates of public domain works, from commercialisation goals helps justify the exploitation of IP generated during more complex initiatives and desired by third-parties. During contract negotiations, institutions must advocate for releasing these basic outputs for public reuse. Doing so will enable disability communities to design accessible works for themselves and enrich our creative industries.

The Open GLAM Movement could also adopt accessibility as a central tenet. Open GLAM recognises technology's potential to free source objects from physical locations and conservation concerns, and it challenges efforts to conserve territory and authority around

[122] CDPA 1988, s. 31F(5)(b). (emphasis added)
[123] This work is already ongoing. See also Liz Jackson's 'The Disabled List' (*The Disabled List*) <https://www.disabledlist.org/> accessed 2 April 2020.
[124] Buccafusco, Lemley, and Masur explore the social costs of IP rights in functional aspects of creations in Christopher Buccafusco, Mark A Lemley and Jonathan S Masur, 'Intelligent Design' (2018) 68 Duke Law Journal 75.

cultural heritage. Similar to accessibility,[125] Open GLAM embraces the potential for hybrid knowledge generation. As Kleege advocates, we must depart from initiatives that require PVI audiences to rely on others' interpretations and reconsider how art engagement might "expand beyond segregated accommodation to create a more inclusive culture."[126] Open GLAM is ideally situated to promote this endeavour. This will lead to more inclusive environments onsite and online for people with perception, memory, cognition, and communication impairments as well as people with physical disabilities.

Conclusion

There is no shortage of culture to translate for accessibility. However, as demonstrated, a real risk exists of copyright erecting unintended barriers around GLAM generated material to expand access and enable new knowledge generation by PVI and other disabled audiences. Without clearer guidance on these pressing issues, desires to exploit low-hanging IP could prevent plural narratives from developing and contributing to a more inclusive society.

At the same time, it is imperative to acknowledge costs and design sustainable business models to support digital strategies that can adapt to each inevitable advancement in technology. Institutions must balance public-facing missions against desires for exclusive exploitation when deciding whether a work's value and its various components are best suited for commercialisation or open access. In reality, gradated treatment of IP in digital media will better enable current and future generations to access, participate in, and innovate using our cultural heritage in the public domain. Otherwise, with each technological advancement, reproductions of public domain works will continue to be restricted by a monolithic view of art and art history, commercial goals will prevail, and access will be granted to only the few able to afford fees.

New technologies enable GLAMs to explore and invite alternative uses of public domain and in-copyright works that advance marginalized voices and facilitate more inclusive discussions around copyright, culture, and digital media accessibility. GLAMs are ideally placed to bargain for openly-licensing certain outputs at the outset of digital initiatives and establish meaningful standards around inclusivity during third-party partnerships. However, this necessitates an unequivocal commitment to adopting a more inclusive philosophy around open access. Indeed, accessibility enables us all to revaluate not only *what* open access means, but to *whom* in a visabled and ableist culture. Advancing accessibility will enable lawmakers, GLAMs, and the plural public to more accurately represent and consider diverse voices when designing projects, policies, and the law to better reflect the richly-diverse society in which we live.

[125] Fiona Candlin, 'Don't Touch! Hands Off! Art, Blindness and the Conservation of Expertise' (2004) 10 Body & Society 71; Hetherington (n 16).
[126] Kleege (n 7) 99.