

## SOME LEGAL ASPECTS OF DIGITALIZATION OF THE OBJECTS OF CULTURAL HERITAGE IN THE SLOVAK REPUBLIC

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Цифровізація об'єктів культурної спадщини в Словацькій Республіці, як і в інших країнах, має дві основні мети. Першою метою є збереження культурної спадщини для майбутніх поколінь, і більш того, у високій якості сприйняття, як форми, так і змісту окремих об'єктів культурної спадщини. Другою метою є зробити культурну спадщину в Словацькій Республіці доступнішою найбільшому числу тих, хто зацікавлений в пізнанні форми або змісту, або одночасно форми і змісту окремих об'єктів культурної спадщини. Тим не менш, використання окремих об'єктів культурної спадщини в цифровій формі впливає на права як фізичних і юридичних осіб. Ці права, які гарантуються Конституцією Словацької Республіки та Хартією про основні права і свободи або зобов'язання, які є обов'язковими для Словацької Республіки. Це право власності, особисті прав, і права на інтелектуальну власність. У статті розглядаються ці три права відносно цифровізації об'єктів культурної спадщини в Словацькій Республіці.

**Ключові слова:** цифровізація об'єктів, культурна спадщина, право власності.

Цифровизация объектов культурного наследия в Словацкой Республике преследует, как и в других странах, две основные цели. Первой целью является сохранение культурного наследия для будущих поколений, и более того, в высоком качестве восприятия как формы, так и содержания отдельных объектов культурного наследия. Второй целью является сделать культурное наследие в Словацкой Республике доступной наибольшему числу тех, кто заинтересован в познании формы или содержания, либо одновременно формы и содержания отдельных объектов культурного наследия. Тем не менее, решений и применении отдельных объектов культурного наследия в цифровой форме, оказывает воздействие на права как физических и юридических лиц. Эти права, которые гарантируются Конституцией Словацкой Республики, План основных прав и свобод или обязательства, которые являются обязательными для Словацкой Республики по ратификации международных соглашений. Это право собственности, личные права, и право на интеллектуальную собственность. В статье рассматриваются эти три права в отношении цифровизации объектов культурного наследия в Словацкой Республике.

**Ключевые слова:** цифровизация объектов, культурное наследие, право собственности.

Digitalization of the objects of cultural heritage in the Slovak Republic follows, as in the other countries, two basic objectives. The first objective is to preserve the cultural heritage for future generations, and moreover, in high quality of perception of both the form and content of the individual objects of cultural heritage. The second objective is to make the cultural heritage in the Slovak Republic available to the highest number of those who are interested in knowing the form or the content, or simultaneously the form and the content of the individual objects of cultural heritage. However, making and applying the individual objects of cultural heritage in digital form has impacts on the rights of both the individuals and legal entities. These are the rights that are guaranteed by the Constitution of the Slovak Republic, the Chart of Fundamental Rights and Freedoms or the obligations that are binding for the Slovak Republic by ratifying the international agreements. It is the ownership title, the personal right, and the intellectual property right. The article deals with these three rights in respect of digitalization of the objects of cultural heritage in the Slovak Republic.

**Keywords:** objects of cultural legacy, right of ownership.

One of the tasks of the society is not only to support the science, education, art, culture, and technology, but the tasks of the society include also preservation of the results achieved in the social activities. Preservation of such results as the cultural heritage and passing thereof to future generations requires their fixation, so that the „traces in the history” shall not be degraded and lost, and so that the preserved cultural heritage is available to the whole society so that anyone and anytime may exploit it repeatedly and without any limitation.

The important political and legal platform in the Slovak Republic for preservation of the results achieved in the science, education, art, culture, and technology and passing thereof to the future generations is represented by the Declaration of the Slovak Parliament on Safeguarding the Cultural Heritage (No. 91/2001 Coll.). The Declaration declared that the cultural heritage represents the priceless wealth of the state and its citizens, which is a document of development of the society, philosophy, religion, science, technology, and art because it proves the educational and cultural standard of the

Slovak nation, the other nations, and national and ethnic groups and individuals who live or had formerly lived on the territory of Slovakia. However, in this respect, also several international multilateral contractual instruments are important, of which we may present particularly the European Cultural Convention, the European Convention for the Protection of the Archaeological Heritage, the European Convention for the Protection of the Audiovisual Heritage, the Convention for the Safeguarding of the Intangible Cultural Heritage or the Convention for the Protection of the World Cultural and Natural Heritage.

Moreover, for preservation of cultural heritage, in addition to the national declaration for storing and passing to future generations the results achieved in the development of the society, philosophy, religion, science, technology, and art on the territory of Slovakia, and the said international multilateral contractual instruments, also several European Union programs are important, as they follow the same objectives.

### Definition of Cultural Heritage

In order to properly review the legal issues of safeguarding and making available the cultural heritage so that the individual objects of cultural heritage is safeguarded and made available, it is required to deal with the term of “cultural heritage” as a legally important fact. The term “cultural heritage” is defined in different way by a philosopher, ethnographer, historian, and lawyer. The term “cultural heritage” sometimes means both the tangible cultural heritage and the intangible cultural heritage. It may mean also any literary, visual art, musical, dancing heritage, and also any artisan, building, and similar cultural heritage. Another definition of the cultural heritage is based on whether it is the folk cultural heritage or the so-called professional cultural heritage; it may be secular or religious.

From the legal aspect, the term “cultural heritage” may be defined according to the individual generally binding legal regulations of the Slovak Republic. Then the cultural heritage will cover particularly the following:

- any archive documents according to the Law No. 395/2002 Coll. on archives and registers and on amendment to certain laws, as amended. According to that law, an archive document means a record which has permanent documentary value for knowing the history of Slovakia and Slovaks; it means also any film (audiovisual) record or audio record that was made before 1950.

- any objects of cultural value in museums and galleries according to the Law No. 206/2009 Coll. on museums and galleries and on protection of objects of cultural value. Such object means any original secular or spiritual document that is able, directly or indirectly, to speak about development of the society or certain ethnic, and has permanent scientific, historical, cultural or artificial importance; it means also any natural object that is able to speak about development of nature and has permanent scientific and historical importance.

- any cultural sights according to the Law No. 49/2002 Coll. on protection of historical sights. A cultural sight means any movable or immovable thing of historical value, which is proclaimed by the state as cultural sight.

- any library documents according to the Law No. 183/2000 Coll. on libraries, as amended and in conjunction with the Law No. 212/1997 Coll. on obligatory print copies of periodical publications, non-periodical publications and copies of audiovisual works, as amended. A library document means a unit of the library fund, regardless the contents thereof and the form of the information medium.

- any audiovisual works according to the Law No. 343/2007 Coll. on the conditions of records, public dissemination, and storage of audiovisual works, multimedia works, and audio records of artistic performances, and on amendments to certain laws (Audiovisual Law). The audiovisual works, including cinematographic works, multimedia works, and audio records are defined in the Law No. 618/2003 Coll. on copyrights and the

rights connected with the copyright (Copyright Law), as amended.

Definition of the cultural heritage according to the local legal regulations is not quite clear. However, the same applies for the cultural heritage also according to the international agreements which are binding for the Slovak Republic. And here again, we should mention those international multilateral contractual instruments as are mentioned above: the European Cultural Convention, the European Convention for the Protection of the Archaeological Heritage, the European Convention for the Protection of the Audiovisual Heritage, the Convention for the Safeguarding of the Intangible Cultural Heritage or the Convention for the Protection of the World Cultural and Natural Heritage. For example under the Convention on the Means of Prohibiting and Preventing Illicit Import, Export and Transfer of Ownership of Cultural Property, the property means any property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science. Under the Convention, the “intangible cultural heritage” means the practices, representations, expressions, knowledge, skills, instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity. Under the Convention for the Protection of the World Cultural and Natural Heritage, the “cultural heritage” mean monuments, groups of building, and sites which are specified in detail in Article 1.

### Digitalization of Objects of Cultural Heritage

The purpose of digitalization of the objects of cultural heritage is caused by two reasons. The first reason is that the already mentioned preservation of the historical trace for the future generations, as the paper as tangible medium recording the values of cultural heritage degenerates in time, and the same problems are for example also with the celluloid film tapes or the substance from which the gramophone plates are made. It was necessary to find a solution which eliminates the shortcomings of tangible media containing records of the individual objects of cultural heritage. The second reason is that the digitalized (digital copy or digital form) object of cultural heritage is able to be available in one moment in unlimited places and to unlimited number of subjects. This ability of digital copies or digital forms of objects of cultural heritage, when at the same moment all over the world (via web sites or in any other way), unlimited number of subjects have access to the same object of cultural heritage, was essential for applying the digitalization.

The current status of the technologies allow to digi-

talize the individual objects of cultural heritage, and the made digital copies of the objects of cultural heritage or the made digital forms of the objects of cultural heritage allow keeping and making them available. A digital copy of an object of cultural heritage or digital form of an object of cultural heritage has high video or audio quality, or video and audio in combination, it is stable for indefinite period (conservation ability), with high quality of copies or forms, and such copy or form may be applied in the society repeatedly and without worsening the quality thereof. Currently, the most progressive way of keeping and making available the cultural heritage is making of a digital copy or digital form of an object of cultural heritage.

Digitalization may be simply defined as making of another form of an objectively seen object of cultural heritage perceived by human senses (digital form) or making a copy of an object of cultural heritage (digital copy), of the form only or in combination of form and contents of an object of cultural heritage into the video, audio or audiovisual digital record of the form (e.g. a statue, weapon, exterior architecture) or combined form and contents (scientific work, film work, broadcasting program or TV program).

Based on the said benefits, digitalization of the objects of cultural heritage has been elected. In addition to the care for preservation of the original object of cultural heritage, it is the digitalized object of cultural heritage, that will allow the time-unlimited existence of the object itself – the original cultural heritage and also will make available the form or simultaneously the form and contents of the object of cultural heritage unlimited number of subjects. In connection with digitalization of the objects of cultural heritage, from the aspect of application of the generally binding legal regulations of the Slovak Republic, the following should be reviewed and settled:

a) making of a digital copy or digital form of an object of cultural heritage as one legally important fact and use – social application of the made digital object of cultural heritage as another legally important fact,

b) application of the ownership title, application of the personal right, and application of the intellectual property rights in making a digital copy or digital form of an object of cultural heritage, and in use - social application of the made digital object of cultural heritage.

Thus, a legally reasonable solution must respect that each object of cultural heritage is subject to the existing ownership title. Moreover, certain objects of cultural heritage are subject, in addition to the ownership title, also to the personal right of one or two or more individuals, and to the intellectual property right or rights. It is more difficult to properly deal, from the legal aspect, with digitalization and social application of individual objects of cultural heritage in digitalized form, which are subject, in addition to the ownership title, also to the personal right or rights or the intellectual property rights.

While the ownership title exists during existence of the given object (a thing, tangible medium recording the intangible property) of cultural heritage, the personal

right has limited duration indirectly, as stipulated in the Civil Code No. 40/1964 Coll., as amended, and also the duration of the intellectual property rights is limited by the law – it is certain specific duration. Upon expiry of the period of duration of the personal right and also the intellectual property right to individual objects of cultural heritage, only the ownership title remains.

### **Ownership Title to the Objects of Cultural Heritage**

The ownership title as direct legal title to the object of ownership title, and thus also to the object of cultural heritage, according to § 123 of the Civil Code No. 40/1964 Coll., as amended, is a unified right that has its own structure which consists of the right to possess the object of cultural heritage, the right to use the object of cultural heritage, the right to receive the usufruct and benefits from the object of cultural heritage, and the right to deal with the object of cultural heritage.

What concerns the ownership title, it allows to the owner of the thing – the object of cultural heritage to be digitalized, to decide on dealing with the object, the result of which will be a digital copy or digital form of the object of cultural heritage. The owner of the thing has the right of access to the thing – to the object of cultural heritage and to handle with the object of cultural heritage in the process of digitalization. The owner of the thing – the object of cultural heritage has the right to decide on making a digital form of e.g. a folk costume, weapon, clock, china tea set or cupboard. The owner of the thing will also decide on making a digital copy of an audio record recorded on a gramophone plate or audiovisual record of a cinematographic work from the celluloid film.

The ownership title of persons belongs to the fundamental human rights, and the basis of its legal regulation, including legal protection thereof, is stipulated in Art. 11 of the Chart of Fundamental Rights and Freedoms, Art. 20 of the Constitution of the Slovak Republic, and also Art. 1 of the Additional Protocol to the Convention on Protection of Human Rights and Fundamental Freedoms. The legislation applicable for the ownership title of individuals applies also for legal entities, including municipalities, regional offices, and the State; thus the ownership title of all subjects has the same substance.

Thus, if we summarize everything said above about the ownership title to the objects of cultural heritage, then there is no difference between an object of ownership title that belongs to the cultural heritage and an object of ownership title that does not belong to the cultural heritage. It is the subject holding the ownership title – the owner, or the subjects holding the joint ownership title – the co-owners which must agree with digitalization of a specific object of cultural heritage and to actually allow making of a digital copy or digital form of a specific object of cultural heritage.

### **Personal Right to the Objects of Cultural Heritage**

According to § 12(1) of the Civil Code No. 40/1964 Coll., as amended, the object of personal right are any personal written documents (particularly the correspon-

dence and diaries), pictures (regardless the form of recording the person's appearance) and audio, video, and audiovisual records of expressions of individuality – the personality. Such objects of personal right of an individual – the individual to whom the written documents relate to, whose picture is recorded on a tangible medium or whose personal expressions are recorded on any audio, video or audiovisual medium – may be used only with a consent of the given individual or his/her legal successors. Exceptions from this mandatory rule, which are subject to the consent of the individual for use of the objects which are subject to the personal right, are stipulated solely for:

- official purposes stipulated by the law,
- scientific purposes,
- for news in the press, and for film, radio, and TV news.

The personal right which belongs to a specific person or jointly to two or several specific persons (e.g. a photograph of a group of five people) is not related to the thing – the tangible medium, but such right is connected with the people's faces in the photograph.

In connection with digitalization of the objects of cultural heritage, that are subject to the personal right of an individual or several individuals, that right must be clearly respected. Such strict requirement to respect the personal right arises not only from the Constitution of the Slovak Republic and the Chart of Fundamental Rights and Freedoms, but is stipulated also in the international multilateral agreements, as e.g. the International Covenant on Civil and Political Rights or the Convention for the Protection of Human Rights and Fundamental Freedoms which are binding for the Slovak Republic.

In view of the foregoing, during existence of the personal right of an individual or several individuals,

a) any digitalized object of cultural heritage, being a tangible medium of the object personal right may be made solely by those subjects which have acquired, from the holder or holders of the personal right, the right to digitalize the given object of cultural heritage; the only exception are the objects of cultural heritage which are open to the public.

b) no digitalized object of cultural heritage may be made, if such object is not open to the public and the subject holding the personal right disagrees with making a digital copy or digital form of the given object.

c) no made digitalized object of cultural heritage may be used – socially applied before expiry of the personal right or in case the individual or individuals disagree with social application of the digitalized object of cultural heritage.

#### **Intellectual Property Rights to the Objects of Cultural Heritage**

From the aspect of application of the laws of the Slovak Republic (including the secondary law of the European Union and the international agreements which are binding for the Slovak Republic), in connection with digitalization of the objects of cultural heritage, the third

basic legal aspect are the intellectual property rights. According to the Law No. 618/2003 Coll. on copyright and the rights connected with the copyright (Copyright Law), as amended, it represents the specific copyright, the right of performing artists, and the property rights related to both such rights (the right of manufacturers of audio records, the right of manufacturers of audiovisual records, the right of radio broadcasters, the right of TV broadcasters, and under the terms and conditions stipulated by the law, also the right of publishers).

The said intellectual property rights do not belong to the thing - the tangible substrate expressing the existence of the object of intellectual property, i.e. the tangible medium, but the given rights are bound to the contents of the object of intellectual property. For existence and application of such intellectual property rights it is not essential whether the literary work – a poem is written on a paper or is carved in marble, but it is the poem itself that is essential. It is neither essential whether the music is recorded on gramophone plate or on magnetic tape; for a picture it is not essential whether it is painted on canvas or wood.

It was mentioned before that duration of the intellectual property rights is determined by the law.

Pursuant to:

a) § 21(1) and § 22 of the Law No. 618/2003 Coll. on copyright and the rights connected with the copyright (Copyright Law), as amended, the copyright to any literary, scientific, and art work in general lasts from the moment of creation of the work „during the author's lifetime and 70 after his/her death.”,

b) § 63(7) and § 70 of the said Law, the right of performing artists to the artistic performances lasts for 50 years from recording the artistic performance; if, during that period, the recorded artistic performance is published (for the first time and after that right shown to the public), the right of performing artists lasts for maximum 50 years following publication of the artistic performance,

c) § 64(5) and § 70 of the said Law, the right of the manufacturers of audio records lasts for 50 years from making the audio record; if, during that period, the audio record is published, the right of the manufacturers of audio records lasts for maximum 50 following publication of the audio records,

d) § 66(5) and § 70 of the said Law, the right of the manufacturers of audiovisual records lasts for 50 years from making the audiovisual record; if, during that period, the audiovisual record is published, the right of the manufacturers of audiovisual records lasts for maximum 50 following publication of the audiovisual record,

e) § 68(5) and § 70 of the said Law, the right of radio broadcasters and the right of TV broadcasters lasts for 50 years following broadcasting of a radio program or TV program,

f) § 52 of the said Law, the right of publishers lasts for 25 following publication of a literary, scientific or artistic work.

It should be taken into consideration that in respect

of digitalization of objects of cultural heritage, from the aspect of the intellectual property rights, it means use of literary, scientific or artistic works, recorded artistic performance, and also audio records, audiovisual records, radio programs, and TV programs. According to the Law No. 618/2003 Coll. on copyright and the rights connected with copyright (Copyright Law), as amended, during existence of the intellectual property rights, the use of any of the said intangible property require a consent of the subject or subjects holding such rights. Particularly:

a) according to § 31 of the said Law, a library or archive may make a copy of any work from its own funds without a consent of the author or co-authors or the subject holding the copyright or subjects jointly holding the copyright, if the purpose of making the copy of the work is to archive or safeguard the work, including a copy thereof for the case when the work is lost, destroyed or damaged;

b) according to § 71(1) and § 31 of the said Law, the same legal status as described above in respect of the literary, scientific or artistic works applies also for artistic performances;

c) according to § 64 of the said Law, a copy of any audio record may be made solely with a consent of the producer thereof or the subject holding the audio record producer's right. Within the rights of audio record producers, that subject is also entitled to decide on making of a digital copy of an audio record;

d) the same legal status as described above in respect of legislation applicable for audio records applies also for audiovisual records (§ 66 of the Law No. 618/2003 Coll.);

e) making a digital copy of a radio program requires a consent of the radio broadcaster or the subject holding the radio broadcaster's right (§ 68 of the Law No. 618/2003 Coll.);

f) making a digital copy of a TV program requires a consent of the TV broadcaster or the subject holding the TV broadcaster's right (§ 68 of the Law No. 618/2003 Coll.).

Making a digital copy of a literary, scientific or artistic work, recorded artistic performance, and also audio record, audiovisual record, radio program, and TV program is one legally significant act, and the use of such digital copy, i.e. the social use thereof, is another one legally significant act.

The law-determined – limited duration of the specific intellectual property right means that upon expiry of the statutory period, the intellectual property right shall cease and the object of such right is free. This is according to § 53 of the Law No. 618/2003 Coll. on copyright and the rights connected copyright (Copyright Law), as amended, for literary, scientific, and art work, and according to § 71 of the said Law for recorded artistic performances, audio records, audiovisual records, radio programs, and TV programs. In respect with digitalization of the objects of cultural heritage, upon expiry of the period of existence of the intellectual property right or rights, the subject making a digital copy or digital form

of the object of cultural heritage is no more obligated to obtain a consent with digitalization from the subject or subjects holding one of the intellectual property rights. There is neither the obligation to obtain a consent for use – social application of the digitalized object of cultural heritage. Upon expiry of the period of duration of the intellectual property right or rights, a digital copy or digital form of a specific object of cultural heritage will become an object of cultural heritage which is subject to the ownership title only.

Subject Holding the Right to Digitalize a Specific Object of Cultural Heritage and Subject Holding the Right to Decide on Use – Social Application of a Digitalized Object of Cultural Heritage

The foregoing regarding the ownership title to the objects of cultural heritage, the personal right to such objects, and the intellectual property rights to the objects of cultural heritage represents only one part of the legal issues relating to digitalization of the objects of cultural heritage. The other part of such issues represents specification of the subject holding:

a) the right to make a digitalized object of cultural heritage,

b) the right to decide on use - social application of a digitalized object of cultural heritage,

c) the ownership title to the tangible medium where the digitalized object of cultural heritage is recorded.

I. In respect of digitalization of the objects of cultural heritage and application of the generally binding legal regulations of the Slovak Republic it should be stated that in the social practice, there may be, but need not be, a difference between the subject holding the right to digitalize an object of cultural heritage (in the legal sense) and the subject which digitalizes the specific object of cultural heritage in the technical sense. Because digitalization of the objects of cultural heritage requires technologic and personal background for digitalization of the objects of cultural heritage, it should be stated that the objects of cultural heritage will mostly be digitalized by specialized subjects. Moreover, the subject having the right to digitalize an object or objects of cultural heritage will also hold the ownership title to the tangible medium which serves as a medium for the digitalized object of cultural heritage.

There will be a contractual relationship between the two subjects. Under an agreement, the subject having the right to digitalize an object of cultural heritage is a principal and the subject that (technically) digitalizes the object of cultural heritage is a contractor of the work; however, that work is not subject to the Copyright Law. The contractual relationship represents the legal relationship established by an agreement on work (the provisions of § 631 et seq. of the Civil Code No. 40/1964 Coll., as amended; the provisions of § 536 et seq. of the Commercial Code No. 513/1991 Coll., as amended).

II. The subject holding the right to decide on use of a digitalized object of cultural heritage means the subject, which:

a) held the right to make a digital form of the object of cultural heritage and which, in the legal sense, also made such form of the object of cultural heritage,

b) is a legal successor of the subject described in paragraph (a) above.

A decision on use or application of a digitalized object of cultural heritage depends also on the fact whether there exists or not the personal right or the intellectual property right or rights to the object of cultural heritage. If there exists no personal right or intellectual property right or rights to the object of cultural heritage, then use of such digitalized object will not be subject to personal right or intellectual property rights. In making the decision, the subject holding the right to decide on use of a digitalized object of cultural heritage need not account for personal right or intellectual property right.

A different legal situation exists when an object of cultural heritage is subject to the personal right or some right or some intellectual property rights. It has been already said that making of a digital form of the object of cultural heritage which is subject to any right or intellectual property rights requires a consent of the subject that holds either the personal right or the intellectual property right. A consent of the subject holding the personal right or a consent of the subjects holding the intellectual property rights is required for use of a digitalized object of cultural heritage. Such consent may be obtained by an agreement either for a specific and time-limited or time-unlimited use of the digitalized object of cultural heritage or for type-determined and time-limited or time-unlimited use of the digitalized object of cultural heritage. Thus, the subject holding the right to decide on use of a digitalized object of cultural heritage is:

a) solely the subject that held the right to digitalize the object of cultural heritage or another subject having acquired such right from the said subject,

b) a cumulated subject set forth in paragraph (a) above, together with the subject that holds the personal right or the intellectual property right. Such joint right to decide on use of a digitalized object of cultural heritage exists during the period of existence of either the personal right or the intellectual property right.

III. The ownership title to the tangible substrate where the digitalized object of cultural heritage is recorded – to the medium of the digitalized object of cultural heritage belongs to the subject which had the right to digitalize the object of cultural heritage and which made such object of cultural heritage in the legal sense.

#### Final Remarks

These final remarks, in addition to description of the applicable legal regulations of the Slovak Republic, will contain also suggestions *de lege ferenda*.

The first remark relates to determination of the subject which has the right to digitalize an object or objects of cultural heritage, in order to leave a „historical trace”. The subject which best satisfies this requirement should be the State – the Slovak Republic. This declaration on competence of the State is given by universality of

the State to preserve the cultural heritage. Another significant legal act is that the objects of cultural heritage should be digitalized on behalf of the State by certain subjects determined in the law, and likewise, the subjects determined in the law should archive the digitalized objects of cultural heritage. Determination of the State as the subject having the right to digitalize the objects of cultural heritage and the right to decide (on cumulative basis with other subjects) on use - social application of a digitalized object of cultural heritage is without prejudice to the fact that it will be made, on behalf of the State, by other specialized legal subjects. It should be made by those subjects on behalf of the State and under the terms and conditions stipulated in the law.

The second remark relates to the fact that the objects of cultural heritage which were not subject to any of the personal right or the intellectual property rights, and the objects which were subject to either the personal right or the intellectual property right that has already expired require only a consent of the owner of the given object of cultural heritage, both in respect of digitalization thereof and social application of the digitalized object of cultural heritage.

The law should stipulate an obligation for the owners (or detentors or holders) of the objects of cultural heritage to make them available for the purposes of digitalization. Although it would represent an intervention in the ownership title, which would mean limitation thereof, such legal solution would be based on the good reason to preserve the object of cultural heritage. However, such intervention into the ownership title and such limitation of the ownership title should not apply for the use – social application of the digitalized object of cultural heritage. The owner of the object of cultural heritage may have a good reason why he does not wish to make the digitalized object of cultural heritage available to the public, and the State should respect such reason, and the digitalized object of cultural heritage should not be applied in public.

The third remark relates to the objects which are subject to the (existing) personal right or some of the intellectual property rights. Thus:

a) digitalization of such object of cultural heritage, in addition to the consent from the owner of the object of cultural heritage, requires a consent from those subjects that hold the personal right or the intellectual property right,

b) the use – social application of the digitalized object of cultural heritage also requires a consent from the owner of the digitalized object of cultural heritage, and also a consent from those subjects that hold the personal right or some of the intellectual property rights.

The said consents may be obtained under agreements, however, if no agreement is reached in some specific case, the law should provide for an option to digitalize the object of cultural heritage also without a consent of the relevant subjects. What concerns the option stipulated by the law for making a digital form of an object of cultural heritage, it would mean:

- intervention in the ownership title to the tangible medium where the object of personal right or intellectual property rights is recorded; it would be such limitation of the ownership title that would allow digitalization of the object of cultural heritage, but would not permit any social application of the digital object of cultural heritage,

- extending the statutory licenses by digitalization of an object of cultural heritage, representing an object of personal property, and such license would allow digitalization of the object of cultural heritage, but would not permit, during existence of the personal right, any social application of the digital object of cultural heritage, stipulating a statutory license – the right to

digitalize an object of cultural heritage, representing a literary, scientific or art work, recorded artistic performance, and also audio record, audiovisual record, radio program, and TV program, but would not permit any use – social application of the digital object of cultural heritage during existence of the intellectual property right. However, in respect of the intellectual property rights, attention should be paid to the different legal status concerning the works and recorded artistic performances on one side, and concerning the audio records, audiovisual records, radio programs, and TV programs on the other side. However, the deliberation on such solution would require more space than provided in this paper.